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

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| In the Matter of | **Docket No. 99-83-SP** |
| **THE UNIVERSITY OF BIRMINGHAM, THE SHAKESPEARE INSTITUTE,** | Student Financial Assistance Proceeding |
| Respondent. | PRCN: 199930216674 |

## DECISION

On October 12, 1999, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department) issued a final program review determination (FPRD) finding that the University of Birmingham, The Shakespeare Institute (Birmingham), certified numerous Federal Stafford student loans in excess of the maximum annual loan limits for one student in violation of Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. §§ 1070 *et seq*., 1088 *et seq*. Specifically, the FPRD alleges that Birmingham is liable for $42,000 in subsidized Stafford loans and $40,000 in unsubsidized Stafford Loans. SFAP also seeks $6,911 in special allowances and interest owed in connection with these loans.

A graduate student is eligible to receive $18,500 each academic year. 34 C.F.R. § 682.204 (1996). Up to $8,500 may be subsidized and the remaining $10,000 unsubsidized. *Id*. For Title IV purposes, an academic year must be at least 30 weeks of instructional time. 34 C.F.R. § 668.2. In the instant case, a Title IV eligible student attended Birmingham as a graduate student from September 1996 through June 1998. During this period, Birmingham certified 15 student loan applications on behalf of this student, totaling $137,500 in both subsidized and unsubsidized Stafford student loans.

According to SFAP, Birmingham is under the misimpression that it is only required to certify the student's academic status for a loan application. SFAP argues that this is, in fact, an admission that Birmingham failed to ensure that the student received loans not exceeding the mandated annual loan maximum. SFAP states that the loan applications, certified by an authorized Birmingham official, gave specific information about the loan periods, the cost of attendance, and the loan amounts requested. SFAP argues that for the three academic years in question, 1996 through 1999, the student was eligible to receive a maximum of $25,000[1] in subsidized Stafford loans and $30,000 in unsubsidized Stafford loans. Instead, the student received $67,500 in subsidized and $70,000 in unsubsidized loan funds.

SFAP argues that a school may not certify a Stafford loan application for a loan amount that the school has reason to know would result in the borrower exceeding the maximum loan amount. See 34 C.F.R. § 682.204. SFAP asserts that the school must provide information about the borrower's eligibility, the estimated cost of attendance for the academic period, the student's estimated financial assistance, and the schedule for disbursement of the loan proceeds. 34 C.F.R. § 682.603(b). Further, in its program participation agreement (PPA), the school agrees to not provide certification to any lender to avoid a student's qualification for funds in excess of the amount allowed under the HEA. *See* 34 C.F.R. § 668.14(b)(8). SFAP argues that foreign schools are required to comply with these provisions, and nowhere does it say that the Secretary has waived these requirements for foreign schools. *See* 34 C.F.R. § 682.611.

Moreover, SFAP states that Birmingham was on notice of its responsibilities not only from the regulations, but also from detailed instructions provided by the New Jersey Higher Education Student Assistance Authority (NJHESAA).

Birmingham states that it does not award or administer financial aid to any of its students from the United Kingdom. According to Birmingham, in the United Kingdom, the local government administers financial aid. After a student gains admission to its school, the local government authority pays the funds directly to Birmingham. Birmingham argues that it accurately certified the academic status and progress of the Title IV student recipient. Birmingham states that its good faith actions are fully consistent with the responsibilities imposed on a school like itself. Birmingham further argues that it acted reasonably in providing the information and making its certification as this tribunal has previously held.[2] Additionally, Birmingham maintains that its participation in the Title IV programs was to facilitate and accommodate the access of international students to its highly distinctive and well-regarded academic programs such as The Shakespeare Institute. It makes no attempt to seek out Title IV aid and/or solicit the participation of Title IV eligible students.

