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

In the Matter of **Docket No. 95-46-SP**

DELTA BEAUTY COLLEGE, Student Financial Assistance Proceeding
Respondent.

PRCN: 94404250

Appearances: Louise Teague, Owner, for Delta Beauty College.

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

Before: Judge Richard F. O'Hair

DECISION

Delta Beauty College (Delta) participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). On January 5, 1995 , SFAP issued a Final Program Review Determination (FPRD) in which it sought the return of $15,572 in Pell Grant funds. The FPRD is based upon the program review report for the 1991-92, 1992-93, and 1993-94 award years.See footnote 1 *1* Delta filed a request for review on February 1, 1995 . Both parties filed submissions to this tribunal in response to the Order Governing Proceedings.

SFAP contends that Delta failed to properly calculate refunds according to the *pro rata* refund formula required by 20 U.S.C. § 1091b. SFAP also alleges that Delta improperly failed to include all fees and charges in the calculation of refunds. Delta raises a "good faith effort" defense to both of these allegations.

Finding 1--Failure to Calculate *Pro Rata* Refunds

As of July 23, 1992,See footnote 2 *2* any institution participating in the Title IV, HEA programs must have in effect a fair and equitable refund policy 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% of the period of enrollment. 20 U.S.C. § 1091b(b).

The program review found that Delta failed to calculate *pro rata* refunds for 4 students out of the program review sample of 36 students, as it was required to do. As a result, the program reviewers required the institution to review all of its files for the 1992-93 and 1993-94 award years in order to determine all students who were due *pro rata* refund calculations but did not receive them. Delta then had to recalculate the identified students' refunds using the *pro rata* formula described in 20 U.S.C. § 1091b(c) and supply other related records. In response, Delta compiled a list of students and the refunds that should have been given to them under the *pro rata* formula. This list, which is contained in the FPRD at pages 2-3, identified a total of $7,844 in refunds that Delta should have disbursed to students under the *pro rata* refund formula.

In its brief, Delta admits that the *pro rata* refund requirement went into effect on July 23, 1992, when the law was signed, but raises the "good faith" argument that it was not aware of the specifics of the law until it received a "Dear Colleague" letter from the Department in mid-November 1992 and argues that it did not understand the law even after reading the Dear Colleague letter.See footnote 3 *3* On this basis, Delta argues that it should not be held liable for $6,868 in refunds that it did not disburse to students between July 23, 1992 and January 1, 1993.See footnote 4 *4*

Nonetheless, it is axiomatic that "ignorance of the law is no excuse," and Delta's professed unawareness of and subsequent confusion over the requirements of the law do not nullify the law's effective date of July 23, 1992. As SFAP notes in its brief, Congress did not allow for any exceptions based upon ignorance of the law or "good faith" attempts to comply. In addition, institutions that participate in Title IV programs are required to administer these programs in accordance with all statutory and regulatory provisions applicable to the Title IV programs. 34 C.F.R. § 668.16(a). Finally, this tribunal has previously rejected attempts by an institution to escape liability for its failure to provide *pro rata* refunds on the basis that this statute was unclear or ambiguous. In *In re Blaine Hair School,* Dkt. No. 94-129-SP, U.S. Dep't of Educ. (Jan. 31, 1995), the school argued that it made good faith efforts to ascertain ED's interpretation of the new refund policy and to implement it. The school blamed ED for lack of guidance, claiming that the October 1992 Dear Colleague letter did not provide adequate guidance. The judge rejected these arguments, stating that the *pro rata* refund requirement became effective on July 23, 1992, and that the language of the statute is "clear and unambiguous." *Id.* at 3. The judge further stated that "the [school's] 'reasonable efforts' claim is not a consideration here because the statute is unambiguous." *Id.* at 3. For all of these reasons, I find that Delta was required to implement the *pro rata* refund policy contained in 20 U.S.C. § 1091b as of July 23, 1992, and is liable for the difference between the amount of refunds it should have disbursed under the *pro rata* formula and the actual amount of refunds it disbursed.

Delta also argues it should not be held liable for $1,648 in *pro rata* refunds it did not make to students on the basis that they had passed the point at which they could have completed at least 60 percent of the total hours in that period of enrollment, regardless of whether or not they had actually attended these classes. Delta relies upon 20 U.S.C. § 1091b(b)(3), which states as follows:

(b) The institution's refund policy shall be considered to be fair and equitable for purposes of this section if that policy provides for a refund in an amount of at least the largest of the amounts provided under--

...

(3) the pro rata refund calculation described in subsection (c) of this section, except that this paragraph will not apply to the institution's refund policy for any student whose date of withdrawal from the institution is after the 60 percent point (in time) in the period of enrollment for which the student has been charged.

SFAP contends this statute excused Delta from making *pro rata* refunds only for those students who actually had completed (attended) more than 60 percent of the clock hours offered for that period of enrollment. To support this position, SFAP notes that 20 U.S.C. § 1091(b)(3) specifically refers to "the pro rata refund calculation described in subsection (c) of this section". 20 U.S.C. § 1091b(c)(1) states that the term "*pro rata* refund" includes various charges assessed the student by the institution for "the portion of enrollment for which the student has been

charged that remains on the last day of attendance by the student...." Paragraph (2) states as follows:

For purposes of paragraph (1), "the portion of the period of enrollment for which the student has been charged that remains", shall be determined--

...

