



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

In the Matters of

Docket No. 03-68-SP
Docket No. 03-69-SP
Docket No. 03-70-SP

AVANTI HAIR TECH,

Student Financial
Assistance Proceedings

Respondent.

Appearances: Gerald M. Ritzert, Esq., of Fairfax, VA, for the Respondent

Russell B. Wolff, Esq., of Washington, D.C., Office of the
General Counsel, United States Department of Education for the
office of Federal Student Aid

Before: Allan C. Lewis, Administrative Law Judge

DECISION

This is an action initiated by the office of Federal Student Aid of the United States Department of Education (FSA) to recover \$1,035,112 in disbursements of Title IV funds for the award years 1999/2000, 2000/2001, and 2001/2002 from Avanti Hair Tech (Avanti). In a program review report, FSA concluded: 1) there was falsification of financial aid records at Avanti's West Palm Beach location; 2) there were falsified ability to benefit examinations at Avanti's West Palm Beach location; 3) there remained unresolved, conflicting information in student files in Avanti's Winter Park and Orlando locations. As a result of these determinations, Avanti was required to perform a 100% review of the student files in certain pertinent areas for the three schools and have these reviews audited and certified by an independent CPA. Avanti did not perform the file reviews. As a result, FSA issued a program review determination seeking the recovery of all Title IV funds disbursed during the three award years under review, *i.e.* \$1,035,112. Based upon the findings of fact and conclusions of law, *infra*, it is concluded that the findings are sustained and that the United States Department of Education may recover \$1,035,112 less certain minor reductions.

The first finding challenged by Avanti concerns the falsification of student financial aid records at its West Palm Beach location.¹ It is based upon the affidavits of six students who were part of a sample of 34 students whose files were examined by the FSA auditors.² According to the six students, Avanti, unbeknownst to them, included false information regarding the students' marital status, financial situation, or family status in their Free Application for Federal Student Aid (FAFSA) and/or their Institutional Student Information Record (ISIR). The false information made the students eligible for Pell Grant awards or increased the amount thereof.

While Avanti challenges this finding, it does not dispute that the erroneous information was included in these students' FAFSAs and ISIRs.³ It asserts, however, that the students provided this false information to Avanti's personnel who then included this information in these documents. At the West Palm Beach location, the financial aid secretary was responsible for compiling the student information and completing the Pell Grant applications. She swears that she did not falsify any information contained in a student's FAFSA, ISIR, or any other financial aid document and she further swears that the erroneous information was the result of false representations made to her by each student. Stuart Smith, Sr., the chief operating officer of Avanti's parent corporation, opines that these students were biased in their sworn statements because they had to explain this false information as part of the application process to complete

¹ The three findings at issue were also the basis of a prior action before the U.S. Secretary of Education to revoke Avanti's provisional program participation agreement. On June 17, 2002, the Secretary revoked Avanti's provisional certification and Avanti became ineligible to participate in the student financial assistance programs. Subsequently, Avanti filed a request for reconsideration before the Secretary and included two binders of documentation that provided additional information that addressed the merits of the Secretary's findings. In this proceeding, Avanti included the same two binders of documents with its appeal. The tribunal treated these materials as Avanti's brief and evidence in this matter.

² FSA's sample consisted of 34 students. Of these students, 26 student received Pell Grant awards for the award year 1999-00. These 26 students were interviewed by FSA during the audit in March 2002 and, subsequent to the revocation action, SFA obtained affidavits from six of the students. A seventh student, who apparently had a falsification in her file, could not be located by FSA to obtain an affidavit. The six students represent 23% of the group that received Pell Grant awards (6/26).

³ For example, the FAFSA for student #10 reported that she was single, earned less than \$3,000 and had no dependents. To the contrary, her affidavit indicates she was married, had four dependents, and had a family income of \$30,000. Student #18 was classified under FAFSA and ISIR as an independent student due to children and/or dependents that she supported and had household size of two. According to her affidavit, she had no children or dependents and lived with her parents. As a dependent of her parents, her parent's income should have been used to calculate her need. It was not.

their studies in another school. As a result, he argues, they invented stories that Avanti had falsified documents and, in some instances, had forged their signatures to these documents.

