

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

In the Matter of

Docket No. 96-20-SP

**INTERAMERICAN BUSINESS
COLLEGE,**
Respondent.

Student Financial
Assistance Proceeding

Appearances:

Cris Burgos, President, San Juan, Puerto Rico, for Interamerican Business College.

Alexandra Gil-Montero, 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

Interamerican Business College (IBC) participated in the various 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.* These programs are administered by the office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED or Department). On October 26, 1995, SFAP issued a Final Program Review Determination (FPRD) in which it sought the return of \$3,828,580.05 in federal funds. The FPRD is based upon the program review report for the 1992-93 and 1993-94 award years. IBC filed a request for review on March 22, 1996. Both parties filed submissions to this tribunal in response to the Order Governing Proceedings.

SFAP is seeking a recovery of funds from IBC based upon eight findings contained in the FPRD. These findings generally allege that IBC failed to refund Pell Grant funds that it owed to the Department, maintained excess cash in excess of its three day need, and failed to submit a close-out audit after it ceased participating in the Title IV programs.

IBC concedes liabilities as to certain findings, but argues that a series of administrative and clerical errors prevented it from fulfilling certain obligations. IBC explains that it cannot complete the closeout audit because the necessary student records are in the hands of the Department's Office of the Inspector General in San Juan, Puerto Rico.

Finding 1--Failure to refund federal Pell Grant funds to the federal Pell Grant account for students who did not enroll

In Finding 1, the FPRD assessed a liability of \$3,560 for the administrative cost allowance that the Department paid on behalf of students who failed to enroll before the first day of classes. SFAP alleged that IBC drew down Pell Grant funds for these students, and although IBC ultimately returned these funds to the Department, the Department incurred an administrative cost allowance on behalf of these students. In its brief, SFAP reduced the liability under this finding to \$3,360.

IBC argues that all of these students were properly enrolled, but does not deny that the students did not attend classes, and it admits that the refunds for the students in question were made late. Therefore, IBC failed to demonstrate that it is not liable for the \$3,360 administrative cost allowances for these students. Accordingly, IBC must refund this \$3,360 to the Department.

Finding 2--Failure to refund federal Pell Grant funds to the federal Pell Grant account

Finding 2 of the FPRD assessed a liability of \$1,036,254.16 for failure to refund Pell Grant fund disbursements for students who never began their program of study and for numerous other refund calculations for which the required refund was not made. This total consisted of \$973,972 in unrefunded Pell Grant funds and \$62,282.16 in interest on those funds at an annual rate of three per cent.

In its brief, IBC argues that the \$973,972 figure should be reduced by \$141,580 for refunds previously paid. The school also contends that the amount of unrefunded Pell Grant funds should be further reduced by the \$45,425 from the Humacao branch, which is a duplication. Therefore, IBC argues that the actual liability under this finding is \$786,967 plus the applicable interest.

In its brief, SFAP acknowledged that IBC refunded \$129,884 in Pell Grant funds for the 1992-93 award year. SFAP also withdrew its claim for \$45,425 for the students listed in Appendix B-1 of the FPRD, admitting that this was a duplication. Accordingly, SFAP reduced the liability under this finding to \$846,994. This amount includes \$11,696 in Pell Grant funds from the 1992-93 award year, \$786,967 from the 1993-94 award year, and interest of \$48,331.

Thus, the only remaining difference between the two parties' positions is \$11,696 in Pell Grant funds from the 1992-93 award year (IBC claims that it previously paid \$141,580 in refunds while SFAP contends that the school paid only \$129,884 in refunds). IBC has not specifically documented its claimed amount. Since IBC has the burden of persuasion in this proceeding under 34 C.F.R. § 668.116(d), it must demonstrate that its questioned expenditures were proper. IBC has failed to specifically document in its brief or exhibits that it paid the \$141,580 in refunds rather than \$129,884 as SFAP contends, and, therefore, it must refund \$846,994 to the Department.

Finding 3--Untimely federal Pell Grant refunds to the federal Pell Grant account

IBC concedes liability as to this finding and has agreed to repay the \$14,494.75 in question. SFAP did not mention this finding in its brief, suggesting that perhaps IBC has already repaid this sum. IBC must repay this \$14,494.75 to SFAP, if it has not already done so.

Finding 5--Excess cash on hand/misuse of federal funds

The FPRD alleges that IBC held \$973,972 in excess cash, but did not assess a liability under this finding because interest on excess cash was assessed under Findings 2 and 3. Therefore, no further action is required on the part of the school for this finding.

Finding 8--Unauthorized charges to a federal account

IBC concedes liability as to this finding and has agreed to repay the \$735.39 in bank fees. SFAP did not mention this finding in its brief, suggesting that perhaps IBC has already repaid this sum. IBC must repay this \$735.39 to SFAP, if it has not already done so.

