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

In the Matter of	**Docket No. 07-52-SA**
INTERNATIONAL JUNIOR COLLEGE,	Federal Student Aid Proceeding
Respondent.	ACN: 02-2006-72564

Appearances: Ronald L. Holt, Esq., and David L. LeFevre, Esq., Dunn & Davison, L.L.C., Kansas City, Missouri, for International Junior College.

Jennifer L. Woodward, 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 ON REMAND

On November 25, 2009, the Secretary of Education remanded the above-captioned proceeding to determine whether the tuition paid by 34 of Respondent's students who attended classes offered only on Saturdays were enrolled in a Title IV eligible program, and, if so, whether the tuition paid by those students could be considered income for the purposes of complying with the 90:10 Rule. This rule embodies the requirement that an institution that participates in the Title IV programs must derive no more than 90% of its revenue from Title IV program funds during an award year, and that the balance must come from program funds generated by the institution from tuition, fees, and other institutional charges for students enrolled in Title IV eligible programs. See 34 C.F.R. § 600.5(d)(1). Pursuant to my Order Re Further Proceedings, dated December 9, 2009, I ordered Respondent to submit for my review, evidence concerning enrollment agreements, graduation records, courses completed in accordance with its program requirements, and any other documents relevant to this issue, and the office of Federal Student Aid (FSA) was provided the opportunity to respond.

It is FSA's position that tuition received from 34 students who attended the Saturday-only

classes could not be included in the 90:10 computation as non-Title IV aid because these students were not enrolled in a Title IV-eligible program as required by regulation. Without this non-Title IV income, Respondent admittedly does not meet the 90:10 Rule for the 2005 award year. Respondent argues that the Saturday classes were not specific, separate programs, but were individual courses taught on Saturdays and were also part of the school's Title IV eligible programs. The Secretary, in his remand order, tasked me with the responsibility of addressing the question of whether the 34 students in question were enrolled in an eligible Title IV program.

To meet its burden of showing by a preponderance of the evidence that the 34 students in question were enrolled in one of its Title IV-eligible programs, Respondent submitted declarations from three persons formerly affiliated with Respondent: its vice chairman, a professor, and its interim president, all of whom insist that the Saturday courses were part of its non-degree diploma program. Quotes from these declarants aver that the subjects taught "were subjects that were also taught in the Title IV eligible non-degree and associate degree programs…." The courses "were taken from one of International's diploma or associate degree programs…." The Saturday courses "[existed] in one of International's certificate or degree programs…." The declarants then explain that the Saturday-only courses were shorter and cheaper than those in the associate degree programs in order to accommodate students who could not afford to attend on a full-time or part-time basis; these non-degree Saturday-only students generally paid cash for each class at the time they attended class; and the individual courses taught in the Saturday classes were taken from one of its Title IV eligible associate degree programs. Respondent argues that these similarities give rise to an inference that the course materials were the same. It further argues that no significance should be given to the fact that for Saturday-only students, their academic progress was recorded on the ledger cards under a generic program name of "Cursos Sabatinos", translated as "Continuous Education", even though the degree students had their specific program listed on their ledger cards. Respondent also pointed out that some of the students who took a Saturday-only course took further courses in the program.

Next Respondent presented documentation it believes illustrates that Saturday-only courses were attended by both Saturday-only students, as well as its Title IV students. This consisted of copies of cash receipts which show that payments by a number of cash-paying Saturday-only students occurred on the same dates as payments by some students who were Title IV eligible. Respondent highlighted two students who it says both made payments on Saturday, October 6, 2004. One of the students was, Miguel, a degree student, and the other was Awilda, a non-degree, Saturday-only student. Respondent asserts that this proves that Saturday-only students and regular students attended some of the same courses which, by necessity would have been a part of a Title IV-eligible program.

Addressing the question of whether the Saturday-only students were properly enrolled with the institution, Respondent submitted registration documentation for 11 of the 34 Saturday-only students and 13 declarations from theses students. These documents include personally identifiable information, such as their name, date of birth, address, Social Security number, telephone number, dates of attendance, and name of the course in which they were enrolled.

Also included were some payment ledgers which included the course name and dates of payments.[1] From this information, Respondent believes it is reasonable to infer that both the students and the institution regarded the Saturday-only students as being enrolled in a Title IV course which met on Saturdays. Respondent further asserts that its compliance with certain Title IV formalities, such as advising prospective students of their Privacy Act rights, rights to certain percentage refunds, rights to be free from discrimination, and the existence of program approvals from the Department of Education, as well as accrediting bodies and the Puerto Rican educational authority, show these Saturday-only students were treated in an identical manner as its Title IV eligible students and thus proves they were enrolled in Title IV courses.

