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

In the Matter of

Docket No. 05-50-SP

LA LAN 2000 COMPUTER TRAINING CENTER,

Student Financial Assistance Proceeding

Respondent.

Appearances:

James Victor Kosnett, Esq., Kosnett & Durchfort, Los Angeles, CA, for LA LAN 2000 Computer Training Center.

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

Before:

Richard I. Slippen, Administrative Judge

DECISION

LA LAN 2000 Computer Training Center (Respondent) is a for-profit institution located in Los Angeles, California. The Respondent is accredited by the Accrediting Commission of Career Schools and Colleges of Technology. On October 9, 2002, the Respondent and the United States Department of Education (Department) executed a Program Participation Agreement (PPA). The Department's Office of Federal Student Aid (FSA) has a policy of closely monitoring institutions that are new to the Title IV funding programs involving federally guaranteed student loans under the Higher Education Act of 1965 as amended (HEA). 20 U.S.C. § 1070 *et seq*. and 42 U.S.C. § 2751 *et seq*. Pursuant to that policy, FSA contacted the governing

state authority, the California Bureau for Private Postsecondary and Vocational Education (Bureau), when the provisional PPA expired on June 30, 2004. FSA reported the Bureau expressed a number of concerns about the Respondent. FSA also asserted that it had received a number of student complaints about the administration of Title IV funds. Subsequently, FSA conducted a program review site visit and issued a Program Review Report (PRR) on November 10, 2004. FSA stated that in a December 27, 2004 letter, the Respondent indicated that, for various reasons, including time and budget constraints, it was not going to respond to the PRR at that time. FSA also alleged that in an April 22, 2005 conversation with Leo Lukovsky (Lukovsky), the owner[1] of LA LAN, he indicated the Respondent did not intend to file a response to the PRR because the school was no longer operating. In a response to the Final Program Review Determination Letter (FPRD) dated June 2, 2005, Altangerel Bayartuul (CFO), the Chief Financial Officer of the Respondent, disputed FSA's assertion that Lukovsky said this, claiming that the Respondent was still operating, but without Title IV funds.

The FPRD assessed the Respondent a total liability of $1,556,294. On July 7, 2005, the Respondent requested an appeal of the findings in the FPRD.[2] Because the Respondent no longer participates in Title IV programs, the FSA determined that the issues in Findings 3, 10, and 13 were moot and no liabilities were assessed. Therefore, those findings are not before this Tribunal. Additionally, the FPRD indicated that the liabilities assessed in Findings 1, 6, 7, 12, and 14 were included in the funds ordered returned in Finding 2. The Department's brief decreased the other liabilities so they too became encompassed by the liabilities assessed in Finding 2. Because Finding 2 directs the Respondent to return all Title IV funds, including the liabilities assessed in all the other Findings, this decision will address it before the other Findings.

Finding No. 2

FSA alleged the Respondent either falsified its records or negligently disregarded Title IV requirements and, therefore, breached LA LAN's fiduciary duty to properly administer Title IV funds.[3] As a result, the Department directed the Respondent to conduct a file review. Rather than object to the file review, the Respondent ignored the request and consequently the Department held the Respondent liable for all Title IV funds disbursed between 2002 and 2005, or $1,556,294.00.

The FPRD states that although Respondent's catalogue provides "the applicant(s) must have a High School Diploma or its equivalent" and that "students who have completed their secondary education are required to provide the school with a copy of their high school diploma or transcript, or [a] copy of their GED certificate," very few of the files reviewed by FSA

[1] The CFO disputed that Lukovsky was the owner, claiming that he was the President and Chief Executive Officer of L.A. LAN 200, Inc., a California corporation. CFO Affidavit, at 2.
[2] It appears that in the Respondent's initial brief, dated January 31, 2006, the attorneys for the Respondent requested an oral argument before this Tribunal. If the Respondent is requesting an oral argument, then based on my discretion as the hearing official, I reject the request for an oral argument. *See* 34 C.F.R. § 668.116(g)(1)
[3] FPRD, at 7.

contained a copy of a high school diploma, transcript, or GED certificate.[4] The FPRD claimed the Respondent "systematically disregarded its own admission requirements and repeatedly acted to falsify information regarding Title IV eligibly for students who did not have a high school diploma or GED and who had not passed an Ability to Benefit Test (ATB)."[5]

The liabilities assessed in Finding 2 are a direct result of the Respondent's failure to properly respond to the Department's requirement to perform a file review. This file review was ordered because FSA found five violations within the original sample of 45 students "for whom the school falsely claimed that the student possessed a high school diploma or its equivalent."[6] Therefore, to determine the validity of Finding 2, this Tribunal will address the FPRD's evidence in relation to the five students, Students # 38, #39, #40, #41, and #42. The Department claimed these five students received Title IV funds without the required high school diploma or its equivalent.

