

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

In the Matter of

Docket No. 97-54-SP

GANAYE ACADEMY OF COSMETOLOGY,

Student Financial

Assistance Proceeding

Respondent.

Appearances:

Alfred S. Wright, Esq., San Jose, California, for Respondent.

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

Before:

Frank K. Krueger, Jr., Administrative Judge

DECISION

INTRODUCTION AND BACKGROUND

The Respondent, Ganaye Academy of Cosmetology, is a proprietary school located in San Jose, California, which participated in the student assistance programs authorized under Title IV of the Higher Education Act of 1963, as amended. [See footnote 1](#)¹ Ganaye enrolls approximately 120 students. From April 30, 1996, to May 3, 1996, an on-site program review was conducted of Ganaye's administration of the student assistance programs by the Student Financial Assistance Programs (SFAP), U.S. Department of Education. The SFAP review covered award years 1993/94, 1994/95, and 1995/96, and examined a sample of ten files for each year. SFAP also reviewed refunds for an additional seventeen files for all three award years.

As a result of the on-site review, SFAP determined that Ganaye was in violation of a number of Title IV regulations. SFAP found that Ganaye lacked administrative capability (Finding # 1), failed to properly administer its ability-to-benefit program (Finding # 2), had incomplete attendance records (Finding # 3), had inconsistent information in student files (Finding # 4), incorrectly calculated refunds (Finding # 5), did not make refunds to its Title IV account (Finding # 6), made late refunds into its Title IV account (Finding # 7), had invalid Electronic Student Aid Reports (Finding # 8), did not properly perform verifications (Finding # 9), maintained excessive cash balances (Finding # 10), had inadequate placement records (Finding # 11), had an inadequate audit trail (Finding # 12), had incomplete or missing financial aid

transcripts (Finding # 13), failed to maintain Title IV student records for five years (Finding # 14), and did not timely withdraw students (Finding # 15). As a result of these findings, Ganaye was placed on a reimbursement method of payment, required to perform a number of full-file reviews to ensure that all regulatory violations were discovered, and to have the full-file reviews certified by an independent auditor.

The program review report was issued on August 30, 1996. Despite a number of extensions granted to Ganaye over the next six months, the school failed to fully respond to the individual determinations made by SFAP and to provide SFAP with the requested file reviews and certification. As a result of Ganaye's unresponsiveness, on March 20, 1997, SFAP issued its final program review determination in which it concluded, in the absence of an appropriate response from the school to its program review report, that it was unable to determine the precise dollar liability for each of the deficiencies noted, and assessed a liability for all student assistance awarded during award years from 1993/94 to the date of the final program review determination. The total liability assessed was \$390,333 in Pell and Supplemental Educational Opportunity grants. SFAP subsequently reduced this liability determination to \$358,401 to exclude the 1996/97 award year which was not included in the on-site program review. *See* ED Exhibit 1 to SFAP's brief dated August 28, 1997. SFAP again reduced its liability determination to \$352,409.19 to reflect a payment made to the Department by Ganaye of \$5,991.81 to cover student # 12 under SFAP's Finding # 2. [See footnote 2²](#)

In response to my briefing schedule, Ganaye finally responded to the individual SFAP determinations and provided the required full-file reviews on July 14, 1997. SFAP objected to the proffered exhibits on the basis that they were not certified by an independent auditor. As part of its so-called response brief, Ganaye submitted additional exhibits, including an auditor's certification. SFAP continued to object to the auditor's certification because it was based on a letter from the school to the auditor providing "representations" by the school concerning the full-file reviews which was not attached to the auditor's certification. In response to my order for additional information, the letter of representation was filed on December 22, 1997. SFAP also objected to the auditor's certification because the auditor only identified \$3,159 in audit liabilities, while the total liabilities identified by the SFAP program review report, based on its limited sample, was more than \$39,000. However, as discussed below, some of the SFAP findings are not valid and the auditor's certification does not cover all of the SFAP findings.

Although a number of SFAP's findings are insignificant or wrong, and I question the appropriateness of requiring full-file reviews based on some of the findings, I empathize with SFAP's apparent frustration in getting the Respondent to adequately respond to its determinations. When a school agrees to participate in the Title IV programs, as a fiduciary it should be prepared to justify all expenditures and to fully document those expenditures within a reasonable time after receiving a request from SFAP. The time provided by SFAP was entirely reasonable. Nevertheless, once Ganaye finally responded to those findings, albeit after the appeal was initiated, it became appropriate to deal with the substance of the responses. *See Puerto Rico Professional College*, Docket No. 95-144-SP, U.S. Dept. of Educ. (Order of Remand, June 28, 1996) (Case remanded by Secretary to administrative judge to consider close-out audit not submitted until appeal was filed with Secretary). Had Ganaye promptly responded to SFAP's findings, perhaps many, if not all, would have been resolved without resort to this administrative proceeding with substantial savings of time and money to both the school and the Department of Education.