Avanti has the burden of proof to establish that its disbursements were proper. *See* 34 C.F.R. § 668.116(d); In re Omni Technical School, Dkt. Nos. 03-65-SP, 03-66-SP, and 03-67-SP, U.S. Dep't of Education (Feb. 6, 2004); In re Modern Trend Beauty School, Dkt No. 98-109-SP, U.S. Dep't of Education (March 14, 2001), certified by the Sec'y (Oct. 11, 2001); In re Classic Beauty Colleges, Dkt. Nos. 96-147-SP, 97-33-SP, and 97-58-SP, U.S. Dep't of Education (Nov. 3, 1997). Initially, most of the students interviewed indicated that they signed their FAFSAs and their enrollment contracts before much, if any, of the information was inserted by Avanti's financial aid secretary. A few students indicated that their signatures were forged on the FAFSAs. Thus, the financial aid secretary had the opportunity and means to insert erroneous information without the student's knowledge. Moreover, the financial aid secretary, not each student, understood the nuances of the factors affecting the amount of a Pell Grant award and was, therefore, in a much better position to assess and determine the information to report erroneously. Lastly, the magnitude of students with erroneous information, *i.e.* 23% of the interviewees, indicates a systemic problem that, again, points to the financial aid secretary as the source of the erroneous information.

In light of the above, I find no credence to the averment by Avanti's financial aid secretary that each student provided her with the erroneous information as well as the suggestion of an anti-Avanti bias of the students. Accordingly, I conclude that Avanti failed to sustain its burden of proof on this matter and uphold FSA's finding of falsification of financial aid records.

Due to the systemic nature of this finding, FSA requested in its program review report that Avanti determine the extent of its ineligible disbursements. Avanti was required to conduct a 100% file review for the award years 1999-00, 2000-01, and 2001-02 and to produce certain verifying documents. In addition, the review was to be audited by an independent CPA followed by an opinion letter.

FSA's request for a 100% file review is consistent with Departmental policy. In In re Classic Beauty Colleges, Dkt No. 96-147-SP, U.S. Dep't of Education (Sept. 30, 1997), the tribunal found a full file review appropriate when the student file sample revealed numerous and varied violations exhibiting systemic problems. In In re Cabot Colleges, Dkt. No. 97-15-SP, U.S. Dep't of Education, (Sec. Dec., July 25, 2000), the Secretary endorsed the Department's policy set forth in IRB Memo S-89-11 regarding the circumstances in which a complete file review may be requested. Under the policy, a significant problem exists when the error rate in the student file sample exceeds 10% and this warrants, in general, a file reconstruction or review. When the percentage of error rate ranges between 11% and 35%, all the award years under review, usually two award years, should be included in the file review.

In the instant case, 23% of the students interviewed had files containing erroneous information affecting either the student's eligibility for Pell Grant funds or the amount thereof. While the record is unclear whether this percentage is derived from a proper statistical sample, it is, nonetheless, a significant number of instances. In addition, these instances are not the result of simple errors by the school. They reflect overt, intentional acts of fraud. In this situation, it is

clearly proper for the program review report to require a complete file review and verification by a CPA for the three award years.

Inasmuch as Avanti did not comply with the 100% file review request and, therefore, did not determine the amount of its ineligible disbursements of Pell Grant funds, FSA sought to recover all Pell Grant funds disbursed during the three award years, *i.e.* \$495,915. SFA may recover this amount less a minor adjustment for the award year 1999-00. This is the award year in which the SFA auditors determined that 18 of the 26 students interviewed had no problems associated with their FAFSAs or ISIRs. The auditors also possessed the information regarding the amount of Pell Grant disbursements to these students. Accordingly, this amount should have been excluded from the assessment. It was not. Therefore, it is excluded here.