(B) in the case of a program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student...

SFAP argues that, under § 1091b(c)(1), the use of the language "the number of clock hours remaining to be completed by the student" requires a school to include in its *pro rata* refund calculation not only all future classes in the current period of enrollment, but also all previous classes that the student did not attend. Thus, under 20 U.S.C. § 1091b(b)(3), an institution is excused from the *pro rata* refund requirement of § 1091b(c) only if the student withdrew from that institution after having completed (attended) at least 60 percent of the clock hours for that period of enrollment. I find these arguments to be persuasive.

Accordingly, Delta is liable for the $1,648 in refunds that it did not make to students who had passed the point at which they could have completed at least 60 percent of the total hours in that period of enrollment because it has not shown that these students had actually completed at least 60 percent of the clock hours for that period of enrollment. As a result, Delta's total liability under Finding 1 is $7,844.

Finding 2--Incorrect Refunds-Failure to Include All Charges

The program review found that Delta did not include all applicable charges and fees, including registration fees and charges for books and tools, when calculating *pro rata* refunds for 5 students out of the program review sample of 36 students. As a result, the program reviewers required the institution to review all of its files for the 1992-93 and 1993-94 award years in order to determine all students who were due *pro rata* refund calculations, but for whom the refunds were calculated incorrectly. Delta was then required to recalculate the identified students' refunds using the *pro rata* formula described in 20 U.S.C. § 1091b(c) and supply other related records. In response, Delta compiled a list of students and the refunds that should have been given to them under the *pro rata* formula, including refunds for registration fees and charges for books and tools. This list, which is contained in the FPRD at pages 4-5, identified an additional $7,728 in refunds that Delta should have disbursed to students using the correct *pro rata* refund formula.

Delta concedes that the law requires the school to inform students in advance if there is a

school requirement that they must return books and supplies to the school if they withdraw.See footnote 5 5 Delta further concedes that it did not include the registration fees and charges for books and supplies in its *pro rata* refund calculation, but makes the "good faith" argument that it should be compensated for these items because the students' contracts state that the students own these items once they are issued.

20 U.S.C. § 1091b(c) states that the required *pro rata* refunds must include not only tuition and room and board, but also fees and other charges assessed the student by the institution. In its letter to the Department's Region IV office, dated November 28, 1994, Delta states, "it was our interpretation of Public Law 191-325 [sic] that we would be allowed to keep the cost of the books and tools if the student received and kept same. We feel that we were justified with the guidance given in doing so." Neither the statutory language nor the guidance given by the Department support the school's position. The statutory language is quite broad, requiring the *pro rata* refunds to include fees and "other charges assessed the student by the institution." Additionally, both the Dear Colleague letter issued by the Department in October 1992 and the 1993-94 Federal Student Financial Aid Handbook reiterate the statutory requirement that *pro rata* refunds must include fees and other charges assessed to students. Nothing in either the Dear Colleague or the Handbook letter lends support to Delta's claim that the guidance given by the Department indicated that institutions could keep the amounts charged for books, tools, or other fees. In fact, the Handbook specifically states that "[i]f the school charges a student directly for books and supplies...those charges are included in the *pro rata* calculation." ED Ex. 7-13. Inasmuch as Delta has conceded its failure to include the registration fees and charges for books and supplies in its *pro rata* refund calculations, in violation of 20 U.S.C. § 1091b(c), Delta must refund $7,728 to the Department under Finding 2.

FINDINGS

1. Delta was required to implement the *pro rata* refund policy contained in 20 U.S.C. § 1091b as of July 23, 1992, and is liable for the difference between the amount of refunds that it should have disbursed under the *pro rata* formula and the actual amount of refunds that it disbursed for students who withdrew between July 23, 1992, and January 1, 1993.

2. Delta is liable for the $1,648 in refunds that it did not make to students who had passed the point at which they could have completed at least 60 percent of the total hours in that period of enrollment because it has not shown that these students actually completed at least 60 percent of the clock hours for that period of enrollment.

3. Delta failed to include the registration fees and charges for books and supplies in its *pro rata* refund calculations, in violation of 20 U.S.C. § 1091b(c).

ORDER

On the basis of the foregoing, it is hereby ORDERED that Delta Beauty College shall repay $15,572 to the United States Department of Education in the manner authorized by law.

_____
Judge Richard F. O'Hair

Dated: November 22, 1995

SERVICE

On November 21, 1995, 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 Only amounts disbursed during the 1992-93 and 1993-94 award years are at issue in this proceeding.*

Footnote: 2 *2 Higher Education Act Amendments of 1992, P.L. 102-325 (1992).*

Footnote: 3 *3 As SFAP notes in its brief, this Dear Colleague letter, which provided guidance on the pro rata refund calculation, was actually issued in October 1992. ED Ex. 6.*

Footnote: 4 *4 SFAP contends that only $6,764 of the total liability is attributable to this time period. Inasmuch as I find that Delta is liable for its failure to implement the pro rata refund calculation during this time period, and therefore should not have its liability reduced by either $6,764 or $6,868, it is not necessary to determine which is the correct amount for purposes of reducing Delta's liability.*

Footnote: 5 *5 This "law" is set forth at 34 C.F.R. § 668.22(c)(5)(ii). This language, however, was not added to the regulation until after the 1992-93 and 1993-94 award years.*