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

In the Matter of **Docket No. 95-48-SP**

LOUISE'S BEAUTY COLLEGE, Student Financial Assistance Proceeding
Respondent.

PRCN: 93304135

Appearances: Lauretta B. Luker, President, Commerce, Georgia, for Louise's Beauty College

S. Dawn Robinson, 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 January 5, 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 Louise's Beauty College (LBC) violated several regulations promulgated pursuant to 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*. LBC was a proprietary school offering programs in cosmetology. The institution was located in Commerce, Georgia. On or about April 1992, LBC opened another location in Royston, Georgia. The Commerce location closed on December 18, 1992. The institution closed in June or July 1993See footnote 1 *1* .

From May 3 - May 7, 1993, reviewers from SFAP, Region IV, conducted a program review at LBC for award years 1990-1991, 1991-1992, and 1992-1993. A program review report (PRR) was sent to LBC on September 16, 1993. In a November 30, 1993, response, LBC asked for clarification on how it should respond to the requests for full file review for several of the findings

contained in the PRR. SFAP responded to LBC on January 11, 1994. LBC never conducted the

required full file reviews or responded to SFAP's January 11, 1994 letter or SFAP's subsequent March 8, 1994, letterSee footnote 2 *2* . Based on its program review, SFAP issued a FPRD containing findings that LBC disbursed Title IV funds at an ineligible branch (Finding # 1); LBC falsely reported the number of clock hours earned by students (Finding # 3); LBC disbursed Federal Family Education Loan (FFEL) Program funds after students' last dates of attendance

without late disbursement approval (Finding # 4); LBC failed to make refunds on behalf of some students (Finding # 5); LBC failed to calculate pro rata refunds for some students (Finding # 6); LBC disbursed Pell Grant funds to ineligible students (Finding # 7); LBC disbursed Pell funds to one student in the absence of a valid Electronic Student Aid Report (ESAR) (Finding # 9); and LBC disbursed Title IV funds to one student in the absence of a financial aid transcript (Finding #10).See footnote 3 *3* For several findings, SFAP assessed liability for all Pell and/or FFEL funds received by the school during the program review period because LBC failed to conduct the full file reviews needed to determine the exact amount of liability for each of these findings.

I.

To participate in Title IV programs, an institution must be designated as an eligible location. 34 C.F.R. § 600.20(a) (1990). Eligibility does not extend to any other location of that institution established after an it receives its eligibility determination. 34 C.F.R. § 600.10(b)(3) (1990). To seek eligibility for such an additional location, an institution must follow the procedures contained in 34 C.F.R. § 600.20 (1990). An institution that disburses Title IV funds to students enrolled in an educational program at an ineligible location is liable for the return of such funds. *In Re Patten College*, Docket No. 94-122-SP, U.S. Dep't of Educ. (August 15, 1995); *In Re LeMoyne-Owen College*, Docket No. 94-171-SA, U.S. Dep't of Educ. (May 18, 1995).

SFAP argues that LBC failed to notify the Department that it was opening an additional location in Royston, Georgia. Further, SFAP asserts that LBC did not apply for eligibility for the Royston location in accordance with 34 C.F.R. § 600.20(b)(3) (1990) and 34 C.F.R. § 600.20 (1990). SFAP also argues that even if LBC had notified the Department of its additional location, the

institution was precluded from disbursing Title IV funds until it received notification that the additional location was eligible to disburse funds. Due to LBC's failure to conduct a full file review, SFAP argues that the institution is liable for all Pell and FFEL funds received during the 1991-1992 and 1992-1993 award years.

First, LBC argues that it merely moved its main campus from Commerce, Georgia, to the Royston location, not that it opened an additional location. Second, LBC argues that its accrediting agency allowed the institution to continue to offer instruction at its former location when the movement of locations would severely affect the students' ability to continue their training. Third, LBC asserts that it filed all necessary forms with the Department regarding the movement of its main campus. Fourth, LBC states that it did not receive its accrediting agency's decision approving the institution's move until June 1993, after LBC had closed. Finally, LBC argues that it was informed by the Department that it was proper to continue to draw down funds at both locations.

I find that the Royston location was an additional location opened by LBC for which the institution failed to obtain the Department's approval as an eligible location. Although LBC argues that the Royston location did not constitute an additional location, I find this unpersuasive

due to the concurrent operation of the Royston and Commerce locations for nearly nine months. Further, LBC's argument is a distinction without difference. The opening of the Royston location constituted a new location not covered under the eligibility determination made by the Department whether it was an additional location or change of location.

