

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

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In the Matter of

**Docket No. 95-147-SP**

**BATON ROUGE COLLEGE,** Student Financial Assistance Proceeding  
Respondent.

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PRCN: 199540611737

Appearances: Dr. John O. Murphy, President, Baton Rouge College, Baton Rouge, Louisiana

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

Before: Judge Richard I. Slippen

### DECISION

Baton Rouge College (BRC) is a proprietary institution of higher education which offers programs in paralegal studies and court reporting. The main campus is located in Baton Rouge, Louisiana. On November 1, 1993, BRC opened an additional location in Metairie, Louisiana. Eligibility of the additional location was approved by the Department on November 1, 1994. On August 17, 1995, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department or ED) issued a Final Program Review Determination (FPRD) finding that BRC violated several regulations promulgated pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 2070 *et seq.* and 42 U.S.C. § 2751 *et seq.* By letter dated October 3, 1995, BRC appealed the finding that its Metairie location was an ineligible site under the regulations.

A program review of BRC, conducted June 28-30, 1994, by the State of Louisiana's Office of Student Financial Assistance (LOFSA), revealed that BRC had an additional lecture site located in Metairie, Louisiana. Despite the fact that the additional site was not yet approved by the Department, students at this location were receiving Title IV funds. In response to a referral made by LOFSA, an off-site program review was subsequently conducted by the Regional Office of SFAP from August 2-10, 1995, to identify possible regulatory violations and assess Title IV liabilities in relation to the Metairie branch. The Department found that BRC improperly

disbursed Title IV funds to students at its Metairie campus from November 1, 1993, to November 1, 1994, because BRC-Metairie was an ineligible location until it received Departmental approval on November 1, 1994. ED assessed a total liability of \$30,696.29 for the Title IV funds improperly disbursed at Metairie during the requisite period, which includes \$15,350 for ineligible Federal Pell grants (Pell) and \$15,346.29 for the estimated actual loss to the Department for ineligible Federal Family Education Loan (FFEL) funds.

### I

To participate in Title IV programs, an institution must be designated as an eligible location. 34 C.F.R. § 600.20(a) (1990). This designation does not extend to any additional locations established after the institution receives its initial eligibility determination. 34 C.F.R.

§ 600.10(b)(3) (1990). Institutions establishing additional locations for educational programs must apply to the Secretary for a determination on each new location. 34 C.F.R. §§ 600.10(b)(3), 600.30(a)(3) (1990). Until additional locations are approved by the Department, students at the new locations are ineligible to receive Title IV funds. *In Re Puerto Rico Barber & Technical College*, Dkt. No. 91-36-SP, U.S. Dep't of Educ. (February 10, 1993); *In Re Louise's*

*Beauty College*, Dkt. No. 95-48-SP, U.S. Dep't of Educ. (April 17, 1996); *In Re LeMoyne-Owen College*, Dkt. No. 94-171-SA, U.S. Dep't of Educ. (May 18, 1995). An institution is required to notify the Department of changes in location. However, there is no requirement that the institution apply for the Secretary's permission unless the additional location offers a complete program. *In Re Fundacion Educativa Ana G. Mendez*, Dkt. No. 94-30-SA, U.S. Dep't of Educ. (December 15, 1995). A complete educational program is one which leads to an academic or professional degree, vocational certificate, or other recognized educational credential. 34 C.F.R. § 600.2(c) (1990).

BRC obtained Departmental approval to participate in Title IV programs in September 1990 for its main campus, BRC-Baton Rouge. BRC received approval from its accrediting agency, the Accrediting Council for Continuing Education and Training (ACCET), to establish an "auxiliary classroom" in Metairie, Louisiana, on September 17, 1992. The program offered at BRC-Metairie was defined by ACCET as a paralegal program consisting of 30.5 semester credit hours, or 615 clock hours. BRC-Metairie opened on November 1, 1993, at which time Title IV funds were immediately disbursed. As stated previously, eligibility of the additional location was not approved by the Department until November 1, 1994.

SFAP maintains that BRC-Metairie was an ineligible location until approved by the Department on November 1, 1994, and thus, any funds disbursed before that time were ineligible. As clearly outlined in 34 C.F.R. §§ 600.10(b)(3) and 600.30(a)(3), BRC was required to obtain approval from the Department for any additional locations. Consequently, when BRC opened the Metairie location, the school was required to obtain Departmental approval before disbursing Title IV funds to students enrolled there. As BRC failed to obtain the required approval before disbursing Title IV funds at the Metairie location, SFAP asserts the institution is liable for all funds disbursed prior to that location being approved by the Department.