The FPRD indicated Students #38 and #42 stated that they did not have a high school diploma or GED and that they gave this information to Lukovsky and the CFO. The CFO indicated in her affidavit that neither student notified her or Lukovsky that he did not have a diploma.[7] Rather, the CFO claimed that both students made written representations that they had high school diplomas and relied on those representations. In support of its contention, the Respondent provided Student #38's enrollment application,[8] Free Application for Federal Student Aid (FAFSA) for 2003-04 and 2004-05,[9] and his enrollment checklist.[10] Student # 42's FAFSA for 2004-05,[11] enrollment application,[12] Acknowledgement of Disclosure Received Form,[13] and enrollment checklist[14] were also offered in evidence.

The Department's reply brief argues the CFO provided false information. In support of its claim, the Department provided notes from the interview with Students #38 and #42.[15] The notes indicate, first, that Student #38 told the CFO he did not graduate from high school or get a GED, and second, that he told Lukovsky that he only completed the 8th grade. The Department

[4] FPRD, at 6.
[5] FPRD, at 6.
[6] ED Brief, at 10. In addition to those five cases, the FPRD alleged that the Respondent made errors in relation to two other cases. First, FSA alleged also that in one case, the Respondent continued to receive funds on behalf of a student who had been killed as a result of gang violence, but because the Department acknowledges that the Respondent returned the money collected on behalf of the deceased student, this issue is not before the Tribunal. Secondly, the FPRD alleged that the Respondent fraudulently changed a student's FAFSA form so that recipient of the funds was LA LAN, and not the college where the student wanted the federal funds directed. While both parties offered evidence disputing or supporting the allegation that the Respondent fraudulently altered a student's FAFSA form, the evidence provided by neither party is conclusive. However, Finding 2 is more affected by the issues addressed in the other five student files.
[7] CFO Affidavit, at 5, 6.
[8] Res. Ex 19.
[9] Res. EX 20.
[10] Res. EX 21.
[11] Res. EX 26.
[12] Res. EX 27.
[13] Res. EX 28.
[14] Res. EX 29.
[15] ED EX 5, 10.

provided a signed affidavit from Student #38 stating that he filled out only his signature and items 1 through 12 on the FAFSA form.[16] Because the question of whether a student has a high school diploma or GED is question 31 on the form, the implication seems to be that someone from LA LAN answered "yes" to that question. Similarly, the notes from the interview with Student #42 indicated that when he filled out his FAFSA he left the question about a high school diploma blank. Student #42 concluded that "Bonnie [the CFO] must have filled it out." In Respondent's reply brief, after attacking the notes of the reviewer and the credibility of the students, the Respondent concluded that "a program must rely on the statement of its students."[17]

The FPRD also asserts Student #39 informed Lukovsky he did not have a diploma. The CFO's affidavit indicated the same student said he had a diploma and filled out a request for a transcript.[18] The CFO indicated that while they do not know if the high school ever responded, the Respondent relied on the FAFSA.[19] FSA disputed the CFO's claim by offering the notes from the reviewer who interviewed Student #39.[20] According to the reviewer's notes, the student told the reviewer when he enrolled, Lukovsky had him complete the FAFSA. The student further claimed when he came to the question of whether he had graduated from high school, the student told Lukovsky that he did not graduate but was told by Lukovsky to lie and answer yes.[21]

In response to the FPRD's assertion that Student #40 was ineligible to receive Title IV funds, the CFO indicated the Student was eligible because he had passed an Ability to Benefit test (ATB), a recognized alternative to the high school diploma. The Department offered the notes of the interviewer to support the FPRD.[22] The notes indicated Student #40 told the reviewer he had informed both the CFO and Lukovsky he did not have a high school diploma or GED. Student #40 also stated that the CFO directed him in to take an ATB test that was administered by an employee of LA LAN.[23] As the Department indicated, the regulations require an ATB test to be administered by someone who is not a current or former employee of the institution. *See* 34 C.F.R. §§ 668.151(a)(2), 668.151(b)(2)(ii). In its reply brief, the Respondent attempts to dispute the Department's claim, but the evidence is inconclusive and insufficient.

The CFO claimed that while initially the Respondent did not enroll Student #41 because the student could not produce a high school diploma, three months later the Respondent enrolled the student when he produced a document titled "High School Test Results." The Respondent also indicated that the student passed a "rigorous certification examination." The Department provided the notes from the site visit reviewer's interview with Student #41 indicating that he told Lukovsky he did not finish high school.[24] 34 C.F.R. § 668.141 (a)(1) indicates that a student who does not possess a high school diploma or GED can become eligible by "achieving a

[16] ED EX 6.
[17] Res. Reply Brief, at 2.
[18] CFO Affidavit, at 6.
[19] Ibid.
[20] ED EX 7.
[21] Ibid.
[22] ED EX 8.
[23] ED EX 8.
[24] ED Ex. 9.

passing score … on an independently administered test *approved by the Secretary* under this subpart." (emphasis added). The Respondent has offered no evidence to prove that the "High School Test Result" indicates a passing grade on a test approved by the Secretary.

