

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

In the Matter of

Docket No. 98-113-SA

PAGE'S UNIVERSITY OF COSMETOLOGY,

Student Financial
Assistance Proceeding

Respondent.

ACN: 04-96-84021
04-97-84092

Appearances: Robert Page, President, Augusta, Georgia, for Page's University of Cosmetology

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

Before: Judge Ernest C. Canellos

DECISION

Page's University of Cosmetology (Page) is a postsecondary vocational institution which operates within the State of Georgia. Page participated in the various federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), until July of 1997. At that time, Page became ineligible to participate in Title IV Programs. These programs are administered by the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department). On June 10, 1998, SFAP issued a Final Audit Determination (FAD), which found that for the award years 1995-96 and 1996-97, Page violated several Title IV regulations. As a result, Page was required to reimburse the Department \$13,966. On July 8, 1998, Page exercised its right to appeal the FAD pursuant to 34 C.F.R. § 668.113.

It is alleged by SFAP that Page, in violation of 34 C.F.R. § 668.22, did not make timely refunds to students who had withdrawn, incorrectly calculated *pro rata* refunds, and failed to use the Federal refund policy when the regulations required it for award years 1995-96 and 1996-97. ^[1] These violations amounted to liabilities totaling \$3,542 for the year 1995-1996 and \$10,424 for the year 1996-1997, for a total liability of \$13,966. Included as an attachment to the FAD was a spreadsheet which delineated the correct calculation of the refunds owed and compared those figures with the refunds actually paid by Page. After further analysis, SFAP determined that the liabilities should be reduced to \$2,666 for 1995-96 and \$10,394 for 1996-97. Page was notified of the corrected total demand of \$13,060 for the two award years at issue.

Unfortunately, Page did not submit any evidence to rebut SFAP's allegations or to demonstrate that it correctly calculated the *pro rata* refunds. Though Page's brief stated that it did not agree that it owes the Department any additional refunds and that its previously paid refunds were made in good faith, Page maintained that it could not afford to hire an accountant to recompute the figures. Page was thus unable to refute the government's assertions, and there is no evidence on the record for me to review in order to determine whether Page made its refunds in accordance with the regulations.

It is well established that in a Subpart H proceeding, the institution bears the burden of proving that it complied with the program requirements and that all of its expenditures were proper. 34 C.F.R. § 668.116(d). In order to satisfy its burden of proof, the institution must establish by a preponderance of the evidence that it properly disbursed the Title IV funds during the periods at issue. *In the Matter of Cabot College*, Dkt. No. 97-15-SP, U.S. Dept. of Educ. (Oct. 30, 1998). Merely contesting the claim is not enough. Page must actively prove that it disbursed the Title IV funds correctly. Page did not, however, offer any evidence into the record and, consequently, Page has not satisfied its burden of proof.

Institutions that participate in Title IV programs are required to have a fair and equitable refund policy. A refund policy is considered fair and equitable if it provides for a refund which is the larger of the amount provided: under state law, the institution's accrediting agency, by a pro rata calculation for first time students, or if the student is not enrolled for the first time, the Federal refund calculation. 34 C.F.R. § 668.22(b). Since the institution did not submit any evidence into the record to establish that it adhered to 34 C.F.R. § 668.22(b) in making its refunds, the only question for me to consider is whether SFAP met its burden of providing adequate notice of its claim. SFAP indicates, correctly, that the regulations require institutions to include books, supplies and equipment as a part of "institutional costs" in calculating a refund. 34 C.F.R. § 668.22(c)(5)(i). Page did not comply since it subtracted these amounts from its total institutional costs. The second incorrect refund calculation violation cited by SFAP is that Page did not apply the Federal refund policy as required. SFAP argued that the pro rata refund policy can only be applied to students attending the institution for the first time. When a student attended Page and withdrew, was reenrolled, and then withdrew a second time, the Federal refund policy should have been used to calculate their refunds. Such policy requires a 50 percent refund of institutional charges, less an administrative fee, for students who have completed between 10 and 25 percent of the enrollment period. 34 C.F.R. § 668.22(d)(1)(iv). SFAP concluded that Page did not comply.

After a full review of the FAD, I am convinced that the findings therein sufficiently state allegations in a manner which would require Page to carry its burden of proof in establishing that the institution correctly calculated the pro rata refunds, applied the Federal refund policy when applicable, and made these refunds in a timely manner. SFAP has satisfied its burden of production through issuance of the FAD, thereby providing the institution with the factual and legal bases for the alleged violations and the proposed liabilities. 34 C.F.R. § 668.112(a).

Although Page did not offer any evidence towards proving that it properly disbursed the Title IV funds at issue, it did argue that the Department owes it \$45,900 because Page was not reimbursed for 34 students who were enrolled at the time the institution became ineligible to participate in Title IV programs. In support of its position, Page filed an affidavit of Mr. Robert Page and also filed a motion to have the Department produce the calculations for payments on the Pell Grant applications for the relevant students. SFAP opposed this motion to produce on the grounds that the information sought is not germane to the proceeding.

Though Page may have a valid claim, that issue is outside the jurisdiction of this tribunal. A Subpart H hearing solely involves the review of an appeal by an institution from a final audit determination or a final program review determination. 34 C.F.R. § 668.111(a). Thus, my authority is limited to the allegations presented in the FAD, and I cannot consider independent issues. *See In re Centro de Estudios Multidisciplinarios*, Dkt. No. 96-79-SP, U.S. Dept. of Ed. (Aug. 15, 1996). Since Page's contention is not within the purview of this tribunal, Page's motion to produce is DENIED.

Page also introduced the settlement discussions between itself and SFAP in order to prove the invalidity of the government's claim. Proposed settlement discussions are irrelevant and improper evidence that cannot be admitted into the record. Federal Rule of Evidence 408 does not allow the offering or acceptance of settlements to prove either the

“liability for or invalidity of a claim.” Though these Rules are not binding on this tribunal, they are instructive. In order to promote the public policy goal of compromise and settlement of disputes, this type of evidence cannot be considered and I have not considered it here.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that Page's University of Cosmetology pay to the United States Department of Education the sum of \$13,060.

Ernest C. Canellos
Chief Judge

Dated: September 20, 1999

SERVICE

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

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[\[1\]](#) The FAD also included findings of inaccurate recordkeeping and missing student records for both award years, however, since these findings did not result in any liabilities, I have no jurisdiction over them.