Birmingham contends that the appropriate division of responsibility between the instrumentalities of the United States and the United Kingdom must be recognized in order to maintain access for American students to valuable opportunities for international study. Birmingham does not consider that it has the authority, knowledge, or responsibility to monitor the eligibility of foreign students to receive funds under programs administered by foreign governments. Birmingham also states that NJHESAA reviewed, approved, and guaranteed the loan applications and is, therefore, responsible for verifying and certifying the loan amounts in question. Pursuant to 34 C.F.R. § 682.401(b), Birmingham argues that it was NJHESAA's obligation to ensure that the annual maximum loan amount guaranteed does not exceed the amount set forth in the Title IV regulations, as evidenced by NJHESAA's authority to reduce the amount certified by the school to avoid such an occurrence.

Birmingham next argues that there is no evidence that the student in question has defaulted on any Title IV student loans. Further, the school asserts that it has only received $9,500 in direct proceeds from the Title IV loan funds. Given the small amount actually paid to Birmingham, the school argues that the liability assessed is unjustified and tantamount to a fine. Finally, in its reply brief, Birmingham argues that the certification of these excess loan amounts was an aberration for three reasons. First, the student presented the loan applications to an employee who was not authorized to review such a document. Second, the student at issue consistently exploited the regulation that allows a student of a foreign school to have the Title IV loans disbursed directly to that student. Third, in receiving in excess of $100,000 over three years, the student violated the regulatory requirement that the loan proceeds be used only for expenses reasonably attributable to educational expenses for attendance.

Under 34 C.F.R. § 682.204, an eligible graduate student may receive up to $18,500 in Federal Stafford loans for each academic year. An academic year must provide at least 30 weeks of instructional time. 34 C.F.R § 668.2. Birmingham's academic year is a period of twelve calendar months beginning on the first day of October which consists of three terms: Autumn, Spring, and Summer.[3] Birmingham's three terms comprise an academic year that provides at least 30 weeks of instructional time. There is no factual dispute that the Title IV loans certified by Birmingham exceeded the maximum loan amount for each of the three academic years at issue.

A school shall certify that the information it provides in connection with a loan application is complete and accurate. 34 C.F.R. § 682.603. The information provided includes whether the borrower is eligible under 34 C.F.R. §§ 682.201 and 401(b)(1) and (2), the student's estimated cost of attendance as well as the student's estimated financial need.[4] A school may not certify a Stafford loan application for a loan amount that the school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in 34 C.F.R. § 682.204. 34 C.F.R. § 682.604(d).

Birmingham did not comply with its regulatory obligations. Although it may have provided accurate information on the loan application as to the student's academic status and progress, this did not vitiate its requirement not to continually certify loan applications for amounts that it reasonably should have known exceeded the annual maximum loan amounts. Birmingham certified numerous loan applications within each academic year. For the 1996 academic year, it certified loan applications on April 16, 1996, for $18,500, on March 19, 1997, for $6,279 and $1,721,

and on June 19, 1997, for $3,721 and $6,779. For the 1997 academic year, it certified loan applications on August 19, 1997, for $8,500, on August 20, 1997, for $10,000, on December 22, 1997, for $18,000, on May 6, 1998, for $8,500, on May 12, 1998, for $10,000, and on June 25, 1998, for $8,500. For the 1998 academic year, Birmingham certified loan applications on July 21, 1998, for $8,500 and for $10,000, on November 19, 1998, for $8,500 and for $10,000. It is patently obvious that Birmingham utterly failed to review or consider the loan applications it certified in any meaningful way. In fact, even a cursory review by the school would have indicated that the student in question had exceeded the maximum loan amounts allowed and that the school should not continue to certify these loan applications.

Contrary to Birmingham's arguments, as a fiduciary participating in the Title IV programs, it was required to conduct a review of these loan applications; its obligation did not end with a simple certification of attendance or progress. Simply because Birmingham is a foreign school does not relieve it of its obligation to ensure that this student was eligible to receive Stafford loan funds. *See In re Universidad Eugenio Maria de Hostos*, Docket No. 96-126-SP (February 19, 1998). If Birmingham's assertion of its lack of responsibility were correct, it would void the fiduciary role schools play as participants in the Title IV programs. *See In re Universidad Eugenio Maria de Hostos*, Docket No. 95-128-ST, U.S. Dep't of Educ. (January 21, 1995). Birmingham was required to do more to satisfy its statutory and regulatory responsibilities.

