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

In the Matters of **Docket Nos. 96-140-SP**
96-141-SP

MIDLAND CAREER INSTITUTE,

Student Financial Assistance Proceeding

Respondent.

PRCNS: 199-240500051

199-240500049

Appearances:

Mr. Alan P. Frost, President, for Midland Career Institute, Inc.

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

Before:

Ernest C. Canellos, Chief Judge

DECISION

Midland Career Institute, Inc. (MCI), headquartered in Tampa, Florida, offered computer training in several fields at campuses in Hammond, Indiana, and Chicago, Illinois. MCI participated in the Federal Pell Grant and Federal Family Educational Loan (FFEL) programs, authorized under Title IV of the Higher Education Act of 1965 (Title IV), as amended. 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). The present appeal is based on two separate Final Program Review Determinations (FPRDs), issued by SFAP which assessed a total liability of $6,220,447. Pursuant to my Order Governing Proceedings, the two matters were consolidated.

On March 17, 1993, the Accrediting Council for Continuing Education and Training (ACCET) revoked MCI's accreditation for the Chicago campus. This action was followed by the Indiana Commission on Proprietary Education's revocation of MCI's accreditation for the Hammond campus on March 23, 1993. Both campuses closed in April 1993 and, as a consequence, MCI was no longer eligible to participate in Title IV programs.[See footnote 1][1] On April 20, 1993, SFAP notified MCI that certain procedures were mandated when an institution closes, including submission of a

close-out audit. 34 C.F.R. § 668.25.

Coincidentally, earlier on-site program reviews were conducted by staff from ED's Region V between August 31, 1992, and September 11, 1992, simultaneously at both the Hammond and Chicago campuses. At the Hammond campus, the SFAP reviewers found numerous violations such as: improper admissions procedures, incomplete attendance records, failure to monitor students' academic progress, late refund payments, incorrectly calculated refunds, and improper Pell Grant disbursements. Similar violations were discovered at the Chicago campus. The two FPRDs incorporated the findings of the on-site program reviews.

DISCUSSION

As an initial observation, an institution which requests a review of an FPRD has the burden of proving that questioned expenditures were proper and that the institution complied with Title IV program requirements. 34 C.F.R. § 668.116(d)(1) and (2). I find that MCI failed to sustain its burden in this proceeding. I will examine each area of alleged non-compliance, *seriatim*:

Failure to Submit a Close-out Audit

SFAP alleges that the last audit MCI submitted covered the award year ending on June 30, 1991. Further, MCI did not notify the Secretary of its loss of eligibility or closing, nor did it submit a letter of engagement for an auditor to perform the close-out audit. These failures constitute a violation of 34 C.F.R. § 668.25(a)(2)(I) and (ii). MCI defends its failure to submit a close-out audit by claiming that all its records were in the hands of agents of ED's Office of Inspector General (IG) and Federal Bureau of Investigation (FBI) and, therefore, access was limited and restricted. In addition, MCI contends that because the school was under a criminal investigation at the time of its closing, the school's records were “audited” and “investigated” by agents of the IG and FBI, and that this investigative effort should constitute the close-out audit required by the regulations. SFAP points out that MCI could and, in fact, did access its files twice. However, neither MCI nor an independent auditor ever requested access to its files for the purpose of completing a close-out audit. SFAP further states that the investigation was focused on potential fraud involving MCI's owners and not on assessing areas of regulatory noncompliance.

It has been well established by this tribunal that in the absence of a close-out audit, the school is liable for all Title IV funds received since the last audit was submitted if the school cannot, otherwise account for its expenditure of Title IV funds. *See, e.g., In re Magic Touch Beauty Institute,* Dkt. No. 97-161-SP, U.S. Dept. of Educ. (July 2, 1998); *In re Interamerican Business College,* Dkt. No. 96-20-SP, U.S. Dept. of Educ. (May 28, 1997); *In re Belzer Yeshiva,* Dkt. No. 95-55-SP, U.S. Dept. of Educ. (June 19, 1996); *In re Long Beach College of Business,* Dkt. No. 94-78-SP, U.S. Dept. of Educ. (August 30, 1995); *In re Calvinade Beauty Academy,* Dkt. No. 93- 151-SA, U.S. Dept. of Educ. (March 21, 1995); and *In re National Broadcasting School,* Dkt. No. 94-98-SP, (December 12, 1994). The last audit MCI submitted was for the award year ending June 30, 1991. Since that time, MCI has not accounted for its expenditure of Title IV funds by coming forward with any probative evidence demonstrating that the institution complied with Title IV in its disbursal of Title IV funds. Therefore, I find that MCI is liable for all Title IV funds disbursed from June 30, 1991, through the school's closing date.

Regardless of the claimed difficulties MCI encountered in submitting a close out audit, the school cannot rely on these to shield it from its regulatory violation. *See In re Interamerican Business College,* Dkt. No. 96-20-SP, U.S. Dept. of Educ. (May 28, 1997). MCI has a fiduciary obligation to submit a close-out audit and thereby properly account for disbursed Title IV funds. Section 668.82(b). In addition, pursuant to 34 C.F.R. § 668.23, institutions are required to have an *independent* auditor conduct compliance and financial audits every two years. I find that MCI's contention that OIG's investigation satisfies the audit requirement is unpersuasive. SFAP assessed a liability for its estimated actual loss for the failure to submit a close-out audit at $2,920,013, however, that amount was subsumed in the total recovery sought by SFAP.

