

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

In the Matter of

L'ESTHETIQUE COSMETOLOGY COLLEGE CORPORATION,
Respondent.

Docket No. 96-12-SA
Student Financial Assistance Proceeding
ACN: 02-51034

Appearances: Hilda de Jesus Adorno, Director, Bayamon, Puerto Rico, for L'Esthetique Cosmetology College Corporation.

S. Dawn Robinson Scaniffe, 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 August 18, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final audit determination (FAD) finding that L'Esthetique Cosmetology College Corporation (LCCC) 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.*

In a letter dated October 17, 1995, LCCC disputed the first of two findings contained in the FAD. [See footnote 1 /](#) On March 8, 1996, I issued an Order Re Further Proceedings which established a revised briefing schedule for the parties and required LCCC to file a submission in support of its position by April 8, 1996. On April 19, 1996, SFAP filed a Motion For Termination of Proceedings and Entry of Judgment on the ground that LCCC failed to comply with my order.

Subsequently, on April 23, 1996, I issued an Order To Show Cause why I should not issue a decision and enter judgment against LCCC for its failure to prosecute its appeal by May 15, 1996. In response, on May 9, 1996, LCCC submitted a copy of the letter sent to the Department appealing the FAD, a copy of a letter sent to Mr. Jose E. Salichs Martinez, an attorney for the Department of Education for Puerto Rico, and a copy of a letter from Mr. Jose E. Salichs Martinez to LCCC explaining Puerto Rico's compulsory age requirement. SFAP then filed its initial brief on June 6, 1996.

To be eligible to receive Title IV funds, a student enrolled at a proprietary institution of higher education or postsecondary vocational institution must be above the age of compulsory school attendance in the State in which the institution is located. 34 C.F.R. § 668.7(a)(3)(iii)(A) (1992). A student must also have the ability to benefit from the training offered by that institution. 34 C.F.R. § 668.7(a)(3)(iii)(B) (1992). According to SFAP, an audit of LCCC for the 1992-1993 award year revealed that LCCC disbursed Title IV funds to students who were below Puerto Rico's compulsory age requirement of age eighteen (18).

In an appeal of an FAD, an institution bears the burden of demonstrating that it properly disbursed Title IV funds. 34

C.F.R. § 668.116(d). The letters submitted by LCCC are not at all probative in determining whether Title IV funds were lawfully expended. These letters merely state that the compulsory age requirement for Puerto Rico is age 18. Further, LCCC does not dispute the finding in the FAD that it disbursed Title IV funds to students who were below the age of 18. Therefore, I find that LCCC disbursed Title IV funds to students who were below the compulsory age requirement of Puerto Rico and, consequently, were ineligible to receive Title IV funds.

The nature of the enforcement of Title IV programs creates the need for institutions to cooperate with SFAP by providing full file reviews in order to determine the extent to which Title IV funds were improperly spent. *See In Re Catherine College*, Docket No. 94-145-SA, U.S. Dep't of Educ. (March 6, 1996) at p. 7. This tribunal has allowed the recovery of projected liabilities when an institution fails to provide SFAP with data regarding the institution's expenditures of Title IV funds. *See id.* LCCC improperly disbursed Title IV funds to 13 out of 50 students in the audit sample. The sample comprised 28 percent of students receiving Title IV funds at LCCC for the audit period. Due to this error rate, SFAP projected a liability of \$55,400 for the institution's total student population. LCCC had the option of either performing a full file review, paying the projected liability, or conducting its own statistically valid random sample. *See* ED Exhibit 1 at p. 4. LCCC did not perform a full file review or offer any evidence to this tribunal as to why liability should not be imposed in the amount projected by SFAP. Therefore, I find SFAP's proposed calculation of liability valid.

FINDING

LCCC disbursed Title IV funds to students who were below the compulsory age of attendance and were, therefore, ineligible to receive Title IV funds.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the L'Esthetique Cosmetology College Corporation pay to the U.S. Department of Education the sum of \$55,400. [See footnote 2 2](#)

Judge Richard I. Slippen

Dated: July 1, 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 LCCC did not appeal the \$1,064 liability assessed in FAD Finding # 2.

[Footnote: 2](#) 2 As SFAP did not seek payment of the \$1,064 liability for FAD Finding # 2 in its initial brief, it is excluded from this judgment.