The difficulty inherent in reviewing detailed audit findings was compounded in this case by the fact that Ganaye's counsel made no effort to explain the school's exhibits and responses, but simply passed them through to me to understand. As noted recently by Judge Canellos, "the burden of proof never lies with the fact-finder [A]n institution that fails to show how its exhibits establish its burden of proof acts at its own peril." *Clark Atlanta University*, Docket No. 93-106-SP, U.S. Dept. of Educ. (Decision on Remand II, Dec. 22, 1997), p. 3. Similarly, SFAP balked at reviewing Ganaye's exhibits and responses and simply took the position that the school, in light of its inadequate explanations, owed the Department all of the school's Title IV expenditures for the three award years in question. The final program review determination, which is the subject of this administrative proceeding, required Ganaye to respond to the individual SFAP determinations and to submit full-file reviews certified by a CPA. Ganaye responded to the individual determinations and submitted full-file reviews certified by a CPA. If SFAP believes that the full-file reviews are substantively inadequate, it should take up the inadequacies directly with the school since I have made no effort to question the substantive findings of the CPA and make no legal or factual findings concerning the accuracy of the full-file reviews.

As noted below, I find in part for SFAP and in part for Ganaye.

DISCUSSION AND FINDINGS

Finding # 1: Lack of Administrative Capability.

Based on findings 2 through 7 discussed below, SFAP determined that Ganaye lacked administrative capability and demanded a return of all Title IV assistance awarded during the period covered by the program review. Although lack of administrative capability is a factor in determining whether an institution should be terminated from participation in the Title IV programs as part of a proceeding initiated by SFAP under 34 C.F.R. Part 668, Subpart G, such a determination does not support a demand for a return of all Title IV funds under a program review proceeding under 34 C.F.R. Part 668, Subpart H. In a Subpart H proceeding, SFAP is only entitled to recover losses directly attributed to the institution's improper expenditure of Title IV funds. See discussion and cases cited in *Liberty Academy of Business*, Docket No. 96-132- SP, U.S. Dept. of Educ. (Interim Decision and Order, Dec. 8, 1997), p. 2, n. 1.

Finding #2: Ability to Benefit (ATB) Testing Requirements Not Met.

Under the Title IV regulations, a student admitted to a participating institution who does not have a high school diploma or the equivalent must pass an independently administered test which measure the student's ability to benefit from the program for which the student is seeking the Federal financial aid. 34 C.F.R. § 668.32(e) (1997) and 20 U.S.C. § 1091(d) (1992). To satisfy this requirement, Ganaye used the Wonderlic Scholastic Level Exam. SFAP found a number of specific problems with Ganaye's administration of this requirement.

A. Ineligible Charges.

Ganaye uses the Wonderlic Exam for both an ATB test as well as an admissions test. SFAP found that the school charges a fee to prospective students taking the exam for ATB purposes, while perspective students taking the exam for admissions purposes are not charged. According to the program review report (ED Response 2, attached to SFAP response brief dated November 3, 1997, pp. 9-10) and the final program review determination (p. 6), this is a violation of Federal regulations. There are no Federal regulations cited and the quoted material simply states that a school cannot charge a student a fee for processing or handling an application for Federal financial assistance. Ganaye justifies its position by stating that ATB students must pay for the Wonderlic Exam because it is administered by a proctor not affiliated with the school, whereas students with high school diplomas or equivalent are given the test by a school employee. *See* Ganaye Academy of Cosmetology Program Review Finding #1, submitted with Respondent's initial brief, p. 2.

As noted above, SFAP cites no regulation which specifically proscribes a school from charging students for their ATB tests. The language quoted by SFAP in its final program review determination does not provide a citation, and itself does not specifically state that a school cannot charge students for ATB tests. The language simply provides that a school may not charge a fee for the processing of an application, form, or data requirement to determine a student's eligibility for Title IV aid. The school is not charging students a fee for the processing of their Title IV applications, but appears to be collecting a fee to pay the independent tester to administer the examination. I find nothing improper with this practice.