Failure to Properly Administer Title IV Funds

Although MCI acknowledges that it lacked experience in administering Title IV programs, it claims that it ran a well-managed, progressive school. In its brief, however, SFAP cites many violations of 34 C.F.R. § 668.7(a)(1993) which required the school to determine whether each student is eligible to receive Title IV funds by ascertaining whether the student has a high school diploma or an equivalent, or whether the student has the ability to benefit from the training. SFAP alleges that the school did not have a system in place to determine students' eligibility. MCI defends by merely claiming in its brief: that documents that were said to not be in the files were actually there, and that student accounts (including refunds) and records that were said to be inaccurate or improper were correct. MCI gives no evidence to demonstrate which records were accurate, nor does it produce copies of records to verify its claims of sound record-keeping practice.

SFAP also alleges that the three-week trial offer which allowed students to conditionally register, provided they received Title IV funds, violates the student eligibility requirement, as outlined in 34 C.F.R. § 668.7(a)(I).See footnote 2[2] MCI responds by stating that the trial offer was questioned by reviewers during the Program Review, but was immediately changed to omit any financial obligation on the part of the student.

In addition to the above cited violations, the FPRDs allege that MCI's academic progress reports, on which student Federal Pell Grant awards are based, were inconsistent with other sources of the same information such as attendance reports documented by the instructors. Consequently, SFAP claims that MCI granted students academic credit for incomplete course work and/or failing grades.

SFAP also cites 34 C.F.R. § 668.8(a)(2)(iv), which requires that to be eligible to receive Title IV funds, a proprietary institution must provide at least a six month training program aimed at preparing students for gainful employment in a recognized occupation. In order to fulfill this requirement, an institution that measures academic progress with quarter credit hours must have a program consisting of at least 24 credit hours. 34 C.F.R. § 600.2. MCI fails to satisfy this requirement because it graduated students with less than 24 credit hours. MCI is liable to return all the federal student financial assistance funds disbursed to students enrolled in that program even though it truly, though erroneously, believes that its educational program comports with these requirements. 34 C.F.R. § 600.10(c)(2). Both MCI's failure to demonstrate that it maintained accurate academic records under 34 C.F.R. § 668.7(a) and (c), as well as its inappropriate certificate and degree awards to ineligible students renders MCI an institution administratively incapable of properly disbursing Title IV funds. SFAP requested that MCI perform a full file review to determine the exact amount which would quantify exactly this finding, however, that was not done. In the absence of such review, SFAP had no choice other than assessing liability for these violations in the amount of $3,662,635, the total Title IV aid disbursed for the 1990-91 award year.

Refund Violations

SFAP asserts that MCI neglected to make Federal Family Education Loan (FFEL) refunds to students who withdrew or were terminated, made late refunds, and failed to accurately assess the amount of refund due. Under 34 C.F.R. § 682.607(c), the school must make refunds within 60 days of either a student's withdrawal, the expiration of the academic term, expiration of the period of enrollment for which the loan was made, or the date on which the school makes a determination that the student has withdrawn, whichever occurs first. SFAP claims that MCI failed to produce complete file reviews for all students who withdrew or discontinued their education program after July, 1990. The above violation also carries a liability necessitating the return of all Title IV funds disbursed to MCI during the 1990-91 award year and totals $3,662,635, which was already discussed under a previously mentioned liability, and is only counted once in the final liability amount.

CONCLUSION

SFAP assesses a total liability at $6,220,447 for the regulatory violations for the 1990-91 award year and for failure to submit close-out audits for both the 1991-92 and 1992-93 award years. This figure is broken out as $2,485,716 in Federal Pell Grant funds and $3,734,731 in estimated actual FFEL liabilities.

In its brief, MCI confuses the purpose of an FPRD appeal. As a result, its arguments are laden with vague references to fraudulent behavior and indiscretions on the part of SFAP program reviewers and federal agents involved in a criminal investigation of MCI. Subpart H limits the scope and purpose of this proceeding to an administrative hearing specifically concerning the allegations raised in an FPRD and any relevant defense to those allegations. Any arguments related to the institution's view of the performance of the program reviewers are simply not relevant to this appeal. Notably, MCI's brief is conspicuously void of substantive arguments or exhibits that demonstrate its ability to properly account for Title IV funds. It is clear that the institution requesting a review has the burden of proving that the questioned expenditures were properly disbursed and that it complied with program requirements. MCI fails on both counts.

In short, the findings contained in the FPRD demonstrate a *prima facie* showing that MCI has not complied with Title IV program requirements. MCI has not sustained its burden of proof and I therefore uphold SFAP's calculation of liability in the amount of $6,220,447.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that MCI pay to the United States Department of Education the sum of $6,220,447.

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Chief Judge Ernest C. Canellos
Dated: July 30, 1998

SERVICE

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

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Footnote: 1 [1] *An institution loses its eligibility to participate in Title IV on the date that it closes permanently. 34 C.F.R. § 600.40(a)(2). In addition, an institution must maintain accreditation by a nationally recognized accrediting agency. 34 C.F.R. § 600.5(a)(6).*

Footnote: 2 [2] *34 C.F.R. § 668.7(a)(1)(I) defines an eligible student as a regular student enrolled or accepted for enrollment in an eligible program. According to 34 C.F.R. § 668.2, a regular student is one who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential. MCI's three-week trial offer did not comport with the regulations because students were not officially enrolled and, therefore, were not eligible to receive Title IV funds.*
