

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

In the Matter of

PONCE TECHNICAL SCHOOL,

Respondent.

Docket No. 98-89-SA

Student Financial
Assistance Proceeding
ACN: 02-1996-74223

Appearances: Fernando Torres, President, Ponce Technical School, Ponce, PR, for Respondent.

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

Before: Richard I. Slippen, Administrative Judge

DECISION

On March 20, 1998, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department) issued a final audit determination (FAD) finding that during the period of July 1, 1995 through June 30, 1996, Ponce Technical School (Ponce) violated the institutional eligibility requirements of Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. §§ 1070 *et seq*, 1088 *et seq*, and its implementing regulations. Ponce only appealed Finding No. 1, which found that the institution maintained excess cash on hand in the amount of \$76,702. The FAD assessed an additional \$13,156 in interest, for a total liability of \$89,858 for Finding No. 1. Finding Nos. 2 and 4, respectively, found that Ponce failed to meet its FSEOG matching requirements and assessed liability in the amount of \$2,210, and that Ponce did not make four refunds to its Title IV account, resulting in an assessed liability of \$820.^[1] The total liability assessed for the FAD is \$93,201.

Finding #1: Excess Cash On Hand

SFAP alleges that Ponce has maintained \$76,702 in excess cash since July 1994. SFAP states that Ponce has acknowledged that it owes this money to the Department and, in fact, has had ongoing excess cash balances since 1993, when it wrote a check to repay this amount plus interest. It is also undisputed that Ponce's check was returned due to insufficient funds. However, the Department credited Ponce's account with this payment, and did not later correct the institution's account records, to show that the payment was not made. SFAP states that although the excess cash amount due to the Department has fluctuated slightly since 1993 due to other accounting transactions, Ponce continues to maintain an excess cash balance. Ponce does not dispute that it maintained an excess cash balance. Instead, the

institution argues that the \$13,156 in interest should be decreased because it was waiting for the Department to adjust its statement of account records to correct SFAP's failure to reflect that the institution's prior attempt at payment failed. Ponce also states that its auditors also recommended that the Department correct its account records. Ponce asserts that if the Department had made the adjustment to its records, no length of time would have elapsed, and, therefore, it would not owe as much interest.^[2]

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Excess cash is any amount of Title IV funds, other than FFEL funds, that an institution does not disburse to students by the end of the third business day following the date the institution received those funds. 34 C.F.R. § 668.166. An institution must promptly return any amount of excess cash in its account.^[3] 34 C.F.R. § 668.166. If an institution maintains excess cash balances, the institution is required to reimburse the Department for its costs, including the assessment of interest that would have been earned on any excess cash improperly held. See 34 C.F.R. § 668.166(c); *In re Phillips Colleges, Inc.*, Docket No. 92-64-SA, U.S. Dep't of Educ. (August 24, 1994), certified by the Secretary (May 25, 1995).

There is no dispute that Ponce maintained excess cash. Ponce's argument that it should not owe the accrued interest on this liability is categorically rejected. It is clear that Ponce knew it owed money to the Department, and, that its previous attempt to pay it was unsuccessful. Further, the institution's failure to promptly pay and thereby reduce its incurred liability cannot be excused by the Department's inadvertent omission to readjust the institution's balance due to the institution's own bounced check. The Department is entitled to recoup interest on excess cash balances held by institutions. Therefore, I find that Ponce remains liable for the excess cash on hand plus the accrued interest on this unpaid liability, for a total of \$89,858.

Finding # 2: FSEOG Matching Requirement Not Met

An institution is required to match, with its own resources, the federal share of funding supplied to the institution under the Federal Supplemental Educational Opportunity Grant (FSEOG) Program. 34 C.F.R. § 676.21 (1995). The FAD charges that for the 1995-96 award year, Ponce did not contribute the required 25 percent share. Instead, Ponce contributed only 16 percent. Ponce does not dispute this finding. Therefore, it remains liable for \$2,523.

Finding # 4: Refunds Not Made

According to the FAD, Ponce failed to make timely refunds to four students. Specifically, these refunds were not made within 30 days after the students' withdrawals, as required by 34 C.F.R. § 668.22(j)(4) (1995). Ponce does not dispute that it made late refunds. Therefore, Ponce remains liable for \$820.

FINDINGS

1. Ponce maintained an excess cash balance.
2. Ponce failed to meet FSEOG matching requirements.
3. Ponce failed to make timely refunds for four students.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Ponce pay to the U.S. Department of Education the sum of \$93,201.

Judge Richard I. Slippen

Dated: August 6, 1999

SERVICE

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

Fernando Torres
President
Ponce Technical School
Calle Salud No.16
Ponce, Puerto Rico 00731

Steven Z. Finley, Esq.
Office of the General Counsel
United States Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

[1] Ponce did not appeal finding Nos. 2 and 4.

[2] Ponce also asks that this tribunal order an adjustment to its EDPPMS-272 Federal Cash Transaction Report. However, I have no authority to order any such adjustment. Therefore, Respondent's request is denied.

[3] As specified in 34 C.F.R. § 668.166(b), there are some exceptions to this requirement; however, these exceptions are not at issue in this case.