BRC claims that it is not liable for the Title IV funds disbursed, for several reasons. First, BRC asserts that it does not offer a complete educational program at BRC-Metairie, and, thus, it was not required to notify the Secretary. Second, BRC contends that it did not need to notify the Department of its additional location because in an October 27, 1993, letter from ACCET, its accrediting agency, it stated that, "The U.S. Department of Education and the State of Louisiana have been advised of ACCET approval of this new auxiliary classroom by copy of this letter." BRC asserts that this letter served as proper notification to the Department, and that no other notification was necessary.

Finally, BRC alleges that the rules regarding notification of additional locations are unclear, and consequently, it should not be held liable for alleged regulatory violations. In support of its position, the school points to a May/June 1982 Education Bulletin, which BRC claims is one of the most recent, comprehensive guidelines on the establishment of new institutional locations. The Bulletin states that financial aid disbursements may begin "in the payment period in which the branch is accredited." BRC also argues that the 1988 NATTS Student Financial Aid Tool Kit, produced by the National Association of Trade and Technical Schools supports its position. The Tool Kit states that the effective date of eligibility will be when the new location is accredited. In further support of its claim, BRC proffers two November 1994 letters, written by Mark C. Rhodes, Compliance Auditor for LOSFA, to Charles Johnson, Chief of the Institutional Review Branch of SFAP. In the letters, Mr. Rhodes expresses his belief that the loans guaranteed for BRC's auxiliary classroom were eligible loans, since they were approved by the institution's accrediting agency and the state licensing board. He asks for confirmation from Mr. Johnson that his belief is correct. [See footnote 1 /](#) BRC's position is that if an agent of LOSFA, such as Mr. Rhodes, is unclear on the Department's eligibility regulations, BRC's mistake is understandable, and, thus, it should not be held liable.

In a Subpart H proceeding, an institution requesting review of a FPRD has the burden of proving that it complied with Title IV program requirements. 34 C.F.R. § 668.116(d). I find that BRC has not met its burden in this proceeding. It is abundantly clear that if an institution offers a complete educational program at an additional location, that institution must file an application to secure the Secretary's permission. *See In Re Fundacion Educativa Ana G. Mendez*, Dkt. No. 94-30-SA, U.S. Dep't of Educ. (December 15, 1995). In that respect, BRC has failed to demonstrate that a complete educational program was not being offered at Metairie. In order to do so, it would have had to establish, *inter alia*, that BRC-Metairie did not furnish all of the courses needed for a diploma, and that students were simultaneously required to take classes at BRC- Baton Rouge. *See In Re Patten College*, Dkt. No. 94-122-SP, U.S. Dep't of Educ. (August 15, 1995). After its assessment of Baton Rouge College, LOSFA concluded that BRC-Metairie does,

indeed, offer a complete Paralegal Studies Course. Likewise, in an April 10, 1995, letter to LOSFA, the Institutional Participation Division of the Department confirmed that BRC-Metairie offers a complete paralegal program. I also find that BRC-Metairie offers a complete educational program because the Institutional Approval Notice, issued by the Secretary, effective date November 1, 1994, indicates that the educational programs offered at BRC-Metairie are identical to the undisputedly complete educational programs offered at BRC-Baton Rouge, having the same title and academic measurement. In light of BRC's lack of evidence to the contrary, this tribunal concludes that BRC-Metairie provides a complete educational program.

As BRC provided a complete educational program at BRC-Metairie, the institution was required to notify the Department of its additional location, pursuant to 34 C.F.R. §§ 600.10(b)(3), 600.30(a)(3) (1993). While ACCET, BRC's accrediting agency, indicated that it would inform the Department of the Metairie site, third-party notification fails to satisfy the requirement. The rule mandates that "*an eligible institution* shall notify the Secretary at the same time as it notifies its accrediting agency" but not later than 10 days after the change occurs. 34 C.F.R. § 600.30(a) (1993). Therefore, notification by ACCET was insufficient. BRC was obligated to notify the Department itself.

Furthermore, though there was confusion among LOSFA officials regarding eligibility requirements, the regulation itself is clear. Promulgated in 1988, 34 C.F.R. § 600.10(b)(3) unambiguously states that an institution seeking to establish a new location must apply to the Secretary under § 600.20. Neither this tribunal nor a compliance auditor of a state agency have authority to waive this rule. Additionally, the regulation cannot be waived by the 1982 Education Bulletin and the 1988 NATTS Tool Kit proffered by BRC. Thus, BRC had a responsibility to notify the Department of its Metairie location before disbursing Title IV funds. Because it failed to do so, the institution is liable for funds improperly disbursed before being designated an eligible site.

#### FINDING

BRC is liable for disbursing Title IV funds from November 1, 1993, to November 1, 1994, at its Metairie location, prior to obtaining eligibility certification from the Department.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that Baton Rouge College pay to the United States Department of Education the sum of \$30,696.29.

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Judge Richard I. Slippen

Dated: August 6, 1996

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#### 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 By way of letter dated December 2, 1994, Mr. Johnson responded that any loans disbursed prior to November 1, 1994, at BRC-Metairie were ineligible.*

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