

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

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In the Matter of **Docket No. 94-78-SP**

**LONG BEACH COLLEGE OF BUSINESS,** Student  
Financial Assistance Proceeding  
Respondent.

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Appearances: D.N. Ward, Esq., Huntington Beach, California, for Respondent.

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

Before: Frank K. Krueger, Jr.  
Administrative Judge

### **DECISION**

The Respondent, Long Beach College of Business, which was located in Long Beach, California, stopped enrolling students in November 1992, and ceased operations in June 1993. In late November and early December of 1992 the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), conducted a program review of the Respondent. By letter of June 23, 1993, after being notified that the school had ceased operations, SFAP reminded the Respondent of its obligations under its Program Participation Agreement to conduct a close-out audit. On February 24, 1994, SFAP issued its final program review determination.

As part of the final program review determination, SFAP cited Respondent for its failure to conduct a close-out audit and for its failure to provide SFAP with institutional audits for award years 1988-89 through 1992-93. SFAP also found a number of other program violations and missing records. On the basis of Respondent's failure to do the close-out audit and the unavailability of certain information necessary to determine whether expenditures were proper, SFAP assessed liability against Respondent for the entire period covered by the program review, award years 1990-91 through 1992-93, for a total of \$13,194,828.

As discussed below, SFAP's determination that Respondent is liable for all Federal student aid disbursements made since the 1990-91 award year through the 1992-93 award year is affirmed, since Respondent has not performed any institutional audit for any of those years and has not done the required close-out audit.

## DISCUSSION

### I. Failure to Submit Required Audits.

SFAP determined that Respondent failed to have any institutional audits performed since before the 1988-89 award year, and failed to have the required close-out audit performed since it went out of business in June 1993. The Respondent makes no effort to justify its failure to conduct the close-out audit. Concerning its failure to conduct institutional audits, Respondent claims that they were completed but, for reasons not stated, the auditor will not provide copies of the audit reports. Respondent also alleges in its brief that it was unable to complete the audits due to ED's interference with the auditor and the fact that the school no longer enrolls students. Respondent's allegation concerning ED interference must be rejected since it provides no evidence to support it. Similarly, Respondent makes no effort to demonstrate how the fact that it no longer enrolls students prevented it from completing the required audits.

In order to participate in the Federal student financial aid programs, the Respondent was required to enter into a Program Participation Agreement whereby it agreed to comply with the regulations governing the student aid programs. Under 34 C.F.R. § 668.23(c) (1990) of those regulations, the institution was required to submit to ED periodic audits accounting for all student assistance funds released by the institution during the period of the audit. Audits were required to be conducted at least every two years. *Id.* Under 34 C.F.R. § 668.25(c) (1993), when an institution ceases to provide educational services, or otherwise loses its eligibility to participate in the program, it must submit a close-out audit to SFAP within ninety days after the school ceases operation. Since Respondent did not submit any audits for the 1990-91 through 1992-93 award years, the close out-audit for Respondent should have covered that entire period. [See footnote 1 /](#) Because the Respondent has never had a close-out audit performed, SFAP is unable to determine whether the Federal funds expended by Respondent during this period were properly spent. Under the prevailing legal precedent Respondent is liable for all Federal assistance expended during this period. *See In re Macomb Community College*, Docket No. 91-80-SP, U.S. Dept. of Education (May 5, 1993); *In re National Broadcasting School*, Docket No. 94-98-SP, U.S.

Dept. of Education (December 12, 1994); *In re Lehigh Technical School*, Docket No. 94-193- SP , U.S. Dept. of Education (March 17, 1995); *In re Cosmetology College*, Docket No. 94-96-

SP (August 23, 1995); *cf. Montgomery County, Maryland v. Department of Labor*, 757 F.2d 1510 (4th Cir. 1985).

### II. Ability to Benefit Test.

SFAP found that Respondent was in violation of 34 C.F.R. § 668.7(b) and 20 U.S.C. § 1091(d), which require that a student admitted to a participating institution who does not have a high school diploma or its equivalent must pass an independently administered test which measures the student's ability to benefit from the program for which the student is seeking Federal financial aid. In fulfilling this requirement, Respondent used the Wonderlic Scholastic Level Exam. SFAP determined that Respondent passed three students with scores of 17, 17, and

16, respectively, when the passing score recommended by the publisher was 18. SFAP also determined that for six students it was unable to verify that the test was independently administered. On the bases of these findings, SFAP concluded that Respondent should do a full-file review of all students admitted on the basis of ability-to-benefit tests to determine which additional students were admitted without passing grades, or whose tests were not documented as being independently administered.

In response, Respondent contends that the publisher of the Wonderlic test determined that the passing grade for the course in question -- computer technology -- was 15, rather than 18, and submitted a letter from the publisher which in fact states that 15 is the appropriate passing score. (Respondent's Exhibit 2.) SFAP rejects this justification since it was not submitted with empirical evidence. Although the letter is not accompanied by any empirical data, it does state that the test score was arrived at using procedures approved by ED. In response to the conclusion that it could not be determined whether the Wonderlic test was being independently administered, Respondent submitted weekly logs signed by independent test administrators who were certified by the publisher as qualified to administer the test. The logs are certifications for students administered tests during 1991 and 1992. (*See* Respondent's Exhibit 1.) SFAP never specifically responded to this information, except to contend that it is "unsatisfactory." (SFAP brief, p. 8.)