B. Invalid ATB Tests _ 6 students.

Student # 3

SFAP found that the school does not have proper documentation of when the ATB test was administered and that it was properly administered (although school records show that the test was taken on March 4, 1996), since the independent test administrator did not date the certification and the student's name does not appear on the appropriate Wonderlic Quarterly Report. The school contends that the test was given as an ATB test only as an interim measure until the school was able to obtain the student's high school diploma from Vietnam. I find that the Wonderlic Exam was properly administered for this student even though it was not dated on the certification signed by the independent test

administrator and does not appear on the Wonderlic Quarterly Report. There is no Title IV requirement that the names of students taking an ATB test appear on the Wonderlic Report, only that the test be independently administered. [See footnote 3³](#)

Student # 5

SFAP determined that there was confusing information in the student's file in that he appears to have graduated from high school in Vietnam and yet was given the Wonderlic Exam by the independent test administrator; in addition, his name does not appear on the appropriate Wonderlic Quarterly Report. The school responds by stating that the student was admitted as a high school graduate and was only given the Wonderlic Exam to fulfill the ATB requirement because of delay in securing the high school diploma from Vietnam. The school attaches to its brief a copy of what it represents to be the high school diploma for this student. I find that the student was properly admitted as a high school graduate and that, even if the student was not a high school graduate, the student was properly admitted under the ATB requirements in that the Wonderlic Exam was given by an independent test administrator. As noted above for student # 3, there is no requirement that students admitted under ATB requirements appear on Wonderlic Quarterly Reports.

Student # 15

SFAP found that the student's Enrollment Questionnaire indicated that the student was not a high school graduate, but had a GED certificate; however, the GED certificate was not in the student's file and the Federal assistance application for this student did not reflect GED status. The student also took the Wonderlic Exam administered by the independent test administrator, but the student does not appear on the appropriate Wonderlic Quarterly Report. The student does appear on a later Quarterly Report. In light of this confusion, SFAP determined that it could not tell if this student was properly admitted. The school responded by stating that, because of two enrollments by this student, the student took the Wonderlic Exam two times, both times under the independent test administrator. I find that student # 15 was properly admitted. The fact that the student does not appear on the Wonderlic Quarterly Report is, again, of no significance in determining whether the ATB requirements have been met.

Student # 16

SFAP found that the Institutional Certification of Admission form indicated that the Wonderlic Exam for this student was administered by the independent test administrator on 4/2/95. However, the certification signed by the independent test administrator is dated 4/1/95. The Wonderlic Quarterly Report indicates that the test was taken on 1/1/95. The school responds by stating that the Institutional Certification of Admission form was filled out incorrectly by the school. The school does not respond to SFAP's point concerning the date appearing on the Wonderlic Quarterly Report. The test itself is dated 4/1/95. I find that this student was properly administered the ATB test. The inconsistent dates appearing on the various forms do not show that the test was not properly administered. Since the Wonderlic Quarterly Report is, apparently, prepared by Wonderlic and not the school (*see supra* note 3), it is more likely that Wonderlic, and not the school, was responsible for the erroneous date appearing in the report.

Student # 18

SFAP found that this student took the Wonderlic Exam on 6/25/95, and that the certification was signed and dated by the independent test administrator. SFAP rejected the test, however, simply because it did not appear on the Wonderlic Quarterly Report. The school responds that it does not know why the student did not appear on the Quarterly Report. Again, although there is nothing in the record concerning the nature and purpose of the Quarterly Report, it is my understanding that the Report is prepared by Wonderlic and is not under the control of the school. In addition, the report has nothing to do with whether the test was independently administered. On the basis of the record before me, I find that the ATB requirements were met for this student.

C. Altered ATB Test _ 1 student.

Student # 33

SFAP found that the date on the Wonderlic Exam for this student was altered from 7/25/94 to 6/25/94 (actually, the date appearing on the test itself and the certification was changed from 7/25 to 6/15). The Institutional Certification of Admissions form and the Wonderlic Quarterly Report both indicate that the test was given on 7/25/94. The school responds by stating that it does not know why the test date was altered, but that the student clearly took the test and was properly admitted. The school notes that the student did not apply for Federal aid until 9/8/94, well after the test was given. I agree that the altered date, standing alone, is not relevant as to whether the test was independently administered; the student clearly passed the test given by an independent test administrator.

D. Requirement for Full File Review and Other Documentation.

Because of SFAP's determinations discussed above, it required Ganaye to conduct a full- file review of all students admitted under the ATB requirement and have the review certified by an independent CPA. As noted, the school never complied with this requirement until it submitted the results of its review as a spread sheet attached to its initial brief submitted to me on July 14, 1997. SFAP's primary objection to the full-file review was that it was not certified by an independent CPA. As noted earlier, the school did eventually have all of the full-file reviews certified by a CPA.

In addition, SFAP noted that it required Ganaye to prove that all of its ATB tests were independently administered which it has never done. However, in light of the somewhat petty "violations" identified by the SFAP finding, I question the appropriateness of requiring Ganaye to do a full-file review of its ATB students and requiring it to prove that the tests were independently administered in the absence of any evidence that they were not independently administered. In any event, the school eventually did substantially everything requested by SFAP except to prove that all of its ATB tests were independently administered

On the basis of Ganaye's full-file review, the CPA determined that the school owed the Department \$378 under Finding # 2. Although I am unable to determine exactly why Ganaye owes the Department \$378, I accept the CPA's representation to that effect and assess liability for \$378 for failure by the school to fully comply with ATB requirements.

