



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

In the Matter of

Docket No. 04-08-SA

INTERACTIVE LEARNING SYSTEMS,

Federal Student Aid
Proceeding

Respondent.

ACN: 06-1999-10001

Appearances: Stanley A. Freeman, Esq., Joel M. Rudnick, Esq., and Dennis M. Taylor, Esq., of Powers Pyles Sutter & Verville, Washington, D.C. for Interactive Learning Systems

Sarah L. Wanner, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

Interactive Learning Systems (ILS), participates in the federal student financial aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV), as amended. 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* On December 5, 2003, the Office of Federal Student Aid (FSA), U.S. Department of Education (ED) issued a Final Audit Determination (FAD) in which it sought the return of \$985,798 in federal funds from ILS because of two findings: (1) ILS disbursed funds at two locations which were not accredited, and (2) ILS disbursed Title IV funds to ineligible students and failed to calculate and return refunds in a timely manner. The FAD covered the period from August 18, 1995, to December 8, 1999. In conjunction with its appeal of these findings, ILS requested and was afforded the opportunity to present an oral argument on these issues.

FINDING 1 – INELIGIBLE LOCATIONS

Prior to 1993, ILS had its main campus in Dallas, Texas, but desired to expand its operations by providing instruction at two new locations, hereafter referred to as Hillcroft and

Pasadena. Pursuant to this plan, ILS enrolled students to attend classes at both of these locations. FSA approved Hillcroft and Pasadena as additional locations in October 1996, and ILS awarded Title IV funds to students attending these locations. FSA now asserts that neither the Hillcroft nor Pasadena locations received the appropriate accreditation during the times in question and acknowledges that its certification for these locations was invalid. Consequently, it demands the return of all Title IV funds disbursed at Hillcroft and Pasadena. ILS contests this determination by highlighting the fact that both locations were appropriately accredited and certified by FSA. ILS concedes that, even if the accreditation status were deficient or erroneous, FSA is barred by the statute of limitation from any recovery, or in the alternative, this is only a minor, technical violation that should result in minimal financial recovery by FSA.

Hillcroft Location

On July 31, 1995, ILS sent a letter to its accrediting agency, Council on Occupational Education (COE) informing it that ILS wished to offer a partial English as a Second Language (ESL) program at a new location called Hillcroft and that this program would be avocational. ILS assured COE that no vocational programs would be offered at this location. After further discussion and interchanges of questions and answers, on October 11, 1995, COE informed ILS that it was deferring approval of its request to offer the partial ESL program pending ILS's submission of a business plan. In July 1996, ILS informed COE that it wished to add an occupational program at Hillcroft and reclassify the location as an extension. On July 17, 1996, COE identified the site as an extended classroom site and advised ILS that, if it planned on offering an occupational program, Hillcroft would become a branch of the main campus and would have to file a formal accreditation application with COE. ILS never added an occupational program and never filed a formal application for accreditation.

When ILS submitted its June 1996 application to FSA for a recertification of its pre-existing eligibility to disburse Title IV funds, it included Hillcroft in the application, identifying Hillcroft as an ESL-only location. On October 24, 1996, FSA issued an Eligibility and Certification Approval Report (ECAR) to ILS that, in addition to other items, confirmed Hillcroft as an approved additional location. FSA did not request any additional information from ILS about this site and did not require ILS to submit an application for approval of Hillcroft as an additional location. The Hillcroft operation was closed in September 1997 and relocated to another site; both COE and FSA approved of the new location. FSA seeks to disallow Title IV funds disbursed to the Hillcroft students during the August 1995 to August 1997 period because the site was never accredited and thus not eligible for Title IV funds.

Pasadena Location

On June 4, 1996, ILS notified COE that it would like to offer a complete ESL-only program at its new Pasadena location and that, at a later date, it would add a vocational program at that site. In support of this proposal, ILS submitted a business plan which is one of the first steps to obtaining accreditation. COE responded on July 2, 1996, providing interim approval of ILS's request and explaining that "this approval applies only to the **PLAN** for the extension

campus, not to the extension campus itself.”¹ The letter further advised that once instruction had begun, ILS must request a site visit, and that following this, the site visit report, the application, and the institution’s response to the team report will be reviewed by the Commission. Additionally, the letter restated that ILS agreed that only an avocational ESL program would be offered at Pasadena to be followed in 12 to 18 months by a Computer Applications Program. When ILS submitted its June 1996 application to FSA for a recertification of its eligibility to disburse Title IV funds, it included Pasadena in the application, identifying Pasadena as an ESL-only location. On October 24, 1996, FSA issued ILS an ECAR that confirmed Pasadena as an approved additional location.

