

IN THE MATTER OF MR. ARNOLD'S EXCELLANCE BEAUTY SCHOOLS, INC.,  
Respondent.

Docket No. 94-1-SP  
Student Financial Assistance Proceeding

## DECISION

Appearances: William J. Sanchez, P.A., Coral Gables, Florida,  
for the Respondent

Steven Z. Finley, Esq., of the Office of the  
General Counsel, United States Department of  
Education for the Office of Student Financial  
Assistance, Washington, D.C.

Before: Judge Paul S. Cross, Administrative Law Judge,  
Office of Higher Education Appeals, U.S.  
Department  
of Education, Washington, D.C.

This is an appeal of a final program review determination (FPRD) issued on October 18, 1993, by the Office of Student Financial Assistance (SFAP) within the United States Department of Education (ED). Mr. Arnold's Excellance Beauty Schools, Inc. (Respondent), asserts that FPRD findings 3, 4, 5, 6, 7, and 10 should be vacated. Respondent filed a brief on June 17, 1994, in response to SFAP's brief of March 22, 1994. The FPRD is based upon a program review conducted between November 12 and 15, 1991. Respondent has the burden of establishing that the FPRD findings are erroneous.

Respondent points out that in another proceeding, No. 92-121ST, an ED administrative judge issued a decision finding that:

- 1) ED failed to meet its burden of proving that Respondent committed fraud by altering Ability-to-Benefit test answers.
- 2) Ed failed to meet its burden of proving that Respondent did not meet the standard of administrative capability and the fiduciary standard of conduct.

3) Respondent did not make timely refunds as required by 34 CFR 668.21. The Respondent did not dispute this violation.

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4) ED failed to meet its burden of proving that Respondent did not implement the default reduction measures of 34 CFR 668.

5) Respondent's participation in federal student financial assistance programs under Title IV of the HEA of 1965, as amended, should not be terminated.

6) Respondent should be fined \$6,000.

However, these findings are not at issue herein. This is a separate proceeding with different issues. As noted, the findings at issue on appeal in this FPRD are findings 3-7 and

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### Finding 3: Credit Balances on Student Accounts

Finding 3 revealed that Respondent was giving students excess funds after the full amount of the school's tuition and fees were paid or was not making refunds. As set out on Page 2 in the October 18, 1993 FPRD, Respondent owed the following refunds:

\$15,163 due to 29 students

28,136 due to Stafford Loan holders for 30 students

4,972 due to SLS holders for 3 students

792 due to SFAP for Pell Grants for 3 students

\$49,063 Total

As noted on page 7 of SFAP's brief, all of the 29 students who are owed refunds received a Stafford loan, but either graduated or received a federal Pell Grant which created a credit balance on their account. Respondent only paid a refund of \$136 to one student. SFAP seeks recovery of \$11,474, composed of the alleged improper federal Pell Grant (\$792) and

the interest and special allowance subsidies (I&SA)(\$10,682). Respondent admits that the refunds identified in the December 1991 program review remain unpaid because the institution is currently under administrative offset which reduces its monthly HEA funds by approximately \$12,000. Respondent says that an ISA of \$10,682 is extreme and seeks to have it eliminated from this finding. SFAP states that no challenge has been made as to the accuracy of the interest calculation and no alternative or corrected calculation has been provided. I uphold Finding No. 3.

#### Finding 4: Incorrect Ability to Benefit Test Scores

Finding 4 reflects the fact that Respondent used the Wonderlic Test during part of the period covered by the program review as the admission test for all of its students, thereby using its ability-to-benefit test as an admissions procedure for everyone, regardless

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of whether the student did or did not have a high school diploma. As explained in the program review, students taking an untimed Wonderlic test were required to have raw scores of at least 21, which the four students identified in the FPRD did not achieve. However, three of the four students retook the test and obtained satisfactory scores. SFAP seeks \$1700 repayment for one of the students who did not make a passing score on the entrance examination. Also, the student purportedly graduated from high school in Cuba. Respondent failed to show that graduation from a high school in Cuba can be accepted under the regulations as the equivalent of a high school diploma issued by a state-approved institution. I uphold Finding No. 4.

#### Finding 5: Incorrect Pro-rate Refund

Respondent does not question the amount of refund owed under this finding, but states that the interest and special allowance is extreme. However, SFAP requests that this

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tribunal affirm the calculated liability of \$16,950 and take into consideration both the actual loan rates at issue and the lengthy time since the refund became due on June 1990. (See page 5 of the 10/18/93 FPRD.) I uphold Finding No. 5.

#### Finding 6: Ability to Benefit (ATB) Test Answers Changed

Under this finding, the Respondent bears the burden of proving that the questioned Title IV expenditures were proper. White-out was used in conjunction with marginally passing scores. This creates a presumption of irregularity. SFAP points out that even though other test score sheets are not at issue in this proceeding, a department witness identified numerous other instances of changed answers and that the cumulative effect of these altered scores was to convert a failing test into a passing test. According to SFAP, the Respondent could have adopted different screening procedures and directly admitted students that were high school graduates without requiring an ability-to-benefit test. However, the school did not do so. The admission test was the basis for admitting students. SFAP thus says that HEA funds improperly were disbursed to students with failing scores and such funds should be repaid to ED. Therefore, SFAP asks this tribunal to affirm the liability for finding 6 of \$6,933 of Federal Pell Grant funds and \$4,927 of Federal Family Education Loans. I uphold Finding No. 6.

#### Finding 7: Federal Pell Grant Overpayment

SFAP notes that the FPRD identified an overpayment of \$383 in Federal Pell Grants. Respondent does not appear to challenge its liability for this finding in its appeal, but says its servicer is responsible for this miscalculation. Respondent also asserts that

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it is currently subject to administrative offset, apparently proffering this as the explanation of why the funds need not be repaid. SFAP properly seeks repayment of \$383 in Federal Pell Grants. I uphold Finding No. 7.

#### Finding 10: Improper Grant Disbursement

SFAP points out that Respondent improperly disbursed a Supplemental Educational Opportunity Grant (SEOG) in the amount of \$374 to a student after her last recorded date of attendance. Respondent apparently acknowledges the liability and makes reference to the current administrative offset proceeding as an explanation of why these funds have not been repaid. SFAP asks that the SEOG of \$374 be repaid. I uphold Finding No. 10.

On the basis of the record before me, the disputed FPRD findings are affirmed.

By Paul S. Cross, Administrative Law Judge on the 26th of Sept, 1994