Finding # 3: Inaccurate and Incomplete Attendance Records _ 6 Students.

Student # 13

SFAP alleges four instances of discrepancies between the school's daily attendance records and the institution's attendance records. The school responded by stating that the institution's attendance record has been corrected and attached a copy, and that "Title IV were [sic] disbursed only after the student reached the appropriate hours, i.e., 0-450 hours; 451 - 900 hours; 901-1350 hours; and 1351 - 1600 hours."

The corrected attendance record is illegible and, even if it were legible, one cannot tell from that record alone whether Title IV funds were properly disbursed. Since the Respondent bears the burden of proving that the funds questioned by SFAP were proper, I find that the \$4,089 in Pell funds awarded to this student were improperly awarded and must be returned to the Department.

Student # 22

SFAP determined that the student's attendance record shows attendance from 11/7/95 through 3/29/96. On 4/9/96 the school certified on the Institutional Authorization for Payment form that on 4/9/96 the student completed 468 hours. The school contends that the student completed 468 hours at 2 PM on 4/9/96, and attached a copy of the student's daily time card. Although the original submission was illegible, pursuant to my order, the school submitted a legible copy which appears to add up to 491 hours on 4/9/98. SFAP never rebutted this submission by Ganaye, and the attendance record relied on by SFAP is not in the record. Thus, I find that Ganaye has demonstrated that the funds awarded to this student were proper.

Student # 24

SFAP determined that the student's attendance record reflected attendance from 8/25/95 through 3/30/96. On 4/9/96 the school certified on the Institutional Authorization for Payment form that on 4/9/96 the student completed 884 hours. The school contends that at the beginning of 4/9/96 the student completed 873.75 hours and that the daily attendance record was recalculated and revised, but that, in any case, the student completed more than the 450 hours required for the Pell grant in question. The attached daily attendance record appears to add up to 873.75 hours, but it is undated. SFAP's contention appears to be that the student stopped attending on 3/30/96; the school, in response to my order for a legible copy of the record attached to its brief, submitted a record which indicates that this student attended Ganaye until 2/15/97, rather than 3/30/96 as alleged by SFAP. Since I am unable to determine upon which record SFAP relied, and the records submitted by Ganaye are not rebutted by SFAP, I find that Ganaye has met its burden of proof concerning this student.

Student # 27

SFAP determined that Ganaye represented that this student completed 51 hours before dropping out of the program. The school's attendance records indicate, however, that the student actually attended 52 hours. The school responded by noting that a refund calculation based on 51 hours, rather than 52 hours, actually favors the student by \$5.00. I agree that this discrepancy is trivial and results in no liability on the part of the school.

Student # 28

SFAP determined that there were discrepancies of up to 40 hours among the student's daily attendance record, the daily record of applied effort, and the number of hours certified by the school on the Institutional Authorization for Payment form completed on 4/9/96. The school notes that the attendance referred to in the finding covers the payment period of 451-900 hours, and that the student reached the required number of hours for the payment in question by any calculation. I agree with Ganaye. The discrepancies involved appear to be immaterial to whether the student was properly awarded Title IV funds, although they do indicate sloppy record keeping by the school.

Student # 37

SFAP determined that the school calculated its refund to this student based on the student having completed 142 hours when the student dropped out of the program, and yet its attendance records indicate that the student only completed 40 hours. The attendance record relied on by SFAP is not part of the record. The school responds by stating that the student in fact completed 142 hours, and attaches a copy of what appears to be an attendance record that indicates a cumulative attendance by this student of 142 hours on May 5, 1994. Since Ganaye's exhibit remains unchallenged, I find that there is no liability for this student.

Full-File Review

Because of the alleged inaccurate attendance records for these six students, SFAP directed Ganaye to conduct a full-file review of all of its Title IV students from the 1993/94 award year through the date of the school's response to the program review report and to present the results of such review in a prescribed spread-sheet format and have the results certified by an independent CPA. Ganaye appears to have fully complied with this requirement.

Finding # 4: Inconsistent Information in Student Files _ 15 Students.

Students # 6 and # 25

SFAP determined that these students, although enrolled in the cosmetology program, were provided information concerning the school's manicuring program and that it was not clear in which program the students were enrolled. With respect to student # 6, the school states that the information concerning manicuring was given to the student during orientation. The school does not state why the student was given this information. Based on the school's responses for other students, presumably the student either expressed an interest in manicuring or the school explains all of its programs to its students during orientation. While the school's response is cryptic, I do not see the significance of the

SFAP finding. Thus, I find that the school has no liability for these two students.