Birmingham's argument that NJHESAA should be held responsible instead of the school is not relevant to this proceeding. Once again, it is Birmingham's obligation to have properly certified these loan applications. It is unfortunate that NJHESAA apparently did not earlier discover these improper certifications.[5] However, NJHESAA's culpability, if any, is not within my jurisdiction and it does vitiate Birmingham's clear regulatory violations.

Birmingham's assertion of its "good faith," its description of this occurrence as isolated, its lack of desire to secure Title IV funds, and its only partial receipt of the Title IV funds at issue are neither relevant nor persuasive for the following reasons. My determination in this case only goes to whether the school violated Title IV regulations and if Title IV funds were misspent, not whether it acted in bad faith in certifying these loans or engaged in a practice of "soliciting" Title IV funds. There has been no allegation or evidence that Birmingham acted with ill intent. The requirements for certifying Title IV loan applications are specified in the regulations. I am not permitted to waive these requirements or the resulting liability. The liability for the loans is based on the amounts over certified not whether the school is in actual receipt of the entirety of these funds. A Title IV loan can be used for expenses other than those charged by the school such as room and board. *See* 20 U.S.C. § 1070a-6(5); *In re Ivy Tech State College*, Docket No. 95-101-SP, U.S. Dep't of Educ. (August 6, 1996). Therefore, the fact that Birmingham asserts that it only received $9,500 is also not relevant. Birmingham's argument that an unauthorized employee signed the loan applications is not convincing. This tribunal has found schools liable for the actions of its employees, even those identified as "rogue" in cases similar to this one. *See In re Huston-Tillotson* College, Docket No. 99-2-SP (February 10, 2000). Regardless, Birmingham's insufficient offer of proof, a page from the school's financial manual identifying who is an authorized signatory for general corporate purposes, does not demonstrate that the school employee who signed the loan applications was not responsible for handling student financial aid matters.

Finally, the assertion that the student who received these Title IV loans has not yet defaulted on any of these improper loans does not make the assessment of liability premature or inappropriate. Although the actual financial harm incurred to the Department at this point may be limited to the interest and special allowances it has paid on the subsidized Stafford loans, the Department should not have to bear any further risk of loss. Further, as this case involves a small number of loans held by a single individual, I find that the use of the estimated loss formula would not be appropriate in this case.[6] SFAP is only seeking liability for the loan amounts that exceed $18,500 for each academic year.

## ORDER

On the basis of the foregoing, it is hereby ORDERED that The University of Birmingham, The Shakespeare Institute return $82,000 to the appropriate Stafford loan lenders and pay to the U.S. Department of Education $6,911.

Judge Richard I. Slippen

Dated: March 30, 2001

SERVICE

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

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[1] SFAP slightly understated the amount. The student would have been eligible for $25,500 over the three year period.
*[2] In re Modern Hairstyling Institute*, Docket No. 94-189-SA, U.S. Dep't of Educ. (September 19, 1995).
[3] *See* ED Ex. 3.
[4] A foreign school is not, however, required to comply with 34 CFR 668 Subpart E which pertains to the verification of information submitted by applicants in connection with the calculation of their expected family contribution. 34 C.F.R. § 668.51(c).
[5] It also seems highly probable that the student at issue knew or should have known that the loan amounts she repeatedly applied for over this three year period were improper. However, this is not to say that a school cannot be held accountable for the "independent" acts of fraud committed by individuals, if the school's violation of a Title IV program requirement led to the improper expenditure. *See In re Eugenio Maria de Hostos*, Docket No. 96-126-SP, U.S. Dep't of Educ. (February 19, 1998), ftnt 8.
[6] *See In re Christian Brothers University*, Docket No. 96-4-SP (January 8, 1997).