FSA asserts that, other than the statements of Respondent's three former employees, it has not submitted any evidence that any of the 34 students at issue were enrolled in a Title IV-eligible program. There are no enrollment agreements, graduation records, or a listing of courses completed in accordance with Respondent's program requirements which might support Respondent's position.[2] FSA points out that even if one of the challenged courses is part of an eligible program, it does not follow that the attendance of this course by the 34 students at issue automatically proves that those students were enrolled in an eligible program. FSA continues by saying that one could argue that the course materials were inferentially the same as those used in a Title IV-eligible program, but, again, this does not support the conclusion that these 34 students had enrolled in a Title IV-eligible program. It also points out that none of the 23 courses which comprise the Associate Degree in Business Administration Program, Computer Science Option, appear to match any of the Saturday-only classes. Further, it says the enrollment records for 11 of the 34 Saturday-only students are wholly distinct from the records of the students enrolled in Title IV-eligible programs. Many of the Saturday-only records were labeled as "Cursos Sabatinos" (Saturday Courses) and were usually no more than two pages and contained very little information. In contrast, FSA explains that the enrollment records of the Title IV-eligible students were much lengthier, and contained information not included for the Saturday-only students, such as data about their citizenship, existence of a high school diploma, and notification of their Title IV-mandated rights.

FSA next refers to a portion of a November 28, 2006, letter Respondent sent to FSA, in which it admitted that it recognized "that short-term course revenue had erroneously been included in the original [90:10] calculation…" and that, consequently, it had violated the 90:10 rule. FSA also challenges Respondent's assertion that a Title IV student and a Saturday-only student both made payments on Saturday, October 6, 2004, thus proving that both were enrolled in a Title IV-eligible Saturday program. FSA points out that the Saturday-only student did make

[1] Respondent reports that it was hampered in providing copies of student records for these 34 students because many of the relevant documents it needed to support its position were lost during a robbery at one of its campuses, and when the records were moved in connection with its closure.

[2] As an aside, FSA notes that these 34 students do not constitute all of the Saturday-only students whose cash payments must be excluded from Respondent's 90:10 calculation.

a payment on a Saturday – October 9, 2006, whereas the Title IV student made a payment on October 6, 2006, but that it is a Wednesday, not a Saturday. FSA further highlights that after an examination of the available Title IV student ledger cards, it found no students enrolled in degree programs who made payments on a Saturday.

After evaluating Respondent's submissions on remand, I find it has failed to convince me by a preponderance of the evidence that the 34 students at issue who attended Saturday-only classes were enrolled in a Title IV-eligible program. The declarations from three former employees of the institution were self-serving and contained only un-supportable conclusions that the two sets of students were jointly enrolled in Title IV programs. The declarations from the Saturday-only students were equally unpersuasive. They were all in Spanish and from what I could discern, contain only minimal information, none of which supports a conclusion they were enrolled in Title IV-eligible programs. Additionally, there was a significant difference in the Saturday-only student applications, and those prepared by students admittedly enrolled in Title IV programs. The Saturday-only student documents were generally 2-3 pages in length and often had the words "Cursos Sabatinos" somewhere in the documents, whereas the enrollment documents and other records maintained for the students enrolled in degree programs were generally five or six pages in length, included a student photograph, and addressed Title IV issues. The distinctly cursory treatment the Saturday-only students received significanatly reduces the validity of Respondent's argument of Title IV enrollment. Finally, Respondent's attempt to show that a student purportedly was enrolled in a Saturday Title IV course because he made a payment on a Saturday lost any value when it was shown that his payment was made on a Wednesday, not a Saturday. Even if the payment had occurred on a Saturday, that fact would not satisfactorily prove the student was attending Saturday classes.

Aside from the enrollment documents addressed above, Respondent did not submit any records of courses completed or graduation records for the Saturday-only students, and it did not submit a school catalog which might have enlightened me about its courses and programs. In the absence of such documents, I find no convincing evidence the Saturday-only students enrolled in any Title IV-eligible programs. Consequently, the tuition payments from these Saturday-only students cannot be classified non-Title IV income for the purposes of the 90:10 calculation.

Respondent concludes by arguing that, if I find the students were not enrolled in an eligible Title IV program, its penalty for not complying with the 90:10 Rule should be proportional to the violation. It believes it should not have to repay the Department $1,365,078 for a 90:10 Rule violation consisting of its receipt of only $15,789 in Title IV aid in excess of what was permissible for 2005. It also points out that there is no evidence that it was engaged in any fraudulent or other regulatory violations. For support, Respondent cites a recent secretarial decision, *In re Gibson Barber & Beauty College*, Dkt. No. 05-49-SA (Nov. 29, 2009), which held that the 90:10 violation in that case was not sufficiently serious to warrant the repayment of the entire asserted liability. Respondent believes that its violation of the 90:10 Rule is less egregious than in *Gibson*, so it should obtain the same relief from having to repay all Title IV funds received during the year in question. Respondent's reliance on *Gibson* presents an equitable solution to its dilemma which is available only to the Secretary, not to me.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that International Junior College pay $1,365,078 to the U.S. Department of Education.

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Judge Richard F. O'Hair

Dated: June 30, 2010

SERVICE

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

Ronald L. Holt, Esq.
David L. LeFevre
Brown & Dunn, P.C.
911 Main Street, Ste. 2300
Kansas City, MO 64105-5319

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