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

In the Matter of **Docket No. 95-98-SP**

ACADEMY OF HAIR DESIGN, Student Financial Assistance Proceeding
Respondent.

PCRN: 91405104

Appearances: Beverly Jo Hembree, Owner/Director for Academy of Hair Design

Paul G. Freeborne, 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

Academy of Hair Design (Academy) is an eligible proprietary school located in Middletown, Ohio, which offers programs of study in cosmetology at three locations. On April 28, 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 the Academy violated several regulations promulgated pursuant to 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.

The FPRD, which resulted from a July 29 - August 2, 1991, program review of Academy's Title IV compliance for the award years 1989-1990 and 1990-1991, contained eight adverse findings. These included findings that Academy: improperly charged non-educational items to student account cards and used Federal funds as payment; disbursed Federal funds to students after said students failed to maintain satisfactory academic progress; and improperly made disbursements of Pell funds to students enrolled at an ineligible location. In its brief, Academy appealed numerous other findings contained in the FPRD, but only the above three are in issue.See footnote 1 *1*

I.

It is abundantly clear that Title IV program funds are to be used solely for expenses connected with the cost of attendance at an eligible institution. 20 U.S.C. § 1087ll and 34 C.F.R. § 668.32(a)(2) (1990). In its Program Participation Agreement, Academy agreed that it would comply with all statutory and regulatory requirements applicable to Title IV programs, including

the requirement that it will disburse Federal funds for the purposes specified in and in accordance with all Title IV programs. 34 C.F.R. § 668.12(b)(2)(1) (1990).

The evidence in the record reveals the Academy charges all students a $450.00 supplies fee that is supposed to cover all items needed to complete the program of study. The following items identified in the FPRD were added charges incurred by students: one student was charged for a variety of items including, but not limited to, a watch, sweatshirt, scout master, tanning bed, T-shirt, and unidentified "school items;" a second student was charged for a jacket, sweatshirt, T-shirt, bag, watch, and unidentified "school items," and a third student was charged for unidentified "supplies," sweatshirt, jacket, and a hairdo. As a result of these added charges, Academy was required to reconstruct account cards for all affected students and provide copies of original account cards for all students who attended Academy during the program review period. Academy was also required to have this information attested to by a certified public accountant. In a November 7, 1992, letter from Academy's certified public accountant, Froehle and Co. (Froehle), to the Department, Froehle calculated the school's liabilities for this finding based upon reconstructed records of Pell and FFEL recipients and the number of accounts Academy failed to make available to Froehle.See footnote 2 *2* Froehle's review was to include an itemized list of non-educational charges to students' account cards, however, the report submitted by Froehle merely listed the total dollar amount of non-educational charges.

SFAP claims that Academy operated a wholesale/retail outlet selling assorted jewelry, clothing, and tanning beds, and argues that charges for such items are not related to the students' educational program. Academy argues that these charges were related to the program of study and that the institution was advised by the Ohio State Loan Commission, a state guaranty agency, that it had to disburse monies as requested by their students if the items charged were related to their program of study.

In an appeal of a finding in an FPRD, the institution has the burden of proving that the Title IV funds were lawfully disbursed. 34 C.F.R. § 668.116(d). I find that Academy failed to carry its

burden of proof in showing that the charges to the accounts were for educational expenses connected with attendance at the institution. Academy submitted no proof that these charges were required for the program of study; these charges were above and beyond the only charge identified by the school in the enrollment contract as required for completion of the program. In its request for review, Academy stated that some items were for the students' personal use or were purchased in anticipation of the students' employment after completion of the program.

Academy also argues that it was advised by the Ohio Student Loan Commission that it must disburse funds to students as they requested it so long as it was related to the program of study. However, I find that this does not excuse the institution from meeting Title IV requirements and Academy is responsible for the return of Tile IV funds disbursed for such purposes.

II

To be eligible to receive Federal aid, a student must maintain satisfactory academic progress in his or her course of study. 20 U.S.C. § 1091(a)(2). An institution must establish, publish, and

apply standards for measuring satisfactory academic progress. 34 C.F.R. § 668.14(e) (1990). An institution's satisfactory academic progress policy must include a schedule for determining the amount of work a student needs to complete by the end of each increment of the time frame allocated for the program of study. 34 C.F.R. § 668.14(e)(3)(iii) (1990). Academy's satisfactory academic progress policy required full-time students to attend 40 hours per week, and part-time students to attend 20 hours per week. Academy evaluated attendance monthly for full-time students and bimonthly for part-time students. If a student failed to attend 66 percent of the classes in an evaluation period, the student is placed on academic probation, however, he/she is still considered to be making satisfactory academic progress. If the student's attendance remains below 66 percent for the following evaluation period, he/she is placed on final probation until the next evaluation period. If the student's attendance again remains below 66 percent for the final probation period, the student is terminated from the school.

