



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

In the Matter of

Docket Nos. 09-29-SP

ACADEMY OF COSMETOLOGY,

Federal Student Aid
Proceeding

Respondent.

PRCN: 200830626676

Appearances: Beverly Padilla Ton, President, for Academy of Cosmetology.

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

The Academy of Cosmetology (Academy) operated as a proprietary institution of higher education in Austin, Texas, offering programs in cosmetology. These programs were accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and were eligible to participate in the Federal Pell Grant Program. The Pell Grant program is governed 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.

During the week of March 12, 2008, a team from FSA's School Participation Team - Dallas conducted a program review at Academy to examine its compliance with statutes and regulations as they pertain to the administration of the Federal Student Aid programs. A sample of student files was reviewed from the 2006-07 and 2007-08 award years. A number of violations were uncovered during this review that were incorporated into fourteen findings in a final program review report, dated August 14, 2008. After an exchange of information between Academy and FSA, ten of the findings were resolved through corrective action.¹

¹ On February 10, 2009, Academy ceased providing educational instruction and closed.

Four of the findings were not resolved. These unresolved findings alleged that Academy: (1) either failed to make refunds or refund calculations were made erroneously for six students; (2) failed to develop and apply an adequate Satisfactory Academic Progress policy for three students; (3) failed to verify financial aid data, as required for two students; and, (4) failed to resolve inconsistent information submitted by one student. These findings were included in a Final Program Review Determination (FPRD), issued on April 14, 2009, demanding the return of \$9,914.51. In a response, dated on May 15, 2009, Academy requested a hearing to challenge the findings of the FPRD and, once assigned the case, I issued an order to commence the hearing process.

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 issue 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. After a careful review of the entire record, including the submission from Academy, I find that Academy has not substantiated its position that the findings contained in the FPRD are incorrect. It is abundantly clear that under the circumstances of this case, Academy has failed to meet its prescribed burden of proof.

The record is clear -- the Respondent does not present any evidence to rebut the findings in the FPRD. In fact, the Respondent does not even mention the specific findings relative to the Satisfactory Academic Progress policy, the failure to verify financial data and the failure to resolve inconsistent student information. As to the finding regarding improper refunds, the Academy's owner, acting *pro se*, merely claims that Academy suffered a lapse in funding due to an unspecified "computer glitch" and she no longer has access to Academy's records after being evicted from the school's premises for failure to pay the rent.

I note that Academy filed several disparate "documents" along with its request for administrative hearing and its submitted "brief." I find, however, that these "documents" are not probative of the allegations contained in the FPRD. Rather than addressing the findings in dispute, Academy's President merely makes some generalized statements that she believes that the institution does not owe anything to ED, that ED should somehow retrieve the school's records and computers, Academy doesn't deserve [its treatment] and, the institution should receive federal stimulus money to rebuild. Unfortunately, regardless of how noteworthy these factors might or might not be, they do not constitute acceptable substitutes for Academy's failure to establish that its expenditure of federal student aid funds was correct.

In summation, I am convinced that the findings contained in the FPRD 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 Academy has failed to meet its burden of establishing that its expenditures of Title IV funds, as enumerated in the FPRD, was correct. Therefore, Academy owes \$9,914.51 in Pell Grant liability, as provided in the FPRD.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that Academy of Cosmetology, pay to the United States Department of Education the sum of **\$9,914.51**, consistent with the determinations contained in the FPRD and in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: September 23, 2009

SERVICE

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

Beverly Padilla Ton
Texas Academy of Cosmetology, Inc.
3123 Quail Oak Park Lane
Spring, Texas 77386-2027

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

A separate copy of this decision was sent electronically to the following:

Beverly Padilla Ton @ beverly1229@hotmail.com

Jennifer L. Woodward, Esq. @ jennifer.woodward@ed.gov