



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

In the Matter of
MARTIN UNIVERSITY,
Respondent.

Docket No. 13-10-SP

Federal Student Aid
Proceeding

PRCN: 2011 4 05 27667

Appearances: Bonnie Little, Esq., of Brustein & Manasevit, PLLC, Washington, D.C. for
Martin University.

Jennifer L. Woodward, 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

Martin University (Martin) 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 February 15, 2013, FSA issued a Final Program Review Determination (FPRD) assessing a liability of \$882,741.00 against Martin. This assessment was based upon a finding of a number of violations of the governing regulations as a result of FSA's program review of Martin's adherence to Heightened Cash Monitoring-1, Verification, and Return of Title IV requirements during award years 2009-2010 and 2010-2011. FSA has reduced the amount of the liability to \$383,143.29 because of evidence Martin submitted after the FPRD was issued. This final liability consists of \$276,995.51 for Finding 2 and \$106,147.78 for Finding 3, the only findings Martin is challenging.

An institution participating in the Title IV programs must demonstrate it is capable of properly administering the Title IV programs. 34 C.F.R. § 668.16. In its capacity as a fiduciary of these federal funds, it owes the Department the highest standard of care and diligence to ensure the proper and efficient administration of these programs. 34 C.F.R. § 668.82(b). The institution also must comply with all other Title IV statutory and regulatory requirements. 34 C.F.R. § 668.16(a). As this applies to the eligibility to receive Title IV funds, an institution must accurately compute a student's expected family contribution (EFC). 34 C.F.R. § 690.2. During this process, when an institution receives conflicting information for a student, or has any reason to believe the information is incorrect, the institution must resolve the discrepant information prior to disbursing this Title IV aid. 34 C.F.R. §§ 668.16(f), 668.54(a)(3). In this proceeding, Martin bears the burden of proving by a preponderance of the evidence its expenditures were proper. 34 C.F.R. § 668.116(d); *see, e.g. In the Matter of Modern Trend Beauty School*, Dkt. No. 98-109-SP, U.S. Dep't of Educ., at 4 (Mar. 14, 2001).

Finding 2

In Finding 2, Verification Violations, the reviewers found verification errors in the form of inconsistencies among information included on the students' Institutional Student Information Reports (ISIRs), supporting documentation, and the verification worksheets. The program review noted that for award year 2009-2010: Martin failed to properly verify one student out of a sample of 50 and Martin failed to submit any verification documentation for 57 out of a sample of 355 students. In addition to FSA's findings, Martin found during its file review of that year that it improperly verified 49 out of the sample. FSA's reviewer also found the following errors for award year 2010-2011: Martin failed to properly verify five out of a sample of 50 students and Martin failed to submit verification documentation for 58 out of a sample of 341 students. In addition to FSA's findings, Martin found during its review that it improperly verified 40 out of the sample. FSA required that Martin conduct a further file review of the students for that year, collect any additional required documentation that was missing, and perform any additional analysis calculations. At the conclusion of the verification of this sample file review, FSA concluded that 210 out of a sample of 696 students were ineligible to receive funds for award years 2009-2010 and 2010-2011. Martin subsequently supplied additional exhibits to corroborate the student EFC calculations, and therefore the final number of students for which FSA maintains Martin has failed to properly eliminate verification errors is 124. Martin disputes 13 of these 124 students and FSA will not proceed further against nine of the students. The remaining four students in dispute are #107, #414, #636, and #689.

The computation of an EFC requires the institution to examine and verify information such as the student's household size, number of household family members in college, adjusted gross income, U.S. taxes paid, certain types of untaxed income and benefits, and other untaxed income included on their tax return. 34 C.F.R. § 668.56.

For students #107 and #414, Martin claims that the Department did not indicate the basis for rejecting the students' files. FSA responds that for student #107, Martin submitted the 2010-2011 ISIR and 2009 federal tax return, when it needed to provide the 2009-2010 ISIR and 2008 tax return. Similarly, for student #414, FSA states that Martin submitted the student's 2009 tax return, instead of the appropriate 2008 tax return. Martin did not submit any additional

documentation and therefore inconsistencies have not been satisfactorily resolved. I find Martin has not properly performed verification for these students. *In the Matter of Central State University*, Dkt. No. 12-32-SA, U.S. Dep't of Educ. (April 15, 2013).

