

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

In the Matter of **Docket No. 94-214-SP**

CC'S COSMETOLOGY COLLEGE, Student Financial Assistance Proceeding
Respondent.
PRCN: 94206025

Appearances:

Chiquita Carter, Owner, for CC's Cosmetology College, Tulsa, Oklahoma

Denise Morelli, Esq., Office of the General Counsel, U.S. Department of Education,
Washington, D.C., for the Office of Student Financial Assistance Programs

Before:

Judge Ernest C. Canellos

DECISION

CC's Cosmetology College (CC's), Tulsa, Oklahoma, is a proprietary school offering vocational programs in cosmetology at locations in Tulsa and Durant, Oklahoma, and Paris, Texas. It is accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and is eligible to participate in the Federal Pell Grant and Federal Family Education Loan Programs, authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.*

Between February 14-18, 1994, program specialists from the office of Student Financial Assistance Programs (SFAP) of the U. S. Department of Education (Department), conducted an on-site review of CC's administration of the Title IV Programs for award years 1991-92 and 1992-93. The program review report dated March 9, 1994, contained ten adverse findings. On October 14, 1994, SFAP issued a final program review determination (FPRD) which found that CC's had taken corrective action as to nine of these findings leaving unresolved only one violation, i.e. that CC's violated Title IV and its implementing regulations, by improperly awarding Federal Pell Grants to students at its Durant branch campus. Specifically, CC's was alleged to have made Pell Grant disbursements to students attending the Durant campus before that campus had become eligible to participate in Title IV programs.

As a result of this finding, SFAP alleged that CC's improperly expended \$26,767 in Pell Grant payments for the 1991-92 and 1992-93 award years. CC's disputed this liability and filed an appeal. In this appellate proceeding, CC's has the burden of proof and is obligated to show that: the questioned expenditures were proper, and the institution complied with program requirements. 34 C.F.R. § 668.116(d).[See footnote 1](#)¹

To participate in the federal student financial assistance programs promulgated under Title IV, an institution must apply to the Secretary for a determination that it qualifies as an eligible institution. 34 C.F.R. § 600.20. Once a decision has been made relative to eligibility, the institution is notified. 34 C.F.R. § 600.21. The eligibility determination is made by the Department based on the information provided in the eligibility application. Eligibility applies only to the educational programs and locations specifically identified by the institution and the Secretary; eligibility does not extend to a location that is established after the Department's determination is made. 34 C.F.R. § 600.10(b)(3). Therefore, institutions which establish additional locations must apply separately for an individual eligibility determination on each new location. 34 C.F.R. § 600.30(a)(3). Until the time any additional locations are approved by the Department, the students attending at those locations are not eligible to receive Title IV funds. *See* 34 C.F.R. § 668.7(a)(1)(I).

CC's is an eligible institution which has participated in the Title IV programs through a Program Participation Agreement entered into on December 9, 1988.[See footnote 2](#)² After a number of years in operation, CC's submitted an Application of Institutional Eligibility and Certification for approval of an additional location in Durant, Oklahoma. Based upon that application, on June 23, 1992, SFAP designated CC's Durant location as eligible to participate in Title IV programs. Consequently, on and after June 23, 1992, CC's could lawfully disburse Pell Grant funds to eligible students enrolled in programs at the Durant location -- not before.

I am persuaded that CC's did not satisfy its burden of proof in this case. CC's asserts that no Pell Grant funds were disbursed to students prior to June 23, 1992, and it provides copies of checks as documentation. A review of each check reveals that it is dated after the June 23, 1992, eligibility date. However, the date of disbursement of the Pell Grant is not the controlling factor, but rather it is the period for which the payment was made that is significant. In this case, students were paid after the June 23, 1992, eligibility date, but payment improperly included clock hours which were earned during prior payment periods. I find that the evidence reveals that CC's improperly disbursed Pell Grant funds during the 1991-92 and 1992-93 award years because the disbursements included payment for the entire award year rather than just for the appropriate or current payment period.

Regulations promulgated pursuant to Title IV provide that “[i]f an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant *for the payment period* during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.” 34 C.F.R. § 690.7(a)(2) (emphasis added). *See In the Matter of Puerto Rico Barber & Technical College*, Docket No. 91-36-SP (February 10, 1993). In the present case, CC's disbursed Pell Grant funds to students for the entire award year rather than just for the appropriate or current payment period. Clearly, disbursements to students attending a newly

eligible institution or branch of an institution cannot include payment for hours earned in a previous payment period, even if that payment period occurs in the same award year.

CC's does not dispute that it needed to gain eligibility for the Durant campus location before it could disburse Pell Grant payments to the students at Durant. Instead, it claims that it made an honest attempt to follow regulations set forth by the Department and was unaware of any wrongdoing. This tribunal recognizes that the school's mistakes were probably unintentional and, furthermore, that the interpretation of the school was not completely off-base; however, that does not constitute an excuse for the unauthorized expenditure of federal funds.

ORDER

On the basis of the foregoing findings, it is hereby ORDERED, that CC's Cosmetology College repay to the United States Department of Education the sum of \$26,767.

Judge Ernest C. Canellos

Dated: December 11, 1996

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 Citations in this decision to the Code of Federal Regulations are from the 1992 edition.

Footnote: 2 ² I do not interpret that the institution's argument that it did not need to reapply for a Program Participation Agreement to lawfully disburse Title IV funds at its Durant location to argue the proposition that the institution views the original eligibility designation as extending to the Durant location under 34 C.F.R. § 600.10. Notably, § 600.10 extends eligibility to locations where an institution provides less than 50 percent of the educational program at that location.