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

Docket No. 93-83-SP
Student Financial Assistance Proceeding

Appearances: Leslie H. Wiesenfelder, 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 Birmingham, Alabama (Phillips) is one of a number of proprietary schools owned by Phillips Colleges, Inc. On June 10, 1993, Region V of the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED), issued a final program review determination (FPRD) on the results of a program review performed at Phillips between July 15, 1991, and July 19, 1991. The report 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 the 1989-1990 and 1990-1991 award years.

The FPRD contained eight findings, six of which were monetary and subject to this appeal. They are: Phillips disbursed Title IV funds in two rather than the required three installments; Phillips caused students to endorse aid checks prior to them being enrolled in school for 30 days; student aid files contained instances of conflicting information; Phillips incorrectly calculated pro-rata refunds; Phillips failed to verify the dependency status of one student, and Phillips made payments to two students after their last day of attendance (this finding was dropped by ED during the hearing process).

One of the issues enumerated above, namely, the payment in two rather than three installments, has been litigated previously between Phillips Colleges Inc., the parent of Phillips, and ED. Since all the schools under the umbrella of Phillips Colleges Inc., operate under the same student financial aid regulations, the decisions in those cases are controlling here. In In the Matter of Edmondson Junior College, Docket No. 93-7-SP, U.S. Dep't of Educ. (June 4, 1993), I found that another school in the Phillips Colleges Inc. family did not violate the Title IV regulations by dispensing federal student financial assistance in two payments as a term school. On April 5, 1994, the Secretary affirmed my decision. On November 15, 1994, the Secretary refused to

reconsider his decision when requested to do so by SFAP. The law in this area is abundantly clear - the facts of the current case and those in Edmondson, are also indistinguishable - therefore, I find that Phillips did not disburse federal student financial assistance by utilizing incorrect payment periods. See also, In the Matter of Phillips College of Chicago, Docket No. 93-58-SP, U.S. Dep't of Educ. (November 14, 1994), and the cases cited therein.

The term issue enumerated above was clearly the major issue in this case, accounting for $1,844,580 out of the $1,853,205 demanded by SFAP. The remaining issues are resolved as follows:

1- For both the premature endorsement of checks and the incorrect calculations of pro-rata refunds, Phillips had remitted the erroneous payments, however, SFAP demanded a total of $2,387.11 in excess interest and special allowances that ED had to pay. Phillips argued that there was no authority to recoup those amounts, and, even if there were such authority, SFAP calculated the amount using an impermissible "simplified formula." See, In the Matter of Berk Trade School, Docket No. 91-5-SP, U.S. Dep't of Educ. (December 10, 1992). In response, SFAP recalculated the amounts of excess interest and special allowances by utilizing the authorized statutory formula. The result was that SFAP reduced its demand for these findings to $2,228.32. See, In the Matter of International Career Institute, Docket No. 92-144-SP (July 7, 1994) and 34 C.F.R. 682.609.

2- The issue of conflicting information involves the files of three students. In one, Phillips agreed and paid a $167 refund. In another, a student was listed as either having four or two family members. Phillips claims there were four, amended the records to so indicate, and verified the information with the student. SFAP argues that the evidence is insufficient and the discrepancy should cause all the aid to be returned. Phillips argues that, at most, the difference between the amount authorized for two family members as opposed to four is returnable. In the third case, a student listed the mother as a parent, however, the grandmother signed as the guardian, and her financial condition was used in calculating the award. Phillips argues that, in either case, the award would not have been affected. I find that Phillips has met its burden of sufficiently explaining the apparent inconsistencies and dismiss this finding.

3- Finally, SFAP seeks recovery for the failure to properly determine the dependency status of one student. Phillips claims that the student declared that he was married and was not claimed by his parents for income tax purposes and, therefore, was an independent student for student aid purposes. SFAP claims that there must be evidence of those facts in the file to verify such status and there was no such evidence. I find that Phillips failed to prove that the dependency status was determined as required and, therefore, $2,069.94 must be returned. Although a student may be certified as an eligible independent student based on the student's declaration, "no disbursement of an award may be made without documentation." 20 U.S.C. 1087vv(d)(4).

Accordingly, Phillips Junior College of Birmingham, Alabama, is ordered to refund to the U.S. Department of Education $2,228.32 for excess interest and special allowance costs and $2,069.94 for the failure to properly establish independent status, for a total of $4,298.26.

SO ORDERED:

Judge Ernest C. Canellos

Issued: November 16, 1994