The Secretary has held that once an institution has established and published a valid satisfactory academic progress policy, it must be applied. *In Re Sinclair Community College*, Docket No. 89-21-S, U.S. Dep't of Educ. (September 26, 1991) (Decision of the Secretary). There is no dispute between the parties regarding the satisfactory academic progress policy that should be used to determine whether or not the students at issue were making satisfactory academic progress.

Academy asserts that of the students at issue, one changed her enrollment status from full-time to part-time in September 1990; another was enrolled part-time from April 1991 through the summer of 1991 and then was to begin a full-time schedule; and a third student changed from full-time to half-time in July 1990. Therefore, according to Academy, these students were maintaining satisfactory academic progress.

SFAP asserts that these students continued to be enrolled at Academy and receive Pell and FFEL disbursements following the final probation period where their attendance fell below 66 percent. SFAP maintains that even if the two students dropped to part-time, their attendance fell below 66 percent for three consecutive months and, therefore, the Academy did not apply its own satisfactory progress policy to these students.See footnote 3 *3* For the third student, SFAP asserts that although the documentation purports to show this student changed to part-time status in July 1990, his attendance far exceeded the level for half-time attendance in August 1990, October 1990, and November 1990. Thus, he should be considered full-time.

The record reveals that for two students, due to their drop from full-time to part-time schedules, their attendance did not fall below 66 percent attendance for three consecutive evaluation periods and, therefore, maintained satisfactory academic progress. SFAP has interpreted Academy's satisfactory academic progress policy as being that if a part-time student falls below 66 percent attendance for three consecutive months, the student is not making satisfactory academic progress under the institution's policy. However, under Academy's policy, a student fails to maintain satisfactory academic progress following the third evaluation period where the student fell below 66 percent attendance. For less than full-time students, attendance is evaluated bimonthly. Therefore, a less than full-time student would, in effect, have to attend less than 66 percent for six months before Academy would deem the student not to be making satisfactory academic progress. Accordingly, I find that Academy has demonstrated that the two students maintained satisfactory academic progress and were eligible to receive Title IV funds.

As for the third student, I find Academy's contention that this student became part-time is unpersuasive. The record reveals that this student remained a full-time student with subsequent monthly attendance levels well in excess of any reduced schedule and, therefore, I find he failed to maintain satisfactory academic progress throughout the period at issue.

III

To participate in Title IV programs, an institution must be designated as an eligible institution. 34 C.F.R. § 600.20(a) (1990). Eligibility does not extend to any other location established after an institution 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 a 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).

Academy concedes that its Dayton location was not eligible to disburse Title IV funds, and admits a $5,600.00 liability for three of the students who attended the Dayton location. However, Academy maintains that the remaining 12 students listed in the FPRD as having attended the Dayton location actually attended the Middletown location. SFAP points out that Academy's attendance records show that the remaining 12 students did attend the Dayton location from December 1, 1991, to March 1992. Hence, SFAP has also recalculated Academy's liability to include only the portion of Pell funds the students received while attending the Dayton location rather than the entire Pell funds received by the students. The only question before me is a factual dispute concerning whether the 12 students attended the Dayton location. The evidence submitted by Academy to prove that these 12 students attended the Middletown location is either irrelevant and/or does not contain information demonstrating that these students attended a site other than the Dayton location. Attendance sheets submitted by SFAP in support of this finding contain all of the students cited in FPRD and show that these students attended the Dayton location. Therefore, I find that Academy remains liable for the recalculated amount of Pell funds disbursed to students for the portion of their attendance at the Dayton location.

FINDINGS

1. Academy improperly charged student Pell and FFEL funds in student accounts for non-educational items.

2. Academy improperly disbursed Pell and FFEL payments to one student who was not maintaining satisfactory academic progress.

3. Academy improperly disbursed Pell payments to students attending the institution's ineligible Dayton, Ohio location.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the Academy of Hair Design pay to the U. S. Department of Education $65,639.81 and reimburse $4,488.05 to the appropriate holders of FFEL Program loans.

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Ernest C. Canellos
Chief Judge

Dated: March 22, 1996

SERVICE

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

Beverly Jo Hembree
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Footnote: 1 *1 Other findings challenged by Academy either have no liability assessed or were dropped by the Department and, therefore, will not be addressed in this decision.*

Footnote: 2 *2 Froehle stated that it never received an account card for student E.D. and Academy, through an unsigned handwritten note on a disbursement journal prepared by the institution's servicer, Robert J. Malone & Associates, claims that E.D. never attended the institution. Contrariwise, E.D. appeared on the institution's Pell Payment Summary. Therefore, I find Academy's contention that the student did not attend the institution is unpersuasive.*

Footnote: 3 *3 Academy and SFAP both submitted supplemental briefs. They are admitted.*
