

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

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In the Matter of

**Docket No. 98-81-SP**

**HAIR INTERNS SCHOOL OF COSMETOLOGY,**

Student Financial Assistance Proceeding

Respondent.

PRCN: 199820914884

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Appearances:

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

Ms. Rubi White, Owner, Hair Interns School of Cosmetology, Fresno, California.

Before:

Frank K. Krueger, Jr., Administrative Judge

**DECISION**

Respondent, Hair Interns School of Cosmetology, participated in the student assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended, from July 1, 1990, until September 30, 1997, when it lost its eligibility to participate in the Title IV programs because its application for re-certification was denied. The denial of re-certification was based on the school's failure to submit compliance audits for all award years since the school began participation in the Title IV programs in 1990.

By letter dated January 23, 1998, Respondent was informed of its obligation to submit a close-out audit covering the period since the submission of its last compliance audit; since Respondent never submitted any compliance audits, this included the period from July 1, 1990, through September 30, 1997. Although the record indicates that the Respondent made several telephone requests for extensions of time to submit the close-out audit, the requests were never put in writing as requested by the U.S. Department of Education officials taking the telephone calls. On April 7, 1998, the Student Financial Assistance Programs (SFAP) issued a final program review determination in which it assessed liability against the Respondent for all Title IV assistance awarded by the Respondent since July 1, 1990. The total liability assessed was \$329,753, all in Pell Grant funds.

Respondent requested a review of the SFAP determination under 34 C.F.R. Part 668, Subpart H. Both parties submitted written argument and exhibits in support of their respective positions. Under 34 C.F.R. § 668.116(d)(1)

(1997), Respondent has the burden of proving that the expenditures questioned by SFAP were proper and in accordance with program requirements. Since Respondent failed to conduct the necessary compliance and close-out audits, or otherwise account for the Pell Grant funds it expended, SFAP's determination that Respondent is liable for those funds is affirmed.

## DISCUSSION

In order to participate in the Federal student assistance programs under Title IV, Respondent was required to enter into a Program Participation Agreement whereby it agreed to comply with the regulations governing the Title IV programs. Under those regulations, participating schools are required to submit periodic audits accounting for all Federal student assistance awarded by the schools during the period covered by the audits. The audits must be conducted by an independent certified public accountant. Prior to July 1, 1994, such audits were required every two years. 34 C.F.R. § 668.23(c)(3) (1993). Beginning July 1, 1994, the audits are required every year. 34 C.F.R. § 668.23 (c)(1)(i) (1994). When a school loses its eligibility to participate in the Title IV programs, it must submit a close-out audit to SFAP within ninety days after the loss of eligibility. The close-out audit must cover the period since a school submitted its last compliance audit. Again, the audit must be conducted by an independent certified public accountant. 34 C.F.R. § 668.26(b) (1997). Thus, under the regulations, Respondent was required to submit separate compliance audits for the 1990/91 and 1991/92 award years; for the 1992/93 and 1993/94 award years; for the 1994/95 award year; for the 1995/96 award year; and for the 1996/97 award year. Had Respondent submitted the required reports, its close-out audit should have covered the period from July 1, 1997 to September 30, 1997, when it lost its eligibility. Since none of the required biannual and annual compliance audits were conducted, Respondent was required to submit a close-out audit for the entire period. Since no audits were conducted, and Respondent has not otherwise demonstrated that the Pell Grant funds were properly expended and in full compliance with program requirements, Respondent must reimburse the Department for those funds.

Respondent does not deny that it has not conducted the required audits. Respondent did submit some documentation for eight students, and appears to contend that these unexplained documents satisfy the requirement that it demonstrate that it complied with all Title IV requirements. The submission of documentation for a mere eight students does not satisfy Respondent's burden of demonstrating that the Federal funds it awarded to hundreds of students since 1990 were properly awarded. In addition, Respondent makes no effort to explain the relevancy and meaning of the documentation submitted. A school which fails to provide the fact-finder with an adequate explanation of its submissions does so at its peril. *Clark Atlanta Univ.*, Docket No. 93-106-SP, U.S. Dept. of Educ. (Decision on Remand II, Dec. 22, 1997). Based on the unexplained documentation submitted, I am unable to determine whether any Pell Grant expenditures to the students covered by the documents were proper, or even that the students received Pell Grant funds.

