

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

IN THE MATTER OF

Dkt No. 94-109-SP

AMERICAN EDUCATION CENTER, INC.,
PRCN: 91305053
RESPONDENT.

Student Financial
Assistance Proceeding

Appearances: Harry M. Moss, President, of American Education Center, Inc.,
of Huntington Woods, MI, for American Education Center.

Jennifer L. Woodward, Esq., Office of the General Counsel, of the United States
Department of Education, Washington, D.C., for the Office of Student Financial
Assistance Programs.

Before: Judge Richard I. Slippen

DECISION

American Education Center, Inc. (AEC) is a private, coeducational vocational school offering certificates in the field of travel consulting that began operating in 1973 and is accredited by the National Association of Trade and Technical Schools . AEC is an eligible institution for purposes of participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV). 20 U.S.C. § 1070 et seq. AEC first obtained Title IV funding beginning in the 1988 school year.

From April 29-May 3, 1991, Institutional Review Specialists from the U.S. Department of Education's (ED) Office of Student Financial Assistance Programs (SFAP), Region V, conducted a program review of AEC's Title IV compliance for the award years 1989-1990 and 1990-1991. A program review report was issued on November 21, 1991, that contained twenty-three adverse findings. SFAP subsequently issued a Final Program Review Determination (FPRD) on May 27, 1994, affirming each of the adverse findings and noting that AEC had satisfactorily resolved thirteen of the initial findings. For these findings, ED sought repayment of \$501,788.13. [See footnote 1 /](#) AEC timely appealed these findings.

AEC's contested liability was originally \$501,738.13, however that amount was reduced significantly through SFAP's acceptance of AEC evidence which has substantially satisfied the findings at issue, in some cases fully resolving the finding. SFAP's Reply Brief, filed November 16, 1994, reviews the claim on a finding-by-finding basis, and breaks out AEC's total liability as \$90,691.62. That sum corresponds to \$80,871 due on Title IV Loans and \$9820.62 due for interest and special allowance. See Reply at 15. The present action comes before this tribunal as

an appeal of the FPRD issued on May 27, 1994. This action is governed by 34 C.F.R. §668.116(d) and, therefore, AEC has the burden of showing the following: (1) that the questioned expenditures of federal student financial assistance funds were proper; and (2) that the institution complied with Title IV program requirements.

I.

Finding 2- Federal Family Education Loan (FFEL) Refunds Not Made or Untimely Made.

SFAP makes a strictly regulatory argument in support of this finding based upon the requirements of 34 C.F.R. § 682.606. Under that provision, SFAP accurately asserts that a school's eligibility is contingent upon its establishment of a "fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board." SFAP additionally argues that AEC violated § 682.607 in failing to operate an acceptable refund program to ensure that withdrawn students were timely reimbursed.

In response, AEC attempts to shield itself from liability by hiding behind the alleged incompetency of its financial aid officer. In its defense, AEC states that once the delinquent and/or unprocessed refunds were recognized, the school moved swiftly to remedy this violation. Therefore, AEC asserts that it should be spared the liability for the interest and special allowance assessed in the amount of \$781.20.

The requirements of §§ 682.606 and 682.607 have been thoroughly examined. In the Matter of Branell Institute, Dkt. 93-157-SA, U.S. Dep't of Educ. (July 22, 1994). In that matter, this tribunal held that subsequent correction of an error found as a result of an ED audit determination, does not release the institution from liability absent authenticated records of payment. [See footnote 2 2](#) While AEC blames its financial aid officer for mismanagement of the funds, [See footnote 3 3](#) it is a well settled legal principle that an employer is vicariously liable for the acts of his/her employee committed when the employee is acting within the scope of his/her employment. See, e.g., *Moy v. Adelphi Institute, Inc.* 866 F. Supp. 696, 700 (E.D.N.Y. 1994). Liability must attach to AEC through the actions of its financial aid officer. Therefore, I find that AEC is liable for \$781.20.

