

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

In the Matter of

Docket No. 96-145-ST

WESTERN BEAUTY COLLEGE,
Respondent.

Student Financial Assistance Proceeding

Appearances:

Vickie S. Park, President, Western Beauty College.

Alexandra Gil-Montero, Esq., and Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Judge Richard F. O'Hair

DECISION

On November 20, 1996, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a notice of intent to terminate the eligibility of the Western Beauty College (Western) to participate in the student financial assistance programs authorized under 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.* [See footnote 1¹](#) This notice also indicated that SFAP intended to impose a fine of \$139,000 on the institution.

This proceeding is premised on the following alleged regulatory violations by Western: failure to timely pay Title IV program refunds, failure to verify inaccurate information which was supplied by student financial aid applicants, and failure to meet financial responsibility standards. These program deficiencies were discovered during the course of a program review conducted at Western in November 1994 and reconfirmed by a follow-up program review in June 1996. After analyzing the 1994 program review, SFAP issued a Final Program Review Determination (FPRD) in August 1996 which assessed program liabilities of \$205,809. Western did not appeal these findings, and they became final.

At Western's request, an evidentiary hearing was conducted in Los Angeles, California, on July 23, 1997, to give it an opportunity to contest the proposed termination. Ms. Vickie Park, Western's owner, was present for the hearing, but was not represented by counsel, did not offer any witnesses or other evidence, and did not cross-examine any of SFAP's three witnesses. She was offered the opportunity to submit a post-hearing statement, but elected not to do so. During the evidentiary hearing, SFAP presented testimony and evidence that satisfied its burden of proving that Western failed to meet the standards of financial responsibility and administrative capability. These failures warrant its termination from participation in Title IV programs. 34 C.F.R. §§ 668.15, 16.

Failure to pay timely Title IV, HEA program refunds

Participating institutions have a fiduciary responsibility to refund appropriate amounts of excess federal funds which they receive on behalf of students who subsequently withdraw from their program of instruction. For students who participate in the Pell Grant program and officially withdraw, drop out or are expelled on or after the first day of class, the institution owes and must pay a refund to the Pell Grant account within 30 days of the students' withdrawal. 34 C.F.R. §§ 668.22(a), (f), (g), and (j). For students who withdraw from an institution while participating in the FFEL program, to be timely, refunds must be made to the borrower's lender within 60 days of the withdrawal or drop date. 34 C.F.R. § 682.607(c).

The initial program review disclosed that Western had a problem with making timely refund payments, and this prompted SFAP to order the school to perform a full file review for the period July 1, 1992, through October 10, 1995. Upon an analysis of that review, SFAP concluded that of 161 students who withdrew, were expelled or dropped out, there were 141 refunds due either the Pell or the FFEL programs and of those, 131 (93 percent) were paid late. Additionally, out of the 72 refunds which were owed for students who graduated from the program and requested that a portion of their FFEL loans be returned to the appropriate lender, 61 (83 percent) were late. During the follow-up program review in June 1996, the reviewers examined 17 additional student files and found that three of four refunds were paid late.

Failure to perform verification

As a participating institution, Western is required to verify the accuracy of information provided by students applying for financial aid if the application is randomly selected by SFAP for verification. 34 C.F.R. § 668.54(a)(2)(i). Furthermore, the institution must develop and apply an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to the student applications. 34 C.F.R. § 668.16(f). During the program review, reviewers found that Western failed to perform verification, or resolve conflicting information, in 10 of 20 files which previously had been selected for verification. (SFAP reduced the failures from 10 to 8.) With such a poor showing, SFAP ordered Western to review all of the files for the 1992-93 and 1993-94 award years to determine if verification had been properly completed or if there were unresolved discrepancies. This process identified 119 student files which were required to have been verified. SFAP's review of these files identified 68 student files for which Western had provided incomplete verification or failed to resolve inconsistent information. [See footnote 2²](#) After conducting the follow-up program review, SFAP reviewers found inadequate verification in nine out of a sample of 17 files.

Failure to meet financial responsibility standards

Another prerequisite to continuing to participate in the Title IV programs is that an institution must demonstrate it is financially responsible. 34 C.F.R. § 668.15(a). One of the indications that an institution is not financially responsible occurs when an individual who exercises substantial control over an institution owes a liability to the Department for a Title IV violation and is not making payments in accordance with an agreement with the Department. 34 C.F.R. §§ 668.15(c)(1)(i)(B), (ii). The August 16, 1996, FPRD assessed a liability of \$205,809 against Ms. Park because of program violations found during the November, 1994 program review. Ms. Park did not appeal this FPRD and it became final on September 30, 1996. Subsequent to that time, Ms. Park has made no payments to the Department to satisfy the debt, nor has she executed a repayment plan, despite repeated offers by Department personnel to assist with the preparation of such a document. Additionally, Western has not responded in any way to the normal billing procedure utilized by the Department, which consists of regular monthly payment due notices.