For student #636, Martin argues that the verification worksheets, tax documents, and other documents appropriately verify all required information. FSA responds that the student claimed to be an “emancipated minor” on her 2010-2011 ISIR, which would have made her an independent student. FSA states that no legal documentation was submitted to demonstrate that the student was “emancipated,” except a note from the student’s mother stating that she refused to support her daughter financially. A student may only answer “yes” to indicate she is an emancipated minor on the Free Application for Federal Student Aid, if she can provide a copy of a court’s decision that she was an emancipated minor immediately before she reached the age of adulthood. FSA states that Martin was required to verify this student’s “emancipated” status. I find that Martin had an obligation to pursue this. It did not, thus, I find verification was not properly performed for this student.

For student #689, Martin suggests that nothing in the student’s file conflicts with her claim of independence for Title IV aid. Furthermore, Martin claims that there is no regulatory requirement that a school must document a student’s independent status and therefore Martin was not required to obtain additional documentation. FSA responds that the documentation provided for this student is replete with discrepant information. In addition, FSA states that the changes in the student’s ISIR demonstrate that Martin did not properly verify the student’s independent status. 34 C.F.R. § 668.57(c)(2). I find verification was not properly performed for this student. *See Central State University, supra*.

Finding 3

In this finding, Martin first argues that the FPRD did not provide factual or legal support for the rejection of Martin’s June submission of files, and that the FPRD did not acknowledge that Martin submitted these files. Martin claims that due to the lack of support, FSA failed to meet its burden of production and failed to establish a prima facie case for recovery of funds. FSA responds that it issued the Program Review Report (PRR) which found that Martin maintained inconsistent information in its student files. FSA states that the PRR required Martin to perform a file review of all students selected by the Central Processing System (CPS) for verification during 2009-2010 to show its resolution of inconsistent information. FSA claims that in response to the PRR, Martin submitted a file review in which it only examined 30% of its Title IV applicants. FSA states that Martin therefore ignored the requirement to review all of its Title IV applicants outside of the 30% chosen by Martin. FSA states that the FPRD established liabilities for the 147 students that Martin chose not to review, and argues that adequate administrative case precedent upholds establishing liabilities for all funds received by students for whom a school fails to perform an acceptable file review. *See In the Matter of Avanti Hair Tech*, Dkt. Nos. 03-68-SP; 03-69-SP; 03-70-SP, U.S. Dep’t of Educ. (Nov. 10, 2004); *In the Matter of Classic Beauty Colleges*, Dkt No. 96-147-SP, U.S. Dep’t of Educ. (Sept. 30, 1997). I find that the FPRD does make a prima facie case which requires Martin to carry its burden of proof in this proceeding. *In the Matter of Metro Technical Institute*, Dkt. No. 04-10-SA, U.S. Dep’t of Educ. (July 16, 2004).

In Finding 3, Unresolved Discrepant Information in Student Files, the reviewers determined that Martin failed to accurately resolve discrepant information for students where verification documents were obtained. A participating institution is required to identify and resolve discrepancies in any and all information it receives from different sources with respect to a student's application for Title IV, HEA programs. 34 C.F.R. § 668.16(f). In the PRR, dated November 14, 2011, FSA's reviewers found that Martin collected verification documents for all students selected by the CPS and then chose the 30% that it verified. The PRR found that when Martin collected documents for all the students selected by CPS, inconsistencies were apparent in six students' files for award year 2009-2010. After identifying these inconsistencies, the PRR required Martin to complete a file review for all students selected for verification by CPS for award years 2009-2010 and 2010-2011 to demonstrate its resolution of the inconsistent information. According to the FPRD, Martin ignored the Department's instructions and only submitted information regarding the 30% of all applicants for verification. Martin claims that it only submitted information for the 30% of students to reduce its exposure to liability. The Department responded that it could have required Martin to perform a file review for all of its students for award year 2009-2010, but instead the Department only required Martin to review those student files identified by CPS. *See Avanti Hair Tech, supra*. As a result of Martin's failure to review the rest of its Title IV applications CPS selected, the FPRD established liabilities for the 147 students in award year 2009-2010 that Martin chose not to review. Martin subsequently supplied additional student information, and the final number of students for which FSA maintains Martin has failed to resolve inconsistent information is 36. Martin disputes 12 of these 36 students and FSA will not proceed further against four of them. Consequently, Martin has the burden of resolving discrepant information and providing documentation to resolve the inconsistencies for the remaining eight students: #771, #787, #823, #842, #875, #879, #889, and #892.