This Tribunal has consistently held that schools receiving Title IV funds have a fiduciary responsibility to assure only eligible students receive Title IV funds. *See In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Education (January 15, 2008). 34 C.F.R. § 668.32(e)(1) states that students are required to possess high school diplomas or the equivalent to be eligible for Title IV funds. 34 C.F.R. § 668.16(f)(3) further requires that participation in Title IV programs is contingent on a school obtaining and reviewing information available to it regarding, among other things, a student's previous educational experience. Respondent has not provided copies of high school diplomas or GEDs which the Respondent should have on file to confirm student eligibility.[25] My review of the record persuades me the Respondent has submitted documents that may have been falsified to counter the Department's allegations that students were ineligible for Title IV funds. Therefore, Respondent has not shown that it met its fiduciary responsibility.

In response to the Respondent's alleged failure to fulfill its fiduciary responsibility, the FPRD instructed the Respondent to review the student files and submit a report that provided information about, among other things, whether students' files had a copy of a high school diploma or GED. While the Respondent did dispute the Department's allegations that LA LAN falsified documents, the FPRD indicates that the Respondent did not respond to the Department's instruction to submit a file review.

The CFO declared that the Respondent did not "negligently disregard Title IV requirements."[26] However, the CFO's own declaration acknowledged Respondent relied on the claims of three students that they had diplomas without asking for a copy. For the two students LA LAN knew did not have diplomas, Respondent has not proven that it properly administered the ATB tests. Therefore, the file review was justified.

As a result of the Respondent's failure to perform a file review, the FPRD assessed three sets of liabilities. First, the FPRD directed the Respondent to return all Title IV funds disbursed from the 2002-03, 2003-04, and 2004-05 Award Years. The FPRD then held the Respondent liable for the imputed interest on those funds. Finally, the FPRD stated that the Respondent is liable to student and parent borrowers' accounts for interest accrued on all Federal Direct Loan accounts.

This Tribunal has consistently held that when an institution does not respond to a properly ordered file review, the Respondent can be held liable for all Title IV funds dispersed for the time period covered by the ordered file review. *See In re Classic Beauty College*, Dkt. Nos. 96-147-SP, 97-33-SP, 97-58-SP, 97-59-SP, U.S. Dep't of Education (September 30, 1997).

[25] The Respondent's own catalogue indicates students are required to provide a copy of their diploma. See FPRD, at 6. Furthermore, by initially refusing to enroll Student #41because he would not provide a high school diploma, as the CFO indicates on page 6 of her affidavit, Respondent implicitly acknowledges it is aware of its responsibility to ensure that Title IV funds are only distributed to eligible students.

[26] CFO Affidavit, at 7.

In many cases, this Tribunal has determined that the Department must use the estimated loss formula to determine liability. However, *In re Christian Brothers University*, Dkt. No. 96-4-SP, U.S. Dep't of Education (January 8, 1997) this Tribunal specified four instances where the estimated loss formula should not be used. One of those instances is when the institution knows it is certifying ineligible loans. Both parties offer contradictory evidence as to whether Respondent knowingly or negligently certified loans to students who were ineligible because of a lack of a diploma or its equivalent. However, as the Respondent acknowledged,[27] the regulations impose the burden of proof in this matter on LA LAN. *See* 34 C.F.R. § 668.116(d). The Respondent has the burden of proving it did not knowingly certify funds to ineligible students. This burden has not been met by the evidence and the totality of the record. Therefore, assessing liabilities to return all Title IV funds in full is appropriate.

Finding No. 1

FSA alleged that, while the Respondent began receiving Title IV funds in March 2003, it kept no attendance records before June 2003 and for an unspecified period of time after June 2003, the Respondent did not keep any attendance records. The FPRD further alleged that Lukovsky indicated approximately 80 students were enrolled but the Respondent's financial aid officer provided a list of 127 students receiving Title IV funds. Class rosters indicated that 70 students were enrolled. When FSA's reviewer took attendance over a three day period, 20 students attended on the second day and 23 students attended on the third day. The FPRD stated the day after the school was notified of the program review, some students received phone calls from Respondent officials telling them not to attend unless they brought a copy of their high school diplomas or GEDs. Furthermore, the FPRD claimed that 14 students were interviewed during and after the site visit, and none of the students, including those who had been enrolled for over a year, had progressed beyond the second of the 10 modules in the 50 week program. All 14 students expressed concern over the lack of a curriculum, frequent turnover of instructors, lack of continuity in education, instances of instructors not showing up for class, and the general poor quality of training and equipment. Because of these issues that relate to Respondent's lack of administrative capability in administering Title IV loans, FSA 1) ordered the Respondent to respond to each of the findings and submit a corrective action plan; 2) placed the Respondent on heightened cash monitoring; and 3) denied the Respondent's pending application for recertification of eligibility.

