IN THE MATTER OF
Phillips Junior College, Melbourne, Docket No. 93-90-SP
Student Financial
Respondent. Assistance Proceeding

Appearances: Leslie H. Wiesenfelder, Esq., of Dow, Lohnes & Albertson, Washington, D.C. for Respondent.

Karla Y. Byrd, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

Phillips Junior College, Melbourne, Florida, (Melbourne) is one of a number of proprietary schools owned by Phillips Colleges, Inc. On June 25, 1993, Region IV of the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a final program review determination (FPRD) on the results of a program review performed at Melbourne. The report analyzed the administration of student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV) for the 1988-89 and 1989-90 award years. The FPRD cited six findings, two of which are subject to this appeal.

According to SFAP, Melbourne improperly disbursed Title IV funds in two, rather than the required three, installments. This issue has been litigated previously between ED and Phillips Colleges Inc., the parent corporation that owned and operated Melbourne during the period at issue. In the Matter of Edmondson Junior College, Dkt. No. 93-7-SP, U.S. Dep't of Educ. (June 4, 1993) (Edmondson). The Secretary affirmed Edmondson on April 5, 1994 and, on November 15, 1994, rejected SFAP's request to reconsider that decision. Consequently, the law in this area is abundantly clear. I find that the facts of the case before me and those in Edmondson are clearly indistinguishable. Accordingly, I find that Melbourne did not disburse Federal student financial assistance by utilizing incorrect payment periods. See also, In the Matter of Phillips College of Chicago, Dkt. No. 93-58-SP, U.S. Dep't of Educ. (November 14, 1994), and the cases cited therein.

In addition, SFAP alleges that Melbourne misrepresented to students several features of the school's film/video program, including: guaranteeing graduates of the program employment with Universal/MGM studios, promising film/video students access to film studio equipment and supplies, informing students that Melbourne course credits were transferable to four year postsecondary institutions, and asserting various false claims about a student's responsibility

to repay his or her Title IV loan. In its defense, Melbourne denies the allegations of misrepresentation and argues that in accordance with 34 C.F.R. § 668.75, issues regarding misrepresentation are outside the scope of this Subpart H proceeding.

In SFAP's view, although Section 668.75 provides that allegations of substantial misrepresentation must be brought under a Subpart G proceeding, the regulation also permits the Secretary to "[t]ake other appropriate action" including initiating a Subpart H action to recover all Title IV funds disbursed to students who were mislead by the institution. I find that Section 668.75, by its clear and unambiguous language, sets out procedures by which a designated department official may initiate an action to fine or to limit, suspend, or terminate an institution's eligibility to participate in Title IV programs in accordance with "procedures set forth in Subpart G."See footnote 1 *1* See 34 C.F.R. § 668.75(c)(1). SFAP has elected to bring the case before me under the procedures set forth under Subpart H. Clearly, a case involving the misrepresentations alleged by SFAP, which are denied by the institution, is uniquely suited for procedures that provide for the presentation of testimonial evidence and the evaluation of the credibility of witnesses that are only provided for in a Subpart G proceeding.See footnote 2 *2* Consequently, I find that SFAP's allegation regarding misrepresentation is not properly before me in this proceeding. Nothing in this decision, however, precludes SFAP from raising its allegations regarding the school's misrepresentations in a proper forum.

ORDER

Accordingly, Phillips Junior College of Melbourne, Florida is relieved of any obligation to repay funds to the U.S. Department of Education as a result of this proceeding.

SO ORDERED:

Ernest C. Canellos
Issued: November 23, 1994 Chief Judge
Washington, D.C.

Footnote: 1 *1 As I have noted in other decisions, it is quite clear that Subpart H and G proceedings are separate and complimentary. See, e.g., In the Matter of Phillips College of Chicago, Dkt. No. 93-58-SP, U.S. Dep't of Educ. (November 14, 1994). The remedies available in a Subpart H proceeding are contractual in nature and allow for recovery of proven compensatory damages while the remedies in a Subpart G proceeding are punitive in nature. See generally, In the Matter of Macomb Community College, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (June 28, 1993).*

Footnote: 2 *2 Notably, SFAP's most compelling documentary evidence, copies of settlement agreements between Melbourne and some of its students, not surprisingly, conspicuously omit the nature of the underlying dispute giving rise to the settlement agreement and, thus, have limited persuasive appeal.*