Finding 11--Ineligible student/ability to benefit (ATB) test

IBC concedes liability as to this finding and has agreed to return the \$2,622 in question. SFAP did not mention this finding in its brief, suggesting that perhaps IBC has already repaid this sum. IBC must repay this \$2,622 to SFAP, if it has not already done so.

Finding 12--Missing financial aid transcript (FAT)

IBC concedes liability as to this finding and has agreed to return the \$2,443.75 in question, which includes \$2,300 in Pell Grant funds and \$143.75 in interest on these funds. IBC must repay this \$2,443.75 to SFAP, if it has not already done so.

Finding 17--Closed school/failure to submit the required audits/failure to respond to a closed school letter

Under this finding, SFAP has assessed a liability of \$2,813,895, which represents the total amount of Title IV funds that IBC received during the 1993-94 and 1994-95 award years. This amount excludes \$786,967, which is the amount assessed under Finding 2 for the 1993-94 award year. This amount also excludes the \$2,443.75 assessed separately under Finding 12 (that amount includes \$2,300 in Pell Grant funds and \$143.75 in interest).

Under 34 C.F.R. § 668.26(b), if an institution ceases participating in the Title IV programs, within 45 days after the date that the participation ends, it must submit to the Secretary of Education a letter of engagement for an independent audit of all funds that the institution received under that program. In addition, the actual audit must be submitted to the Secretary within 45 days after the date of the engagement letter.

On January 24, 1995, the Department's Region II sent IBC a letter noting that IBC had lost its accreditation and thus had ceased participating in the Title IV programs as of December 31, 1994. The letter reminded IBC of the closeout audit requirements described above. IBC did not submit a letter of engagement for a closeout audit to the Department until May 7, 1995, well after the 45 day period required by the regulation cited above. Nor did IBC submit the actual audit within 45 days after the date of the engagement letter.

IBC offers no explanation for its failure to submit the letter of engagement within the time limit prescribed by regulation, and this failure alone is sufficient to constitute a violation of the regulation. IBC does, however, offer a number of excuses as to why it has not submitted the actual audit. Among these are that various clerical errors caused the school not to receive certain pieces of mail from the Department, even though these items were unrelated to and did not affect the school's ability to submit its closeout audit. IBC also argues that because the school was closed, it did not have the administrative staff necessary to assist the CPA in preparing the closeout audit. Finally, the school argues that it could not complete the closeout audit because it was required by a court order to turn over certain documents to the Department's Office of Inspector General. The subpoena in question was dated July 27, 1995. This is well after the 45 day period required under the regulation for IBC to submit its closeout audit, so the school was already in violation of this regulation even before the subpoena was issued. Therefore, the court order does not shield IBC from its violation of the closeout audit requirement. Furthermore, the proceedings in this case were stayed for nine months to permit IBC to copy all relevant school records in the possession of the Department's Office of Inspector General to be used in the preparation of the closeout audit. Apparently IBC has not availed itself of this opportunity and, therefore, cannot rely upon this as a defense.

Numerous decisions of this tribunal have held that when a school fails to submit the required closeout audit, unless it can otherwise account for the federal funds that it received, it is liable for all Title IV funds that it received since the period covered in the last submitted audit. *In re Belzer Yeshiva*, Dkt. No. 95-55-SP, U.S. Dep't of Educ. (June 19, 1996), at 3; *In re Long Beach College of Business*, Dkt. No. 94-78-SP, U.S. Dep't of Educ. (Aug. 30, 1995), at 2-3; *In re Cosmetology College*, Dkt. No. 94-96-SP, U.S. Dep't of Educ. (Aug. 23, 1995), at 3; *In re Calvinade Beauty Academy*, Dkt. No. 93-151-SA, U.S. Dep't of Educ. (March 21, 1995), at 4; *In re National Broadcasting School*, Dkt. No. 94-98-SP, U.S. Dep't of Educ. (Dec. 12, 1994), at 3. In this case, the school has not accounted for these funds, so it must refund them to the Department.

Accordingly, IBC must refund \$2,813,895 that it received after the date of its last submitted audit. This amount represents the total amount of Title IV funds that IBC received during the 1993-94 and 1994-95 award years. This amount does not include the \$786,967 assessed separately under Finding 2 for the 1993-94 award year and the \$2,443.75 assessed separately under Finding 12.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Interamerican Business College shall repay \$3,684,544.89 to the United States Department of Education in the manner authorized by law. This amount consists of \$3,360 under

Finding 1; \$846,994 under Finding 2; \$14, 494.75 under Finding 3; \$735.39 under Finding 8; \$2,622 under Finding 11; \$2,443.75 under Finding 12; and \$2,813,895 under Finding 17. To the extent, if any, that IBC has already repaid the liabilities as to certain of these findings, this amount shall be reduced accordingly.

Judge Richard F. O'Hair

Dated: May 28, 1997

SERVICE

A copy of the attached document was sent to the following:

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