On December 9, 2004, the Department sent the Respondent a letter denying its Application to Participate in Federal Student Aid Programs and ordered it to submit a close-out audit to account for all Title IV funds within 90 days. After the Respondent failed to submit either a closeout audit or give notice that the Respondent had hired an independent auditor as required by the regulations, FSA sent a letter to the Respondent on April 12, 2005 reminding LA LAN that it had not submitted a closeout audit. The April 12 letter also established an April 30, 2005 deadline for the Respondent to file its closeout audit. On April 22, Lukovsky informed the Department Respondent had no intention of filing a closeout audit. In response, the FPRD stated that the Respondent was required to return all Title IV funds received after December 31, 2003,

[27] Res. Brief, at 3.

the last fiscal year for which the Respondent filed the required compliance audit. The FPRD also assessed liabilities for imputed and accrued interest on the Title IV funds. In total, the FPRD assessed $762,860 in liabilities for Finding 1.

The CFO' affidavit disputed that the Respondent failed to maintain attendance records. Additionally, the Respondent disputed other allegations concerning its lack of administrative capability. However, the Respondent did not address its failure to complete a closeout audit within 90 days other than to indicate that it had hired an auditor.

The deadline established by the Department to submit a closeout audit, April 30, 2005, was more than 90 days after the December 9, 2004 initial order to submit a closeout audit. In the FPRD, FSA alleged that Lukovsky informed the Department that LA LAN had no intention of filing a closeout audit. The Respondent has not disputed that Lukovsky made this statement. Only after over six months after the FPRD was issued did the Respondent hire an independent auditor. It appears that while the Respondent hired this auditor on January 27, 2006,[28] three days later the auditor withdrew its services.[29] There is no evidence in the record that a closeout audit has been completed.

This Tribunal has consistently held that in the absence of this closeout audit, unless the school can otherwise account for the expenditure of all federal student aid funds since the date of the most recent compliance audit, the school is liable for all such funds received for that period. *See In re Instituto Irma Valentin,* Dkt. Nos. 09-37-SA, 09-38-SA, U.S. Dep't of Education (July 23, 2010), at 3; *In re Harrison Career Institute,* Dkt. No. 07-55-SA, U.S. Dep't of Education (May 15, 2008), at 3; *In the Matter of Stenotopia Business School,* Dkt. No. 01-26-SP, U.S. Dep't of Education (July 31, 2002). Therefore, the liabilities assessed by the Department in Finding #1 are upheld.

Finding No. 3

Because the Department has declared the Finding moot and is assessing no liabilities, this Finding is not before this Tribunal.

Finding No. 4

FSA alleged that the Respondent disbursed Title IV funds both on behalf of students who did not attend class and for students who did not even enroll at LA LAN. The FPRD asserts Respondent would recruit students, bring them to the school for orientation and ask students to complete FAFSA forms. FSA claims the Respondent would process the FAFSA forms and draw Title IV funds on the prospective students whether they enrolled or not. The FSA reviewer

[28] Res. EX 133.
[29] ED EX 4.

indicated that she found no instances where the school returned the funds even though the staff knew that some students were "no shows." The FPRD listed 6 student files that contained no executed enrollment agreements and the records show no attendance by these 6 students. The FPRD identified 3 other students who the Respondent drew funds for, but who have no files at all.

To be eligible for Title IV funds, a student must be enrolled or have accepted enrollment in an eligible program. *See* 34 C.F.R. § 668.32(a)(1)(i). Additionally, the school must verify the student's eligibility, including enrollment status, before disbursing funds. Furthermore, if a student officially withdraws, drops out, or is expelled before his or her first day of class within a payment period, all funds disbursed on behalf of these student are overpayments which must be returned to the respective Title IV programs. *See* 34 C.F.R. § 668.21. Finally, a student is identified as having dropped out before his or first day of class if the Respondent is unable to document the student's attendance at any class in the pay period. *See* 34 C.F.R. § 668.21(a).

In response to the alleged disbursement of funds to students who were not enrolled or who were not in attendance at LA LAN, FSA directed the Respondent to file 3 items. First, the Respondent was ordered to develop written procedures to prevent improper disbursements of funds and submit a copy of the procedures. Second, the Respondent was asked to explain why they had disbursed funds for known "no-shows." Third, FSA directed the Respondent to review all student files and identify the students who were not enrolled, but for whom funds were drawn. The CFO disputed that Respondent sought, obtained, or retained funds for "no-show" students. Additionally, the CFO claims that the school kept attendance sheets and destroyed the checks for students who did not show up. In support of her claims, the CFO produced evidence that indicated that for some of the students, the Respondent determined that the students were ineligible and re-credited or returned the funds drawn on the students' accounts. For other students, Respondent submitted the missing enrollment agreements and attendance sheets. For two students, the Respondent failed to submit the missing enrollment agreements.