The second finding focuses on falsified ability to benefit (ATB) tests and/or test results included in the student files at Avanti's West Palm Beach location. In order to receive Title IV financial assistance, a prospective student is required to pass an ATB test, absent a high school diploma or its equivalent. 34 C.F.R. § 668.32(e). This test must be independently administered by a certified test administrator or a test administrator at an assessment center. 34 C.F.R. § 668.151. In the instant case, Avanti did not utilize the services of an assessment center. Instead, it chose to employ the services of a certified test administrator to administer the test to prospective applicants.

In March 2002, FSA interviewed 29 students whose files contained ATB tests. Of the 29 students, 28 students indicated that they were never administered ATB examinations and that the ATB examinations in their files were not taken by them. In addition, these students stated that they had never met Bridget Garcia, the individual engaged by Avanti to administer these examinations.⁴ Subsequently, FSA obtained affidavits from five of these students that confirmed their interview statements; that is, the five did not take the ATB tests and, in three of the five instances, their signatures on these tests were forged. In the other two instances, where a student was unsure about the signature or made no statement regarding its authenticity, these students affirmed that they had never met Bridget Garcia, Avanti's certified test administrator.

Avanti challenges this finding asserting that the accusations are devoid of any objective evidence of falsified documents, are not based upon any written declarations by students, and rely solely on anecdotal evidence.⁵ In its view, the purported oral statements by the 29 students were fabricated stories for a variety of reasons. They were concocted as part of their cover up of the false financial information included in their FAFSAs and ISIRs. These lies, it argues, were the result of pressure asserted by a fired Avanti instructor who steered these students to her new

⁴ One student stated that she did take an ATB examination; it was, however, administered by her teacher, a violation of the rules governing the administration of the examination.

⁵ It should be noted that these averments were made in Avanti's July 29, 2002, filing with the Secretary seeking reconsideration of his revocation decision. At this time, FSA auditors had only their notes of the interviews with the students. After Avanti's filing, FSA obtained affidavits from the five students referred to in the preceding paragraph.

school. It also argues that the resident alien status of these students made them subject to manipulation by FSA.

The tribunal reviewed the affidavits, considered the arguments urged by both sides, and concludes that Avanti fails to carry its burden of proof in this matter. The affidavits by the five students clearly state that they did not take the ATB test, yet ATB tests purportedly taken by them were found in the files of four students.⁶ Affidavits are statements made under oath and are entitled to great weight. Similar statements by students made to FSA reviewers, while hearsay, are also entitled to some consideration. The sheer number of statements belies the notion suggested by Avanti that these statements are fabricated and false.

In addition, a visual examination of the answers on the ATB tests for four of the five affiants reveals the presence of strikingly similar handwritten numbers in the answer spaces. There is also similar spacing of these numbers in relation to the lines designated to record the answers. These observations suggest that the answers were written by the same person and support the proposition that the tests were fabricated. Accordingly, the finding of falsified ATB tests is sustained.

The program review report of December 20, 2002, requested Avanti to perform a 100% file review of all students admitted on the basis of ATB tests administered by Bridget Garcia during the award years 1999-00, 2000-01, and 2001-02. Avanti was required to provide information concerning each student and a statement from each student verifying that an independent tester certified by Wonderlic administered the test properly to him or her. This information was to be audited by an independent CPA and an opinion rendered regarding Avanti's compliance therewith.

The request for a 100% file review is consistent with Departmental policy. Falsification of ATB tests is a flagrant violation of the program rules and it was pervasive. Accordingly, the 100% file review was clearly warranted.

Avanti did not comply with the file review request. As a result, FSA sought the recovery of \$495,915 of Pell Grant funds, the same amount under the prior finding. This figure represents the total amount of Pell Grant funds disbursed by Avanti at the West Palm Beach location during the three award years. While this figure should be reduced by the disbursements to students who qualified for Pell Grants due to a high school diploma or its equivalent, the record contains no evidence to ascertain the amount of these disbursements. Therefore, in view of Avanti's failure to comply with the request for a file review, FSA may recover \$495,915, the total amount of Pell Grant disbursements by Avanti. Since the amount recovered under this finding exceeds FSA's recovery under the first finding, this is the amount of recovery with respect to Avanti's West Palm Beach location.