In its June 4, 1996, accreditation application to COE, ILS explained that it intended to offer a vocational program at Pasadena. Thereafter, ILS made repeated inquiries to COE regarding its accreditation and COE responded by saying it was deferring action on Pasadena’s final approval pending inclusion of an occupational program. In 1999, ILS again applied to FSA for a recertification of its eligibility to disburse Title IV funds and again listed Pasadena as an eligible location. This eligibility was granted.

On April 18, 2000, COE granted approval of the accreditation application for Pasadena as a location after COE approved ILS’s plan to offer three vocational programs at Pasadena, in addition to the original ESL program. In the letter to ILS from COE’s then Executive Director, Mr. Bowman, he explained that the accreditation approval was based on an April 13, 2000, council meeting of the executive committee and that the effective date of the accreditation was July 1, 1996, which was the date the original application for accreditation was received from ILS. At a later point, Mr. Bowman elaborated on the use of a July 1, 1996 effective date of the accreditation by saying:

[c]onsistent with the standard COE practice described earlier, the Commission deemed its approval of the Pasadena location to have been effective as of July 2, [sic] 1996. This date matches the date on which the Commission approved the business plan and on which ILS was thereby authorized to commence operations and provide instructions to students at the Pasadena location. The April 18, 2000 letter confirms that the Commission considers the Pasadena location to have been operating within the scope of ILS’s accreditation since July 2, [sic] 1996.²

Discussion

The foundation for FSA’s Finding 1 of the FAD is the position that the Hillcroft location was never accredited during its two years of existence, and the Pasadena location was not accredited until April 13, 2000, the actual date the COE executive committee approved such a move after evaluating the occupational courses to be offered by ILS at Pasadena. FSA argues that all the language in previous correspondence from COE in response to applications and

¹ See Resp. Ex. 9-51.

² See Resp. Ex. 8-3.

inquiries from ILS regarding accreditation of these two sites provide nothing more than deferrals on the issue, or approvals of something less than the determinative accreditation issue. FSA insists that with this April 18, 2000, letter, COE attempted to retroactively accredit the Pasadena branch for the period it received Title IV funds, and that COE had no authority to accomplish that.

Furthermore, FSA points out that COE has been recognized by the Secretary of Education as a reliable authority to assess the quality of postsecondary education at institutions that offer vocational or occupational courses. FSA maintains that COE does not have authority from the Secretary to evaluate or accredit avocational courses, such as the ESL classes ILS offered at Hillcroft and Pasadena. *See* 34 C.F.R. § 602.13(e). Meanwhile, ILS maintains that both Pasadena and Hillcroft were fully accredited throughout the time periods addressed here.

ILS argues that COE's letter of October 11, 1995, explaining that the sites could not be instructional service centers, and deferring action on ILS's application until ILS submitted business plans for them, constituted approval of Hillcroft and Pasadena as extended classroom sites. ILS made no further submissions or inquiries to COE regarding Hillcroft. As to Pasadena, however, ILS next argues that COE's July 2, 1996, approval of its business plan constitutes an initial approval of Pasadena as accredited location. It asserts that the June 19, 1998, "deferral" letter from COE served only to delay the final approval of Pasadena, and did not rescind or disturb the initial approval. Furthermore, with regard to both locations, ILS argues that COE's standards do not prohibit it from accrediting an ESL-only location, and that ESL training constitutes occupational/vocational training under ED's regulations. 34 C.F.R. §668.8(j)(1).³ Additionally, ILS asserts that once Hillcroft and Pasadena were accredited by COE and certified as eligible by FSA to disburse Title IV funds, FSA is now powerless to disturb this conclusion.

The accreditation of the two additional locations, Hillcroft and Pasadena, was not effective for Title IV purposes during the period at issue. With regard to the Hillcroft location, whether it is referred to as a branch or extended classroom, there is no evidence ILS ever offered any class other than its avocational, partial ESL program during its two years of existence. It did not submit a business plan or even an application for accreditation to COE. For these reasons it cannot be even reasonably argued that it was accredited and, therefore, eligible to apply for certification with FSA. The Hillcroft site was never accredited.

