

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

In the Matter of **Docket No. 95-16-SA**

NATIONAL BEAUTY COLLEGE Student Financial Assistance Proceeding

Respondent. ACN: 06-20003

Appearances: John Allen Chalk, Esq., of Michener, Larimore, Whitaker, Flowers, Sawyer, Reynolds & Chalk, Fort Worth, Texas, for National Beauty College.

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

Before: Judge Ernest C. Canellos

DECISION

National Beauty College (NBC) of Baton Rouge, Louisiana, is a proprietary institution which operated two campuses, Baton Rouge and Lake Charles, each offering programs in cosmetology. Both campuses were closed in 1992. The schools were licensed by the Louisiana State Board of Cosmetology and were accredited by the National Accrediting Commission of Cosmetology Arts and Sciences. Each of these schools participated in the Federal student aid 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.*

On November 21, 1994, the Chief, Audit Resolution Branch, Institutional Monitoring Branch, Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final audit determination (FAD) to NBC. The FAD was based upon a final audit report, dated December 3, 1993, which was issued by the Department's Office of Inspector General (IG). The IG review examined NBC's administration of the student financial assistance programs for the period July 1, 1988, to March 31, 1992. On December 30, 1994, NBC, through counsel, timely appealed the four adverse findings of the FAD and requested a hearing. After briefs were filed by both parties, an oral argument was held.

The audit report, FAD, and request for hearing all involve the same four findings. First, NBC is alleged to have failed to document the high school diploma, General Education Development (GED) certificate, or ability-to-benefit (ATB) test for five students, as required. For this violation, the FAD demanded the return of \$8,552 in Pell Grants and \$3,200 in Stafford loans. Second, NBC is alleged to have failed to obtain or retain financial aid transcripts from previously

attended eligible institutions for seven students, as required. For this violation, the FAD demanded that \$8,924 in Pell Grants and \$2,625 in FFEL loans be returned. Third, NBC is alleged to have overpaid twelve students who withdrew prior to entering into the payment period for which the funds were paid and failed to make appropriate refunds to students who had withdrawn. [See footnote 1 /](#) For the appealed portion of this finding, the FAD demanded the return of \$1,153 in Pell Grants and \$2,013 in Stafford loans. Finally, on the basis of evidence that was discovered during the IG audit that NBC's owner had directed a scheme to fraudulently alter student records, SFAP determined that all of NBC's records were suspect, and, therefore, NBC was unable to verify whether any of its students were eligible to receive Title IV funds. Despite this determination, SFAP offered NBC the option of performing a full file review of the records required to be maintained by Title IV regulations and having such review attested to by a certified public accountant. Such action could have alleviated SFAP's concern regarding the viability of those records, but NBC apparently did not avail itself of that opportunity.

Although SFAP's counsel conceded that a large percentage of the records may not have been tampered, as a consequence of not being able to determine which of the records was correct, the FAD demanded the return of all the Title IV funds expended by NBC during the audit period. In an attempt to reach a final determination of the amounts to be refunded to the Department, SFAP reasoned that students who graduated and received licenses from the State of Louisiana could be presumed to be eligible; therefore, SFAP credited NBC for the federal aid given to the 70 students it found to have received a license from the Louisiana authorities . After such credit (\$217,304) was applied, SFAP demanded the return of \$431,049 in Pell Grant funds and \$334,952 in Stafford loans.

First, based upon my review of the evidence, I find that NBC failed to meet its burden of proof in establishing the ability-to-benefit qualifications for five students; therefore, that finding is affirmed. As to the second finding, I find that NBC failed to meet its burden of proof in presenting the financial aid transcripts for the seven students; therefore, that finding is affirmed. Third, I find that NBC failed to make timely refunds to three students; therefore, that finding is affirmed. Since the return of the Title IV funds relative to these three findings is subsumed into the final finding, I make no separate finding as to the amounts that should be returned to the Department for those findings.

As to the fourth determination, I find that the evidence of fraud uncovered by the IG team is substantial. Such evidence includes statements from the owner's son, who was also a Director of NBC, that his mother, the owner of NBC, directed employees to alter records in order to make them appear to be in compliance with Title IV regulations; a statement from the former office manager at NBC that he credited students with hours of attendance which they did not attend and manufactured reports and altered student files at the direction of the owner; a statement from the former financial aid officer to the effect that NBC paid Pell funds to students who were not attending the school and then fraudulently altered attendance records to cover up that fact; and, statements from a number of former students attesting to the fact that NBC's management falsified information on their financial aid applications, such as marital status, resulting in the award of higher federal student aid than they were entitled. Although NBC argues that these statements were the result of disgruntled former employees "getting even," the scope and the diversity of that information convinces me that the allegations are clearly supportable.

With this information in hand, SFAP was placed in a dilemma. SFAP determined that some of NBC's files were fraudulent, but readily agreed that most were not tainted by fraud. In its responsibility to protect federal funds, SFAP had to decide which Title IV funds were improperly spent and recoup them. At the same time, since NBC acts as a fiduciary as to those Title IV funds, it had a duty to account. Faced with this situation, SFAP determined that, since it had no practical method of ascertaining which files were not tainted, it opted to declare that all federal student financial assistance was unsupported. However, SFAP allowed NBC to review and have independently certified those files which were correct - full credit could then be given for those students. I find that SFAP's position on this issue is reasonable and is supported by the law. It is well established that the nature of the enforcement of Title IV programs, through the use of audit review determinations, creates the need for institutions to cooperate with SFAP by providing the agency with complete file reviews when that information is needed to determine whether any, if not all, Title IV funds disbursed by the institution were spent contrary to statutory or regulatory requirements. See, e.g., *In re Pan American School*, Docket No. 92-118-SP, U.S. Dep't of Educ. (October 18, 1994). Under circumstances where an institution fails to fully comply with SFAP's reasonable request for a complete file review, SFAP has no choice other than to require the return of all Title IV funds disbursed during the period at issue. Given the option that was offered to NBC by SFAP to establish that the Title IV funds were correctly spent, NBC had the burden of complying, otherwise, all the Title IV funds it expended during the audit period would be returned. I find that NBC has not met such burden. It has neither accomplished the file review with independent certification, nor provided adequate alternative evidence sufficient to convince me that federal aid was properly expended; therefore, I find that it has not established that the Title IV funds were properly expended. 34 C.F.R. § 668.116(d).

Having determined that NBC has not meet its burden of establishing the correctness of its Title IV expenditures, I must determine the amount of such funds which must be returned to the Department. SFAP has established reasonable ground rules as to how that calculation should be accomplished, and I adopt those rules herein. I will give full credit for the Title IV aid given to students who graduated from NBC and who received a license to practice from the State of Louisiana. SFAP found that number to be 70. However, based on NBC's evidentiary submissions, I find that the number of such students is 155.

ORDER

On the basis of the foregoing, it is ORDERED that National Beauty College repay to the United States Department of Education \$776,001, less an appropriate credit for the additional 85 students whom I found both had graduated and were licensed.

Judge Ernest C. Canellos

Dated: May 3, 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 I NBC did not appeal that portion of this finding relative to the overpayment to the twelve students, therefore, the \$12,530 in Pell Grant funds and the \$1,843 in Stafford loans demanded by SFAP are not in issue before me.