

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

In the Matter of

JON LOUIS SCHOOLS OF BEAUTY,

Respondent.

Docket No. 00-38-SP

Student Financial
Assistance Proceeding.

Appearances: Denise Morelli, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

John L. Braider, President, Jon Louis Schools of Beauty, North Babylon, NY, for Respondent.

Before: Frank K. Krueger, Jr., Administrative Judge.

DECISION

In December 1996, the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), conducted a program review under Title IV of the Higher Education Act of 1964, as amended, at the Jon Louis School of Beauty in North Babylon, NY, which includes a branch in the Bronx, NY, the Jon Louis School of Beauty at Patchogue, NY, and the Jon Louis School of Beauty at Jamaica, NY. Based on this review and on follow-up file reviews by the schools required by SFAP, SFAP initiated a termination and fine proceeding against the schools in February 1997. SFAP alleged that the Jon Louis Schools in question failed to pay refunds and student credit balances, paid refunds and credit balances late, and maintained excess funds in violation of Federal regulations. As a result, the Jon Louis Schools at North Babylon/Bronx, and Patchogue were terminated from participation in all programs authorized under Title IV and fined \$177,500 and \$39,000, respectively. The Jon Louis School at Jamaica was neither fined nor terminated. *Jon Louis School of Beauty*, Docket Nos. 96-108-ST & 97-19-ST, U.S. Dept. of Educ. (Initial Decision, April 3, 1998) (Decision of the Secretary, Nov. 17, 1999). [\[1\]](#)

Based on the December 1996 program review and on information disclosed during the termination and fine proceeding, on April 26, 2000, SFAP issued a final program review determination which is the subject of this proceeding. The program review determination involves the Jon Louis Schools at North Babylon/Bronx, Patchogue, and Jamaica. Each of these schools is owned by separate corporations in which John L. Braider is 100 percent owner and President. [\[2\]](#) SFAP seeks refunds for lenders of loans made under the Federal Family Education Loan (FFEL) program and reimbursement to ED of interest and special allowances paid by ED on those loans; seeks reimbursement for interest and special allowances concerning late FFEL refunds; seeks repayment for improperly-awarded Pell Grants; seeks “imputed interest” on the improperly-awarded Pell Grants and on late and unpaid Pell Grant refunds; and seeks “imputed interest” on excess cash maintained by the schools during the award years in question. In the final program review determination, SFAP also sought “imputed interest” on unpaid and late credit balances owed to Jon Louis students; in its brief SFAP inexplicably dropped this claim.

For the reasons provided below, I find in part in favor of SFAP and in part in favor of the Respondent.

DISCUSSION

After Respondent filed its appeal with SFAP, and after the parties exchanged briefs and exhibits, there remains little in dispute. The evidence shows, and I find, that Respondent still owes the lenders of FFELs \$11,067.39 in FFEL refunds for ten students. See ED Exhibit 11. Respondent owes ED an additional \$3,109.49 in interest and special allowances paid by the Department on these loans during the period in which the refunds remained unpaid. *Id.* Respondent owes the Department another \$8,457.49 in interest and special allowances for 111 FFEL refunds which were paid late. See ED Exhibit 12. Respondent also owes the Department \$17,382 for improper Pell Grants, which were awarded to 21 students and which remain unpaid. See ED Exhibits 13 and 14.

The only remaining factual disputes involve SFAP's calculations with respect to several students. Respondent argues that student FR6 is included as having received an FFEL, while the evidence shows that FR6 is the same as student #97, who is shown on other documents as having received a Pell Grant. Student FR6 was identified by Respondent as being owed a FFEL refund when it conducted the full-file review mandated by SFAP after it issued its program review report. See ED Exhibit 11-1. Student # 97 is listed as having the same social security number as student FR6 and was identified by SFAP during its on-site review as having received a Pell Grant. Respondent argues that the interest calculation done for student FR6 is incorrect.^[3] However, there is the possibility that this student received both a Pell Grant and an FFEL. Since Respondent has the burden of proof, I find in favor of SFAP.

