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

In the Matter of

BELL MAR BEAUTY COLLEGE,

Respondent.

Docket No. 10-54-SF

Federal Student Aid Proceeding

Appearances: Vincent A. Guarna, Jr., Berwyn, Illinois, for Bell Mar Beauty College.

Brian P. Siegel, 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

Bell Mar Beauty College (Bell Mar), a small cosmetology school located in Cicero, Illinois, is a participant in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA) of the United States Department of Education (Department) administers these programs. On October 26, 2010, FSA issued Bell Mar a notice that it intended to impose a fine of $10,000, based upon Bell Mar's failure to complete and submit in a timely manner, and to the satisfaction of the Secretary of Education, five surveys conducted as part of the Integrated Postsecondary Education Data System (IPEDS). Bell Mar filed a timely appeal of this determination on November 5, 2010. Pursuant to my Order Governing Proceedings, briefs have been filed by both parties to this proceeding.

The Department's National Center for Education Statistics (NCES) is required regularly to collect, analyze, and disseminate statistics and other information related to education in the United States. 20 U.S.C. § 9541 *et seq.* IPEDS is the postsecondary education system that NCES uses to collect data from schools that participate in federal student financial aid programs.

To perform this role, IPEDS relies on a series of interrelated on-line surveys that collect institutional data in areas such as enrollments, completions, faculty, staff, graduation rates, and finances. These subject-matter categories are bunched into surveys required to be completed by the institutions during the fall, winter and spring. If the correct data is not collected through IPEDS by the established deadlines, the Department says it cannot fulfill its role in providing accurate data to parents and students, Congress, other governmental agencies, and other interested parties.

The IPEDS data collection system works through a web collection system which includes an online help system, and this is supplemented by a Department Help Desk. NCES establishes a schedule for completing these surveys and the institutions are given six to eight weeks to enter the appropriate data. During each survey period, IPEDS personnel monitor institutional submissions and send e-mails and make telephone calls to each institution's keyholder, the person responsible for completing the surveys, to remind them to complete the surveys.

FSA reports that for the 2009-2010 collection cycle, the Fall 2009 data collection process, containing three surveys was open from September 2 – October 14, 2009; the Winter 2009-10 collection process was open from December 2, 2009 – January 20, 2010; and the Spring 2010 collection process was open December 2, 2009 – April 14, 2010. The IPEDS staff related this information to Bell Mar and all other institutions by e-mail.

FSA explains that Bell Mar did not submit its five Spring 2010 surveys, even though on January 20, 2010, Aushra Rollins, a Bell Mar employee, sent an e-mail to the IPEDS Help Desk requesting a current user ID and password for the institution. FSA says the Help Desk sent the requested information to Bell Mar's keyholder, but Bell Mar submitted nothing thereafter. In March 2010 IPEDS personnel began sending regular reminders to Bell Mar reminding it to complete its Spring 2010 IPEDS survey. The e-mails were sent on March 17, March 31, and April 7, 2010; and telephone calls were made to Bell Mar on April 1 and 21, 2010, but the caller was unable to speak to anyone at the institution. All institutions were notified that the Spring data collection period was extended to April 19, 2010, but Bell Mar did not submit any of the five surveys during the extended collection cycle. FSA said that even after the deadline passed, it sent two additional e-mail reminders to Bell Mar and made four additional telephone calls to it, but was never able to speak with anyone. Despite FSA's efforts, Bell Mar did not submit any of the Spring 2010 IPEDS surveys. This failure prompted FSA to initiate the current fine proceeding.