The Department argued that, because more than 10% student files examined in the initial review contained errors,[30] FSA was justified in ordering a full file review. As with Finding 2, in response to the Respondent's failure to respond, the FPRD assessed liabilities for all Title IV funds which LA LAN had disbursed between 2002 and 2005. But, unlike Finding 2, none of the exceptions articulated in *Christian Brothers University* relates to this finding. Therefore, in the Department's brief, it reduced the liabilities sought to $819,912.00, the amount calculated using the estimated loss formula.[31]

However, because the missing enrollment agreements are in the file for four of the student files, and the Respondent showed that the money had been returned in four other student files, only two student files contain errors. Because only 2 out of 45 student files contain errors, the error rate from the original sample is just over 4%. Therefore, Respondent did not have an obligation to conduct the file review.

[30] ED Brief, at 19. The Department claims that they found that 10 out of 45 files contained an error, or 22.2 %.
[31] ED Brief, at 19 n. 12.

Finding No. 5

FSA alleged that the Respondent failed to properly verify inconsistent information in some students' files. For example, FSA noted numerous inconsistencies with students' reported family sizes, a factor in calculating Expected Family Contributions (EFC) for students. Student #2's 2002-03 Institutional Student Information Record (ISIR) showed a household size of 3, while his ISIR for the following award year showed a household size of only 1. Student #4's ISIRs showed 3 family members in 2002-03 and only 2 in 2003-04. Student # 9's's ISIRs showed a decline from a household size of 6 in 2002-03 to 5 in 2003-04. Student # 11's ISIRs for both 2002-03 and 2003-04 showed a household size of 2, while her tax returns for 2001 and 2002 indicated no dependents. Respondent excused the issues of the changing household size by indicating that student household sizes change from year to year and that the number of tax dependents was not necessarily indicative of household size.[32] However, the record does not indicate that Respondent made any effort to confirm the changing household sizes.

The FPRD also noted that for many students, there were inconsistencies with the financial information in the students' files. In some cases, the FPRD identified situations where there was conflicting information on different forms in the students' files. In other cases, the FPRD identified situations where the students' files were missing information necessary to confirm their accuracy.

As a result of the alleged inconsistencies in the student files, FSA ordered Respondent to conduct a file review. Because the Respondent did not conduct the ordered file review, FSA directed LA LAN to return all Title IV funds collected over the review period.

Under 34 C.F.R. § 668.54(a)(3), the Respondent had an obligation to verify information that it had reason to believe was inaccurate. For example, changes in family size affect a student's Title IV eligibility. Therefore, LA LAN had an obligation to confirm the reported changes in the family size of its students and not to excuse the changes as something that happens from year to year. Additionally, both the presence of conflicting financial records and the absence of necessary information to confirm students' financial data provide reasons for the Respondent to believe the financial records provided by the students may have been inaccurate. Those inaccuracies also might affect the students' Title IV eligibility. Therefore, FSA was correct in ordering the Respondent to conduct a file review. As with the other Findings, because the Respondent failed to conduct the properly ordered review, LA LAN is liable to return all Title IV funds. The Department's brief indicates that because this Finding does not involve any of the exceptions established in *Christian Brothers*, the Department used the estimated loss formula to assess $819,912.00 in liabilities.[33] Those liabilities are upheld.

Finding No. 6

FSA alleged Respondent failed to properly verify the information required on student

[32] CFO Affidavit, at 10.
[33] ED Brief, at 26.

files marked for verification. To ensure that Title IV funds are properly distributed, schools are required to verify certain items of the financial information in all files selected for verification by the Department. *See* 34 C.F.R. § 668.54(a)(2)(i). The regulations list the financial information which the schools are required to verify in 34 C.F.R. § 668.56(a). The regulations also identify what documentation meets the school's burden to verify the information. *See* 34 C.F.R. § 668.57. The FPRD stated that for all 15 files marked for verification, LA LAN did not adequately and accurately verify the information provided by the students. FSA alleged that for some of the student files, the Respondent failed to provide all the documents that are required under the regulations. For the files of other students, the FPRD alleged that Respondent did not address all existing inconsistencies in the student's financial records that could affect the student's EFC.

Because of the errors and inadequacies in verification, FSA directed the Respondent to resolve the verification deficiencies and demonstrate that the verification was properly completed. Again, the Respondent did not respond to the Department's ordered file review. Therefore, the Department assessed liabilities for 30% of all students receiving Title IV funds, or $245,974.00[34]

This Tribunal has consistently held that when a school fails to completely and properly verify student files marked for verification by the Department, the school is liable to return all Title IV funds it received for the students whose files the school failed to properly verify. *See In re Shaw University*, Dkt. No. 05-48-SP, U.S. Dep't of Education (May 2, 2006); *In re Livingstone College*, Dkt. 02-80-SA, U.S. Dep't of Education (April 29, 2004). As stated in other findings, the Respondent has the burden of proving that it fulfilled its fiduciary obligations. LA LAN has failed to prove that it properly verified any student file selected for verification. Therefore, the assessed liabilities of $245,974.00 are upheld.

