



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

In the Matter of

Docket No. 10-57-SF

**LEON STUDIO ONE
SCHOOL of HAIR DESIGN,**

Federal Student Aid
Proceeding

Respondent.

Appearances: Mark Custard, Williamsville, New York, for Leon Studio One School of Hair Design.

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

Leon Studio One School of Hair Design (Leon Studio One), a proprietary school located in Williamsville, New York, which offers vocational programs in the computer, cosmetology, and business fields is a participant in the various 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 November 3, 2010, FSA issued Leon Studio One a notice that it intended to impose a fine of \$28,000, based upon its failure to complete and submit in a timely manner, and to the satisfaction of the Secretary of Education, eight surveys conducted as part of the Integrated Postsecondary Education Data System (IPEDS). Leon Studio One filed a timely appeal of this determination on November 22, 2010. Pursuant to my Order Governing Proceedings, briefs have been timely 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 aid it in meeting this responsibility, 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. The data is entered for an institution by a person who is designated as the keyholder, and that person needs to register with IPEDS prior to completion of the surveys. During each survey period, IPEDS personnel monitor institutional submissions and send e-mails to the keyholders to remind them to complete the surveys and telephone calls are made to further encourage compliance. If a keyholder fails to enter the data before the data collection period closes, no further data can be submitted.

FSA reports that on August 19, 2009, IPEDS staff informed Leon Studio One that it needed to register a keyholder for the 2009-2010 data collection cycle. Leon Studio One did not respond to this notice, so IPEDS sent follow-up e-mails on August 27, 2009, and September 24, 2009. On September 24, Leon Studio One's prior keyholder, Mr. Mark Custard, was contacted by phone and eventually he registered as the keyholder. For the 2009-2010 collection cycle, the Fall 2009 data collection process, containing three surveys, started on September 2, 2009. The IPEDS staff related this information to Leon Studio One and all other institutions by e-mail and informed them that the system would remain open until October 14 and no extensions could be granted. On September 16, September 30, and October 7 the IPEDS staff sent additional reminder notices to all institutions, including Leon Studio One, which had not completed the surveys as of those dates. Additionally, the staff called Mr. Custard five times between September 30 and October 7 and either left messages or spoke with him to remind him of the need to complete the Fall survey. FSA says that despite this encouragement, Leon Studio One did not complete any of the three Fall 2009 collection period surveys.

Both the Winter 2009 and Spring 2010 data collections processes opened on December 2, 2009. All institutions were notified by e-mail on December 9 that the surveys were due April 14, 2010. Additional e-mail reminder notices were sent to Leon Studio One on March 17, 2010, March 31, 2010, and April 7, 2010. These were followed by a telephone call to Mr. Custard on April 8, 2010, to remind him of the deadline. All institutions were notified on April 13, 2010, that the deadline had been extended to April 19, 2010. Despite all of these notices and reminders, Leon Studio One submitted only one of three Winter 2009 collection period surveys and none of the five Spring 2010 collection period surveys.

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 Leon Studio One's failure to complete the eight IPEDS surveys in 2009 and 2010 constitutes a violation of its obligation under the statute, regulations, and program participation agreement, and this supports the imposition of a fine. In its attempt to justify the proposed fine of \$28,000, 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 surveys¹, \$17,500 for the failure to submit five surveys², and \$10,000 for the failure to submit two surveys³. FSA maintains that the proposed fine here is consistent with those precedents. Additionally, FSA acknowledges that in arriving at a proposed fine of \$28,000 it took into consideration that Leon Studio One 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. Custard, speaking on behalf of Leon Studio One, readily acknowledges the significant and important role the IPEDS surveys serve for both prospective students, as well as for the institutions submitting this information. He admits it was his responsibility as a keyholder to submit these surveys, but that tragedies in his personal life were the cause of his failure to do so; however, he admits that this is not a satisfactory excuse for his neglect. He further adds that the imposition of fine of \$28,000 upon Leon Studio One could jeopardize the continuing operation of the school. In his attempt to bring extenuating information before the tribunal, Mr. Custard points out that prior to 2009 Leon Studio One had never failed to submit any IPEDS surveys since the beginning of its participation in the federal student aid programs. Additionally, he states that Leon Studio One has completed the IPEDS surveys for Fall 2010 and Winter 2010-2011, and is currently completing surveys for Spring 2011, of which two of the four surveys in the cycle have been completed. Of these remaining uncompleted two, one has data that needs to be verified before he can submit it, and the second will be completed upon receipt of the final audit copy which is expected to be available before the end of March, 2011.

To further illustrate how seriously Leon Studio One is taking this issue, Mr. Custard reports that Leon Studio One has hired two additional full-time employees to supplement its administrative staff, and it has implemented a corrective action plan. He believes the combination of these two initiatives will ensure timely submission of these IPEDS surveys in the future. Mr. Custard concludes by re-emphasizing it was his responsibility to submit the 2009-2010 IPEDS surveys and that his several personal problems were the prime reason he failed in this responsibility. He explains that he does not wish to rely on these problems as an excuse, but

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).

wants to emphasize that the failure to submit the IPEDS surveys was not as a result of purposeful neglect by the school of its responsibilities. He concludes by asking for a reduction of the fine because he believes it is excessive in light of their past and most recent submission of timely IPEDS surveys.

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. FSA does not allege here, and it has produced no evidence, that the proprietors of Leon Studio One were aware of or acquiesced in Mr. Custard's failure perform his administrative duties to submit the required surveys. However, there is no doubt that Mr. Custard blatantly disregarded the obligation to submit eight surveys for the 2009-2010 award year, despite repeated written and oral reminders of the institution's ongoing responsibilities in this regard. Such a failure certainly merits a fine, the maximum of which could have been \$27,500 for each of the eight violations, or \$220,000. Although not expressly stated, it appears FSA is seeking only \$3,500 per violation, an amount which is in the middle range of fines affirmed in the cases cited above.

It is well settled that these are serious violations of the regulations and program participation agreements by which participating institutions operate, and of such significance that fines are appropriate in these instances to serve the legitimate needs for providing punishment to the institution and deterrence to it and others. Taking into consideration that Leon Studio One is considered a small school because of the relatively small amount of federal student aid funds it disburses, the absence of any evidence that any federal funds were ever in jeopardy, the fact that the failure to submit the IPEDS surveys appears to be limited to only one award year since it began participation in Title IV programs, and the corrective actions taken by the institution designed to prevent any repeat violations convince me that the fine FSA proposes is appropriate. Mr. Custard argues that the imposition of this fine will cause the institution to suffer financially; however, that is the intended purpose of such a punishment. Accordingly, I find that the imposition of a fine of \$28,000 for Leon Studio One is appropriate.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Leon Studio One School of Hair Design pay a fine of \$28,000 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: March 29, 2011

SERVICE

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

Mr. Mark Custard
Administrative Director
Leon Studio One School of Hair Design
5221 Main Street
Williamsville, NY 14221

Brian P. Siegel, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110