

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

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In the Matter of

**Docket No. 98-141-SA**

**CONTEMPO SCHOOL OF BEAUTY,** Student Financial Assistance Proceeding  
Respondent.

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Appearances: Thomas J. Spratt, Jr., Esq., Pomona, California, for Contempo School of Beauty.

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

Before: Administrative Law Judge Allan C. Lewis

**DECISION**

This is an action initiated by the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education to recover \$116,270 for the fiscal year July 1, 1995, through June 30, 1996. This action was proposed following an audit which contained two adverse findings, namely, that Contempo School of Beauty (Contempo) failed to compute, properly, refunds due to many of its students (Finding 5) and failed to pay refunds due to students in a timely manner (Finding 6). Based upon the findings of fact, supra, it is concluded that SFAP may recover \$84,833, plus interest.

Discussion

If a student withdraws from a program, the institution is required to refund the appropriate amount of the excess Federal Pell Grant funds and Direct Loan proceeds due to the student. 34 C.F.R. § 668.22(a) (1995). In this regard, each school must have a fair and equitable refund policy. During 1995 and 1996, an institution was required to refund the larger of the amount required under the applicable State law or the Federal *pro rata* refund calculation. 34 C.F.R. § 668.22(b). In this case, the parties agree that Contempo was obligated to apply the California formula to determine the amount of refund due each student who withdrew from the program during Contempo's fiscal year 1996.

Under the California formula, the initial refund amount equals the amount the student paid for instruction multiplied by a fraction, the numerator of which is the number of hours of instruction which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of instruction for which the student has paid. Cal. Ed. Code § 94318.5(a) (1995). The amount of the refund may be reduced by the documented cost of equipment to the institution if a student fails to return that equipment in good condition within 30 days following the student's withdrawal. Cal. Ed. Code § 94318.5(b).

Finding 5 of the Final Audit Determination focuses upon the amount of refund due to 59 students who withdrew from the program prior to its completion. [See footnote 1](#) There are three controversies between the parties regarding this determination. [See footnote 2](#) The first controversy concerns an assessment of \$31,886, plus imputed interest by SFAP which reflects the total amount of all Title IV funds received by 5 students (#5, 36, 43, 56, and 66). The assessment was

based on the theory that Contempo had not presented documentation to prove that these students had attended the institution and, therefore, full refunds of all Title IV funds were warranted.

In the present proceeding, Contempo submitted documentation regarding the attendance by these students. Based on this information, SFAP now concedes that the 5 students attended the institution. It maintains, however, that Contempo is not entitled to a cancellation of the entire \$31, 886 assessment, as it seeks, because the students withdrew from the program prior to its completion and, therefore, are entitled to refunds of a portion of their tuition under the California refund formula.

I agree with SFAP's position. The Final Audit Determination focused on the correction of many errors made by Contempo in computing the amount of refund due its students after they withdrew from the program. One area of errors concerned the number of hours of attendance by each student. SFAP is simply correcting this factor for these 5 students, a matter which it could not address previously due to the unavailability of Contempo's records. Based upon the information in the newly submitted documents, it is determined that Contempo's assessment on this matter shall be reduced to \$17,043, plus interest to reflect the refunds due these students. [See footnote 3](#)

The second area of controversy concerns whether, in computing the refunds, Contempo was entitled to take a \$230 offset for the cost of equipment provided to each student that was not returned within 30 days of the student's withdrawal from the program. SFAP allowed the offset for 12 students in the Final Audit Determination. Accordingly, there are only 45 students who could be affected by this issue. [See footnote 4](#)

An offset is available, under California law, if the "institution specifies in the [enrollment] agreement a separate charge for [the] equipment which the student actually obtains." Cal. Ed. Code § 94318.5(b). The offset is allowed for the "documented cost to the institution of that equipment." *Ibid*. The parties agree that Contempo's enrollment agreement contains a separate charge for equipment and supplies in the amount of \$450. The parties also agree that \$230 is Contempo's cost of the equipment. The area of disagreement is whether Contempo can establish that each student received the equipment.

