

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

In the Matter of

Docket No. 96-128-SP

COLLEGE OF BEAUTY ARTS &

Student Financial

SCIENCE,

Assistance Proceeding

Respondent.

PCRN: 199-540912011

Appearances: Mr. Larry Bulechek, owner, Cottonwood, Arizona, for the College of Beauty Arts and Science.

Denise Morelli, Esq., Office of the General Counsel, United States
D.C., for Student Financial Assistance Programs.

Department of Education, Washington,

Before: Judge Ernest C. Canellos

DECISION

The College of Beauty Arts and Science (College), Cottonwood, Arizona, is a proprietary institution offering vocational programs of study in cosmetology at three locations in Arizona. It is accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and is eligible to participate in the Federal Pell Grant, Federal Supplemental Opportunity Grant, and the Federal Family Education Loan Programs, which are authorized under 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.*

On August 30, 1996, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) issued a final program review determination (FPRD) which found that the College violated several regulations promulgated pursuant to Title IV. The FPRD resulted from a September 11-15, 1995, on-site program review of the College's Title IV compliance for the award years 1992-93, 1993-94, and 1994-95, conducted by SFAP's San Francisco Regional Office. During the program review, samples of twenty student files from each award year were selected for review. The program review report, dated January 19, 1996, contained fourteen adverse findings. The FPRD concluded that the College had taken corrective

action as to all but four of these findings, leaving unresolved and in issue only SFAP's conclusions that the College failed to resolve conflicting information, failed to verify information of students selected for verification, disbursed federal aid to students without a valid Student Aid Report (SAR) or Electronic Student Aid Report (ESAR), and erroneously disbursed federal student aid to a student who was in default on a prior Title IV student loan.

The parties submitted their respective briefs and, therein, they agreed that the College owed \$15 for the finding relative to the inconsistent information in the student files, there was no liability for the failure to verify, and the College owed \$1,150 for the finding relative to the distribution of federal student aid to a student who was already in default on a Title IV loan. The College, on the other hand, disputes liability as to the finding relative to the failure to maintain a valid SAR or ESAR in the student files. In its Summary of Unpaid Liabilities, the College agrees to pay the undisputed claims and it also inexplicably agrees to pay \$2,950 towards the finding which it disputes.

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). SFAP claims that the matter is quite straightforward -- as a condition of disbursing Title IV aid, the institution must obtain a valid SAR or ESAR. 34 C.F.R. § 690.61. To be valid, both a SAR and ESAR must be signed. 34 C.F.R. § 690.2. The evidence of record is quite clear -- the College disbursed Title IV aid to eight

students [See footnote 1 /](#) without securing a signed ESAR. The College's various defenses, i.e. that the program reviewers exceeded their authority and that there is no authority requiring the actions demanded by the review, are clearly without merit. The College's argument that other documentation, such as the student loan application, could substitute for the signed ESAR is, likewise, not meritorious. The lack of signatures on the ESARs clearly raises the specter of impropriety, and the College does not rebut this by coming forward with evidence demonstrating that the Title IV aid was lawfully disbursed. *See In the Matter of Knoxville College*, Docket No. 94-175-SP, U.S. Dep't of Educ., (Decision of the Secretary), February 8, 1996. As a consequence, I find that the College has failed to meet its burden of demonstrating that the students at issue had a valid ESAR and, therefore, the College is liable for the return of the Title IV aid disbursed to those students. Further, I find the total liability for this finding is \$8,753. [See footnote 2 2](#)

FINDINGS

1. The College of Beauty Arts and Science improperly disbursed Title IV student aid to students without obtaining a signed SAR or ESAR. The liability for this finding is \$8,753.00.
2. The College of Beauty Arts and Science failed to resolve conflicting information as to one student. The liability for that one student is \$15.00.
3. The College of Beauty Arts and Science erroneously disbursed Title IV student aid to one student despite the fact that the student was already in default of a previous Title IV loan. The liability for that student is \$1,150.00.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the College of Beauty Arts and Science pay to the U. S. Department of Education the sum of \$9,918.00 .

Ernest C. Canellos
Chief Judge

Dated: January 15, 1997

SERVICE

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

Mr. Larry Bulechek
Owner
College of Beauty Arts and Science
1229 East Cherry Street
Cottonwood, Arizona 86326

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

[Footnote: 1](#) 1 After determining that a number of the student files in the review sample did not possess signed copies of an ESAR, SFAP directed the College to perform an audit, certified by a Certified Public Accountant, of all its records to determine if other student files also lacked such documentation. The audit uncovered four additional students whose files lacked a signed ESAR. SFAP calculated that those four students received \$6,664 in federal aid, which was included

in SFAP's demand in the FPRD. The College's claim that the auditor's report is exculpatory and it cannot verify how SFAP's claim was arrived at, is summarily rejected.

[Footnote: 2](#) 2 The total figure includes \$6,664 for the liability uncovered by the audit and \$2,089 for the liability for three students in the original sample. One student is not included in the amount demanded for this finding because it is the same student whose aid is to be returned under the finding regarding the payment of federal aid to the student already in default.