For student #787, Martin claims that the file contains no discrepant information. Martin states that the student claimed he was independent and that it was not obligated to obtain additional information about the student's independent status because there was not a conflict in his file. FSA provides evidence from the student's ISIR, which stated that the Department of Veterans' Affairs did not confirm that the student was or would be a qualifying veteran, a key component of independent status. The student's ISIR continued with instructions to resolve the discrepancy. This conflict should have been resolved; since it was not, I find verification was not properly performed for this student.

For students #771, #842, and #889, Martin claims that it did not collect any verification or tax documentation. FSA responds that Martin submitted 2010-2011 documentation for these students, instead of the applicable 2009-2010 materials, thus supplying inadequate documentation to enable Martin to compute EFC correctly. Additionally, FSA states that Martin made changes to these students' tax information on their ISIRs. FSA claims that based on the corrections, Martin must have obtained tax information from these students. FSA argues that because Martin failed to consider these additional documents in resolving the conflicts in the students' files the liabilities remain. 34 C.F.R. § 668.58. These conflicts should have been resolved; since they were not, I find verification was not properly performed for these students.

For student #823, Martin claims that it did not collect any verification or tax documentation. FSA points out that Martin submitted 2010-2011 documentation for this student, instead of the applicable 2009-2010 materials. FSA argues that in addition to submitting the incorrect documentation, Martin made corrections to the student's household and dependency status on the student's ISIR. FSA states that based on these corrections, the student is a dependent. Therefore, a parent's signature is required by 34 C.F.R. § 668.57(b). I find that Martin had an obligation to further pursue this. It did not, thus I find verification was not properly performed for this student.

For student #875, Martin states that it collected verification worksheets that were consistent with the student's application, but it did not collect tax documentation. Martin claims that it was under no obligation to collect tax documentation because this student was not being verified. FSA states that this student's 2009-2010 ISIR transaction 05 shows three family members in the household and one in college. FSA argues that this is inconsistent with the student's Independent Verification Worksheet, which lists four family members in the household and one in college. This conflict should have been resolved; since it was not, I find verification was not properly performed for this student. 34 C.F.R. §§ 668.54(a)(2); 668.57(c)(2).

For student #879, Martin claims that it collected verification worksheets that were consistent with the student's application, but it did not collect tax documentation. Martin states that it was under no obligation to collect tax documentation because this student was not being verified. FSA responds that Martin submitted 2010-2011 documentation for this student, but the liabilities are for the 2009-2010 award year. I find Martin has failed to present the required documents; therefore, Martin has failed to properly perform verification for this student.

For student #892, Martin claims that it collected verification worksheets that were consistent with the student's application, but it did not collect tax documentation. Martin states that it was under no obligation to collect tax documentation because this student was not being verified. FSA responds that Martin provided EFC data, but the worksheet was not signed by the student, as required by the worksheet itself. Instead, the student's mother signed this document on the student's behalf. Furthermore, FSA argues that the check marks on the student's ISIR strongly suggest that Martin obtained a copy of the mother's tax return. FSA states that the established presence of the tax records created additional documents that Martin was compelled to consider to resolve conflicts in the student's file. Martin did not submit any explanations from the student regarding this item and it failed to demonstrate that it considered these additional documents to resolve the conflicts in the student's file. I find Martin has not properly performed verification for this student.

After reviewing the submissions, I endorse the findings of the FPRD as they apply to the above 12 students. Martin has failed to prove by a preponderance of the evidence that it properly verified information submitted by these students on their ISIRs and other documentation. Accordingly, I find Martin liable for the amounts sought by the Department.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Martin University pay \$383,143.29 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: November 6, 2013

SERVICE

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

Bonnie J. Little, Esq.
Brustein & Manasevit, PLLC
3105 South Street, N.W.
Washington, D.C. 20007

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