In an appeal of an FPRD finding, the institution has the burden of proving that the Title IV funds were lawfully disbursed. 34 C.F.R. § 668.116(d). LBC argues that it filed all necessary forms to obtain eligibility for the Royston location. However, LBC presented no evidence that it did apply for an eligibility designation for the Royston location or that it was advised that the draw down of Title IV funds for both locations was proper. Therefore, I find that LBC failed to meet its burden of proof that the Title IV funds were properly disbursed and remains liable for all Pell and FFEL funds received during the 1991-1992 and 1992-1993 award years.

II.

In order for a student to be eligible and an institution to disburse a Pell Grant, the student must have completed the required clock hours for which the student is being paid a Pell Grant. 34 C.F.R. § 690.75(a) (1990) and 34 C.F.R. § 668.19 (1990). SFAP argues that LBC falsely reported the number of clock hours students actually earned in order to trigger the premature draw down of Pell funds for subsequent pay periods. SFAP further argues that due to LBC's failure to provide a full file review, the institution is liable for all Pell funds received during the program review period.

LBC argues that two of the students listed in FPRD Finding # 3 did complete the required clock hours for which these students were paid Pell funds. LBC bears the burden of proving that these

Pell funds were properly disbursed. 34 C.F.R. § 668.116(d). LBC submitted no evidence demonstrating that these two students completed the required number of clock hours. LBC also did not perform the full file review requested by SFAP. Therefore, I find that LBC remains liable for all Pell funds received during the program review period.

III.

If an institution receives FFEL loan proceeds late, it is prohibited from processing these disbursements unless the guarantor approves. 34 C.F.R. § 682.604(e) (1990). A disbursement is late if the institution receives loan proceeds before the end of the academic period for which the loan was made, but after the student ceased to be enrolled on at least a half-time basis. 34 C.F.R. § 682.604(e)(2) (1990). SFAP argues that the institution disbursed FFEL funds to students after their last dates of attendance without a guarantor's approval. Although the students listed in FPRD Finding # 4 were incorrectly identified due to a numbering error, SFAP states that the correct students were identified in the Department's January 11, 1994, response to LBC. (SFAP Brief at page 2 and ED Exhibit 11). SFAP further argues that due to LBC's failure to provide a full file review, the institution is liable for all FFEL funds received by students at LBC during the program review period.

LBC's response, contained in its November 30, 1993, letter, was directed at the students identified in the FPRD and not at the corrected list contained in the Department's January 11, 1994, letter. LBC did not respond to this finding with regards to the subsequent list of students. I find that LBC failed to meet its burden in refuting this finding under 34 C.F.R. § 668.116(d). Therefore, LBC remains liable for all FFEL funds received by students at LBC during the program review period.

IV.

An institution is required to refund charges assessed to students equal to the portion of enrollment that remains on the students' last date of attendance in the amount specified in 34 C.F.R. § 682.606(c)(1) (1990). The institution is required to pay any refund of Pell funds to the Department within 30 days of the student's withdrawal. 34 C.F.R. § 668.22(e)(5) (1990). Any FFEL refund must be paid to the lender within 60 days of the student's withdrawal. 34 C.F.R. § 682.607 (1990). Any excess FFEL loan proceeds due to a student must be delivered promptly. 34 C.F.R. § 682.604(c) and (d) (1990).

SFAP argues that LBC failed to make required refunds of Pell and FFEL funds to the Department and the FFEL loan holders respectively . SFAP further argues that LBC failed to deliver excess FFEL loan proceeds to two students. Additionally, SFAP argues that due to LBC's failure to provide a full file review, the institution is liable for all Pell and FFEL funds received during the program review period. LBC offered no argument or evidence to refute this FPRD finding as required by 34 C.F.R. § 668.116(d). Therefore, I find LBC remains liable for all Pell and FFEL funds detailed in this finding.

V.

Effective July 23, 1992,See footnote 4 *4* 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% of the period of enrollment. 20 U.S.C. § 1091b(b).

SFAP argues that LBC acknowledged that it was required to perform *pro rata* refunds for the students listed in FPRD Finding # 6 and, therefore, has provided no explanation as to why these refunds were not made. Further, the institution has not complied with SFAP's requirement that LBC perform a full file review and provide copies of all canceled checks for the 1992-1993 award year. LBC argues that it understood from its discussions with Department officials that the

law did not apply to students enrolled prior to July 23, 1992.