For the Pasadena location, there are no facts from which one could reasonably support a position that COE accredited Pasadena until the executive committee's meeting on April 13, 2000, which was memorialized in a letter to ILS dated April 18, 2000. Significantly, the school's accreditation certificate – that magical piece of paper that serves as one of the bases for Title IV eligibility – was not received until COE's April 18, 2000, letter. Mr. Bowman indicated during later questioning that it was common practice to make the effective date of the

³ Programs which are ESL-only programs may be eligible for Title IV funds if the institution admits to the program only students who the institution determines need ESL instruction to use already existing knowledge, training, or skills, and the program leads to a degree, certificate, or other recognized educational credential. 34 C.F.R. § 668.8(j)(1).

accreditation to be that of the date of the original application, but there is no support for this position. Similarly, this position defies common sense because the only reason FSA demands that an institution be accredited is to be assured the institution offers a quality education that meets guidelines set out by FSA. Certainly as of the date of the accreditation application, without any site visit or other evaluation of the educational program offered by Pasadena, it could not be said that Pasadena met those guidelines and ILS could not realistically believe it had the necessary accreditation. In fact, the April 18, 2000, letter states that its previous deferral on ILS's request for accreditation was based on "the approval of the new programs cited above [three vocational programs] by the Texas Workforce Commission (TWC) on April 4, 2000." It is obvious from the context that it was ILS's decision to offer vocational programs at Pasadena that prompted TWC's approval, and this was necessary for COE to make its accreditation decision. All of the necessary prerequisites to accreditation occurred in early 2000, but the final decision was not made until April 13, 2000.

Even if one were to accept ILS's argument that the effective date of the Pasadena accreditation was July 1, 1966, FSA is not bound by this conclusion because COE's scope of recognition extends only to those educational institutions that offer vocational/occupational training. By statute, the Secretary of Education has the authority to recognize only those accrediting agencies that accredit institutions of higher education to enable these institutions to establish eligibility to participate in the federal student aid programs. 20 U.S.C. § 1099b(m). Under 34 C.F.R. § 600.10(a)(2), any additional location or program not previously designated eligible must meet all the statutory and regulatory eligibility requirements, as determined by the Secretary, before it is deemed eligible. The Secretary considers the location or program to be eligible to participate as of the date the Secretary certifies that location or program. The Secretary has further limited the scope of recognized accrediting agencies to those that grant accreditation to institutions that provide vocational training. *In re Sara Schenirer Teachers Seminary*, Dkt. No. 94-49-ST, U. S. Dept. of Educ. (July 21, 1995). Accordingly, the Secretary has recognized COE for the accreditation of only vocational programs and not until April 13, 2000, did ILS have such programs at its Pasadena location. The ESL-only programs at Hillcroft and Pasadena did not meet that criteria because, among other reasons, ILS presented them to COE as avocational in nature. There is no way the programs at these two sites could ever have been accredited by COE before April 2000. Accordingly, I find that neither the Hillcroft nor Pasadena locations were properly accredited during the time in question and were, therefore, ineligible for federal student aid.

The programs were also not eligible ESL programs under 34 C.F.R. § 668.8(j). Under this regulation, ESL programs are only eligible if, in addition to satisfying the relevant provisions in 34 C.F.R. § 668.8, the school only admits to the program students who need ESL instruction to use already existing knowledge, training, or skills; and the program leads to a degree, certificate, or other recognized educational credential. Even if the Secretary did recognize COE as an agency with authority to accredit programs which satisfy the requirements of 34 C.F.R. § 668.8(j)(1), ILS has not presented any evidence that its students meet the necessary criteria.

Unfortunately, a finding that the programs at Hillcroft and Pasadena were ineligible for

federal student aid does not conclude the issues raised in Finding 1 of the FAD. For reasons not fully explained in the filings, ILS listed both the Hillcroft and Pasadena sites on its application to FSA for recertification in 1996. Those FSA personnel responsible for making the eligibility determinations erroneously approved the certification for these two sites then, and again in 1998 for Pasadena. As a consequence, ILS was permitted to disburse Title IV funds at those two locations. For a variety of reasons, ILS argues that it should not be required to suffer the consequence of those mistakes.

