

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

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In the Matter of

**Docket No. 96-118-SP**

**TIFFANY'S COLLEGE OF HAIR DESIGN,** Student Financial  
Assistance Proceeding  
Respondent.

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PRCN: 199240700055

Appearances:

Osa May Martin, Owner, Tiffany's College of Hair Design, Carthage, MO, for Respondent

Kelly J. Andrews, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Frank K. Krueger, Jr.  
Administrative Judge

**DECISION**

The Respondent, Tiffany's College of Hair Design (Tiffany's), received a final program review determination (FPRD) letter from the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED) on August 8, 1996. SFAP determined that Respondent violated 34 C.F.R. § 668.25(a) (1992) [See footnote 1 <sup>1</sup>](#) by failing to submit and have accepted a close-out audit when it lost its eligibility to participate in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV). [See footnote 2 <sup>2</sup>](#) The FPRD also upheld findings #2 and #4 from the initial program review conducted in August 1992 by Region VII of ED. [See footnote 3 <sup>3</sup>](#) Finding #2 contended that Respondent's attendance records were incomplete, inaccurate, and not maintained on a current basis, in violation of 34 C.F.R. § 668.23 (f)(1)(i). The FPRD also stated in finding #2 that Respondent's inaccurate attendance records made it impossible for Tiffany's to comply with various student financial assistance regulations regarding student eligibility for funds. Finding #4 contended that, partly as a result of finding #2, Respondent may have improperly disbursed Federal Pell Grant funds to students not making satisfactory academic progress, in violation of 34 C.F.R. § 668.7(c).

SFAP determined that each of the three FPRD findings requires Respondent to repay Federal Pell Grant funds received for award years 1991-92 and 1992-93, but SFAP does not seek separate liability for each finding. SFAP found that Respondent is responsible for repaying an unduplicated liability total of \$73,490 for funds received by Respondent during the 1991-92 and 1992-93 time periods. [See footnote 4 <sup>4</sup>](#) Respondent appealed the FPRD on September 17, 1996.

As discussed below, SFAP's determination in the FPRD that Respondent is liable for \$73, 490 in Federal Pell Grant funds it received for award years 1991-92 and 1992-93 is affirmed. Respondent did not meet its burden of proving that it was in compliance with applicable program requirements, including submission of an acceptable close-out audit upon termination from Title IV programs. *See* 34 C.F.R. § 668.116 (1996).

## DISCUSSION

### I. Failure to submit a close-out audit

According to 34 C.F.R. § 668.25(a), the requirements imposed on an institution that loses its eligibility to participate in the Title IV programs include the submission of a letter of engagement for an independent audit of all funds within forty-five days of loss of eligibility, and the submission of a close-out audit report within forty-five days of the letter of engagement. On April 26, 1994, ED sent Respondent a letter reiterating the obligations under 34 C.F.R. § 668.25. The letter stated that Respondent had fifteen days from the date of receipt to notify ED of plans being made for the required audit. The letter also notified Respondent that in the absence of a response to the letter within fifteen days, ED would automatically hold Respondent liable for the Title IV funds it received during the unaudited period of time.

Respondent does not dispute that it failed to respond to the letter or to submit the required materials; however, in a letter to the Secretary of Education, dated February 10, 1997, Respondent contended that this pending appeal of the FPRD findings postpones its obligation to submit a close-out audit. Although Respondent's previous appeal of the termination agreement, discussed *infra* note 1, may have postponed its obligation to submit a close-out audit, the current appeal of the FPRD findings does not impact Respondent's obligations under 34 C.F.R. § 668.25(a). The previous appeal was resolved in ED's favor and affirmed by the Secretary on April 5, 1994. The current case does not concern Respondent's termination from participation in the Title IV programs because a final decision has been issued in that matter. Therefore, the current case does not relieve Respondent of the close-out audit requirement resulting from its termination.