Student # 3

Again, because the file for this student contained information concerning the school's manicuring program, SFAP found that the student's file contained conflicting information on which program the student was enrolled even though the student was clearly enrolled in the cosmetology program. The school responded by stating the student may have expressed an interest in manicuring. Again, I have difficulty in appreciating the significance, if any, of the SFAP finding.

SFAP also found that the attendance record for this student reflected attendance up to September 30, 1995, completing 1600.5 hours, but that the student's daily record reflects completion of 1600 hours on July 20, 1995. The school submitted the student's attendance record which appears to show that the student completed 1600.5 hours on September 29, 1995, although the date at the top of the form indicates completion on April 28, 1995. The school also submitted a Record of Completion which indicates that this student completed the Cosmetology Program on September 30, 1995. Although the attendance record has the wrong completion date, that appears to be an error, and the student completed the program at the end of September. Thus, there is no institutional liability for this student based on the SFAP finding.

Student # 28

SFAP again found that this student's file contained conflicting information concerning enrollment even though the student was enrolled in the cosmetology program because the file contained an information sheet providing information on the school's manicuring program. Here the school responds by stating that students are provided information during orientation concerning all of the school's programs, including the manicuring program. Again, I find no merit to SFAP's finding.

SFAP also found that the student's application did not reflect the correct family income and did not take into account the family's Individual Retirement Account. The school responded by revising its calculation which demonstrated that the amount of the student's eligibility did not change as a result of the recalculation. I accept the school's recalculation and find no liability for this student.

Student # 4

SFAP found inconsistent information in the student's file which reflected more income than reported by the student. As a result of this finding, Ganaye recalculated the refund and determined that it owed an additional refund to the Pell account which remains unpaid in the amount of \$1,088. This liability is covered by the \$6,376.51 liability assessed below under Findings # 5, # 6, and # 7 concerning refunds.

SFAP found that the year of the student's GED certificate on the Electronic Student Aid Report (ESAR) was 1967, while the date on the GED itself was 6/7/78. In response, Ganaye states that "[t]he GED is attached and shows that the student was not admitted as an ATB student." This response is, of course, incongruous. I do not see the significance of SFAP's finding, however, which simply indicates that someone put the wrong date on the ESAR.

Students # 8 and # 26

The files for these students reflected family incomes so low that SFAP determined that the school should have resolved the unlikely possibility that families could live on such incomes.

The school responded by stating that, during the period in question, the families were living in Vietnam, presumably where people can survive with little income. I find the school's explanation plausible and find that the school has no liability for these students based on the SFAP determination.

Student # 24

SFAP found that the ESAR reflected a family income so low that the school failed to resolve the unlikely possibility that a family of four could live off of such a modest income. The school responded by noting that the family lived in Vietnam during the period in question. Again, I find the explanation plausible.

The reviewer also found that the ESAR reflected four in the household and two in college, whereas the verification worksheet reflected three in the household and two in college. The school responded by noting that the verification reflected two in the household attending school, both the student and the mother. I fail to see the significance of either SFAP's or the school's point. I find that the school has no liability for this student based on the SFAP determination

Students # 12 , # 15, # 19, and # 29.

SFAP found that the school did not use the correct incomes in calculating the Title IV assistance since the school did not include the Earned Income Tax Credits received by these families. For student # 19, SFAP determined that the school also failed to use the student's income in the calculation. The school responded by recalculating the assistance and demonstrating that the Earned Income Tax Credits, and, for student # 19, the income, were so modest as to not effect the amount of student assistance to which the students were entitled. I find the school's explanation satisfactory. There is no institutional liability for these students based on the SFAP determination.

Student # 16

Again, SFAP took issue with the school's calculation of this student's Title IV assistance since it did not include the student's parents' Earned Income Tax Credit in the family's income. Again the school recalculated the Title IV assistance using the Earned Income Tax Credit and demonstrated the student's eligibility remained unchanged. .

In addition, the reviewer found that the student's file indicated a last date of attendance of 10/19/95, but the Servicer indicated a last date of attendance of 10/1/95. In addition, on 10/5/95, the school received a Pell disbursement of \$936 for this student and certified that the student completed 551.75 hours. According to the attendance record in the student's file, the student had been attending sporadically since about 7/7/95 to 10/19/95 and had only completed 541.25 hours. The school responded by noting that the student was entitled to a second disbursement on August 18, 1995. The student became ill on or about July 7, 1995, but did not withdraw from school until October 19, 1995. The school does not address the question of why it certified that the student completed 551.75 hours, rather than 541.25 hours, and why its servicer reflected a withdrawal date different from that in Ganaye's records. From the documentation provided, I cannot tell whether the school was entitled to the disbursement it received for this student on 10/5/95. Since the school has the burden of proof, it must return that disbursement to the Department.