ILS first argues that there is internal correspondence within FSA which addresses the range of severity of regulatory violations by schools and attempts to categorize them as either technical, which should involve no adverse consequences to the school, or substantive, which demand corrective actions, such as a return of funds or a termination of Title IV eligibility.⁴ ILS views its situation at Hillcroft and Pasadena as one that falls within the technical violation category. I cannot agree with this conclusion. The accreditation of an institution or its programs is one of the most critical and fundamental requirements for Title IV eligibility.⁵ In its absence, there can be no certification; the accreditation requirement cannot be waived. 34 C.F.R. § 600.6(a).

ILS next argues that FSA is barred from recovering Title IV funds disbursed at these two locations because of the six-year statute of limitations contained in 28 U.S.C. § 2415. The period of recovery for these funds began in 1995 and concluded with the April 2000 accreditation of the Pasadena location. ILS maintains that its relationship with FSA is contractual in nature and therefore the statute of limitations applies. As correctly pointed out by FSA, the limitation applies only to actions by the United States to actions for money damages. This tribunal has held that the statutes of limitation set forth under 28 U.S.C. § 2415 and 20 U.S.C. §1091a are inapplicable to a Subpart H proceeding. *See In the Matter of Platt College*, Dkt. No. 90-2-SA, U.S. Dept. of Educ. (Initial Decision on Remand) (Oct. 31, 1991); *In re Belzer Yeshiva*, Dkt. No. 95-55-SP, U.S. Dept. of Educ. (June 19, 1996). FSA seeks only to recoup Title IV funds which were improperly disbursed to ILS for the years in question. It is not seeking damages. Additionally, the administrative determination of the amount of funds that ILS must reimburse FSA will be rendered by this tribunal. *See In the Matter of Spartan Health Sciences University School of Medicine*, Dkt. No. 98-7-SP, U.S. Dept. of Educ. (July 16, 1998), certified Jan. 12, 1999.

ILS has failed to meet its burden of persuasion that its ESL classes at Hillcroft and Pasadena were properly accredited during the period in question, nor has it persuaded me that FSA is barred from recovering these improperly disbursed Title IV funds. ILS must reimburse FSA for the \$974,735 in federal student aid funds it disbursed to its students at the Hillcroft and Pasadena locations.

⁴ Performance Improvement and Procedures Division Memorandum 97-14, dated September 11, 1997. Resp. Ex. 18.

⁵ *See In the Matter of Baytown Technical School, Inc.*, Dkt. No. 91-40-SP, U.S. Dept. of Educ. (Decision of the Secretary) (April 12, 1994); *In the Matter of Fundacion Educativa Ana G. Mendez*, Dkt. No. 94-30-SA, U.S. Dept. of Educ. (July 16, 1998).

FINDING 2 – MANAGEMENT CONTROL WEAKNESSES

In Finding 2 of the FAD, FSA seeks to recover \$19,282 in improperly disbursed funds as a result of management control weaknesses. Within this finding, Office of Inspector General (OIG) auditors found four ineligible students who had not passed the required ability to benefit test and assessed a liability of \$4,245. I agree with this assessment; however, ILS maintains that it issued a check to ED for \$2,773 for this finding. ILS provided no proof that such a check existed or, in fact, that the amount was paid. OIG auditors next found that three students had insufficient citizenship documentation in their files. ILS has not persuaded me otherwise and is liable for \$6,139. OIG auditors next found that 10 student files had excessive refund calculations. I find ILS is liable for \$3086 in unpaid refunds for these 10 students. OIG auditors next found that six students received Pell Grant overawards and demanded the return of \$4,187. I agree with this assessment; however, ILS maintains that it issued a check to ED for \$1,087 for this finding. ILS provided no proof that such a check existed or, in fact, that the amount was paid. Lastly, OIG auditors found that one student file lacked a complete verification. I agree with a liability assessment of \$1,625. Accordingly, I find ILS's liability for Finding 2 is \$19,282.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Interactive Learning Systems pay \$985,798 to the United States Department of Education.

Judge Richard F. O'Hair

Dated: March 8, 2005

SERVICE

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

Stanley A. Freeman, Esq.
Joel M. Rudnick, Esq.
Dennis M. Taylor, Esq.
Powers Pyles Sutter & Verville, P.C.
1875 Eye Street, N.W., Twelfth Floor
Washington, D.C. 20006

Sarah L. Wanner, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110