

IN THE MATTER OF Branell College of Nashville,
Respondent.

Docket No. 94-210-SA

Student Financial Assistance Proceeding

Appearances: Duane W. Hawkins, President, Branell College of Nashville, Nashville, Tennessee for Respondent.

Edmund J. Trepacz, Esq., Office of the General Counsel, Washington, D.C., for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

On August 31, 1994, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a **final audit determination (FAD)** finding that Branell College of Nashville (Branell) improperly disbursed \$3,133,417 in Federal student financial assistance funds during the 1990-91 and 1991-92 award years. The findings of the FAD included determinations that Branell failed to comply with various program regulations and failed to submit to ED a close-out audit, in violation of Title IV of the Higher Education Act of 1965, as amended (Title IV). See 20 U.S.C. § 1070 et seq.

In a submission dated November 4, 1994, Branell disputed the findings of the FAD and requested a hearing pursuant to 34 C.F.R. Part 668, Subpart H. On May 3, 1995, SFAP filed a Motion To Dismiss Respondent's Appeal and For Entry of Default Judgment on the basis that Respondent's appeal was not timely filed. In an order issued on May 25, 1995, I denied SFAP's Motion To Dismiss, but ordered Respondent to show cause within 20 days why I should not dismiss its appeal and enter judgment against it for failure to prosecute its appeal. On July 21, 1995, SFAP filed a Motion For Default Judgment on the ground that Branell had failed to comply with my Order To Show Cause.

Pursuant to 34 C.F.R. § 668.117(c)(3), I have the authority and responsibility to terminate the hearing process and issue a decision against a party if that party does not meet time limits established pursuant to my orders. Although Branell did not file a submission in compliance with my orders, the institution's November 4, 1994, submission requesting a hearing stated that the institution contracted the services of John J. Michie, C.P.A., to audit the institution's Title IV programs. According to Branell, the auditor was expected to complete his audit work by December 1994. To date, the institution has not indicated whether an audit report was submitted to ED. After a review of the FAD, I am convinced that the findings contained therein sufficiently state allegations in a manner that would require Branell to carry its burden of proof in this proceeding. [See footnote 1](#)

As noted, Branell does not proffer evidence showing that the institution has submitted an appropriate close-out audit. Nor does the institution otherwise show that the Title IV

expenditures questioned in the FAD were disbursed properly. In fact, the record contains no evidentiary submissions from the institution that documents or accounts for Branell's expenditure of Title IV funds. As such, I find that Branell has failed to carry its burden of proof in establishing that the institution's expenditure of Title IV funds was proper.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that in accordance with the Final Audit Determination Branell College of Nashville pay to the United States Department of Education the sum of \$3,133,417.

SO ORDERED.

Ernest C. Canellos
Chief Judge
Issued: July 28, 1995
Washington, D.C.

Footnote: 1 In this proceeding, the institution has the burden of proving that the questioned expenditures were proper. 34 C.F.R. § 668.116(d); see also In the Matter of Sinclair Community College, Dkt. No. 89-21-S, U.S. Dep't of Education (September 26, 1991) (Decision of the Secretary).