Student # 22

The reviewer found that the ESAR did not reflect AFDE payments and Earned Income Tax Credit. The school recalculated the Pell award using the modest AFDE payments and the Earned Income Tax Credit and demonstrated that the Pell award would not change using these amounts.

SFAP also found that the ESAR reflected a gross income of \$1,242 , most of which was derived from business income. The reviewer determined that the school should have recognized the possibility of a private business owned by the student and should have placed a value on the business. The school never responded to this allegation. SFAP cites no authority for its position, and, given the modest amount of the income in question, it is unlikely that any business owned by the student which derived such a small gross income could be of much value. I find the SFAP finding trivial.

SFAP found that the Federal assistance application reflected a household of four with two in college, whereas the ESAR reflected a household of four with three in college. SFAP makes no attempt to demonstrate that this difference is of any significance. The school responded by stating that its award calculation was done on the basis of only the student attending college. I find that there is no institutional liability for this student based on the SFAP finding.

Student # 27

The student's Title IV application does not reflect AFDE benefits received by the student's parents. The school

responds by stating that the amount of the AFDE benefits was obtained by the school after the student completed the Federal application and demonstrated that the additional income does not alter the amount of assistance for which this student was qualified. I find that there is no institutional liability for this student based on the SFAP finding.

Findings # 5, # 6 and # 7: Refund Calculations Incorrect (5 students), Unpaid Refunds (9 Students), and Late Refunds (11 Students).

The reviewer made a number of determinations concerning refunds, most of which the school agreed with when it finally got around to responding to the SFAP allegations. As a result of the large number of refund problems, SFAP required the school to do a full file review of all of its students entitled to refunds and submit the results of its review in spread-sheet format and have the results certified by an independent CPA. According to the school's own calculations, it owes the Department \$5,991.81 in corrected, additional or late refunds. In addition, Ganaye only submitted the front of the refund check for \$24.70 for Student # 31; thus, I cannot determine whether the check was actually negotiated. Finally, the refund due for Thuy N. Le was for \$586, yet the refund check submitted for this refund is only for \$226; thus the school owes a balance of \$360. The school's total liability for these three findings is \$6,376.51.

Finding # 8: Valid Student Aid Reports and Electronic Student Aid Reports Not Secured _ 6 Students.

Student # 2

SFAP found that the 1993/94 ESAR was not dated. It is of little insignificance that the ESAR was not dated. Since SFAP does not challenge the accuracy of the information in the ESAR, there is no liability based on this finding.

Student # 5

SFAP found that the 1993/94 ESAR was missing from the file. In response, the school has included the missing ESAR.

Student # 8

SFAP found that the ESAR was not signed by the student's husband. In addition, the reviewer found that the ESAR was selected for verification and the verification worksheet showed a three person family while the ESAR showed only two persons. The school responded by noting that the husband did sign the Federal funding application and that the ESAR was not selected for verification, but that the school apparently was using a verification worksheet to verify the income of the student while she was living in Vietnam. The school's explanation is plausible and any inaccuracies in the file information would not affect the amount of the student's eligibility.

Student # 10

The ESAR was not dated by either the student or spouse and the ESAR contains the wrong social security number. The school responds that a corrected ESAR in the file, which it attaches to its response, is dated by both the student and spouse and was in the file when reviewed by SFAP. The school admits that the social security number is not correct, but states that it used the number provided by the student on the original application for Federal aid. I find the school's explanation for the missing dates on the ESAR acceptable. Concerning the wrong social security number, it appears the first number of the social security number on the student's application, which was handwritten, is a "6" but was misinterpreted when transposed to the ESAR as a "0". This appears to be an honest mistake of little significance.

Student # 12

SFAP found that the ESAR was signed on March 3, 1996, when the student returned to school to withdraw. The school responded by stating that the student was in attendance on March 3, 1996, and withdrew on March 5, 1996. The school attaches the student attendance record which appears to show that the student was in fact in attendance on March 3, 1996.

Student # 43

SFAP found that the school processed an award based on an ESAR which was rejected. The school contends that the award in question was processed based on an earlier ESAR which was not rejected. I find the school's response acceptable.

Finding # 9: Verification Not Documented/Incomplete _ 4 Students.

Student # 2

SFAP found that the school failed to complete the verification for this student by not securing the second page of her parents' Income Tax Return. In addition, SFAP found that the income reported on the ESAR (\$16,120) differed from that reflected on the student's mother's W-2 Wage and Tax Statement (\$15,764). The school states in response that the amount of income reported on the ESAR was more than that reported on the W-2 forms for the parents, so there would not be any change in eligibility. Since the school secured the W-2 forms for the parents, and the income adds up to slightly less than that reported on the ESAR, the income of the parents appears to have been verified. The fact that the signature page of the Income Tax Return was not secured is of little significance.

