

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

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In the Matter of  
**Instituto de Educacion Universal,**  
  
Respondent.

**Docket No. 97-181-SP**  
Student Financial  
Assistance Proceedings  
PRCN: 199740214129

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Appearances:

Angel Ruiz Rivera, President, Instituto de Educacion Universal, Hato Rey, Puerto Rico, for Respondent.

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

Before:

Richard F. O'Hair, Administrative Judge

**DECISION**

On September 30, 1998, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department), through the director of the Case Management Division for the New York Regional Office, issued a final program review determination (FPRD) to the Instituto de Educacion Universal (IEU). This FPRD was generated because of a noted discrepancy in IEU's operation of the student financial assistance programs 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.* Through this FPRD, SFAP sought the recovery of an institutional liability of \$357,351 from IEU and the institution exercised its appeal rights found in 34 C.F.R., Part 668, Subpart H.

Upon receipt of IEU's request for an appeal, this tribunal issued an order governing proceedings which provided for the submission and exchange of briefs and other materials by the parties. IEU was obligated to submit a brief before January 20, 1998, which set forth the basis for its appeal and SFAP was obligated to file a response brief before February 17, 1998. IEU did not file a brief before January 20, 1998. Therefore, on January 26, 1998, SFAP filed a motion for an entry of a default judgment against IEU. [See footnote 1\\*](#) The tribunal responded by issuing an Order to Show Cause which obligated IEU to explain why the tribunal should not act favorably upon SFAP's motion. The order further advised IEU that if it did not respond by February 11, 1998, a judgment would be entered against it. IEU did not respond to this order in the manner requested, but rather it forwarded to the tribunal a copy of a February 11, 1998, letter addressed to the Secretary of Education. In this letter, IEU requested the Secretary to intervene in the pending assessment based upon the FPRD and to order the cessation of this and other incidences of what IEU believed were unnecessary forms of harassment perpetrated against it by Departmental employees. If this letter is to be considered as a

request for an extension of time to file the requested brief, it is denied. In the absence of any other explanation as to its applicability, however, it is viewed as a substitute for the brief which was ordered to be submitted in response to the Order to Show Cause.

The FPRD was issued following an unannounced visit to IEU on September 4, 1997, by two Department employees from the Department's Region II office in New York, New York. The purpose of the visit to IEU was to procure the federal Perkins Loan promissory notes which were in IEU's possession and to subsequently assign them to the Department for collection. The Department wanted to obtain these promissory notes because of the occurrence of two events which caused it to question IEU's ability to manage this loan portfolio. First, the Department was aware that IEU had allowed its Title IV Program Participation Agreement with the Department to expire on July 23, 1997. Second, on September 4, 1997, IEU's former loan servicer informed the Department that IEU had not paid the servicer for its services for the past year.

The Department personnel were unsuccessful in their mission to obtain the Perkins Loan promissory notes. At the time of the visit, IEU's president, Mr. Ruiz, was apparently out of the country and a school employee informed the Department personnel that Mr. Ruiz had sent instructions that no documents were to be given to the Department without a court order. In subsequent correspondence to the Department, Mr. Ruiz suggests that the school employee may not have completely understood what documents or files the Department personnel were requesting, but there is no doubt that at the time he sent that correspondence he knew what was being sought. In fact, in the February 11 letter to the Secretary, Mr. Ruiz states:

As I said in my letters before regarding this issue, if the Department is honestly interested in getting these promissory notes, we can attempt to produce them, if asked for in a proper manner.

Mr. Ruiz further explained that he may not be able to produce these notes since his resources are scarce and, therefore, he cannot guarantee anything.

From these remarks, it appears that the requested loan portfolio will remain in IEU's possession and, because of a sense of honor and pride, it will not provide them to the Department without some unspecified form of a request. There is also some suggestion in IEU's correspondence that the value of these notes is significantly less than the face value of \$357,351; without IEU's cooperation, however, the Department is without a recourse other than to demand repayment of the entire amount.

In a 34 C.F.R., Part 668, Subpart H proceeding such as this, the respondent has the burden of proving that it has complied with the program requirements alleged to have been violated. 34 C.F.R. § 668.116(d). I am convinced that the finding of the FPRD sufficiently states an allegation which provides a *prima facie* showing that IEU did not comply with Title IV program requirements that it supply the Department with the federal Perkins Loan portfolio as was requested. IEU has not satisfied its burden of showing full compliance with SFAP's demand and the remedy sought by SFAP should be enforced.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that the final program review determination issued by the Department on September 30, 1997, is affirmed and Instituto de Educacion Universal is further ORDERED to remit \$357,351 to the United States Department of Education.

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Judge Richard F. O'Hair

Dated: March 3, 1998

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SERVICE

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

Angel Ruiz Rivera, President  
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[Footnote: 1](#) \* See *In re Jett College of Cosmetology and Barbering*, Dkt. No. 97-114-SP, U.S. Dep't of Educ. (November 14, 1997); *In re Bruno Academy of Beauty*, Dkt. No. 96-163-SP, U.S. Dep't of Educ. (March 24, 1997).

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