FSA's third finding addresses the presence of conflicting information discovered in the files of students attending the Winter Park and Orlando locations. FSA auditors reviewed 78

⁶ The ATB test for the fifth affiant is not in the record.

files of Winter Park students who received Title IV assistance and determined that 52 of those files contained inconsistent information that would affect the eligibility or amount of Federal assistance to which the student was entitled. The areas of conflicting information included the student's marital status, number of dependents, amount of income earned by a student, his or her spouse, or parents, household size, or dependency status. The FSA auditors performed a similar review of 40 files of Orlando students and determined that 28 of those files had inconsistent information.

Since this issue was one of the bases relied upon by the Secretary in his revocation of Avanti's provisional program participation agreement, Avanti included additional documentation addressing these inconsistencies in the students' files as part of its request for reconsideration of the revocation action. Of the 52 Winter Park files initially questioned by the auditors, Avanti failed to submit any documentation for 15 of the student files or 19% of the Winter Park student files sampled (15/78). As a result of the additional documentation or a reexamination by FSA, FSA determined that the purported inconsistencies were resolved in 22 files. Hence, under FSA's view, there remained 30 files or 38% of the student file sample (30/78) that had unresolved inconsistencies at the time of the issuance of the program review report in December 2002.

The situation is similar for the Orlando school. The audit of 40 student files revealed 28 files with purported discrepancies. Of the 28 files initially questioned, Avanti failed to submit any documentation for 13 files or 33% of the total files audited (13/40). As a result of the additional documentation or a reexamination by FSA, FSA determined that purported inconsistencies remained in 17 files or 43% of the total audited files (17/40).

As explained previously, when error rates in the student file sample exceeds 10%, a file reconstruction or review may be warranted. Here, the error rates were 19% and 33% for Winter Park and Orlando, respectively, when one includes only the discrepant files that Avanti did not contest before the Secretary. The error rates rise significantly to 38% for Winter Park and 43% for Orlando if one adds thereto the files for which information was submitted to the Secretary but was deemed insufficient to resolve the discrepancies. Accordingly, it was proper for FSA to require a 100% file review and a subsequent audit and opinion letter by an independent CPA.

Once again, Avanti did not comply with the file review request. As a result, FSA seeks to recover \$539,197, the total amount of Pell Grant funds that were disbursed to the students attending the Winter Park and Orlando locations during the three designated award years. FSA seeks this amount despite the fact that its auditors determined, in the initial audit, that there were no inconsistencies in the student files for 33% of the student sample for Winter Park (26/78) and 30% of the student sample for Orlando (12/40). The tribunal finds it troublesome that statistics are used by FSA to justify a demand for a complete file review of the student population, yet the same statistics are apparently inadequate for FSA to project with reasonable certainty an estimated amount that reflects the disbursements to students whose files contain inconsistencies and excludes the disbursements to students whose files contain no inconsistencies. This record, however, does not include the statistical information and related testimony that might support such an approach even if this approach were found to be proper.

It is apparent, however, that FSA did not reduce its monetary demand to reflect the 38 students in the sample whose files were found to contain no discrepant information. FSA auditors had the specific information regarding the amount of Pell Grant disbursements to them. Accordingly, FSA may recover \$539,197 less the amount of disbursements to these 38 students.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Avanti Hair Tech immediately and in the manner provided by law pay to the United States Department of Education the sum of \$1,035,112 less an amount determined in accordance with this decision.

Allan C. Lewis
Chief Administrative Law Judge

Dated: November 10, 2004

SERVICE

A copy of the attached decision was on November 10, 2004, sent by certified mail, return receipt requested to the following:

Gerald M. Ritzert, Esq.
Ritzert & Leyton
Suite 400
11350 Random Hills Road
Fairfax, VA 22030

Russell B. Wolff, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110