

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

In the Matter of

Docket No. 97-1-SP

**ANTHONY'S BARBER
STYLING COLLEGE,**
Respondent.

Student Financial Assistance Proceeding

PRCN: 199530311776

Appearances:

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

Waverly V. Yates & Bisco C. Anthony, President, for Anthony's Barber Styling College.

Before:

Judge Richard I. Slippen

DECISION

On October 18, 1996, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final program review determination (FPRD) finding that Anthony's Barber Styling College (ABSC) violated several regulations 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 June 1995, SFAP conducted a program review of ABSC's administration of its Title IV student assistance programs for the 1992-93 and 1993-94 award years. Based on its review, SFAP issued a FPRD containing five findings that carry an aggregate liability of \$94,851.

Respondent requested that oral argument be heard on this matter. According to 34 C.F.R. § 668.116 (1996), oral argument may be heard if the hearing official determines that oral argument is necessary to clarify the issues and positions of the parties as presented in their written submissions. *In Re Chicago State University*, Docket No. 94-173-SA, U.S. Dep't of Educ. (April 26, 1996). I find that oral argument is unnecessary as the issues do not require further clarification, and therefore, I hereby deny ABSC's request for oral argument.

FINDING # 2: MISSING VERIFICATION DOCUMENTATION

To participate in Title IV student assistance programs, an institution is responsible for verifying the information used to calculate the student's need for financial assistance. 34 C.F.R. § 668 Subpart E (1992). Not only is the institution required to verify student files with signed documentation, but it is also required to resolve discrepancies in student information that may arise. If an institution disburses Pell Grant funds without a valid Student Aid Report (SAR) or Electronic Student Aid Report (ESAR), the institution remains liable for any Pell funds already disbursed. 34 C.F.R. § 690.77(c)(1) (1992).

Initially, SFAP found that ABSC failed to obtain the necessary documentation to verify the need for student financial

assistance for 11 students chosen from a sample of 20 students. Due to this ratio of incomplete files, SFAP ordered ABSC to review the files of all students selected for verification as required by 34 C.F.R. § 668.54 (1992). In reviewing these files, SFAP uncovered missing documentation to include Electronic Student Aid Reports (ESARs), signed ESARs, verification worksheets, and income tax returns. In total, 31 of the 48 student files reviewed were missing some form of documentation.

Although ABSC challenges this finding regarding missing verification documentation, ABSC did not provide any evidence demonstrating that it complied with Title IV program requirements as listed under 34 C.F.R. §§ 668.54 - 668.59 (1992). This tribunal has long held that an institution that fails to demonstrate that it obtained the verification documentation prior to disbursing Title IV funds remains liable for those funds. *In Re American Education Center, Inc.*, Docket No. 94-109-SP, U.S. Dep't of Educ. (February 21, 1996) at 6. *See also In Re College of Beauty Arts & Sciences*, Docket No. 96-128-SP, U.S. Dep't of Educ. (January 15, 1997) at 2. Therefore, I find that ABSC remains liable for \$63,539 in Pell Funds and \$11,424 in FFEL loans disbursed to the 31 students for whom it failed to obtain verification documentation.

FINDING # 8: FSEOG MATCHING REQUIREMENTS NOT MET

The purpose of the Federal Supplemental Education Opportunity Grant (FSEOG) program is to assist financially needy students attending a postsecondary educational institution in paying for their educational costs. 34 C.F.R. § 676.1 (1992). The FSEOG program requires participating institutions to match FSEOG funds with its own resources prior to or while Federal funds are disbursed. 34 C.F.R. § 676.21 (1992).

For the 1991-92 and 1992-93 award years, an institution was required to match the Federal funds by 15 percent so that the federal share did not exceed 85 percent of the amount of FSEOG awards. 34 C.F.R. § 676.21(a) (1992). For the 1993-94 award year, the federal share could not exceed 75 percent of the amount of FSEOG awards so an institution was responsible for 25 percent of the award. 34 C.F.R. § 676.21(a) (1992).

Without such documentation, the institution would be liable for the unmatched shares not contributed for these award years. *In Re Smith Business School*, Docket No. 95-108-SA, U.S. Dep't of Educ. (November 30, 1995) at 3. In the instant case, ABSC failed to provide documentation to demonstrate that it made any contributions to match the Federal funds owed by ABSC for the 1991-92, 1992-93, and 1993-94 award years. ABSC owed the amounts of \$500.00, \$1000.00, and \$1,850, respectively. ABSC failed to address this finding in its Initial or Reply Briefs. Therefore, I find that ABSC failed to demonstrate that it complied with the program requirements contained in 34 C.F.R. § 676.21 (1992), and ABSC remains liable for the aggregate amount of \$3,350 owed for the three award years in FSEOG matching funds.

FINDING #11: FISCAL RECORDS NOT RECONCILED

An institution that participates in the Title IV assistance programs is required to comply with program regulations concerning fiscal and recording systems, record keeping, and record retention. 34 C.F.R. § 668.23(a) (1992). An institution is also required to cooperate with an independent auditor in the conduct of audits, investigations, and program reviews. 34 C.F.R. § 668.23(b) (1992). Such cooperation must include timely access to the records for examination and reasonable access to personnel responsible for the administration of an institution's Title IV programs. 34 C.F.R. § 668.232 (b)(1) and (2) (1992).

An institution is also required to hire an independent auditor to perform financial and compliance audits of its Title IV, HEA programs. 34 C.F.R. § 668.23(c)(1) (1992). Any audit must be conducted in compliance with the standards set forth in the U.S. General Accounting Office's Standards for Governmental Organizations, Programs, Activities, and Functions. *Id.* Procedures for audits are contained in the audit guides developed by the Department's Office of the Inspector General. 34 C.F.R. § 668.23(c)(2) (1992).

