

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

In the Matter of

Docket No. 95-154-SP

CAPRI SCHOOL OF BEAUTY CULTURE,
Respondent.

Student Financial

Assistance Proceeding

PRCN: 94405081

Appearances: Leslie D. Zitzka, Director, Chicago, IL, for Capri School of Beauty Culture.

Alexandra Gil-Montero, 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

On September 22, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final program review determination (FPRD) finding that Capri School of Beauty Culture (Capri) violated several regulations promulgated pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA). [See footnote 1 1](#) 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* Capri is a proprietary school located in the Chicago, Illinois area.

The FPRD, which resulted from a program review of Capri's Title IV compliance for the 1992-1993 and 1993-1994 award years, contained six adverse findings. Only FPRD Finding # 4 is at issue in this appeal. [See footnote 2 2](#) Finding # 4 found that Capri failed to properly compute *pro rata*

refunds for 17 students. In response to the program review report, Capri recalculated *pro rata* refunds for its applicable students for the program review period. *See* ED Exhibit 1.

Effective July 23, 1992, [See footnote 3 3](#) any institution participating in the Title IV, HEA programs must have a fair and equitable refund policy in effect under which the institution refunds unearned tuition, fees, room and board, and other charges to students who receive Title IV assistance and who either 1) did not register for the period of attendance for which the assistance was intended, or 2) withdrew or otherwise failed to complete the period of enrollment for which the assistance was intended. 20 U.S.C. § 1091b(a). The institution's refund policy shall be considered to be fair and equitable if it provides for a refund in an amount that is the largest of 1) the requirements of applicable State law, 2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary, or 3) the *pro rata* refund calculation described in § 1091b(c) if the student was attending that institution for the first time and withdrew before completing at least 60 percent of the period of enrollment. 20 U.S.C. § 1091b(b).

A *pro rata* refund means a refund of not less than the portion of tuition, fees, room and board, and other charges for the period of enrollment for which the student has been charged that remains on the student's last date of attendance. 20 U.S.C. § 1091b(c). The refund should be rounded downward to the nearest 10 percent of the period of enrollment. *Id.* The amount of the *pro rata* refund is minus any unpaid charges and the assessment of a reasonable administrative fee. *Id.* For educational programs measured in clock hours, the portion of the period of enrollment that remains is determined by dividing the total number of clock hours for which the student has been charged into the number of clock hours remaining to be completed as of the student's last date of attendance. 20 U.S.C. § 1091b(c)(2)(B).

SFAP argues that Capri improperly calculated *pro rata* refunds for 17 students because the institution calculated its refunds using the number of clock hours the students were scheduled to complete rather than the actual number of hours the students completed prior to their last dates of attendance. Capri appears to argue that it only owes refunds to nine of the 17 students cited in the FPRD because it either 1) recalculated the *pro rata* refund amounts given in its previous response to the program review report, or 2) that the institution already refunded the money. Capri also argues that a *pro rata* refund should not have been calculated for one student due to her withdrawal after the 60 percent completion point. See Respondent's Exhibit 3. Additionally, Capri argues that it does not have to pay these refunds due to the injunction prohibiting the collection of these refunds issued in *California Cosmetology Coalition v. Richard W. Riley*, 871 F. Supp. 1263 (C.D. Cal. 1994).

An institution appealing an FPRD must demonstrate that it properly refunded Title IV funds under 34 C.F.R. § 668.116(d). Capri concedes that it improperly calculated *pro rata*

refunds for nine of the 17 students identified in FPRD Finding # 4. Capri's assertions regarding the differing amounts of Title IV funds for these nine students, that the Title IV funds for the remaining students were refunded, and that one of the remaining students completed at least 60 percent of her educational program are not supported by any evidence presented to this tribunal. Therefore, I find that Capri has failed to meet its burden under 34 C.F.R. § 668.116(d) and remains liable for the Title IV funds at issue.

Further, Capri's argument that it is not required to pay these refunds due to an injunction prohibiting the Department from collecting refunds is without merit. *California Cosmetology Coalition* involved the issue of deducting unpaid charges for refund calculations other than *pro rata* refunds calculations. 871 F. Supp. at 1265. As stated by the court, *pro rata* refunds were not at issue in the California Cosmetology Coalition decision. *Id.* Therefore, there is no basis for Capri's withholding payment of the *pro rata* refunds to the Department.

FINDINGS

1. Capri improperly calculated *pro rata* refunds for 17 students during the program review period.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the Capri School of Beauty Culture pay to the U.S. Department of Education \$3,165 and reimburse \$8,826 to the appropriate holders of FFEL Program loans.

Judge Richard I. Slippen

Dated: May 15, 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 The September 22, 1995, FPRD rescinded an earlier one dated July 10, 1995.

[Footnote: 2](#) 2 Other findings were dropped by the Department due to corrective action taken by Capri; and one finding involved an informal fine and is, therefore, not part of this appeal.

[Footnote: 3](#) 3 Higher Education Act Amendments of 1992, P.L. 102-325 (1992).