In its brief and supporting materials, Respondent offers no adequate explanation for its failure to submit a close-out audit. At the latest, Respondent's termination was effective as of April 5, 1994, the date the Secretary affirmed Respondent's termination. Respondent was subsequently reminded of the close-out audit obligation in SFAP's letter of April 26, 1994, and failed to respond to that letter. To date, Respondent still has not submitted a close-out audit. Respondent has not fulfilled its requirements under 34 C.F.R. § 668.25(a) and is therefore responsible for repaying the funds it received during the unaudited period of time.

### II. Finding #2: Attendance records incomplete, inaccurate, and not maintained on a current basis.

According to 34 C.F.R. § 668.23(f)(1)(i), an institution is required to maintain current records of students' enrollment status. The initial program review, which found that Respondent's attendance records violated 34 C.F.R. § 668.23(f)(1)(i) because they were incomplete, inaccurate, and not maintained on a current basis, gave Respondent the options of either having an independent CPA review the College's records and report deficiencies, or repaying all Federal funds received for 1992-93. Respondent did not choose either option. In its FPRD, SFAP determined that Respondent failed to address adequately the finding regarding its attendance records. In its appeal of the FPRD, Respondent submitted various exhibits intended to prove the accuracy and completeness of the attendance records. Analysis of the exhibits submitted with Respondent's brief indicates that Respondent's evidence remains insufficient to refute SFAP's findings.

According to the FPRD, Respondent's attendance records show that student #6 completed only 1,318 hours and yet was listed as graduating with the required 1,500 hours. Exhibit XIV of Respondent's brief shows that a Missouri State Board of Cosmetology review of the attendance records concluded that student #6 had the 1,500 hours required to graduate and that SFAP's computation of 1,318 hours for the student was incorrect. Two missing time cards caused the discrepancy in the number of hours. The Missouri State Board of Cosmetology examined time card summary sheets and determined that student #6 had accrued the necessary hours during the weeks for which time cards were missing.

Even if SFAP erred in its assessment of the attendance records for student #6, Respondent still has not provided sufficient evidence to refute SFAP's determination that Respondent overstated or understated hours for other students. In fact, Respondent admits understating hours for some students, justifying it as necessary to comply with Missouri State Board of Cosmetology regulations, which only allow students to be enrolled in a course of study for eight hours per day. Respondent's explanation for understating hours is unpersuasive. Respondent is not free to misrepresent hours on the

pretext of compliance with state regulations. Understating hours demonstrates violation of regulations, not compliance with them.

To address the determination that it overstated hours, Respondent submitted a handwritten, undated sheet with names of students and dates for which Respondent alleges ED's attendance calculations were wrong. Although Respondent also submitted photocopies of some attendance records, it is unclear how the records correspond to the Respondent's attempted proof that it did not overstate hours.

Inaccurate attendance records make it impossible to determine a student's current status, and, therefore, also make it impossible for the institution to comply with student financial assistance regulations regarding eligibility for funds. Although Respondent submitted evidence indicating an SFAP error in regard to one student, Respondent has not met its burden of proving that its attendance records are accurate, complete, and up-to-date.

### **III. Finding #4: Tiffany's made improper Federal Pell Grant Disbursements to students not making satisfactory academic progress.**

Under 34 C.F.R. § 668.7(c), eligibility for assistance under any Title IV program is contingent upon an institution's determination that the student is making satisfactory academic progress. SFAP determined that because Respondent's attendance records were inaccurate, incomplete, and not updated, Respondent made improper Federal Pell Grant disbursements to students who were not making satisfactory progress. As stated above, the exhibits submitted by Respondent did not suffice to meet its burden of proving that the attendance records were accurate, complete, and up-to-date. Similarly, Respondent has not provided sufficient evidence to show that it made proper disbursements to eligible students, and therefore is in violation of 34 C.F.R. § 668.7(c).