Finding 3- Failure To Comply with the Delayed Disbursement Requirement.

SFAP charges AEC, pursuant to §682.603(c), with the additional responsibility of delaying the disbursement of a Guaranteed or Supplemental Student Loan for at least thirty days into the start of the borrower's program. SFAP asserts that its program reviewers found nine violations of this mandate and AEC's subsequent full file review, in accordance with the FPRD, uncovered an additional five violations of this regulation. SFAP argues that one student out of the fourteen actually withdrew after receiving her check prior to the thirty day waiting period. SFAP, therefore, assesses AEC a liability in the amount of \$ 125.00.

AEC chooses not to dispute the material allegation, except to argue that its default rating was not as high as SFAP indicated. AEC, again argues that it was just following the direction provided by its Financial Aid Administrator and therefore should not be liable for her incompetency. AEC argues and includes documentation to demonstrate that it repaid the outstanding amount of \$602.50, but fails to address its non-payment of the \$ 125.00.

AEC does not refute that it violated ED's mandate pursuant to section 682.603(c) (1991, 1992). The tribunal finds, therefore, that AEC has not carried its burden of proof to show that the institution complied with a Title IV program requirement and finds AEC is liable in the amount of \$125.00. AEC again attempts to excuse its noncompliance stating that it was following the direction of its Financial Aid Administrator. As discussed, *supra*, this argument is not persuasive.

Finding 4- Failure to Comply with the Reduced Annual SLS Amount Limit.

20 U.S.C. § 1078-1(b)(1) establishes limitations on the amounts of loans to students. The statute states that a student who has not previously completed one or two years in a program of undergraduate education and is enrolled in a program "whose length is less than 2/3, but at least 1/3 of an academic year" may borrow a maximum amount of \$ 1500.00. See 20 U.S.C. § 1078-1(b)(1)(B) (1990). In the present matter, SFAP points to two AEC students who were awarded an amount in excess of the \$1,500.00 limit. SFAP argues that this overaward constitutes a violation of Title IV and that AEC is liable to the current holders of the SLSs in the amount of \$ 2,185.00.

AEC's argument that it made a mistake and that these loans are being repaid by the individual students is not persuasive. AEC provided the tribunal no evidence to support its argument that this mistake allows them to escape liability. Additionally, AEC fails to substantiate its assertion that the loans are currently being repaid by the individual borrowers. AEC has again failed to carry its burden to present a compelling showing that it followed the procedures for disbursement of federal student financial assistance funds as outlined in the HEA. See, e.g. In the Matter of Pan American School, Inc., Dkt. No. 92-118-SP, U.S. Dep't of Educ. at 4 (Oct. 18, 1994) (stating "[t]he institution's failure of proof in this regard is a fatal defect to its defense.") (certified on July 25, 1995) . AEC, therefore, is liable for the balance of these improperly disbursed loans totaling \$ 2,185.00.

Finding 7- Lack of Independent Student Documentation.

SFAP argues that AEC failed to verify the independent status of three students to whom the school disbursed Stafford Loans in the amount of \$ 2,552.28 and SLSs in the amount of \$1,772.00. SFAP notes that 20 U.S.C. sections 1070a-6(D) and 1087vv(d) require a Financial Aid Administrator to "certify an individual [as independent] . . .on the basis of a demonstration made by the individual, but no disbursement of an award may be made without documentation." [See footnote 4 4](#) SFAP argues that AEC is responsible for the interest and special allowance that ED paid to the lenders of the three improperly disbursed Stafford Loans. AEC's failure to use a system to certify students resulted in loans to three undeserving students. Its renewed blame on its financial aid officer has already been addressed. SFAP states that AEC remains liable for all the fees in connection with these disbursements.