Student # 7

SFAP found that the Federal student aid application reflected five people in the student's household, including her boyfriend, and that from the documentation in the file it cannot be determined whether the boyfriend is a true dependent. SFAP also found a discrepancy between the household income indicated on the application and ESAR and on the tax return. The school responded by simply stating that "there is no evidence to void the claim the students [sic] boyfriend was a dependant." The school does not address the discrepancy between the income claimed on the application and the ESAR and the tax return, but for reason not clear does admit a liability of \$1,030 for this student. Since the school has the burden of proof, I resolve this finding against the school and assess a liability of \$1,150 against the school, which was the Pell grant given to this student.

Student # 12

The student's income did not reflect the family's Earned Income Tax Credit (this same allegation was made under SFAP Finding # 4). Therefore, the verification of the student's income was not complete. The school responds by noting that inclusion of the Earn Income Tax Credit would not affect the amount of funds awarded to this student. I find that there is no school liability for this student based on the SFAP finding.

Student # 28

The reviewer found a discrepancy between the income level claimed on the Federal aid application and ESAR and the income tax return. Therefore, the verification was not done. The school responded by noting that the difference in income was the student's Earned Income Tax Credit, and when included in the calculation it did not affect the amount of the grant awarded to this student. I find the school's response acceptable; there is no institutional liability for this student based on the SFAP finding.

Finding # 10: Excess Cash Balances Maintained.

SFAP determined that Ganaye drew down cash in excess of its immediate needs for the award years covered by the audit. The regulations provide that an institution cannot draw down funds in excess of its needs for any given three-day period. The Program Review Report claimed that balances of between approximately \$1,000 and \$22,000 were maintained by Ganaye over this period. The school's response to this charge is simply a statement that the school does not even request cash until after it is due to be paid. The full-file reviews and the CPA certification does not address this finding. Since the school's response is somewhat unintelligible and unresponsive, and the school bears the burden of proof, I find in favor of SFAP on this finding. The school owes the Department the imputed interest on the excess cash, for a liability of \$484.06. *See* Interest Calculation Worksheet for Excess Cash, submitted by SFAP on December 17, 1997, pursuant to my Order for Additional Documents and Information issued on November 14, 1997.

Finding # 11: Job Placement Records Inadequate.

SFAP determined that Ganaye was not maintaining adequate job placement records and was providing students with inadequate information. This finding is based on the form entitled "How Students Are Doing," which the school states was distributed to its students during orientation. SFAP takes exception to the form in that it provides employment statistics for 1991 rather than more current data. SFAP claims the use of old employment data is a violation of 34 C.F.R. § 668.14(b)(10) (1994), which provides that where a school advertises job placement rates as a means of attracting students to enroll, it will make available to prospective students the most recent available data concerning employment, graduation, and other information necessary to substantiate the truthfulness of the advertisement. There is little merit to this allegation.

Although the form does give information concerning placement and graduation rates, it was apparently distributed during orientation, after students presumably already enrolled, and not used as an advertisement to attract prospective students.

Finding # 12: Audit Trail Inadequate -- 10 students.

Because of inadequate audit trails, SFAP questioned whether refund calculations for ten students were correct. In response, the school attached payment ledgers and the completed refund calculation for each of the students and attached, where appropriate, canceled checks for refunds due and paid. SFAP required the school to reconcile its payment records with the Servicer's tuition account records to ensure accurate refund calculations for all of its Title IV students and to submit the reconciliation in spread sheet format. The school submitted this information as part of its initial brief. Thus, this finding is satisfied.

Finding # 13: Financial Aid Transcripts (FATs) Missing -- 2 students.

SFAP concluded that the school failed to request FATs for two students. Attached to its initial brief, the school submitted the FATs in question. It is not clear from the school's response whether the FATs were in the possession of the school at the time of the review, or obtained subsequently by the school. At any rate, this finding is satisfied. However, I have reached no conclusion on whether the students in question were entitled to financial assistance from Ganaye in light of these FATs, and they should be examined by SFAP in this regard.

Finding # 14: Title IV Records Not Maintained for Five Years -- 3 students.

During the on-site visit by SFAP, Ganaye was unable to produce records for three students. Based on these three missing files, SFAP found that the school failed to maintain student records for five years as required by the regulations. Since the school never responded to the program review report, in its final program review determination, SFAP assessed a liability for all Title IV funds awarded during the period covered by the program review.