SFAP contends that the phrase "documented cost" of equipment requires documentation that reflects "a student-by-student identification of equipment received [by the student], the particular cost for each item, and the student's signature acknowledging receipt." SFAP Br. at 6. In the audit process, SFAP accepted Contempo's "kit list" form if it was signed and dated. [See footnote 5](#) The kit list form sets forth a list of approximately 30 items used in the program ranging from various combs and a hair dryer to the text book. For each item, there was a designated retail price and the student's price and adjacent thereto were two spaces to indicate the receipt and return of each item. The form had an acknowledgement that the student had "received all items checked" which was located above a block for the student's signature and date.

With its appeal, and again as part of its brief, Contempo submitted, generally, three documents for each student which were presumably part of his or her file: a dated and signed enrollment agreement, a kit list, and a "check list." In its brief, SFAP concedes, based on the newly submitted documentation by Contempo, that the kit list forms for three students (#36, 38, and 56) satisfy its requirements and, therefore, warrant the \$ 230 offset. As to the remaining students, their kit list forms were not signed and, therefore, are inadequate. In addition, SFAP maintains that the "check list" form is inadequate as a "documented" cost of equipment—

"checklists" are different from the "kit lists" that were previously accepted as a "documented" cost of equipment, in that they do not state the cost of equipment, nor do they have an acknowledgment of receipt by the student. Accordingly, Contempo fails to satisfy its burden of persuasion to demonstrate a "documented" cost of equipment necessary to receive an additional \$230 credit for these other students.

SFAP Br. at 7.

Contrary to SFAP's view, the check list form clearly provides an acknowledgement of the receipt of the equipment by

the student and on an item-by-item basis. The form has a space for the date and student's name, and immediately underneath requests each student to “[p]lease check each item received.” It then identifies the items of equipment and provides an adjacent space for a check mark. The items of equipment are the same items included in the kit list form. Thus, in this regard, this form is comparable to the kit list form. While the check list omits the retail and student prices, this omission is not meaningful, as urged by SFAP. As noted above, California law only requires a statement of the charge for equipment and supplies in the enrollment agreement and Contempo has satisfied this requirement.

The tribunal reviewed Contempo's documentation for each student, including the check list. Many of the check lists were insufficient to establish receipt of the various items of equipment. Signatures were not acceptable because they could not be read or were printed or misspelled. The tribunal accepted only a check list which had a signature that was clearly similar to the student's signature on his or her enrollment agreement. In some cases, the signature on the enrollment agreement was not discernable. Here, the offset was also not allowed because the signature on the check list could not be verified. Based upon this review, it is concluded that Contempo shall be allowed an offset for 13 additional students. One student (#17) had a signed kit list and the remaining 12 students (#2, 5, 7, 24, 26, 27, 32, 34, 35, 39, 49, and 50) had acceptable, signed check lists. [See footnote 6](#) As a result, Contempo's assessment on this issue shall be reduced by \$2,881 which reflects a reduction for 12 students at \$230 per student and for 1 student (#32) in the amount of \$121. [See footnote 7](#) The assessment shall also be reduced by the appropriate amount of imputed interest. [See footnote 8](#)

Regarding the last issue concerning the proper amount of refunds due its students, Contempo argues that it is entitled to a credit of \$23,745.14 for direct loans distributed to students, the cancellation of loans, or refunds previously provided to the students. This amount reflects 20 adjustments affecting 14 students. As support for its argument, Contempo submitted checks and other documentation.