Respondent also argues that student # 61 is improperly included twice in SFAP's liability calculation. Student # 61 is included on ED Exhibit 13 and again on ED Exhibit 14. ED Exhibit 13 involves Pell Grants improperly disbursed to students while enrolled at Jon Louis. ED Exhibit 14 involves Pell Grants improperly disbursed to students after they withdrew from Jon Louis. Thus, it is entirely possible that student # 61 received two Pell Grants, one improperly awarded while student # 61 was still enrolled at Jon Louis, and one improperly awarded after student # 61 withdrew from Jon Louis. Again, since Respondent has the burden of proof, I find in favor of SFAP concerning this student.

In addition to seeking payment for late and unpaid refunds, improper Pell Grants, and for interest and special allowance payments, SFAP seeks an additional \$4,681.69 in imputed interest on late and unpaid Pell Grant refunds and unauthorized Pell Grant awards. SFAP also seeks an additional \$985 in imputed interest on excess cash maintained by the Respondent. Nowhere in its program review report, its final program review determination, its exhibits, or its brief does SFAP explain or otherwise justify its claim for this assessment. Although SFAP cites no regulations or other authority for this assessment, there is some authority in the case law of this tribunal for the award of imputed interest. See, e.g., *Phillips Colleges, Inc.*, Docket No. 92-64-SA, U.S. Dept. of Educ. (Aug. 24, 1994); *International Career Institute*, Docket No. 92-144-SP, U.S. Dept. of Educ. (July 7, 1994); *Puerto Rico Technology and Beauty College*, Docket No. 92-73-SA, U.S. Dept. of Educ. (Aug. 31, 1992). These cases awarded imputed interest on Title IV audit and program review liabilities under the theory that audit and program review appeals, such as this proceeding, are in the nature of breach of contract cases. The award formula under a breach of contract action is to place the party who suffered the breach in a position that the party would have been in but for the breach. Thus, if SFAP could show that it would have invested the money which Respondent owed in interest bearing accounts or investments, it may be entitled to imputed interest. But SFAP made no attempt to justify imputed interest as a legal theory, much less make any attempt to justify its award in this case. In fact, SFAP does not even define the term "imputed interest." In its calculations, SFAP uses 5 percent to calculate the imputed interest, but does not state how it arrived at that figure. Although Respondent has the burden of proof, see 34 C.F.R. § 668.116(d) (1999), SFAP has the initial burden of establishing a *prima facie* case. See *Sinclair Community College*, 75 Ed. Law Rep. 1296 (1991). Thus, I find that SFAP has failed to meet its burden of coming forward with information to establish its *prima facie* entitlement to imputed interest.

ORDER

Except as noted above, SFAP's final program review determination is affirmed. Respondent is ordered to

reimburse the appropriate holders of FFELs \$11,067.39 for unpaid refunds. Respondent is further ordered to pay the Department of Education \$28,948.98 as reimbursements for special allowances and interest payments made by the Department on late and unpaid FFEL refunds, and as reimbursement for improperly awarded Pell Grant funds.

Frank K. Krueger, Jr.
Administrative Judge

Dated: November 21, 2000

SERVICE

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

Denise Morelli, Esq.
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^[1] In August 1996, SFAP also initiated a termination and fine proceeding against the Jon Louis School of Beauty located at Levittown, NY, which was subsequently joined with the proceeding against the Jon Louis Schools located at North Babylon/Bronx, Patchogue, and Jamaica. The Levittown school was also terminated from the Title IV programs and fined \$63,000. The Levittown school is not involved in this proceeding.

^[2] *Jon Louis*, Initial Decision, at 1-2.

^[3] SFAP uses 9 percent when calculating interest and special allowances owed on FFELs and uses 5 percent when calculating “imputed interest” on late and unpaid Pell refunds.