Finding No. 7

34 C.F.R. § 600.5(a)(8) directs that no more than 90 percent of an institution's revenue can come from Title IV funds (the 90/10 rule). In Finding 7, FSA alleged that the Respondent improperly calculated the percentage of its revenue that came from federal student aid. The Department alleged that the Respondent understated the percentage of Title IV revenues by characterizing some Title IV funds as credit balances and improperly excluding them. FSA further alleged that the Respondent overstated non-Title IV funds by including revenues received from ineligible programs. The FPRD reported that when the school's auditor was advised that funds from ineligible programs could not be used to calculate the percentage of revenues that are not derived from Title IV, the auditor agreed that LA LAN failed the 90/10 rule.

The Department identified January 1, 2004, as the date on which the Respondent was ineligible to participate in Title IV programs because it failed to meet the 90/10 ratio requirement. FSA directed the Respondent to cease awarding or dispersing Title IV funds and to

[34] ED Brief, at 30. Schools are only required to verify up to 30% of students receiving Title IV funds. *See* 34 C.F.R. § 668.54(a)(2)(ii). In its brief, the Department adopted the estimated loss formula to calculate the Respondent's liabilities.

stop certifying Title IV loans to students. Additionally, the Department notified the Respondent that it would be required to return all Title IV funds disbursed after January 1, 2004. Therefore, FSA ordered the Respondent to provide a report of all Title IV funds disbursed from January 1, 2004 to the date of the Respondent's response. Furthermore, the Department ordered the Respondent to provide sufficient documents to verify the schools calculation. After the Respondent failed to respond to the ordered review, FSA assessed liabilities for all Federal Pell Funds and Federal Direct loans, along with the imputed interest from those funds, received by LA LAN after December 31, 2003. Using the estimated loss formula in its brief, the Department directs the Respondent to repay $357,532.00.

The Respondent disputed that 100% of its revenue came from Title IV funds. The CFO claimed that the Respondent never intentionally violated the 90/10 ratio requirement, but rather relied on its accountant to comply with Department regulations.[35] In response to this claim, the Department argued that the reliance on the accountant is not legally significant because the regulation makes it clear that either an institution is in compliance with the 90/10 rule or it is not. Finally, the Department stated that in *In re Pacific Travel Trade School*, Dkt. No. 00-55-SA, U.S. Dep't of Education (January 24, 2002), this Tribunal held that if an institution is not in compliance with the 90/10 rule it loses Title IV eligibility and all funds received thereafter constitute institutional liabilities. [36] In the Respondent's reply brief, it acknowledged that LA LAN "relied upon its CPA, and must take responsibility for his negligence, of which LA LAN was unaware at the time."[37]

Because the Respondent failed to prove that it fulfilled its obligation and was in compliance with the 90/10 rule, it became ineligible to receive funds on January 1, 2004. *See* 34 C.F.R. § 600.40(a)(2). As a result, Respondent was liable for the federal funds it received while it was ineligible. *See In re Gibson Barber and Beauty College*, Dkt. 05-49-SA, U.S. Dep't of Education (November 23, 2005); *In re Pacific Travel Trade School*, Dkt. No. 00-55-SA, U.S. Dep't of Education (January 24, 2002). Therefore, the Department's assessed liability of $357,532.00, accounting for all ineligible funds distributed after December 31, 2003, is upheld.

Finding No. 8

FSA alleged that the Respondent failed to provide complete attendance records for any of its students. As an example, the FPRD listed 8 students with allegedly incomplete records. In response, the Respondent filed additional records. The provided records do not address all of LA LAN's deficiencies in attendance reporting. Rather, for each student file, the Respondent submitted a portion of the missing attendance records, but failed to respond to other allegations FSA made about missing attendance records. For example, the FPRD reported that there were no attendance records for Student #2 for the period prior to October 20, 2003. In addition to the CFO's affidavit, the Respondent attached some attendance records from that period. However, the FPRD also stated that there were no attendance records for Student #2 between March 25,

[35] CFO Affidavit, at 14.
[36] ED Brief, at 32.
[37] Res. Reply Brief, at 6.

2004 and the student's graduation on August 14, 2004. The Respondent does not address this deficiency. For Student #24, the Respondent responds to the charge of missing attendance data by noting that the records are missing.

Since the Respondent was missing the required attendance records, the Department required it to conduct a file review to determine the extent of the school's failure to keep proper records. The Respondent again did not respond to the Department's ordered file review. Because the Respondent did not submit the required file review, it is liable to return all Title IV funds from that period. Therefore, the liability assessed by the Department using the estimated loss formula of $819,912.00[38] is upheld.

Finding No. 9

The FPRD alleged that the Respondent did not properly calculate the funds it was required to return to the Department for withdrawn students. FSA claimed that of the 12 files it reviewed for students who withdrew from LA LAN, none correctly identified both the first and last days of attendance. Therefore, for all 12 files, the Respondent incorrectly calculated the amount of funds it was required to return. 34 C.F.R. § 668.22(e)(2) directs that if 60% or less of a payment period or a period of enrollment is completed, the school needs to return funds for the percentage of time the student was missing.