SFAP analyzed this information and, as a result thereof, revised its position. Of the 20 adjustments in the Final Audit Determination, SFAP concedes 9 adjustments on behalf of 7 students (#9, 21, 25, 37, 38, 50, and 64). This concession reduces its proposed assessment by \$12,955. As to 6 adjustments which addressed refunds or cancellations affecting 6 students (#1, 9, 14, 16, 23, and 43), SFAP maintains that they were previously allowed as part of the Final Audit Determination and, therefore, cannot be allowed a second time. A review of the Final Audit Determination and Contempo's supporting documents confirms SFAP's conclusion. Accordingly, no additional adjustments are warranted. Lastly, there were 5 adjustments in the form of refunds or cancellations of loans that affected 4 students (# 26, 35, 50, and 64). SFAP maintains that Contempo's documentation for students #26 and #35 consists of cancelled checks payable to Contempo and, therefore, cannot support a determination that these monies were refunded to the students. SFAP's analysis is correct and adjustments are not warranted. There was also no documentation to support a second adjustment for student #35 and an adjustment for students #50 and #64. Accordingly, it is concluded that no adjustments are warranted regarding these students. In sum, SFAP's proposed assessment is reduced by \$12,955.

Finding 6 addresses the amount of additional interest imposed on Contempo due to its untimely issuance of refunds. Under the Final Audit Determination, the amount of interest was \$758. In its brief, Contempo does not dispute its legal obligation. It requests only that a recomputation be made to determine the amount of its actual liability in light of any adjustments. SFAP performed a recomputation based upon the concessions in its brief. The amount of interest due was \$1,361. Inasmuch as the tribunal determined that the assessment against Contempo shall be further reduced and that such reduction will affect the amount of Contempo's liability for interest, SFAP is directed to perform another computation to ascertain the correct amount of the interest assessment.

## **Order**

Based on the findings of fact and conclusions of law, it is **HEREBY ORDERED** that Contempo School of Beauty shall refund to the United States Department of Education in the manner authorized by law the amount of \$84,833, plus interest as provided by law.

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Allan C. Lewis  
Chief Administrative Law Judge

Issued: March 5, 1999  
Washington, DC

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*Footnote: 1 While the finding addressed a universe of 72 students, 13 students (#4, 12, 19, 20, 42, 44, 46, 47, 53, 62, 68, 71, and 72) were not entitled to refunds because they did not receive any Title IV funds or withdrew so late in the program that they were not entitled to refunds. Hence, there were, potentially, refunds available for 59 students.*

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*Footnote: 2 There were other adjustments in the computation of refunds which are not at issue in this proceeding. These adjustments included a downward adjustment in the amount of tuition charged per student, a correction in the hours of attendance, and a correction of student withdrawal dates.*

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*Footnote: 3 In determining the amount of refund due each student, SFAP allowed an offset of \$ 230 for equipment for students #36 and #56. It denied an offset for students #5, #43, and #66 on the theory that the documentation was insufficient to establish that the students had received the equipment.*

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*Footnote: 4 The original 72 students less the sum of 13 students not eligible for refunds, 2 of the 5 students under the eligibility issue, and the 12 students conceded by SFAP on brief,.*

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*Footnote: 5 Offsets were allowed for 12 students (#3, 14, 15, 16, 21, 31, 40, 54, 55, 60, 67, and 70).*

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*Footnote: 6 While SFAP's position on brief was that only the kit list form was acceptable, it did not follow this view. One of its 3 concessions on brief (student #38) and 4 of its allowable offsets in the audit (students #21, 31, 67, and 70) were apparently permitted on the basis of a signed and dated check list.*

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*Footnote: 7 The amount of \$121 is the maximum amount available as a refund for student #32.*

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*Footnote: 8 SFAP argues another issue, namely, that Contempo has not established that its equipment was unreturnable, and, therefore, is not entitled to the \$230 offset for any of its withdrawn students. This issue was not addressed in the Final Audit Determination and was argued for the first time in SFAP's brief, a brief that was filed after Contemp's brief. This is too late in the administrative process to raise a new and independent issue. In re Contempo School of Beauty, Dkt. No. 98-110-SA, U.S. Dep't of Education (AJ Dec. , Feb. 3, 1999). Accordingly, it will not be considered or addressed.*