According to the program review report, during the on-site review the school's owner indicated to the reviewer that some student records were at another beauty school owned by her. The exhibits attached to the school's initial brief are statements that "[t]he records are present at the school." No attempt is made by the school to explain why the records were not available to the reviewer, or even whether it agrees with SFAP that the records were not available at the time of the review. Since the school bears the burden of proof and has not produced the records in question or provided any satisfactory explanation as to why the records were missing, I find that the school must return the Title IV funds awarded to these three students to the Department. Student # 31 was awarded a Pell grant of \$2,400 and a Supplemental Educational Opportunity grant of \$189 for the 1993/94 award year. The school contends that it paid a refund of \$24.70 for this student. Although the school could not properly document that it actually paid this refund, it must be deducted from the liability covered under Finding # 14, as it is covered under Findings # 5, # 6, and # 7, *supra*, pp. 12-13. Student # 32 was awarded a Pell grant of \$1,150 for the 1993/94 award year, but the school paid a refund of \$466; thus, the school owes a balance of \$684 for this student. Student # 35 received a Pell grant of \$2,329 for the 1994/95 award year, but the school paid a refund of \$553; thus, the school owes a balance of \$1,776 for this student.

Finding # 15: Students Not Withdrawn Timely _ 4 Students.

Student # 11

SFAP contends that, at the time of the on-site review in May, 1996, this student's attendance record indicated attendance up to January 31, 1996. At the time of the review the student had not been withdrawn. In response, the school simply stated that a refund calculation was completed showing no institutional liability. The school attached a poor copy of what appears to be a refund calculation showing a withdrawal date of May 1, 1995. I find this evidence unsatisfactory. The school did not submit a withdrawal form or any attendance records. Thus, I cannot determine whether the refund calculation is correct. Since the school has the burden of proof, I find that it has not demonstrated that the funds questioned by SFAP were properly expended. Therefore, the school must return this student's Title IV grant for the 1994/95 award year in the amount of \$3,490.

Student # 12

SFAP determined that this student stopped attending class on November 4, 1995, when it appears that she went on medical leave. The medical certificate in the file indicated that the student would be out of school until February 11, 1996, but it could not be determined whether the student ever returned to school. On March 3, 1996, a Pell grant of \$1,170 was distributed for this student, which also appears to be the student's last date of attendance according to the withdrawal form. It appears, according to SFAP, that the student never returned to school, but the school represented that he did return in order to receive the Pell grant. The school responds by stating that the time card and the record of withdrawal indicates that the student was in school as of March 3, 1996. Although the withdrawal form does indicate that the last date of attendance was 3/3/96 (although the year appears to be altered), and that the date of withdrawal was 3/5/96, I am unable to determine from the attendance record when the student returned from the leave of absence or whether the student was actually in school on 3/3/95. Thus, the school has not meet its burden of demonstrating the Pell grant questioned by SFAP was properly awarded and the school must return the grant to the Department.

Students # 33 and # 34

SFAP found that the school allowed these students to go on leaves of absence during the 1994/95 award year when leaves of absence were no longer available and that the students should have been withdrawn from the school earlier. The school responds by stating that it agrees that the students should have been withdrawn earlier, but that the refund recalculation shows that no refund is due. However, the school attaches no backup documentation in support of its statement. Thus, I find that the school has not demonstrated that the funds awarded to these students were proper and is liable to the Department for all Federal assistance awarded to these students during the 1994/95 school year. Student # 33 received a Pell grant \$1,150. Student # 34 was awarded a Pell grant of \$1,080 and a Supplemental Educational Opportunity grant of \$500.

ORDER

ORDERED, that Respondent pay the U.S. Department of Education \$25,827.81, as follows:

Finding # 2	\$378.00
Finding # 3	\$4,089.00
Finding # 4	\$936.00
Findings # 5, # 6, and # 7.	\$6,376.51
Finding # 9	\$1,150.00
Finding # 10	\$ 484.00
Finding # 14	\$5,024.30
Finding # 15	\$7,390.00

Frank K. Krueger, Jr.
Administrative Judge

Date: February 4, 1998

SERVICE

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

Alfred S. Wright, Esq.
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Washington, D.C. 20202-2110

Footnote: 1 ¹ *Ganaye apparently stopped receiving Title IV assistance during the 1996/97 award year. See SFAP response brief, Nov. 3, 1997, p. 4, n. 3.*

Footnote: 2 ² *Respondent apparently conceded liability on this student in response to a declaration submitted by the student stating that the high school diploma submitted by the Respondent for this student is fake. See Ed Response 4 attached to SFAP Response Brief and revised declaration attached to SFAP's Response to Order for Additional Documents and Information.*

Footnote: 3 ³ *There is nothing in the record concerning the purpose of the Wonderlic Quarterly Report. I know from other cases that Wonderlic requires that independent test administrators, certified by Wonderlic, provide Wonderlic with certain information concerning test results. Wonderlic apparently studies this information for statistical purposes and publishes a quarterly report which identifies students taking the test during the period covered by the report. See Chris Logan Career College Docket No. 95-126-ST, U.S. Dept. of Educ. (March 28, 1996), p. 13; Certified by Secretary (June 25, 1996).*
