



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

In the Matter of

Docket No. 08-36-SA

**QUALITY COLLEGE OF
CULINARY CAREERS,**

Federal Student Aid
Proceeding

Respondent.

ACN: 09-2007-71936

Appearances: Lonney Edwards, of Fresno, California, former CEO, for Quality College of Culinary Careers.

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

Before: Judge Ernest C. Canellos

DECISION

Quality College of Culinary Careers, (QCCC), operated as a proprietary institution of higher education in Fresno, California, until it closed on October 31, 2007. Prior to that time, it was eligible to participate in the Federal Pell Grant (Pell) and Federal Family Education Loan (FFEL) Programs that are authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. 2751 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that administers these programs.

This case had its genesis in the Title IV program regulations that require that when an eligible institution closes, it must arrange for a close-out audit covering the period of time between the end of the period last audited and the date of closing. After determining that such action had not been accomplished by QCCC, on June 6, 2008, FSA issued a Final Audit Determination (FAD) demanding that QCCC return \$76,853, the total amount of Title IV funds it drew down and expended during the period required to be covered by the close-out audit report, *i.e.* January 1, 2007, to October 31, 2007. On June 25, 2008, QCCC appealed the findings of the FAD and the appeal was assigned to me for adjudication.

As an initial observation, it is well established that in Subpart H -- audit and program review -- proceedings, the institution has the burden of proving by a preponderance of the evidence, that Title IV funds in question were lawfully disbursed. 34 C.F.R. § 668.116(d). If an institution fails to establish the correctness of its expenditure of federal education funds, it must return all such funds to ED. Here, I find that based on the uncontroverted evidence of record, QCCC failed to provide a close-out audit, as required. Further, after a careful review of the entire record, including the documents submitted by both parties, I find that QCCC has not substantiated its position that the findings contained in the FAD are incorrect. It is abundantly clear that under the circumstances of this case, QCCC has not met its burden of proof that its expenditure of Title IV funds was correct.

More precisely, as pertinent to the findings of the FAD, an institution that participates in Title IV programs has the responsibility to submit a close-out audit covering the period from the date of its last submitted periodic audit to the date it ceases to participate in the federal student financial aid programs. Initially, the institution must engage an independent CPA to perform the close-out audit and a notice to that effect must be submitted to FSA within 45 days of that cessation of participation. 34 C.F.R. § 668.26 (b)(i). Subsequently, the institution must then submit the completed audit to FSA within 45 days of the date of the engagement letter. 34 C.F.R. § 668.26 (b)(ii). In the absence of such a close-out audit, the institution must return all federal student aid funds that it received since its last submitted audit. *See, In re Excelsis Beauty College*, Docket No. 98-108-SA, U.S. Dep't of Educ. (October 4, 1999), and the cases cited therein.

I note that QCCC raised a number of arguments in defense of its actions along with its request for a hearing. I find, however, that these arguments are not probative of the allegations contained in the FAD. QCCC iterated that its failure to submit a close-out audit was caused by the business losses occasioned by FSA's previous cutting off of funds. QCCC's former CEO claimed that there was no evidence of fraud or misconduct, and QCCC has neither assets nor money to accomplish the close-out audit. The former CEO claims, in fact, that when QCCC closed, FSA owed it \$23,173.50 for amounts it had previously earned for educating its students -- saying this payment had been delayed unreasonably because FSA had placed it on the HCM2, heightened cash monitoring system. Even accounting for this enhanced oversight, the CEO claimed FSA had unreasonably delayed payments -- this exacerbated its financial condition and, with that, "the system closed a great college." Unfortunately, regardless of how noteworthy these factors might be, they do not constitute acceptable excuses for QCCC's failure to establish that its expenditure of federal student aid funds was correct. QCCC also inferentially alludes to the fact that, since it was on the HCM2 system, FSA should accept that the federal funds in issue were properly accounted for even without the mandated audit.¹ How that is so, is clearly uncertain since QCCC has submitted no evidence establishing that possibility.

¹ Coincidentally, from March 6 to March 9, 2007, FSA conducted a program review at QCCC. After finalizing its demand, considering an appeal, and analyzing the evidence submitted pertinent thereto, the amount determined to be not properly accounted by QCCC totaled approximately \$900.00. With that result, I should infer and accept that almost all of the funds

FSA quantifies the FAD liability as \$76,853.17, for QCCC's failure to file a close-out audit or otherwise provide sufficient alternate proof of the appropriateness of expended Title IV funds.² I note as significant, that even after the extended period of time between the school's loss of eligibility and today, the required closeout audit still has not been submitted.³

In summation, I am convinced that the findings contained in the FAD sufficiently state allegations in a manner that demonstrate the existence of a *prima facie* showing that the institution failed to comply with Title IV program requirements. Consistent with the record before me, I find that QCCC has failed to meet its burden of establishing that its expenditures of Title IV funds, as enumerated in the FAD, were correct. Therefore, QCCC owes \$49,306.49, in Pell Grant liability and \$27,546.68, in FFEL liability, as provided in the FAD.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Quality College of Culinary Careers, pay to the United States Department of Education the sum of **\$76,853.17**, in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: June 10, 2009

drawn down by QCCC after its last periodic audit were properly expended. FSA disagrees and points out that review was narrowly focused and did not cover most of the unaudited period.

² This is consistent with the concept that ED is entitled to be indemnified for the losses it suffers as a result of violations that are caused by participating institutions, but that the recovery should not result in ED's unjust enrichment.

³ An institution that participates in Title IV programs has a fiduciary responsibility to account for federal funds. In the present case, the Respondent has failed to do so. As I have previously stated in a case where an institution failed to provide a close-out audit, "... although it is possible, if not probable, that some of the funds in issue were correctly expended, there is insufficient basis for me to determine, with any degree of assurance, that this is so." *See, In re Stage One, The Hair School*, Docket No. 03-06-SA, U.S. Dep't of Educ. (March 19, 2004).

SERVICE

A copy of the attached document was sent to the following:

Lonney Edwards, former CEO
Quality College of Culinary Careers
c/o Ms. Sarah Ditrick, Constituent Service Advisor
Congressman George Radanovich
1040 East Herndon, #201
Fresno, CA 93720

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