In the FPRD, SFAP maintained that Respondent required an 85 percent attendance record for satisfactory progress, and that fourteen students did not meet the required percentage. Respondent provided evidence indicating that its satisfactory progress requirement was 75 percent, not 85 percent. Although Respondent's evidence refutes SFAP's statement of an 85 percent requirement, eight of the students cited in the FPRD as not meeting the 85 percent figure still do not meet the 75 percent figure. Therefore, even if SFAP's 85 percent figure is incorrect, it appears that Respondent still disbursed funds to ineligible students. In addition, because Respondent has not proven that its attendance records are accurate, it is not possible to determine if the reported hours for students who appear to meet the progress requirement are correct.

Respondent still has not submitted sufficient documentation to show that it properly disbursed funds to students making satisfactory progress. Although it is commendable that Respondent was able to obtain affidavits from students attesting to the school's accuracy in record-keeping, the affidavits submitted with Respondent's brief do not constitute the kind of proof required to refute SFAP's findings. Similarly, it is not clear what the photocopied pages of attendance sheets submitted with Respondent's brief are intended to prove. Neither they nor the affidavits suffice to refute SFAP's finding that ineligible students received funds.

## **FINDINGS AND CONCLUSIONS**

1. Respondent violated 34 C.F.R. § 668.25(a) by failing to submit an acceptable close-out audit upon termination from Title IV programs.

2. Respondent has not met its burden of proving that its attendance records are accurate, complete, and up to date, and is therefore in violation of 34 C.F.R. § 668.23(f)(1)(i) which required Respondent to maintain current records of students' enrollment status.

3. Respondent has not met its burden of proving that it only disbursed funds to eligible students making satisfactory academic progress, and is therefore in violation of 34 C.F.R. § 668.7(c).

4. Respondent is liable for Federal Pell Grant funds received during award years 1991-92 and 1992-93

## ORDER

ORDERED, that Respondent repay ED \$73,490 in Federal Pell Grant funds it received for award years 1991-92 and 1992-93.

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Judge Frank K. Krueger, Jr.

Dated: July 23, 1997

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### SERVICE

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

Ms. Osa May Martin  
Tiffany's College of Hair Design  
2236 Grand Avenue  
Carthage, MO 64836

Kelly J. Andrews, Esq.  
Office of the General Counsel  
U.S. Department of Education  
600 Independence Avenue, S.W.  
Washington, D.C. 20202-2110

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[Footnote: 1](#) <sup>1</sup> Unless otherwise noted, all citations to the Code of Federal Regulations are to the 1992 edition.

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[Footnote: 2](#) <sup>2</sup> Tiffany's lost its eligibility to participate in Title IV programs as part of a May 11, 1993 settlement agreement. Although Ms. Osa May Martin, owner of Tiffany's, later attempted to repudiate the agreement, it was upheld in Tiffany's College of Hair Design, Docket No. 93-26- ST (June 21, 1993), a decision that the Secretary subsequently affirmed on April 5, 1994.

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[Footnote: 3](#) <sup>3</sup> According to the FPRD, SFAP closed findings #1, #3, #5, #6, and #7 based upon responses and representations submitted by Respondent and upon advice from counsel.

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[Footnote: 4](#) <sup>4</sup> Although Respondent actually received \$78,415 during award years 1991-92 and 92-93, SFAP reduced that amount by \$4,925 in accordance with the terms of the May 11, 1993 settlement agreement, to bring Respondent's total liability to \$73,490. The settlement agreement provided that ED would allow Tiffany's to cash a check for \$6,925, a portion of Tiffany's claims for Pell Grants; however, Tiffany's was to pay \$2,000 of that money to ED as payment of a fine for Title IV violations. Therefore, Tiffany's was to retain a total of \$4,925 of Pell Grant funds from ED after the settlement agreement. The agreement also stipulated that Respondent waived any right or claim to any other payments from ED from participation in Title IV programs, and did not preclude later ED actions based on future program reviews.