An institution's misunderstanding of the *pro rata* refund law does not nullify its requirements. *In Re Delta Beauty College,* Docket No. 95-46-SP, U.S. Dep't of Educ. (November 22, 1995). 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). 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 re Blaine Hair School,* Dkt. No. 94-129-SP, U.S. Dep't of Educ. (Jan. 31, 1995). In *In Re Blaine Hair School*, the institution blamed the Department's inadequate guidance for its misunderstanding or misinterpretation of the *pro rata* refund requirement. *Id.* at 3. The judge rejected the argument that the Department provided inadequate guidance, 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. Likewise, LBC's argument that the Department misadvised LBC is rejected. Therefore, I find that LBC was required to implement the *pro rata* refund policy

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contained in 20 U.S.C. § 1091b as of July 23, 1992, and due to its failure to provide a full file review remains liable for the total Pell and FFEL funds disbursed during the 1992-1993 award year.See footnote 5 *5*

VI.

To be eligible to receive Title IV funds, a student must have a high school diploma, or its equivalent, or pass an ability to benefit test. 34 C.F.R. § 668.7(a)(3)(i) (1990). SFAP argues that LBC submitted no evidence to show that the three students at issue in FPRD Finding # 7 had high school diplomas or its equivalent or passed an ability to benefit test. While LBC asserted in its November 30, 1993 letter to the Department that it was looking for documentation to support its position, no such documentation was submitted to SFAP before the FPRD was issued or subsequently to this tribunal. I find that LBC has failed to refute the finding that these three students were ineligible as required by 34 C.F.R. § 668.116(d). Therefore, the institution remains liable for all Pell funds disbursed to these three students.

VII.

In its role as a fiduciary, an institution holds Title IV funds in trust for the intended student beneficiaries. 34 C.F.R. § 668.82(a) and (b) (1990). SFAP asserts that LBC drew down Pell disbursements but did not credit student accounts with these disbursements. Additionally, there is no evidence that the schools refunded this money to the students or made any downside adjustments to student accounts. SFAP also asserts that these students had not earned enough clock hours to receive the additional Pell funds in question. LBC failed to refute FPRD Finding # 8 as required by 34 C.F.R. § 668.116(d) and did not perform a full file review as requested by SFAP. Therefore, I find that LBC remains liable for all Pell funds received during the program review period.

VIII.

In order to receive a Pell Grant, a student must submit a valid Student Aid Report (SAR) or Electronic Student Aid Report (ESAR). 34 C.F.R. § 690.61(a) (1990). To be valid, a SAR or ESAR must be signed by the student. 34 C.F.R. § 690.2 (1990). An institution may make one

Pell disbursement without a valid SAR or ESAR if it follows the procedures outlined in 34 C.F.R. § 690.77, but it remains liable for the disbursed Pell funds if it does not receive a valid SAR for that award year. 34 C.F.R. § 690.77(c)(1) (1990). SFAP asserts that LBC disbursed Pell funds to the one student at issue in FPRD Finding # 9 at the risk that it would remain liable for those Pell funds if the institution did not subsequently receive the student's SAR for that award year.

SFAP asserts that the SAR observed at the time of the program review was not signed nor is it attached to LBC's brief. LBC asserts in its brief that there is an attached copy of a signed SAR.

I find that LBC has failed to meets its burden in demonstrating that the student at issue had a valid SAR or ESAR. 34 C.F.R. § 668.116(d). Although LBC asserts it has attached a copy of this SAR, no such copy was attached to its brief. Therefore, LBC remains liable for Pell funds disbursed to this student.

IX.

An institution is required to determine if a student previously attended another institution. 34 C.F.R. § 668.19(a)(1) (1990). If a student has previously attended another institution, the current institution or the student shall request a financial aid transcript. 34 C.F.R. § 668.19(a)(2) (1990). Until it receives a financial aid transcript, an institution may withhold payment of Pell funds or it may disburse the first Pell payment. 34 C.F.R. § 668.19(a)(3)(i) and (ii) (1990). If the institution disburses the first Pell payment, it must be able to show that it at least requested the financial aid transcript from the prior institution. 34 C.F.R. § 668.19(a) (1990). An institution cannot release FFEL proceeds until a financial aid transcript is received. 34 C.F.R. § 668.19(a)(3)(iv) (1990). SFAP argues that the one student contained in FPRD Finding # 10 did not have a copy of his or her financial aid transcript in the student file even though the file indicated that the student previously attended another institution. Further, SFAP argues that LBC presented no evidence that it had requested a financial aid transcript from the previous institution. LBC has not submitted any evidence to refute FPRD Finding # 10 as required by 34 C.F.R. § 668.116(d) . Therefore, I find LBC remains liable for all Pell and FFEL funds disbursed to this student.

X.

This tribunal has previously affirmed the necessity of instiutional cooperation with program reviews:

"It is well established that the nature of the enforcement of Title IV programs through the use of program 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 to the institution were spent contrary to the statutory and regulatory requirements." *In Re Pan American School*, Docket No. 92-118-SP, U.S. Dep't of Educ. (October 18, 1994).

