



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

In the Matter of

**INSTITUTE OF MEDICAL
EDUCATION,**

Docket No. 12-59-SA

Federal Student Aid Proceeding

Respondent

ACN: 09-2012-21830

Appearances: Ms. Bindu Baburajan, President, Santa Clara, CA, for Institute of Medical Education.

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

Before: Judge Ernest C. Canellos

DECISION

Institute of Medical Education (IME) was a proprietary institution of higher education located in San Jose, California. It had been accredited by the Western Association of Schools and Colleges - Accrediting Commission for Schools (WASC) and it participated in the federal student financial assistance programs 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.* The Office of Federal Student Aid (FSA) is the cognizant agency within the U.S. Department of Education (ED) that administers and has oversight over these programs.

On October 26, 2010, IME lost its accreditation from WASC. Once that occurred, IME was no longer able to satisfy the eligibility requirements necessary to continue to participate in the Title IV programs. However, rather than terminating IME's eligibility immediately, FSA followed the usual practice it has applied in cases of similarly situated schools -- FSA provided IME with an 18-month grace period allowing it to continue participation in the Title IV programs while it sought an alternative accreditation. Apparently, IME could not procure such accreditation within the allowable time and, as a consequence, closed on February 7, 2012.

One of the consequences of closing and thereby ceasing to participate in the Title IV programs is that an institution must file a timely close-out audit. 34 C.F.R § 668.26(b) (2) (ii). On September 7, 2012, FSA issued a Final Audit Determination (FAD) wherein it determined that IME failed to provide the required close-out audit and, was ordered to repay \$1,805,916.03, to ED. On October 5, 2012, Respondent's President filed a Request for Review in the above-captioned proceeding challenging the findings of that FAD. On November 5, 2012, I issued an Order Governing Proceedings (OGP) wherein I ordered the parties to follow the briefing schedule I set forth. The OGP noted that in its appeal, the Respondent indicated that it intended to comply with its responsibility to file a closeout audit by doing so within 90 days (by January 4, 2013).

Further, as part of the briefing schedule mentioned above, on January 3, 2013, IME filed its submission wherein it again claimed that it intended to file a close-out audit. I note that such submission included a letter from IME to FSA, dated September 17, 2012, wherein IME again claimed its intent to file the closeout audit -- this time IME claims it will be done within 45 days of the date of that letter. In an overabundance of caution, I have waited until today for the periods to elapse and, not surprisingly, no close-out audit has appeared. I will, therefore, proceed to adjudicate this case on the merits.

First, in this proceeding, the Respondent has the burden of proving that its expenditures of Title IV funds were correct. *See* 34 C.F.R. § 668.116(d). In that context, 34 C.F.R. § 668.26 provides: that upon ceasing to provide educational instruction, a school which participated in federal student assistance programs must engage an auditor to carry out an independent audit; a letter of engagement for such audit must be provided to the Secretary within 45 days; and the requisite audit report must be submitted within 45 days of the engagement letter. I find that IME has failed to satisfy any of these requirements. My review of IME's scant presentation also clearly indicates that it has not complied with its obligation to establish the correctness of its expenditures of Title IV funds so as to satisfy its evidentiary burden.

FSA's position, as enunciated in its brief, is quite straightforward. A close-out audit is required -- failing to submit such an audit equates to the inability to account for federal funds for the period since the last periodic audit. As a consequence, FSA demands that the Respondent return all the Title IV funds it received since the last audit period, ending on January 1, 2011, through its date of closing on February 7, 2012. FSA's demand includes funds for: Pell Grants -- \$1,499,482.00; Direct Loans Estimated Actual Loss -- \$488,092.03; and Closed School Loan Discharges -- \$177,300.00. From that total of \$2,164,874.03, FSA netted out \$358,958.00 for a letter of credit it collected, resulting in a net demand for the return of \$1,805,916.03.

As I have previously commented in similar situations, it is fair to surmise that not all of the federal funds drawn down by IME were erroneously spent -- it is possible, if not probable, that a majority of those funds was properly expended. Yet, the great weight of authority supports the demand for the return of all funds drawn down since the last audit period. This anomalous situation results from the fact that the Respondent is a fiduciary as to federal funds in its possession, and as a fiduciary, it has the legal duty to account. *See generally, In re Samverly College of Barber/Hairstyling*, Docket No. 96-144-SP, U.D. Dep't of Educ. (June 21, 2000). In this regard, IME has failed to account either by filing the mandated close-out audit or by

submitting some alternative and acceptable proof of the correctness of the expenditures.

Most important, FSA as the responsible federal agency is left with no other acceptable alternative than to consider all the questioned funds to be improperly accounted for and demand its return. By signing its Program Participation Agreement with FSA, IME acknowledged its responsibility to act as a fiduciary, to comply with all Title IV program requirements and to account for the federal funds entrusted to it. Merely stating that a close-out audit will be submitted falls far short of satisfying that responsibility.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ordered that Institute of Medical Education repay to the United States Department of Education the sum of \$1,805,916.03, as demanded in the FAD.

Ernest C. Canellos
Chief Judge

Dated: February 14, 2013

SERVICE

A copy of the attached document was sent by Certified U.S. Mail, Return Receipt Requested, to the following:

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