
IN THE MATTER OF MONMOUTH COUNTY VOCATIONAL SCHOOL DISTRICT, Respondent. Docket No. 94-144-SP
Student Financial Assistance Proceeding

DECISION

Appearances: Sanford D. Brown, Esq., Cerrato, Dawes, Collins, Saker & Brown, for Monmouth County Vocational School District.

Denise Morelli, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard F. O'Hair

Monmouth County Vocational School (Monmouth or institution) is operated by Monmouth County, New Jersey, to provide both secondary and post-secondary vocational education for its residents. Since the 1987-88 award year, Monmouth's post-secondary program has participated in the Federal Stafford Loan (Stafford) and the Federal Supplemental Loan for Students (SLS) programs, authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. §1070 et seq. These programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). On July 18, 1994, following an on-site review of Monmouth's administration of the Stafford and SLS programs, SFAP issued Monmouth a Final Program Review Determination (FPRD). The findings in the FPRD are based on a program review report for the 1991-92 and 1992-93 award years. Monmouth filed a request for a review of that FPRD on August 29, 1994, and it is now before me for findings. [See footnote 1 *](#)

Monmouth's appeal addresses four adverse findings which were described in the FPRD, each of which will be discussed below:

- 1) failure to perform the required verification of Title IV eligibility documentation;
- 2) failure to perform student need analysis prior to certifying student loans;
- 3) failure to obtain required financial aid transcripts; and
- 4) failure to obtain documentation supporting the eligibility of students who were non-citizens.

After these findings were provided to Monmouth, it conducted a full review of all student files to determine the extent of the noted discrepancies. From this review, SFAP concluded that Monmouth improperly disbursed \$419,317 in Title IV funds between the 1988-89 award year and the 1993-94 award year. Rather than asking Monmouth to repurchase these ineligible loans from the lenders, SFAP ordered the institution to repay ED \$192,808, which has been calculated

as the actual loss for those ineligible loans. This amount was appropriately derived from the application of the cohort default rate to each year's ineligible loans. See *In the Matter of Commercial Training Services, Inc.*, Dkt. No. 92-128-SP, U.S. Dep't of Educ. (Aug. 4, 1993), at 6-7; *In the Matter of Southeastern University*, Dkt. No. 93-61-SA, U.S. Dep't of Educ. (June 22, 1994), at 2; *In the Matter of Berk Trade and Business School*, Dkt. No. 93-170-SP, U.S. Dep't of Educ. (June 27, 1994), at 4-5; *In the Matter of Calvinade Beauty Academy*, Dkt. No. 93-151-SA, U.S. Dep't of Educ. (March 21, 1995).

I

The first finding describes Monmouth's failure to complete a verification of the information in the financial aid applications of those students which ED selected for verification. This verification process requires that each selected student file contain the necessary documentation to support the student's financial need. These documents generally include information on adjusted gross income, income tax paid, number of family members, and untaxed income and benefits. 34 C.F.R. § 668.56. If the required verifications are not conducted, the institution has not established that the students were eligible for Title IV funds.

The program reviewers found that Monmouth failed to conduct the required verification for any of the students in the selected sample, and Monmouth did not dispute this. Therefore, SFAP determined that this failure resulted in the disbursement of \$333,867 of ineligible loans.

II

The second finding asserts that Monmouth failed to obtain the required financial need analysis documents for all Stafford and SLS recipients. See 34 C.F.R. §§ 668.201, 668.301(a), and 668.603. As in the finding above, the program reviewers found that Monmouth failed to conduct the need analysis for any of the students in the sample. Monmouth subsequently conducted a need analysis of all students who had received Stafford and SLS loans and reported

to ED the number of student files which were missing the documents necessary to perform a need analysis. From this information SFAP determined Monmouth had disbursed \$419,317 of ineligible loans, with an estimated loss to ED of \$192,808.

III

The next finding addresses Monmouth's failure to obtain a financial aid transcript (FAT) for a significant number of its students who indicated on their Title IV financial aid applications for Monmouth that they had received prior post-secondary education at another eligible institution. The purpose to be served by requiring 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. 34 C.F.R. § 668.19.

Monmouth did not have FATs for nine of the 20 sample files and was ordered to perform a full file review. ED did not compute a specific dollar liability based upon the number of student files which were missing a FAT. Rather, the liability for this deficiency was subsumed into the

"need analysis" category discussed above.

IV

The last finding alleges that Monmouth failed to secure necessary documentation to support the eligible non-citizenship status for three students in the sample. Among other criteria, to be eligible to receive student financial assistance, a student must be a U.S. citizen or national; or, be a permanent resident of the United States or be in the United States for other than a temporary basis with the intent of becoming a citizen or a permanent resident; or, be a permanent resident of the Trust Territory of the Pacific Islands. 34 C.F.R. § 668.7(a)(4). If an institution does not have the appropriate documentation for a non-citizen student, the funds disbursed to that student become an institutional liability.

Upon the discovery of the missing non-citizenship status documentation, Monmouth conducted a full file review of the relevant years to determine the extent of the violation. Monmouth reported the results of the review, but ED did not assess a specific institutional liability for the deficient student files. As in the previous finding, the liability for this finding was subsumed into the assessment generated by the "need analysis" finding.

Discussion

Monmouth has not directly contested any of these findings, but does challenge the assessment of any financial liability against the school. Its position is that while it facilitated its students in the process of obtaining federal student financial assistance, the institution never received a financial benefit from these loans. Monmouth explains that there was no tuition charge for the students who participated in its programs and that student loans were obtained by its students to help them defray their incidental educational and personal living expenses. While these facts may be true, when Monmouth signed the program participation agreement, it

undertook a fiduciary responsibility to comply with the regulatory and statutory requirements of Title IV, HEA. 20 U.S.C. §1094. These apply regardless of whether or not the students are required to pay tuition to the institution. Monmouth's failure to ensure full compliance with the applicable statutes and regulations governing the administration of Title IV funds resulted in an abdication of its fiduciary obligations.

In conclusion, Monmouth has failed to meet its burden of proving that its questioned disbursements were proper and that it complied with program requirements. 34 C.F.R. § 668.116(d).

ORDER

Based on the foregoing, it is hereby--

ORDERED, that Monmouth County Vocational School must refund to the U.S. Department of Education the \$192,808 requested in the Final Program Review Determination.

Judge Richard F. O'Hair

Issued: April 21, 1995
Washington, D.C.

S E R V I C E

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

Sanford D. Brown, Esq.
Cerrato, Dawes, Collins, Saker & Brown
Wemrock Professional Mall
509 Stillwells Corner Rd.
P.O. Box 6009
Freehold, NJ 07728

Denise Morelli, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
Room 5215
Washington, D.C. 20202

*Footnote: 1 * In its submissions, Monmouth asks for a stay of these proceedings, explaining that ED has not responded to certain Freedom of Information Act requests which the institution believes may assist it in presenting its defense. This tribunal has no authority to order discovery by either party. Because of this, and in the absence of being persuaded that ED has in its possession any documents which would assist Monmouth in its response to the FPRD, the request for a stay is denied.*