

IN THE MATTER OF Puerto Rico Barber & Technical College,
Respondent.

Docket No. 91-36-SP
Student Financial Assistance Proceeding

DECISION

Appearances: A.J. Amadeo Murga, Esq. of Santurce, Puerto Rico for the Respondent

Stephen M. Kraut, Esq. of Washington, D.C., Office of the General Counsel, United States
Department of Education for the Office of Student Financial Assistance

Before: Judge Allan C. Lewis

This is an action initiated by the United States Department of Education (ED) under Title IV of the Higher Education Act of 1965, as amended, to recover \$52,900 of Pell Grant funds and interest in the amount of \$663.19 from the Puerto Rico Barber and Technical College (Puerto Rico Barber) and to require the school to purchase \$8,453 of guaranteed student loans from the lenders. ED alleges that Puerto Rico Barber improperly authorized six guaranteed student loans and distributed Pell Grant funds to several students attending the institution at two locations whose programs were not authorized by ED. Puerto Rico Barber contends that mitigating circumstances surrounding the approval of these programs by its accrediting agency warrants relief from this liability. For the reasons stated, *infra*, it is determined that ED may recover the Pell Grant funds and interest thereon and that Puerto Rico Barber shall purchase the three outstanding guaranteed student loans.

OPINION

In order for a school to participate in the Pell Grant and Guaranteed Student Loan programs, the Department must determine that the school is an eligible institution under 20 U.S.C. . 1091 and 1094 and that it has complied with 34 C.F.R. Part 668 which requires, *inter alia*, that the institution demonstrate financial responsibility and administrative capability. In addition, the Department and the school must execute a program participation agreement regarding the programs.[See footnote 1](#)¹

In order to determine a school's eligibility and to certify the school's compliance with 34 C.F.R. Part 668, the Secretary requires each school to complete and file an application.[See footnote 2](#)² Upon a favorable review, the Secretary designates the school as an eligible institution to participate in Title IV programs. This designation extends only to those locations and educational programs which meet the applicable requirements of Subpart A of 34 C.F.R. Part 600. 34 C.F.R. §600.10(b). The eligibility of an institution does not, however, extend to any location that the institution establishes after it receives its eligibility designation. 34 C.F.R. § 600.10(b)(3). In this circumstance, the institution must reapply to establish eligibility for each new location in order to participate in the Title IV programs at each location. *Id.*

In the instant case, Puerto Rico Barber was designated an eligible institution in August 1988 and this eligibility was extended to its location at #11 Mendez Vigo and the courses offered at that time. Subsequently, in the fall of 1989, Puerto Rico Barber opened two new classroom facilities located in #101 Mendez Vigo and Pablo Cassals. When Puerto Rico Barber opened these two new locations, it did not apply for eligibility for these two locations.

Puerto Rico Barber processed, however, 47 Pell Grants and six guaranteed student loans for the students at these locations under the eligibility designation and program participation agreement governing its main campus at #11 Mendez Vigo. Subsequently, Puerto Rico Barber sought and received reimbursement from the Department for the amounts disbursed to the Pell Grant recipients who were enrolled at these two new sites.

The absence of an eligibility designation for the two new sites surfaced in a program review conducted by ED's Institutional Review Branch on September 26, 1990. Following a response by Puerto Rico Barber, the problems uncovered at the school were adequately addressed, according to the Institutional Review Branch, except for the disbursements to students enrolled at the ineligible sites. As to this potential liability, the Institutional Review Branch deferred the matter on December 12, 1990, since the school has [just recently on November 29, 1990] applied for ED recognition of the two ineligible sites, this office will await the determination of ED's Division of Eligibility and Certification.

Please provide this office with a copy of ED's institutional eligibility letter when received by the college.

Subsequently, on March 22, 1991, the Institutional Review Branch issued a final determination demanding the repayment of the Pell Grant disbursements and the purchase of three guaranteed student loans by Puerto Rico Barber. The final determination stated that-[a]s of the date of this letter the College has not established eligibility. Furthermore, should eligibility be extended to the now ineligible sites, disbursements of Title IV funds could only be made to students during the payment period in which the eligibility had been established. The payment period for students identified in the College's report of invalid disbursements has expired. . . .

Those funds must be remitted to the Department and holders of Guaranteed Student Loans.