AEC is ultimately responsible for these loans as a fiduciary of federal student financial assistance funds. As stated In the Matter of Monmouth County Vocational Sch. Dist., when a school signs a program participation agreement pursuant to section 668.12 it undertakes "a fiduciary responsibility to comply with the regulatory and statutory requirements of Title IV, HEA 20 U.S.C. § 1094." Dkt. No. 94-144-SP, U.S. Dep't. of Educ., at 3-4, (April 21, 1995). This tribunal, thus, finds that AEC's failure to comply with the applicable statute and regulations governing the administration of Title IV funds resulted in an abdication of its fiduciary obligations. See e.g., In the Matter of Maurice Charles Academy of Hairstyling, Dkt. No. 91- 18-ST at 14 (May 17, 1993)(finding violations of regulations demonstrates disregard of institution's fiduciary obligations). AEC is liable for the improperly disbursed \$ 2,252.28 in Stafford Loans, \$ 1,772.00 in SLSs and \$717.14 in interest and special allowances for a total liability of \$4741.42.

Finding 8- Financial Aid Transcripts Not Requested or Properly Completed.

SFAP argues that ten of the sample students' financial aid records reviewed did not contain the Financial Aid Transcript (FAT) in violation of 34 C.F.R. §668.19. Furthermore, AEC's full file review found that eight additional folders were missing the FAT. The regulation at § 668.19 requires that:

Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending. § 668.19(a)(2).

....., until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution--

(iv) Shall not release Stafford or SLS proceeds to a student. § 668.19(a)(3) 1987.
Language revised from Stafford to GSL in § 668.18 (a)(3) 1988 *et seq.*

See also, the general provisions on standards of administrative capability at 34 C.F.R. § 668.14 (1987).

SFAP asserts that AEC's failure to obtain FATs for these students makes AEC liable for the amount of student financial assistance disbursed to them. The erroneously disbursed amount includes \$27,526.00 in Stafford Loans, \$10,822.00 in SLSs, and \$8,322.38 in interest and special allowances.

The purpose of requiring participating institutions to obtain a FAT is to determine whether the amount of the current loan proceeds would cause the student to exceed the federal student loan limits and whether the student previously defaulted on a student loan. See § 668.19; see also Monmouth, *supra*, at 3, for its discussion of the FAT regulation. AEC does not dispute this claim and, therefore, does not carry its burden to demonstrate that it complied with Title IV program requirements. This tribunal, thus, assesses the liability to AEC at \$46,670.38.

Finding 9- Incorrect Verification-Conflicting Documentation for each Student Participating in a Title IV Program.

SFAP argues that pursuant to 34 C.F.R. § 668.14, an institution must demonstrate through the maintenance of student academic and financial records that it is capable of administering federal student financial assistance funds. Furthermore, SFAP asserts that these records shall be maintained so that the institution can issue a report to ED upon request. The FPRD cites AEC's improperly kept records and notes that it failed to verify the financial aid applications of eight students. SFAP contends that AEC's inability to submit the requested summary report showing each student's verification of need for student financial assistance constitutes a violation of this regulation. SFAP argues that this violation requires it to recover all Title IV funds disbursed by AEC from July 1, 1989, through June 30, 1991. This liability would amount to \$ 494,963.00. [See footnote 5 5](#)

AEC does not dispute that it did not immediately comply with the summary report called for in the FPRD. AEC contends that it did not fully understand what ED was requesting and it was not attempting to be uncooperative with the SFAP reviewers. Furthermore, AEC notes that it did attempt to comply with a later in-house audit of its financial aid program. AEC argues that this audit submitted to SFAP on August 4, 1994, demonstrated AEC's commitment to conduct a "good faith effort" to fulfill its responsibility as a fiduciary of Title IV funds. In addition, AEC details its past mismanagement and contends that it has taken steps to ensure future compliance with Title IV program requirements.