More fundamentally, an institution's cooperation in providing SFAP with documentation of its expenditure of Title IV funds is consistent with its fiduciary duty to account for the disbursement of Title IV program funds. *Id*.

Consequently, under the circumstances of this case, LBC's failure or refusal to provide SFAP with the data requested for FPRD Findings # 1, # 3, # 4, # 5, # 6, and # 8 makes it impossible for the Department to determine the exact monetary liabilities for these findings and undercuts LBC's position that all Title IV funds should not be recovered. Therefore, SFAP has no choice, in circumstances such as the ones before me, where the institution fails to provide SFAP with the requisite data needed to determine whether, and, if so, to what extent, Title IV funds were spent contrary to the requirements of Title IV, other than to require the return of all Title IV funds disbursed during the period at issue. *Id*. Accordingly, SFAP may recover all Title IV funds disbursed during the program review periodSee footnote 6 *6* .

FINDINGS

This tribunal's Findings 6, 8, and 9, identified below, are determined against LBC and will individually be affirmed. Inasmuch as each represents a monetary amount already accounted for under Findings 1 - 5, and 7 of this tribunal, no separate amount will be awarded.

1. LBC disbursed Title IV funds at an ineligible location. As LBC failed to comply with the required full file review, liability is assessed for all Title IV funds received by the institution during the 1991-1992 and 1992-1993 award years.

2. LBC disbursed Pell funds to five students before they earned the number of clock hours required to receive those disbursements. As LBC failed to comply with the required full file review, liability is assessed for all Pell funds received by the institution during the 1990-1991, 1991-1992, and 1992-1993 award years.

3. LBC disbursed FFEL Program funds after four students left the institution without late disbursement approval. As LBC failed to comply with the required full file review, liability is assessed for all FFEL funds received by students at the institution during the 1990-1991, 1991-1992, and 1992-1993 award years.

4. LBC did not make refunds of Title IV funds on behalf of six students. As LBC failed to comply with the required full file review, liability is assessed for all Title IV funds received by the institution during the 1990-1991, 1991-1992, and 1992-1993 award years.

5. LBC failed to calculate *pro rata* refunds on behalf of nine students. As LBC failed to comply with the required full file review, liability is assessed for all Title IV funds received by the institution during the 1992-1993 award year.

6. LBC disbursed Title IV funds to three ineligible students.

7. LBC failed to credit student accounts with drawn down Pell funds. As LBC failed to comply with the required full file review, liability is assessed for all Pell funds received by the institution during the 1990-1991, 1991-1992, and 1992-1993 award years.

8. LBC disbursed Pell funds in the absence of a valid ESAR to one student.

9. LBC disbursed Title IV funds in the absence of a financial aid transcript to one student.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Louise's Beauty College pay to the United States Department of Education the sum of $398,242.00 and reimburse $121,811 to the appropriate holders of FFEL Program loans.

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Judge Richard I. Slippen

Dated: April 17, 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 According to SFAP, the institution closed on or about July 16, 1993. LBC asserts that the institution closed on June 6, 1993.*

Footnote: 2 *2 With regard to all of the findings contained in the FPRD, LBC appeals generally on the bases that it never received SFAP's January 11, 1994, letter, that the institution*

was unaware of the SFAP's attempts to contact it in the months before the FPRD was issued, and that around 146 days elapsed between the time of the program review and the institution's receipt of the program review report . In an appeal of an FPRD, the institution bears the burden of proving that it complied with statutory and regulatory requirements governing Title IV programs. 34 C.F.R. § 668.116(d). These abovementioned bases for appeal are without any regulatory foundation or evidentiary support, and, therefore, do not negate the findings contained in the FPRD.

Footnote: 3 *3 Other findings (# 2, # 11, and # 12) challenged by LBC have no liability attached and, therefore, will not be reviewed in this decision.*

Footnote: 4 *4 Higher Education Act Amendments of 1992, P.L. 102-325 (1992).*

Footnote: 5 *5 The tribunal recognizes that an issue concerning the pro rata refund requirement has been remanded by the Secretary. See In Re National Education Center, Bryman Campus, Docket No. 94-95-SP, (April 3, 1996) (Decision of the Secretary). Regardless, LBC's liability for this finding is unaffected since the institution's liability is contained in other findings in this decision.*

Footnote: 6 *6 SFAP corrected the total amount of Pell and FFEL funds received by LBC during award years 1990-1991, 1991-1992, and 1992-1993 using the Department's Institutional Data System (IDS). See ED Exhibit 2.*