A second indication of failure to meet standards of financial responsibility exists when, as a result of the two most recent program reviews, the institution is required to repay an amount greater than five percent of the Title IV funds that it received for any award year covered by the program review. 34 C.F.R. § 668.15(c)(2)(ii)(B). Western falls within this category because its liability to the Department for the finding regarding its failure to perform verification is \$158,721, a figure which exceeds five percent of the total amount of Title IV program funds Western received for the 1992-93 and 1993-94 award years.

Discussion

SFAP has presented un rebutted evidence that Western lacks the administrative capability, and fails to meet the standards of financial responsibility, to continue to disburse student financial aid under the Title IV programs. From the findings of the program review it is clear that Western has a history of making late refunds and has been unwilling or unable to perform the required verification of student files. [See footnote 3³](#) Western also cannot meet the expected standards of financial responsibility, as shown by its failure to repay its program liability of \$205,809, an amount which exceeds five percent of the Title IV funds it received for the award years reviewed. Ms. Park was present for the hearing, but neither cross-examined any of SFAP's witnesses nor offered any of her own. However, she made a closing statement in which she admitted she knew very little, if anything, about the administration of the Title IV program and left this responsibility to other personnel on her staff. She explained that her efforts were devoted to ensuring she provided quality beauty school training to her students, about 90 percent of which do not speak English. She related that she has been unsuccessful in her effort to locate a student financial aid administrator who must be fluent in three languages, English, Korean and Spanish. Despite these impediments, Western had an obligation to hire the appropriate staff to conduct its Title IV program in accordance with the statute and regulations. Western's eight year history of a documented inability to perform the basic tasks incidental to administering the Title IV programs convinces me that its eligibility to continue participating in them should be terminated.

SFAP has requested that Western be fined \$134,500, which represents a fine of \$500 per violation of the requirements to make timely refunds and conduct a satisfactory verification of student files. The Secretary has the authority to fine an institution up to a maximum of \$25,000 for each regulatory violation. 34 C.F.R. § 668.84. This maximum amount can be tempered if the institution is considered to be a small school, meaning that the dollar amount of its Title IV disbursements is low in comparison to all other Title IV participants. SFAP has determined that Western is a medium-sized institution for these purposes. Other considerations in determining an appropriate fine are the absence of any evidence of fraud and the showing of a sincere attempt to comply with the statutes and regulations which is frustrated by some outside interference over which the institution has little control. There is no evidence Ms. Park or anyone on her staff was engaged in acts amounting to fraud, but only that Ms. Park displayed complete ignorance of, and near indifference to, what amounts to a series of complex, unforgiving requirements applicable to all institutions participating in Title IV programs. Ms. Park apparently did not have the financial resources to hire qualified personnel to perform the administrative functions of her beauty school. This shortage of resources may also account for the fact that Western has not made any payments toward the final program review liability which, exclusive of interest, is \$205,809.

Recognizing that a termination of a school's eligibility can be viewed as a form of punishment [See footnote 4⁴](#), as well as taking into consideration the other factors previously discussed, I find that a fine of \$100 per late refund and verification violation is appropriate in this instance. Therefore, for the 195 late refunds, a fine of \$19,500 is appropriate; for the 77 improper verifications, a fine of \$7,700 is appropriate.

FINDINGS

1. Western failed to meet standards of administrative capability by its late payment of 195 refunds.
2. Western failed to meet standards of administrative capability by failing to perform, or improperly performing, verification for 77 student files.
3. Western failed to meet financial responsibility standards by making no payments to the Department on a program review liability of \$205,809, an amount which exceeds five percent of the Title IV funds it received during the award years in question.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of the Western Beauty College to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated and that Western Beauty College be fined \$27,200.

Judge Richard F. O'Hair

Dated: August 14, 1997

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 *Included within the student aid programs under Title IV are: Pell Grant, Federal Supplemental Educational Opportunity Grants, Federal Work-Study, Federal Perkins Loan, Federal Direct Student Loan, and the Federal Family Education Loan (FFEL) programs.*

[Footnote: 2](#) ² *During its reconstruction of the files, Western found only 17 files containing inconsistent student information.*

[Footnote: 3](#) ³ *SFAP presented testimony that in 1987 representatives from the California Student Aid Commission (CSAC), a guaranty agency for California, first detected that Western was not able to make timely refund payments. Following this finding, CSAC recommended that Western's staff take advantage of the free training CSAC offered in the area of administering student financial aid. CSAC found the same problem with late refunds during its 1989 and 1996 program reviews at Western.*

[Footnote: 4](#) ⁴ *See In re Valley Commercial College, Dkt. No. 96-96-ST, U.S. Dep't of Educ. (June 17, 1997); In re Universidad Federico Henriquez Y Carvajal, Dkt. No. 96-16-ST, U.S. Dep't of Educ. (Dec. 16, 1996).*