FSA points out that Title IV at § 487(c)(3)(B) and the Department's regulations at 34 C.F.R. §668.84(a)(1)(i) authorize the imposition of a fine whenever an institution violates Title IV, the regulations, or any agreement it has entered with the Secretary. FSA argues that Bell Mar's failure to complete the five Spring 2010 IPEDS surveys constitutes a violation of its obligation under the statute, the regulations, and its program participation agreement, and this failure supports the imposition of a fine. To justify the proposed fine of $10,000, FSA cites three cases involving schools which were similarly fined for their failure to submit timely IPEDS surveys. Those cases resulted in approved fines of $8,000 for a failure to submit four surveys[1], $17,500 for the failure to submit five surveys[2], and $10,000 for the failure to submit two surveys[3]. FSA maintains that the proposed fine for Bell Mar is consistent with those precedents. Additionally, FSA acknowledges that in arriving at a proposed fine of $10,000 it took into consideration that Bell Mar is categorized as a small institution because its federal student aid funding levels are significantly below the median funding levels relative to all participating institutions.

Mr. Vincent A. Guarna, Jr., the son of Bell Mar's owners, submitted a very comprehensive brief in which he requests that this tribunal reverse FSA's proposed fine due to some extreme, extenuating circumstances regarding the mental health of this parents, Dr. and Mrs. Guarna. He explains that Bell Mar is a small cosmetology school located in a suburb of Chicago. The school serves low income students and averages less than $25,000 income based on annual revenue of approximately $250,000. He says that his parents are now in their 80's and they have significant memory and other cognitive impairment difficulties, culminating in a diagnosis of Alzheimer's Disease. Additionally, a brain scan of Dr. Guarna discloses the previous occurrence of a small stroke within the brain stem which further inhibits his ability to exercise good judgment. Vincent first learned of his parents' incapacities in April 2010 when his parents' neighbors reported an uncharacteristic set of conditions at his parents' home. When Vincent visited them he discovered their electricity had been shut off for non-payment. Upon further investigation he found the natural gas service had been shut off for the same reason, as well as the television service, the telephone service, and the residential fire insurance; real estate taxes had not been paid for 2008 or 2009; his father had been driving without automobile insurance for a year; and, no income tax returns had been filed for 2008 or 2009. His parents' failures to recognize and address regular, recurring financial obligations continued to occur despite normal reminders from the affected entities.

Vincent soon discovered that his father's failure to address his personal financial obligations was not because of a lack of funds, but solely because his cognitive impairment prevented him from recognizing the importance of these responsibilities. Upon further investigation, Vincent uncovered a similar pattern of neglect at Bell Mar. There he found unpaid utility and insurance bills, plus unpaid taxes, vendors and employees. Included in this last category of unpaid employees was Aushra Rollins who assisted the Guarnas with all Title IV and IPEDS submissions. Ms. Rollins stopped working at Bell Mar in January 2010 because she had not been paid her salary since November 2009. Her departure eliminated Bell Mar's third-line administrator. From his assessment of the financial landscape both at their home and at Bell Mar, Vincent surmises there is no doubt that beginning in late 2009 and 2010 his parents lost awareness of all personal and professional financial and regulatory obligations.

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[1] *In the Matter of Powder Springs Beauty College*, Dkt. No. 04-41-SF, U.S. Dept. of Educ. (Dec. of the Secretary) (June 1, 2006).
[2] *In the Matter of Instituto Irma Valentin-Manati*, Dkt. No. 04-42-SF, U.S. Dept. of Educ. (Aug. 19, 2005).
[3] *In the Matter of Teachers College, Columbia University*, Dkt. No. 04-44-SF, U.S. Dept. of Educ. (Sept. 16, 2005).

Vincent reports that after he paid the past-due utility bills for his parent's residence and all utility service was restored, he began correcting problems at Bell Mar. He hired James Bregin to take over as general manager of Bell Mar, his parents retired as directors and officers, and Vincent and James Bregin assumed those roles. Vincent first became aware of the missing IPEDS surveys when he received FSA's October 26, 2010, letter regarding the imposition of a fine. In response to this notice Bell Mar completed and submitted the missing 2010 surveys on November 5, 2010, and November 10, 2010. Next, it completed and submitted both the Winter and Spring 2011 data collection surveys early. For this it received two letters of commendation from the Department.