Based on the evidence presented by the Respondent, I find that Respondent has fulfilled its burden of persuasion that it was in compliance with 34 C.F.R. § 668.7(b) and 20 U.S.C. § 1091(d). The evidence demonstrates that Respondent's students were given independently administered ability-to-benefit tests, and were being scored on those tests in accordance with the criteria specified by the publisher. There was no statutory or regulatory requirement that the publisher's recommended criteria be supported by empirical data before it could be used by the Respondent.

### **III. Missing Documentation and Other SFAP Findings.**

SFAP found that Respondent was unable to provide a number of documents necessary for it to determine whether Federal funds were expended consistent with all appropriate program

requirements. The missing documents included school catalogs, bank statements, expenditure ledgers, and correspondence between Respondent and ED concerning its default rates. Based in part on the fact that Respondent was unable to produce certain documents, SFAP made a number of specific findings concerning clock hour/quarter hour conversions, Perkins Loan deposits and procedures, incorrect calculations of expected family contributions, untimely student refunds, inadequate accounting practices and reconciliation procedures, and conflicting information in student files. In response, Respondent submitted a number of exhibits which it claims prove that it was in compliance with all program requirements. Many of these exhibits are not responded to by SFAP. On the basis of the present record I am unable to intelligently make any type of findings or conclusions, except to note that most, if not all, of these issues could have been resolved by a close-out audit. In light of Respondent's total liability for the entire program period, based on its failure to submit a close-out audit or any intervening audits, it is unnecessary for me to make any findings or conclusions with respect to these additional problem areas.

## **FINDINGS AND CONCLUSIONS**

1. Respondent failed, since award year 1990-91, to perform periodic institutional audits of its administration of the Federal student aid programs, or otherwise account for funds expended by it under the Federal student aid programs.

2. Respondent ceased operation in June 1993, but never submitted to ED a close-out audit, or otherwise made any accounting of expenditures made by it under the Federal student aid programs since before the 1990-91 award year.

3. Respondent is in violation of 34 C.F.R. §§ 668.23 and 668.25, which required that Respondent submit to ED periodic audit reports concerning its expenditures under the Federal student aid programs, and that Respondent submit to ED a close-out audit within 90 days from the date that Respondent ceased operations. As a result of these failures, ED is unable to determine whether expenditures made by the Respondent under the Federal student aid programs since the 1990-91 award year were proper.

4. Respondent has a liability for all expenditures made during the review period since, without the required audits, SFAP is unable to determine whether expenditures made by the Respondent under the Federal student aid programs were proper. During this period, Respondent paid out a total of \$2,284,370 in Pell Grants, \$480,021 in Supplemental Educational Opportunity Grants (SEOG), \$467,976 in Perkins Loans, and \$32,015 in Federal Work Study funds for which it is liable to reimburse ED. In addition, Respondent must reimburse ED \$1,344,879 in special allowances and interest payments made by ED during the review period. Respondent is also liable to buy back from lenders the outstanding balances on all Stafford Loans, Supplemental Loans for Students (SLS), and Parents Loans to Undergraduate Students

(PLUS). [See footnote 2 2](#)

5. Respondent properly administered its ability-to-benefit program in full compliance with 34 C.F.R. § 668.7(b) and 20 U.S.C. § 1091(d).

## **ORDER**

ORDERED, that Respondent reimburse ED \$4,609,261 for expenditures made by Respondent in Pell Grants, SEOGs, Perkins Loans, and Federal Work Study funds for the award years 1990-91 through 1992-93, and for interest payments and special allowances made by ED concerning awards made under the Federal student aid programs to Respondent.

FURTHER ORDERED, that Respondent satisfy its liability for Stafford Loans, SLS loans, and PLUS loans during the review period by purchasing the loans from present holders of those loans, including ED and the guarantee agency, or reimburse ED for actual or estimated losses resulting from defaults on those loans.

Date: August 30, 1995

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Frank K. Krueger, Jr.  
Administrative Judge

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**S E R V I C E**

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

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*Footnote: 1 1 As noted, SFAP determined that Respondent has not completed any institutional audits since before the 1988-89 award years. (Exhibit ED-1, p. 7, final program review determination.) In its brief ( page 5, footnote 3), SFAP states that there has not been an audit since the 1989-90 award year. The discrepancy is not important, since SFAP takes the position in its brief that SFAP is "limited by the scope of the FPRD [final program review determination] which only goes back as far as the 1990-91 award year." Although I do not totally agree with SFAP's position, in order to be totally fair to the Respondent, I have limited my findings to the period requested by SFAP.*

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*Footnote: 2 2 SFAP calculates the total loan liability for third-party loans, as of the date of the final program review determination, to be \$8,585,567. Respondent disputes this amount, and argues that it is \$2,964,318. (See Respondent's Exhibit 12 and the last two pages of its brief.) Respondent further argues that, given this wide disparity, ED cannot with credibility make accurate estimates of Respondent's disbursements under the entire student aid program. However, Respondent submits no specific information or figures to undermine the SFAP calculation of the money owed directly to ED. Thus, I have accepted that figure as fact. With respect to loans made by third-party lenders, it is not necessary to make a specific dollar*

*calculation of the liability, since the dollar amount will depend on the outstanding balances of those loans which, presumably, are being paid off as time passes on. Also, this liability may be satisfied by reimbursing ED directly for actual losses as a result of defaults on these loans.*