The FPRD provided 8 student files in which FSA alleges that Respondent used incorrect start and end dates. In response, the Respondent filed a series of attendance records.[39] The attendance records, however, failed to show that the dates used to calculate the amount of funds to be returned were correct. For some student files, such as #11, the Respondent only provided evidence to show that either the start or end date was correct when the FPRD alleges that both were incorrect. Furthermore, other evidence provided by Respondent in relation to Student #21, showed that the dates the Respondent used to calculate the returned funds were incorrect. In fact, in the Respondent's brief, it even acknowledged for some of the student files, such as Student's #8 and #9, that the dates used were incorrect.

Because FSA discovered that Respondent was using erroneous start and end dates to calculate returned Title IV funds, the Department directed the Respondent to conduct a file review of all withdrawn students to recalculate the funds owed to the Department. After the Respondent did not submit the file review, the Department ordered LA LAN to return all Title IV funds. The Department determined that because the withdrawal rate at LA LAN was approximately 60%, and this finding concerns the return of funds for withdrawn students, the Respondent was assessed liabilities for 60% of all Title IV funds. Because one of the exceptions articulated in *Christian Brothers* applies when student refunds are due, FSA did not use the

[38] ED Brief, at 40.

[39] The Respondent also alleges that all refunds were calculated by RGM, a third party professional server. CFO Affidavit, at 15. This appears to be an attempt to shift the blame for any mistakes, but, the contract with RGM states, in bold and underlined writing, that "it is the institution's responsibility to ensure that ALL data (original or revised) entered into the system is thoroughly supported with accurate and complete documentation…" Res. EX 95, at 4.

estimated loss formula, but rather assessed liabilities of $933,776.00 or 60% of the $1,556,294.00 Title IV funds that were disbursed over the period in question.

As stated in other findings, the Respondent had a fiduciary responsibility to account for the Title IV funds it disbursed. The regulations require the Respondent to properly determine the amount of funds that need to be returned to the Department. The responsibility to correctly account for Title IV funds cannot be met if the school was using incorrect start and end dates when it calculated what percentage of the payment period or period of enrollment the student had completed. Therefore, the ordered file review was appropriate, and the liability for failing to complete the file review is upheld.

Finding No. 10

Because the Department has declared this Finding closed, it is not before this Tribunal.

Finding No. 11

FSA alleged that Respondent did not apply its satisfactory academic progress (SAP) policy to its students. Under 34 C.F.R. § 668.16(e), institutions receiving Title IV funding are required to establish, publish and apply reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in the educational program. The FPRD indicates the Respondent's SAP required, among other things, students maintain a 70% attendance rate in each month. The Department argued that there was no evidence that the financial aid officer verified students were in attendance before distributing Title IV funds.

While Respondent disputed many of the FPRD claims, it did not provide sufficient evidence to refute the allegations. For Student #14, Respondent provided attendance records for a portion of the student's enrollment period but did not provide records for the student's entire enrollment period. Without complete attendance records, it cannot be verified that the student maintained a 70% attendance rate. For Student #21, the Respondent provided attendance records[40] but the records indicate that the student attended class less than 50% of the time. For Student #37, whose attendance the FPRD alleges was consistently below 70%, the Respondent offered no response.

FSA ordered the Respondent to conduct a file review and retroactively apply the SAP to all Title IV funded students and determine what funds were distributed to ineligible students. Because LA LAN did not reply to the ordered file review, the Department ordered the Respondent to return all Title IV funds disbursed over the three payment periods from 2002 to 2005. Using the estimated loss formula, the Department calculated $819,912 in liabilities. Because the Respondent did not satisfy its burden of establishing that it had fulfilled its obligation to apply its SAP, the Department was correct to order a file review. By not responding to the properly ordered file review, the Respondent became liable for all Title IV

[40] Res. EX 102.

funds it drew over the payment periods. Therefore, the liabilities assessed by the Department in this Finding are upheld.

Finding No. 12

Finding 12 of the FPRD assessed liabilities because Respondent improperly granted a leave of absence (LOA) to Student #21that violated its own policy. In response, the Respondent filed a copy of the student's request for a LOA and an unsigned LOA form.[41] When a student takes a leave of absence that violates the school's Leave of Absence Policy that is required under 34 C.F.R. § 668.22(d), it must be treated as a withdrawal from the first date of the leave of absence. *See* 34 C.F.R. § 668.22(b)(1). An institution is then required to return a portion of a student's Title IV funds if the student withdraws from the institution.

FSA ordered Respondent to apply its leave of absence policy to the student, and determine whether the Respondent needed to return funds to the Department. The Department further indicated the Respondent would be liable for any unpaid refunds along with the imputed interest on those funds. After Respondent failed to respond, the Department assessed liabilities for all Title IV funds disbursed to Student #21 and the imputed interest on those funds, or $11,015.00.

