

IN THE MATTER OF PHILLIPS COLLEGES, INC.,
Respondent.

Docket No. 94-4-SP
Student Financial Assistance Proceeding

Appearances: Lisa C. Bureau, Esq., and Leslie H. Wiesenfelder, Esq., of Dow, Lohnes & Albertson, Washington, D.C., for the Respondent.

Renee Brooker, Esq., and Donald C. Phillips, 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

This is an appeal of a final program review determination (FPRD) dated November 2, 1993, which found that Phillips Colleges, Inc. (Phillips) received a total of \$242,962 in fair-share awards under the campus-based programs [See footnote 1](#)¹ for the 1990-91 and 1991-92 award years, but did not provide documentation to prove it was entitled to receive those funds. Phillips owns and operates numerous forprofit trade schools which participate in the campus-based programs, 44 of which are at issue in this proceeding.

Campus-based funds such as those at issue are awarded on an honor system. An institution is generally not required to submit back-up documentation to the U.S. Department of Education (ED) to support its request for funds, but is required to maintain such records. 34 C.F.R. § 675.19(b). A Fiscal Operations Report and Application to Participate (FISAP), the required annual application for campus based funds, is accepted as true, and the institution must sign an accompanying certification that the information it submits is true and accurate. The FISAP contains income grids which are used by ED to determine the needs of the institution's students.

The problems regarding Phillips' campus-based programs first arose in early 1992 and lead to a previous FPRD and decision. The Phillips institutions submitted their FISAPs for the 1988-89 and 1989-90 award years upon which they received the campus-based funds for 1990-91 and 1991-92. An ED Office of Inspector General Audit, however, found serious problems with Phillips' applications for the FY 1990 and 1991 fair-share funds. As a result, Phillips institutions were subject to the requirement of providing back-up documentation to support their initial requests. Since that documentation was not available, Phillips requested that it be allowed to initially perform a reconstruction of the income grids for ten of its schools. These schools were chosen because they represented the largest campus-based funds recipients. The reconstructed grid information which Phillips then submitted revealed that two institutions for the 1990-91 award year and five for the 1991-92 award year, could not document their entitlement to the fair-share funds received. As a result, a FPRD was issued on February 8, 1993, seeking the return of all campus-based funds those institutions received. A decision in that matter was dated on May

16, 1994. See, *In the Matter of Phillips Colleges, Inc.* Docket No. 93-39-SP, U.S. Dep't. of Educ., (August 1, 1994), hereinafter cited as PCI-1.

Here, Phillips submitted no back-up information for the remaining 44 institutions involved in this case. However, Phillips argues that, despite its failure to submit any back-up data as to those 44 institutions, it is entitled to the application of an error rate derived from the reconstructed grids of the ten colleges in PCI-1, as opposed to the "pay it all back" directive of the current FPRD. Phillips submits that the error rate of 14.1% in PCI-1 [See footnote 2](#)² should govern this proceeding and this would result in the return of \$34,257.64. Phillips insists that the reconstructions at the ten institutions in PCI-1 establish that it could document more than 85% of the fair-share funds allocated to its colleges, and therefore, an extrapolation based on the first ten Phillips colleges is eminently reasonable.

SFAP does not agree that Phillips has the right to choose the method of calculating liability. SFAP's counsel recounts that: Phillips was clearly instructed to submit back-up documentation for the 44 institutions or the return of the total fair-share funds would be demanded; SFAP has not seen any documentation to support Phillips' receipt of fair-share funds for the 44 institutions; and, Phillips has had more than two years to provide the requested reconstruction to support its applications but has consistently refused to do so. Because of the inaccurate and faulty back-up documentation for the PCI-1 institutions, and the refusal of Phillips to provide any back-up documentation for the present 44 institutions, all of the fair-share requests for the 44 schools are suspect. As a consequence, Phillips' insistence on a reduced liability equates to giving it a reward for not doing that which it was required to do.

The 44 Phillips institutions were, and continue to be, in noncompliance with ED's regulations by not having the information which they are required to maintain to support the fair-share requests. After all, in this type of proceeding, the school has the burden of establishing that federal education funds were properly spent. Clearly, Phillips has not met its burden. See generally, *In the Matter of Sinclair Community College*. Docket No. 89-21-S, U.S. Dep't. of Educ. (Decision of the Secretary) (September 26, 1991). By not providing evidence to support its fair-share payments, Phillips violated regulatory record-keeping requirements for the campus-based programs. 34 C.F.R. .675.19(b)(5) (CWS); 34 C.F.R. .676.19(b)(4) (SEOG); 34 C.F.R. .674.19(d)(5) (Perkins).

Contrary to Phillips' claim, I find that SFAP has presented a prima facie case for the recovery of the fair-share funds. Phillips also raises some ancillary arguments: that there is no authority to demand the return of all fair-share funds; that there should be no repayment liability because there has been no proof of harm as a result of the fair-share fund awards; and that it is entitled to an offset. These were likewise raised in PCI-1 and I adopt the rationale of PCI-1 as to these issues.

Accordingly, Phillips Colleges, Inc., is ordered to repay the total fair-share funds of \$242,962 to the U.S. Department of Education.

SO ORDERED:

Judge Ernest C. Canellos
Issued: November 2, 1994

[Footnote: 1](#)¹ *The campus-based programs are authorized under Title IV of the Higher Education Act of 1965, as amended, and include: The Federal Supplemental Educational Opportunity Grant Program (SEOG), Federal Work-Study Program (CWS), and Federal Perkins Loan Program (Perkins).*

[Footnote: 2](#)² *In PCI-1 an error rate of 14.1% was based on the amount of unsupported fair-share funds for the ten schools compared to the total amount of the fair-share funds provided to those schools.*