This tribunal has held that an institution participating in Title IV assistance programs has a fiduciary responsibility to the Department to accurately account for the receipt and expenditure of Title IV funds. *In Re The Cittone Institute*, Docket No. 94-131-SA, U.S. Dep't of Educ. (April 7, 1995) at 2. An institution is required to maintain a record of each

program transaction. Thus when an institution cannot reconcile its records, it is liable to the Department for the missing funds uncovered by discrepancies unless it can satisfy its burden of accounting for these missing funds. *Id.*

In the instant case, ABSC was instructed to reconcile all of its Title IV transactions for the 1992-93 and 1993-94 award years. SFAP also instructed ABSC to submit a copy of each reconciliation explaining any discrepancies which occurred during the program review period. SFAP further instructed ABSC to retain a certified public accountant (CPA) to review the reconciliation's accuracy and completeness. The CPA's review was to be attached to the reconciliation and submitted within 45 days of ABSC's receipt of the FPRD dated October 18, 1996. ABSC failed to submit any documentation to demonstrate that the institution completed a reconciliation of its institutional ledgers for the 1992-93 and 1993-94 award years or that it retained a CPA to review its fiscal records.

Due to ABSC's failure to demonstrate that it complied with 34 C.F.R. §§ 690.81 and 690.83 (1992) by not providing SFAP with a comprehensive review of its administration of Title IV funds during the program review period, I hereby find that ABSC remains liable for the \$15,225 in unaccounted Pell funds. 34 C.F.R. § 668.116(d) (1992).

FINDING # 12: PRO-RATA REFUND POLICY NOT IMPLEMENTED

Any institution participating in Title IV, HEA programs must implement a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to students who receive Title IV assistance, and who either did not register for the period of attendance, or withdrew or otherwise failed to complete the period of enrollment for which the assistance was intended. 20 U.S.C. § 1091b(a). *In Re Louise's Beauty College*, Docket No. 95-48-SP, U.S. Dep't of Educ. (May 20, 1996) at 5.

In order to be considered fair and equitable, an institution's refund policy will provide for a refund in the amount which is the largest of (1) the requirements of applicable State law; (2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or (3) the pro rata refund calculation described in § 1091b if the student was attending that institution for the first time and withdrew from the institution before completing at least 60 percent of the period of enrollment. 20 U.S.C. § 1091b(b). *In Re Louise's Beauty College*, Docket No. 95-48-SP, U.S. Dep't of Educ. (May 20, 1996) at 5.

According to SFAP, ABSC did not provide refunds for nine students identified in the FPRD under the pro rata refund policy as set forth in 20 U.S.C. § 1091b. ABSC did not address this finding in either its Initial or Reply briefs. ABSC also failed to submit a reconstruction of its records for all students who withdrew on or after July 23, 1992, as requested by SFAP in the FPRD. Therefore, I find that Respondent failed to meet its burden under 34 C.F.R. § 668.116(d) to comply with the pro rata refund policy and to demonstrate that it properly disbursed Title IV refunds to these nine students. Consequently, ABSC remains liable for \$8,847 in Pell funds and \$1,000 in FFEL loan funds disbursed to these students.

FINDING # 14: IMPROPER ADMINISTRATION OF ATB TESTS

To be eligible to receive Title IV funds, a student must have a high school diploma, its recognized equivalent, or pass an ability to benefit (ATB) test approved by the Secretary of Education. 34 C.F.R. §§ 600.11 and 668.7(a)(3)(i) (1992), and 20 U.S.C.A. § 1091(d). The Secretary approves tests on the basis of compliance with standards for development, administration of the exam and scoring as the Secretary may set forth in regulations. 57 Fed.Reg. 62440 (Dept. of Educ. 1992).

An ATB exam must be administered in accordance with the regulations set forth by the Title IV, HEA. 57 Fed.Reg. 62440 (Dept. of Educ. 1992) at 4. Guidelines set forth by 57 Fed.Reg. 62440 require that the proctor of the examination have no current or prior fiscal interest in the institution. The only relationship that should exist between the proctor and the institution is a "relationship at arm's length." *Id.* The guidelines also advise that an institution keep records to ensure the independence of the administered ATB examinations. The recorded information should include dates and locations of the exams, test scores, and the names of the individuals who administered the exams. 57 Fed.Reg. 62440 (Dept. of Educ. 1992) at 4.

SFAP argues that ABSC improperly used a school official instead of an independent proctor to administer the Wonderlic ATB exam to two students. ABSC did not specifically address this finding in either its Initial or Reply briefs or submit any evidence that someone other than the school official administered the ATB exam. I find that ABSC failed to demonstrate that it complied with Title IV program requirements in its administration of the Wonderlic ATB exams. Therefore, ABSC remains liable for \$3,980 in Pell funds disbursed to these two students.

FINDINGS

1. ABSC disbursed Title IV funds to students whose files contained incomplete and missing verification documentation.
2. ABSC failed to meet its matching requirements for the FSEOG program.
3. ABSC failed to comply with the accounting regulations contained in 34 C.F.R. § 668.23 (1992).
4. ABSC failed to implement a pro-rata refund policy as required by 20 U.S.C. § 1091b(a).
5. ABSC improperly administered ATB tests to its students violating 20 U.S.C. § 1091(d), and 34 C.F.R. §§ 600.11 and 668.7(a)(3)(i) (1992).

ORDER

On the basis of the foregoing, it is hereby ORDERED that Anthony's Barber Styling College pay to the U.S. Department of Education the sum of \$94,941 and reimburse \$12,424 to the appropriate holders of FFEL Program loans.

Judge Richard I. Slippen

Dated: August 1, 1997

SERVICE

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

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