The above position by the Institutional Review Branch is based upon an interpretation of 34 C.F.R. §§ 600.10(a) and 690.7(a)(2). 34 C.F.R. § 600.10(a) provides that the Secretary considers a school "as an eligible institution as of the date the Secretary receives all the information necessary to make that eligibility determination," even though that determination is made at a later date. 34 C.F.R. § 690.7(a)(2) provides that [i]f an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

On brief, Puerto Rico Barber's position is simply an extension of the view taken by the Institutional Review Branch. Puerto Rico Barber asserts that, if disbursements of Pell Grant funds may be made any time during the payment period in which eligibility was established as

the Institutional Review Branch maintains, then Puerto Rico Barber should not be held liable or "responsible for the extraordinary delay of the U.S. Department of Education in processing . . . [its] eligibility applications for the new locations" within its fall/winter payment period. Thus, the issue would appear to be whether the Department was negligent in failing to promptly process the two eligibility applications for the new school locations.

In ED's brief and as amplified at oral argument, ED disavows the position of the Institutional Review Branch and urges a different construction of 34 C.F.R. § 690.7(a)(2). Whereas the Institutional Review Branch view would permit pre-eligibility disbursements of funds within the payment period in which eligibility is designated, ED's view is that disbursements of Pell Grant funds may be made only after the Department grants eligibility to the institution and, even then, only to a presently enrolled student.

At the oral argument, the tribunal requested ED to clarify in writing which view represented the position of the Department. ED's attorney failed to respond. [See footnote 3](#)³ Despite this remissness, the present matter may be resolved because, under either view, ED may recover the Pell Grant funds.

Under ED's view, funds may only be disbursed after the Department has designated eligibility for the two new schools opened by Puerto Rico Barber. Here, funds were clearly disbursed prior to December 20, 1990--the date by which Puerto Rico Barber had submitted its two eligibility and certification applications and the necessary accompanying information. Accordingly, under ED's view, the Department may recover the Pell Grant funds.

Under the view of the Institutional Review Branch, the issue is whether the Department was negligent in its processing of the two eligibility applications for the new school locations. The facts reveal that the Department made a reasonable effort in processing the applications during the pertinent fall/winter payment period.

During this payment period, the Institutional Review Branch informed Puerto Rico Barber on December 10, 1990, that it would await the eligibility and certification of the two new school sites by the Department's Eligibility and Certification Division. By December 20, 1990, Puerto Rico Barber submitted its Commonwealth's licenses for the two sites which completed the basic information required by the Department. Shortly thereafter and before mid-January 1991, it was discovered that the programs offered at these sites were not approved by the school's accrediting agency, the National Association of Trade & Technical Schools (NATTS) due to a misunderstanding between NATTS and Puerto Rico Barber. [See footnote 4](#)⁴ On January 14, 1991, NATTS informed ED's Eligibility Branch that it did not have a record of eight programs. ED's Eligibility Branch, in turn, informed Puerto Rico Barber on February 1, 1991 that it would reconsider the eligibility applications after written approvals for the programs were obtained from NATTS and the Puerto Rico Department of Instruction. During the latter part of January and early February 1990, Puerto Rico Barber submitted requests for the approval of these programs to NATTS and prodded NATTS to review and approve these programs. Thereafter, the record is generally silent regarding the activities of NATTS, the Department, and Puerto Rico Barber until the final program review issued on March 22, 1991, although there is a suggestion

by Puerto Rico Barber that NATTS was dragging its feet during this period due to the presence of other problems between the Department and Puerto Rico Barber.

In sum, any delay in processing the eligibility and certification of the two new school sites of Puerto Rico Barber was not caused by ED's Eligibility Branch. Any delay during the fall/winter payment period was due to the actions or inaction of NATTS and Puerto Rico Barber--matters which are not under the control of the Department. Therefore, even under the view of the Institutional Review Branch, Puerto Rico is liable for the repayment of the Pell Grant funds and must purchase the six outstanding loans guaranteed under the Guaranteed Student Loan program.

ORDER

On the basis of the foregoing findings of fact and conclusions of law and the proceedings herein, it is hereby--

ORDERED that Puerto Rico Barber immediately and in the manner provided by law pay the United States Department of Education a sum of \$53,563.19; and it is further ORDERED that Puerto Rico Barber immediately and in the manner provided by law pay off the loan balances in the total amount of \$8,453 or such lesser amount as may be due and owing for the six guaranteed student loans.

