

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

In the Matter of

WINCHESTER BEAUTY COLLEGE.

Respondent.

Docket No. 95-162-SP

Student Financial
Assistance Proceeding

PCRN: 2-94204209

Appearances:

Negra Gabbard, Owner, Winchester, Kentucky, for Winchester Beauty College

Alexandra Gil-Montero, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Edward J. Kuhlmann. Administrative Law Judge

DECISION

On October 2, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Revised Final Program Review Determination finding that for the period July 1992 to June 1994 Winchester Beauty College violated Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 et seq. On November 15, 1995, respondent appealed the determinations in findings 1 and 3.

I.

SFAP in its file review found that students 4.5.6.17, 18, 19, and 20 enrolled in respondent under the Ability to Benefit (ATB) criteria and received Federal Pell Grant and Federal Family Education Loans (FFEL) funds. Under the Department's regulations, an applicant who does not have a high school diploma or its recognized equivalent is required to pass an independently administered test approved by the Department prior to disbursing Title IV funds. 34 C.F.R. §§ 600.11.668.7 (1991). P.L. 102-26 (April 9, 1991). SFAP found that the ATB test given to these students was proctored by the owner of the respondent and, therefore, it had not been independently administered. SFAP determined that the Department was owed \$10,487 for Pell Grant funds given to these students and \$9,025 was due to lenders of the notes plus interest and special allowance of \$233 for FEEL loans. SFAP in making this determination noted that the reviewers found "that there was no alteration of the ATB tests given." The reviewers' concern was that the proctor of the ATB test was not in compliance with Title IV regulations.

Respondent does not dispute that its owner proctored the ABT examination. Instead, respondent points out that three students who took the test have graduated and are working in the cosmetology field. Respondent also relies on the 1991-92 Federal Student Financial Aid Handbook. That handbook excepts from testing those students who have "clearly demonstrated academic aptitude, but have not received a high school diploma." In the case of

[a] student who has excelled academically in high school and who has met formalized, written admission policies of a postsecondary school is also considered to have the equivalent of a high school diploma. These students may be eligible to receive SFA funds without having to pass an ED-approved test, provided they are no longer enrolled

in high school.

Respondent represents that all of the students met Kentucky's enrollment standards set by the State Board of Hairdressers and Cosmetologists which require two years of high school for admission to a cosmetology program.

Respondent, however, does not state whether the students excelled academically in high school. Without that assurance, it does not meet the exception. Moreover, the handbook on which the respondent relies provides explicit instruction that "persons who administer, proctor, or score (an ATB test] must be completely independent of the postsecondary school. Thus, the test may not be given or scored by an owner...." The Federal Student Financial Aid Handbook at 3-8 (1991-92). while respondent points out that the reviewers found that the tests had not been altered, there is no explanation in the filings about how the reviewers reached their conclusion. There is no indication that the reviewers observed the respondent's owner proctor the test. That seems unlikely since the review took place long after the test had been administered.

Section 600.11 specifically instructs institutions that the test must be independently administered and the Handbook explains in detail that an owner may not proctor. The purpose of the rule is to prevent alteration of the results by those who have an interest in the outcome. Because respondent's owner proctored the exam there is no objective means of determining whether the test was administered fairly. That is the point of the requirement that all tests be administered independently; there is no objective means to determine fairness after the test has been proctored. Respondent has not submitted any evidence that it complied with the rule or that on the basis of the facts asserted that the purpose of the rule was fulfilled. Therefore, respondent has not met its burden of proof.

II

SEAP found that the respondent disbursed Federal funds to student #3 without having obtained a financial aid transcript. The regulations provide that an institution may not disburse Title IV funds to a student who previously attended another eligible institution prior to the receipt of a financial aid transcript from each eligible institution the student previously attended. Student #3 was formerly a student at Morehead State University; she was in default on a Title IV loan on July 31, 1992. She applied for and was granted a "hardship" extension until November 1, 1992. She again entered default status on November 2, 1992. Respondent enrolled student #3 on November 10, 1992. Respondent stated that student #3's default occurred after the student enrolled and began matriculating at Winchester Beauty College. However, respondent told SFAP that it did not request student #3's financial aid transcript until September 23, 1994. Respondent has not produced evidence that it requested the financial aid transcript of student #3 before it disbursed Title IV funds. Therefore, respondent has not met its burden on this issue. Consequently, respondent's liability is \$1,816.00 in Pell Grant funds due to the Department and \$2,625 due the lender of the note plus interest and special allowance of \$66.45.

FINDINGS

1. Respondent has not demonstrated that the ATB test administered to students 4, 5, 6, 17, 18, 19, and 20 was independently administered. Respondent does not dispute that in violation of the rule its owner proctored the exam. The liability due the Department based on finding 1 is \$10,487 in Pell Grant funds due to the Department and \$9,025.00 due the lenders of the notes plus interest and special allowance of \$233.00.

2. Respondent has not met its burden on finding #3. It has not shown that it did not disburse Title IV funds to student #3 before it had received a financial aid transcript from each eligible institution the student previously attended. Respondent's liability is \$1,816.00 in Pell Grant funds due to the Department and \$2,625.00 due the lender of the note plus interest and special allowance of \$66.45 for student #3.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the respondent pay the amounts for which it has been found liable in the findings.

Edward J. Kuhlmann Administrative Law Judge

Dated; May 20, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Ms. Negra Gabbard
Owner
Winchester Beauty College
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