Bell Mar urges that the extreme extenuating circumstances here, and the corrective action it instituted once Vincent became aware of the poor mental health of his parents, warrant that it should not be fined as proposed. Bell Mar proudly points out it has a long history of submitting timely IPEDS reports. It was only after the coincident impairment of his parents' health, and the departure of Ms. Rollins, that the school was left with no functioning administrative staff. In fact, Vincent reports his parents' impairment is so severe that they are wholly incapable of managing their lives. He also believes he has implemented sufficient changes and controls to ensure Bell Mar maintains the ongoing business integrity required by the Department and associated regulations. Citing *In the Matter of Aims Academy*, Dkt. No. 08-49-SF, U.S. Dept. of Educ. (June 19, 2009), Bell Mar recognizes that a fine should be tailored to fit the violation and should serve the purpose of retribution, rehabilitation, or deterrence. In *Aims* the proposed fine of $14,000 was reduced to $1000 by the administrative judge because of significant mitigating circumstances. Bell Mar also highlights two additional fine cases in which the proposed fines were reduced because the administrative judge believed the circumstances warranted a lesser punishment. *See In the Matter of HDS Truck Driving Institute*, Dkt. No. 07-57-SF, U.S. Dept. of Educ. (Feb. 1, 2008) and *In the Matter of 4-States Academy of Cosmetology*, Dkt. No. 08-51-SF, U.S. Dept. of Educ. (Mar. 9, 2009).

The regulations, at 34 C.F.R. § 668.84(a), authorize the imposition of a fine of a maximum of $27, 500 for each violation of a provision of Title IV, or any regulation or agreement implementing that title. The regulations further provide that the Secretary must consider both the gravity of the violation, and the size of the institution in making the determination of the amount of the fine. 34 C.F.R. § 668.92. Taking these two factors into account, FSA's proposal to fine Bell Bar $10,000 for what amounts to a failure to submit the five Spring IPEDS surveys in 2010 appears to be reasonable until one considers the other attending, or mitigating, circumstances in this case. It appears that prior to the Spring 2010, Bell Mar was compliant with all of its Title IV obligations. Dr. and Mrs. Guarna served as capable administrators and had the services of Ms. Rollins as their back-up assistant for these and other matters. The debilitating mental illness which overwhelmed them apparently was not foreseen and appears to have been sudden and devastating, affecting in rather severe fashion both their personal and professional lives. One of the many by-products of this medical situation was the failure to realize the importance of submitting the IPEDS surveys for 2010. It is undisputed that these surveys are legislatively required and serve a very useful purpose in our postsecondary educational arena. Therefore, any failure to submit these surveys warrants a fine to serve as both a punishment to the violator and a deterrent to other institutions, particularly since these failures are not a rarity, as demonstrated by the cases cited above.

I believe the mitigating circumstances highlighted by Bell Mar favor a reduction of the fine from $10,000 to $2,000. The school owners appear to have been near model owners throughout its history and, apparently, filed all required IPEDS surveys prior to the Spring 2010 edition. There is no question their failure to file was not intentional act, but merely the unfortunate side effect of a medical condition beyond their control and undetected by those in a position to remedy the situation. Further, once the disastrous situation was diagnosed, corrective measures were taken almost immediately. The senior Guarnas relinquished all administrative responsibility in favor of more responsible persons, and the Spring 2010 IPEDS were submitted, followed by the Winter 2010 and the Spring 2011 surveys. In fact, Bell Mar has been commended by the Department for the early submission of the last two. It appears Vincent is very sincere in atoning for his parents' failure to adhere to the standards by which they administered Bell Mar up until the time their medical problems prevented them from doing so, and has pursued an appropriate course of action to ensure these problems do not reoccur. These corrective measures and the small size of the institution convince me that a fine of $2,000 is appropriate in this instance.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Bell Mar Beauty College pay a fine of $2,000 to the U.S. Department of Education.

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Judge Richard F. O'Hair

Dated: June 2, 2011

SERVICE

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

Mr. Vincent A. Guarna, Jr.
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