SFAP initially argued for a full recovery of all Title IV funds issued to AEC from July 1, 1989, through June 30, 1991, on an actual loss basis. However, SFAP revised its claim under this finding as set forth in SFAP's Reply Brief of November 16, 1994, in which it makes a total claim for \$36,189. The revision is based on SFAP's conclusion that AEC's August 1994 file review, as set forth in Exhibit 9 to AEC's response brief, fully resolves the loan liability, interest, and special allowances which SFAP initially charged to AEC under this Finding. In SFAP's attempt to credit AEC's file review, resolve any incorrect verification problems in this Finding, and reduce the liability here, SFAP could not overlook nor could this tribunal, that AEC's own file review provided no verification whatsoever for certain named students who received Title IV funds. AEC's inability to locate any documentation for the named students means there is no support for the award of funds. Each such award AEC is unable to account for is an institutional liability under 34 C.F.R. § 668.116(d).

Under § 668.116(d), a recipient institution has the burden of proving (1) that expenditures questioned or disallowed were proper and (2) that the institution complied with program requirements. Using AEC's file review, inclusive of Appendices A & B, SFAP proceeded to identify the student accounts by student number and the amounts from the "Aid Received, (\$) of Award" columns for each student as listed in AEC's Exhibit 9. SFAP stated that AEC was unable to locate any documentation and it correlated that with its notation, "NO FILE FOUND," for the following students: Students #8 and #9 on page 2 of Appendix A; Student 1, at 3; Students #4, #5, and #7 at 4; Students #4--7, at 5; Student #7, at 6; Student #1, at 16; Student 4, at 1 (sic) 17; and Student #7 on page 1 of Appendix B. Concerning the missing files, SFAP asserted that AEC

had the obligation to maintain (for 5 years) copies of records related to student loans under 34 C.F.R. § 682.610 which it has failed to do for the above-identified students.

SFAP seeks to hold AEC liable for the actual losses for the student loans represented only by the missing files. SFAP determined the full liability against AEC is the \$36,189, which it identifies as due and owing in its Reply Brief. I accept SFAP's calculations of the award amounts to be correct, based on AEC's own records, and find that AEC has not met its burden to properly account for Title IV funds under § 668.116(d). I find that AEC is liable for the revised liability of \$36,189.

Finding 13- Lack of Documentation to Support Student's Admission as Regular Students.

SFAP's Reply Brief, filed November 16, 1994, clarifies that this finding has been resolved based on AEC's submissions.

CONCLUSIONS

For the enumerated Findings Nos. 2, 3, 4, 7, 8 and 9, AEC has failed to meet its burden of proving that the questioned disbursements were proper or that it complied with program requirements. § 668.116(d). The liabilities computed for each finding are supportable.

ORDER

On the basis of the foregoing facts and conclusions of law, it is **HEREBY ORDERED**, that American Education Center, Inc. pay to the United States Department of Education the sum of \$90,692.00 [See footnote 6 6](#)

Richard I. Slippen
Dated: March 15, 1996 Administrative Judge

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

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[Footnote: 1](#) 1 AEC's original liability included \$435,126 in Federal Family Education Loans; \$59,837 in Federal PLUS Loans; \$37,656.03 in Federal Stafford Loans; \$18,604 in SLS payments, and \$11,525.10 in interest and special allowance payments.

*[Footnote: 2](#) 2 In this Subpart H proceeding, the institution has the burden of proving that the questioned expenditures were proper. See § 668.116(d); see also *In the Matter of Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Sept. 26, 1991) (Decision of the Secretary)(finding ultimate burden of persuasion to prove institution complied with program requirements falls on the institution requesting review).*

*[Footnote: 3](#) 3 AEC makes a similar argument for Findings 3, 7, and 8. See *infra*.*

*[Footnote: 4](#) 4 The tribunal notes that 20 U.S.C. 1070a-6 was repealed in 1992. See *Pub. L. No. 102- 325* (1992). The text of 20 U.S.C. 1087vv, however, is unaltered.*

*[Footnote: 5](#) 5 See *ED Reply Brief* at 9 and the *FPRD* at 16 which explain the liability calculated upon AEC's failure to submit the summary file report.*

[Footnote: 6](#) 6 The ultimate liability ordered herein differs by the inconsequential amount of 38 cents from that sought by SFAP.