Allan C. Lewis
Administrative Law Judge

Issued: February 10,
1993 Washington, D.C.

APPENDIX -- ADDITIONAL FINDINGS OF FACT

1. On August 9, 1988, Puerto Rico Technology and Beauty College was granted eligibility status by the Secretary following a change in ownership.
2. On January 30, 1989, Puerto Rico Technology and Beauty College notified NATTS of the addition of two programs entitled Principle of Dressmaking and Advance Dressmaking.
3. In February, 1989, Puerto Rico Technology and Beauty College changed its name to Puerto Rico Barber & Technical College (Puerto Rico Barber).
4. On February 18, 1989, Puerto Rico Barber was placed on the reimbursement program.
5. On April 13, 1989, Puerto Rico Barber filed an Application for Institutional Eligibility and Certification which indicated its change in name.
6. On February 2, 1990, NATTS purportedly returned to Puerto Rico Barber its recently submitted new program reports regarding the auto mechanic, electricity, and assistant to aviation mechanic programs instituted between September 1989 and January 1990. Revisions were

requested due to an error in each report which indicated that the program required only 5 clock hours of attendance over a 40 or 56-week program.

7. On February 2, 1990, NATTS acknowledged the receipt of a New Program Report for the refrigeration program by Puerto Rico Barber. The report was returned for a revision to Puerto Rico Barber due to an error in the report which indicated that the program required only 5 clock hours of attendance over a 56-week program.

8. The error in the refrigeration report was corrected by the school on February 27, 1990.

9. Prior to and after August 1990 Puerto Rico Barber participated in the Pell Grant and GSL programs under Title IV with respect to five programs. These programs were cosmetology, barbering, advanced cosmetology, and basic and advanced dress making.

10. On October 31, 1990, Puerto Rico Barber met with NATTS and convinced NATTS that the school had submitted a report for the approval of the new sites to NATTS which NATTS had, apparently, not processed. As a result of this meeting, NATTS issued a letter on the same day to Puerto Rico Barber in which NATTS determined that the facilities at Pablo Cassals and Mendez Vigo #101 "satisf[y] the requirements of a separate classroom. You may, therefore, consider . . . [each] facility to be included within the scope of the main school's accreditation."

11. On November 2, 1990, ED's Institutional Review Branch issued a program review which, inter alia, alleged that the school had disbursed Title IV funds to students at two locations, i.e. Pablo Cassals and Mendez Vigo #101, which were not accredited by a recognized accrediting agency and were not recognized as an eligible location by the Secretary.

12. On or about December 1, 1990, ED received two applications from Puerto Rico Barber to obtain eligibility and certification for the programs offered at the new locations of Pablo Cassals and Mendez Vigo #101. In its Pablo Cassals location, it offered programs in auto mechanics, refrigeration & air conditioning, general aircraft mechanics, and frame aircraft mechanics. In its Mendez Vigo #101 location, it offered programs in auto mechanics, refrigeration & air conditioning, general aircraft mechanics, frame aircraft mechanics, basic and advanced dressmaking, and electricity.

13. On December 12, 1990, ED's Institutional Review Branch notified Puerto Rico Barber that its responses to the November 2, 1990 program review satisfied the problems raised in that report except for the disbursements of Title IV funds to student enrolled at the two ineligible sites, i.e. Pablo Cassals and Mendez Vigo #101. As to this latter problem, the Institutional Review Branch indicated that it would await the determination of ED's Division of Eligibility and Certification in view of the school's request for ED's recognition of the two ineligible sites.

14. On December 20, 1990, ED's Eligibility and Certification Branch received from Puerto Rico Barber two modified licenses issued by the Puerto Rico Department of Instruction.

15. On or about January 11, 1991, Puerto Rico Barber sent NATTS a series of New Program Reports which identified the new programs introduced in the latter part of 1989 or early 1990

at the Pablo Cassals location (auto mechanic, assistant to aviation mechanic in general, and refrigeration), at the Mendez Vigo #101 location (beginning and advanced dress making), and at the main location (electricity).

16. By letter dated January 14, 1991, NATTS responded to a December 24, 1990 request from ED's Eligibility Branch regarding Puerto Rico Barber. NATTS's accreditation is institutional in nature and therefore, when a school adds a new program, the students are considered to be attending an accredited school.