While Respondent's LOA policy requires that they do not exceed 60 days,[42] the request and unsigned form submitted indicated Respondent approved a LOA for 90 days.[43] Respondent admits that it approved a LOA that violated its own policy by 30 days.[44] Because the student's LOA was invalid under the regulations, Respondent was liable to return the funds for the withdrawn student. Therefore, the liability assessed by the Department, $11,015.00, is upheld.

Finding No. 13

Because the Department has declared the Finding moot and is assessing no liabilities, it is not before this Tribunal.

Finding No. 14

According to the applicable statute, independent status should be certified only if a student (1) is 24 years of age or older by December 31 of the award year; (2) is an orphan or ward of the court or was a ward of the court until the age of 18; (3) is a veteran of the Armed Forces of the United States; (4) is a graduate or professional student; (5) is a married individual; (6) has legal dependents other than a spouse; or (7) is a student for whom a financial aid

[41] Res. EX 98.
[42] ED Ex 68, at 21.
[43] Res. EX 98.
[44] Res. Reply Brief, at 10.

administrator makes a documented determination of independence by reason of other unusual circumstances. *See* 20 U.S.C. § 1087vv. This Tribunal has held that while financial aid administrators are empowered to override a dependency status for a special circumstance, there needs to be proper documentation showing the existence of that special circumstance. *See In re Bojack Limited Academy of Beauty Culture*, Dkt. No. 95-135-SP, U.S. Dep't of Education (May 31, 1996).

In Finding 14, FSA alleged Respondent did not properly document the reasons for its decision to override various students' status as a dependent for calculating the Expected Family Contribution. FSA listed 10 students whose status as dependents were overridden by Respondent. However, these files did not contain proper documentation to verify the reason for the change to independent status. The FPRD specifically addressed 3 of the 10 students FSA believed were not automatically eligible to be declared independent and whose files did not contain proper documentation as to why their status was overridden.

The Respondent has provided no evidence to show that any of the first six reasons for independent status (being 24 years old, an orphan, a veteran of the Armed Forces, a graduate or professional student, being married, or having legal dependants) are applicable to these cases. Therefore, the students' independent status can only be justified if a financial aid administrator made a documented determination of independence because of other unusual circumstances. The Respondent has not provided adequate documentation to prove unusual circumstances justifying the independent status of the students.

Because Respondent failed to properly document reasons for the overridden dependency status, FSA directed it to submit the required documentation to support the independent status of the ten students. If the Respondent was unable to provide the proper documentation, it was directed to recalculate the student's eligibility as a dependent student. Finally, the Department notified Respondent that if it failed to support the independent status of the students or recalculate the eligibility for Title IV funds, it would be required to return all Title IV funds disbursed to the ten identified students along with the imputed interest on those funds. When Respondent did not respond, FSA assessed $54,190.00 in liabilities. Because the Respondent failed to provide adequate documentation to prove that its decisions to override the students' dependency status were justified under any of the reasons provided by the regulations, the liability assessed is upheld.

Conclusion

This Tribunal has consistently held that when an institution does not respond to a properly ordered file review, the Respondent can be held liable for all Title IV funds dispersed for the time period covered by the ordered file review. Respondent repeatedly ignored the Department's direction to conduct file reviews. For its noncompliance, LA LAN is liable for all Title IV funds from the three award years in question, 2002-03, 2003-04, and 2004-05.

The regulations impose the burden of proof in this matter on LA LAN. *See* 34 C.F.R. § 668.116(d). The FPRD indicated that Respondent repeatedly ignored the directions to conduct

file reviews. In response, the Respondent has attacked the work of the program reviewer and characterized itself as a victim of relying on bad advice. By consistently ignoring the FSA's instruction to conduct a file review and only responding in the CFO's Affidavit and in other filings to the findings of the initial program review, the Respondent has not met its burden of showing that it properly submitted a response to the ordered file review.

The Respondent does challenge the factual findings of the initial program review which gave rise to the ordered file reviews. However, its evidence, including the Affidavit from the CFO, continuously falls short of proving that LA LAN had met its fiduciary responsibility before the file review. Therefore, the Respondent has failed to prove that the file reviews were not properly ordered.

In its brief, the Department indicated that for all except Findings 2 and 9, it has adopted the estimated loss formula to assess liabilities. While FSA should have used the estimated loss formula initially, the Department has remedied the error. But, as indicated in Finding 2, when a school knowingly certifies loans to ineligible students, the estimated loss formula should not be applied. Therefore, based on Finding 2, Respondent is liable to return all of the Title IV funds, plus the imputed interest on those funds, rather than the amount calculated using the estimated loss formula. The liability assessed in all of the other Findings is a portion of the total Title IV funds ordered returned in Finding 2. While other liabilities are upheld, in order to prevent unjust enrichment by the Department from double recovery, only the liabilities assessed in Finding 2 need be paid.

ORDER

On the basis of the foregoing, it is hereby ORDERED that LA LAN 2000 Computer Training Center pay to the U.S. Department of Education the sum of $1,556,294.00.

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Judge Richard I. Slippen

Dated: August 20, 2010

SERVICE

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

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