Respondent also appears to argue that, since it used a third-party servicer, it should be presumed that it complied with all Title IV requirements. As noted by SFAP in its brief, the use of a third-party servicer is simply a resource used by a school in the processing of Title IV funds, and cannot be considered a substitute for an independent audit or otherwise be considered as proof of regulatory compliance.

Finally, Respondent argues that no liability should be assessed for the years 1990 through 1993, "since the rule is that records have to be maintained for 3 [sic] years," and the records have been discarded. Although a school must retain its Pell Grant records for five years, 34 C.F.R.

§ 690.82(b)(1) (1993), if the records are discarded after five years, it does so at its own peril if it has not submitted the necessary compliance audits which demonstrate that the school has complied with all of the Title IV requirements. To hold otherwise would allow a school to misappropriate Title IV funds and avoid detection by simply discarding the records.

Since participating schools disburse Federal funds directly to students, it is very important that compliance audits be properly submitted so that SFAP may be assured that Federal funds are being properly disbursed. In disbursing Federal funds, schools act in the nature of a fiduciary and are subject to the highest standard of care in accounting to the Department for the funds they receive under the Title IV programs. In the present case, Respondent has accounted for no funds. As such it is liable for all Federal assistance awarded during the period in which it participated in the Title IV program. See *Magic Touch Beauty College*, Docket No. 97-161-SP, U.S. Dept. of Educ. (July 2, 1998); *Interamerican*

*Business College*, Docket No. 96-20-SP, U.S. Dept. of Educ. (May 28, 1997); *Puerto Rico Professional Technical College*, Docket No. 95-144-SP, U.S. Dept. of Educ. (April 11, 1996); *Cosmetology College*, Docket No. 94-96-SP, U.S. Dept. of Educ. (Aug. 23, 1995), *certified by Secretary* (Nov. 27, 1995); *Calvinade Beauty College*, Docket No. 93-151-SA, U.S. Dept. of Educ. (March 21, 1995), *certified by Secretary* (Sept. 18, 1995); *Long Beach College of Business*, Docket No. 94-78-SP, U.S. Dept. of Educ. (Aug. 30, 1995); *Lehigh Technical School*, Docket No. 94-193-SP, U.S. Dept. of Educ. (March 17, 1995); *National Broadcasting School*, Docket No. 94-98-SP, U.S. Dept. Of Educ. (Dec. 12, 1994).

## FINDINGS AND CONCLUSIONS

1. Respondent failed, since the 1990/91 award year, when it began participation in the Pell Grant program, to perform periodic compliance audits of its administration of the Pell Grant program, or otherwise account for the Pell Grant funds it disbursed.
2. Respondent became ineligible for the Title IV programs when it was not re-certified for participation in the programs, effective September 30, 1997. Respondent failed to conduct a close-out audit to account for the Pell Grant funds it expended while it was eligible, or to otherwise account for those funds.
3. Respondent is in violation of 34 C.F.R. §§ 668.23 (1993, 1994) and 668.26 (1997), which required that Respondent submit to the U.S. Department of Education periodic compliance audit reports concerning its expenditure under the Pell Grant program, and that Respondent submit to the U.S. Department of Education a close-out audit within ninety days from the date that Respondent lost its eligibility to participate in Title IV programs.
4. Respondent has a liability for all expenditures made during the review period since, without the required audits or other information and documentation demonstrating that the expenditures were proper and in compliance with program requirements, the Department is unable to determine whether expenditures made by the Respondent under the Pell Grant program were proper. During this period Respondent paid out a total of \$329,753.

**ORDERED**, that Respondent pay to the U.S. Department of Education \$329,753 as reimbursement for Pell Grant funds expended by Respondent from the 1990/91 award year until September 30, 1997.

Date: November 5, 1998

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Frank K. Krueger, Jr.  
Administrative Judge

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## SERVICE

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

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