

IN THE MATTER OF PHILLIPS JUNIOR COLLEGE (Charlotte),  
Respondent.

Docket No. 93-31-SP  
Student Financial Assistance Proceeding

Appearances: Leslie H. Wiesenfelder, Esq., and Kelli J. Crummer, Esq., of Dow, Lohnes & Albertson, Washington, D.C., for the Respondent.

Denise Morelli, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

#### DECISION

Phillips Junior College of Charlotte, North Carolina (Phillips) is one of a number of proprietary schools owned by Phillips Colleges, Inc. Program reviewers from Region IV of the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED), conducted a program review at Phillips between March 18, 1991, and March 21, 1991. The review analyzed Phillips' administration of the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV) for award years 1988-89, 1989-90 and 1990-91.

A final program review determination (FPRD) was issued on January 20, 1993, which found that Phillips violated various provisions of Title IV. Two of those findings are the subject of this appeal. They are: Phillips disbursed Title IV funds in two rather than the required three installments; and, Phillips failed to document the independent status of six students.

The issue of the payment in two rather than three installments, has been litigated previously between the schools of Phillips Colleges Inc., and ED and finally settled by Secretarial action. In the Matter of Edmondson Junior College, Docket No. 93-7-SP, U.S. Dep't

of Educ. (April 5, 1994). The facts of the current case and those in Edmondson, are indistinguishable. Therefore, I find that Phillips did not err by disbursing federal student financial assistance utilizing incorrect payment periods.

The second issue is that Phillips' did not properly document the independent status of six students. In its original determination, SFAP demanded that Phillips perform a full file review to determine the liability for this violation. Phillips declined, stating that it was an unreasonable

demand because of the prohibitive costs involved in such an undertaking. Upon Phillips's refusal, SFAP demanded repayment of all Title IV funds that had been disbursed by Phillips during the period. SFAP's demand has been since modified - now only the return of the Title IV funds disbursed to those six students (\$15,273.90) is demanded.

In its defense, Phillips presented evidence seeking to rebut the specific findings of error enumerated in the program review. In the case of three of the six students, OSFA claimed there was insufficient documentation to show that the students were not claimed as dependents by their parents on their federal income tax forms. However, in each case, Phillips provided the declaration of each student to that effect, claiming that is all the law requires. Citing, 20 U.S.C. § 1087vv(d)(2)(D). A student may be certified as an independent student "on the basis of a demonstration made by the individual, but no disbursement of an award may be made without documentation." 20 U.S.C. § 1087vv(d)(4).

It is readily apparent by reading the two sections together, that prior to disbursement, the school must secure documentation as to the factors qualifying the individual as an independent student - that documentation must be other than the student's own input. Phillips alludes to the obvious - in some cases, what other information can be reasonably gathered. However, I am constrained to follow the law, as written, and cannot waive any requirements of the law. Consequently, I find that Phillips has failed to properly document the independent status of these three students (#5, 22, 27).

As to the other three students, OSFA claims that there is no evidence that the students had \$4,000 in total resources other than from parents the previous two years. 20 U.S.C. § 1087vv(d)(2)(F). My review of the file reveals that such evidence does exist as to one student (#16) by virtue of documents from the Internal Revenue Service (IRS). As to another student (#30), the evidence is insufficient - IRS documents show income of \$3,341, whereas, the student self-certified another \$1,400 in untaxed income, for 1989. The third student (#25), did not have any independent evidence of two years previous resources. I find, therefore, that Phillips has met its burden of proof as to student #16, but not as to students #25 and 30.

Accordingly, Phillips Junior College, Charlotte, is ordered to repay \$11,580 (\$15,273.90 - \$3,693 credit for student #16) to the U.S. Department of Education.

SO ORDERED:

Judge Ernest C. Canellos

Issued: November 18, 1994