

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

In the Matter of

Docket No. 98-122-SP

CAPRI COLLEGE,

Student Financial Assistance Proceeding

Respondent.

PRCN: 199630512663

Appearances:

Charles Fiegen, President, Madison, Wisconsin, for Capri College.

Pamela Gault, 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

Capri College (Capri), a for-profit school which operates in Iowa and Wisconsin, participates in various 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.* On July 24, 1998, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Final Program Review Determination (FPRD) which informed Capri that as a result of SFAP's May 1996 on-site program review of Capri's Madison, Wisconsin, location, SFAP found a number of violations of Title IV administrative requirements. All findings but one have been resolved by the parties and for this remaining finding SFAP seeks a recovery of \$23,019 in Pell Grant and Federal Supplementary Educational Opportunity Grant funds, including associated costs of those funds, and \$16,885 which represents the estimated actual loss of Federal Family Education Loan funds extended to the affected Capri's students.

SFAP's May 1996 program review examined Capri's administration of the Title IV programs during the 1994-95 and 1995-96 award years in support of the cosmetology program and massage therapy program it offered to its students. The reviewers found that Capri satisfied the requirement that it be an accredited institution and that its cosmetology program was properly licensed with the Wisconsin Department of Regulation and Licensing. SFAP discovered, however, that Capri's massage therapy program had not received the necessary license from the Wisconsin Educational Approval Board (WEAB) and, therefore, it was an ineligible program for Title IV purposes.

Capri argued that prior to SFAP's program review, it was of the opinion that it was unnecessary for it to seek WEAB approval for its massage therapy program because it already had state approval of its cosmetology program. It supported this position by relying on the fact that Department regulations do not require additional state approval of a new program if it is the same or similar to an already eligible program. In line with this, Capri argued that its massage therapy program was similar to its cosmetology program since the latter program included a training section on massage therapy.

This argument must be dismissed because even though the Wisconsin statutes recognize that the act of massaging may be provided during a cosmetology procedure, its statutes explicitly separate or distinguish the two professions by specifying that barbering and cosmetology do not include services performed by masseurs or masseuses. Wis.Stat. §§ 454.01(5); 454.02(3) (1995). From this it can be persuasively argued that Wisconsin does not view cosmetology and massage therapy as similar programs. An even more compelling reason for discounting Capri's defense is that on August 19, 1994, shortly after Capri began offering a massage therapy program, the WEAB informed the school that it must obtain approval from the WEAB before it can offer this program. From that date until August 5, 1996, when the WEAB finally granted approval for a class to begin on September 3, 1996, there was a frequent exchange of information and correspondence between the two parties while Capri attempted to satisfy WEAB's requirements for approval. Despite the admonition from the WEAB, Capri continued to offer the massage therapy program to its students while it pursued an approval from the WEAB.

For Title IV purposes, an eligible program must satisfy the definition of an educational program, and that is defined as a "legally authorized postsecondary program of organized instruction or study that leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential." 34 C.F.R. § 668.8(a); 34 C.F.R. § 600.2. [See footnote 1¹](#) There is no question that the WEAB is the appropriate state agency from which Capri had to obtain legal authorization to offer its massage therapy program. Capri did not obtain this approval until August 1996. Therefore, Capri's massage therapy program was ineligible for Title IV purposes for the entire period of the program review, July 1994 (the beginning of the 1994 award year) to September 3, 1996.

Although this was not raised in the program review or the FPRD, SFAP offers as a second rationale for its position that Capri's massage therapy program was ineligible for the stated period the fact that it failed to notify the Department it was offering this additional program. Prior to the program review the Department was aware of only its cosmetology program. The regulations provide that when an eligible institution offers a new educational program after the Secretary has designated it as eligible, the institution must apply to the Secretary to have the additional program designated as eligible. 34 C.F.R. § 600.10(c)(1). There is an exception to this requirement if the additional program prepares students for gainful employment in the same or related field as the program previously designated as eligible. 34 C.F.R. § 600.10(c)(2)(ii)(A). It is uncontested that Capri failed to notify the Department of its new massage therapy program and request eligibility status for it. Capri argues, however, that it was exempt from this notification requirement because its approved cosmetology course and newly offered massage therapy course come under the exception stated above because they are "in the same or related recognized occupations." This argument is not available to Capri because the Wisconsin statutes clearly provide that cosmetology does not include the services provided by masseurs or masseuses. The two programs are not in the same or related occupations which means Capri was not exempted from its obligation to request approval from the Secretary to offer the new massage therapy course.

Capri has failed to meet its burden of proof that it had approval from the appropriate state agency, the Wisconsin Educational Approval Board, to offer a massage therapy program between July 1994 and September 3, 1996, the period covered by the program review. Thus, it offered an ineligible program and all Title IV funds Capri approved and disbursed to students enrolled in that program must be returned to the Department.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Capri College refund to the Department \$39,904 in improperly disbursed Title IV student aid.

Judge Richard F. O'Hair

Dated: January 5, 1999

SERVICE

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

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Footnote: 1 ¹ See Ambassador Beauty College, Dkt. No. 97-22-ST, U.S. Dept. of Educ. (Jan. 15, 1998); In re Institute of Jewish Culture and Heritage, Dkt. No. 94-218-SP, U.S. Dept. of Educ. (March 25, 1996).