NATTS did not have a record of the following programs:

Cosmetology	1200 clock hours
Esthetics	1000 clock hours
Trichology	1000 clock hours
Auto Mechanics	1400 clock hours
Refrigeration & Air Conditioning	1350 clock hours
General Aircraft Mechanics	1000 clock hours
Aircraft Frame Mechanics	1000 clock hours
Electricity	1125 clock hours

According to NATTS, its accredited schools are required to notify NATTS of the addition of new programs by filing a report within 30 days after the first class begins.

17. On January 30, 1991, Puerto Rico Barber expressed its displeasure to NATTS for what Puerto Rico Barber perceived as a failure by NATTS to process within one week, as promised, the new program reports submitted on January 18, 1991. Puerto Rico Barber reiterated its concern that a failure to act upon these new program applications timely could impose a substantial financial loss on the school due to ED's proposed assessment based upon the two ineligible sites.

18. By letter dated February 1, 1991, ED's Eligibility Branch notified Puerto Rico Barber that it was unable to approve the applications for eligibility for the classroom facilities at Pablo Cassals and Nendez Vigo #101. The disapproval was due to a report by NATTS on or about January 14, 1991, that Puerto Rico Barber had not notified NATTS of eight new courses which were offered at the two new classroom facilities. ED's Eligibility Branch indicated that a reconsideration of eligibility could occur after written approvals for the programs offered at the classroom facilities were obtained from NATTS and the Puerto Rico Department of Instruction.

19. On February 8, 1991, Puerto Rico Barber responded to ED's letter of February 1, 1991. Puerto Rico Barber related the difficulties experienced with NATTS regarding the approval of the new courses offered at the two ineligible sites. It indicated that it could not explain NATTS' failure to approve the programs at the two sites and that, even after consultations with NATTS in January 1991, it was still waiting for approval of the programs.

20. By letter dated February 10, 1991, to NATTS, Puerto Rico Barber stated that it had submitted to NATTS new program reports for various courses including the refrigeration and

air conditioning program in February 1990. In addition, Puerto Rico Barber indicated that it had no evidence, other than with respect to the refrigeration and air conditioning program, of any letters from NATTS returning the new program reports due to an error in each report concerning the number of clock hours of required attendance.

21. On March 22, 1991, ED's Institutional Review Branch issued a final program review concerning the outstanding finding of the November 2, 1990 program review regarding the two ineligible sites. The final program review indicated that the school had not established eligibility as of March 22, 1991. Moreover, the letter continued that should eligibility be extended to the two now ineligible sites, the disbursements of Title IV funds could only be made to students during the payment period in which the eligibility had been established. Since the payment period for students identified in the November 2, 1990 program review had expired, the final program review concluded that the Pell Grant funds disbursed to these students and the GSL loans should be repaid. Accordingly, ED requested repayment of \$52,900 in Pell Grant disbursements to the 47 students (plus interest of \$663.19) and the payment of \$8,452.92 in six GSL loans.

Footnote: 1 ¹ The pertinent findings of fact are set forth in the opinion. Other detailed findings of fact are set forth in the Appendix, *infra*.

Footnote: 2 ² There are four parts in the application. Parts I and II pertain to the matter of eligibility and parts III and IV address the certification and the program participation agreement requirements.

Footnote: 3 ³ ED's attorney did, however, subsequently notify the the tribunal that Puerto Rico Barber was denied certification of its two new sites on August 14, 1991. Certification was denied on the basis that Puerto Rico Barber failed to submit an audit required by the Guaranteed Student Loan program for the years 1988 through 1990. While such a revelation would normally be dispositive in this case, this evidence was not submitted in a timely fashion as required by the Department's regulations. Therefore, it is inadmissible evidence under 34 C.F.R. § 668.116(e) and (f) and must be disregarded.

Footnote: 4 ⁴ The misunderstanding was caused by a communication problem between NATTS and Puerto Rico Barber in early 1990. In late January 1990, Puerto Rico Barber applied to NATTS for approval of several new programs by submitting a new program report for each program. NATTS maintains that it returned each of the new program reports in February 1990, including the refrigeration and air conditioning program, due to an obvious error in the stated number of clock hours of attendance required in each program. Puerto Rico Barber, on the other hand, apparently received only the report for the refrigeration and air conditioning program which it promptly corrected and returned to NATTS. Thereafter, there was apparently no correspondence between NATTS and Puerto Rico Barber regarding the programs and the absence of an approval of these other programs remained undiscovered until January 1991.