



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

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In the Matter of  
**VISIONS IN HAIR DESIGN,  
INSTITUTE OF COSMETOLOGY,**  
  
Respondent.

**Docket No. 13-52-SP**

Federal Student Aid  
Proceeding

PRCN: 2010 4 05 27320

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Appearances: Ms. Lazonnie Belton, President/CEO, for Visions in Hair Design Institute of Cosmetology.

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**

Visions in Hair Design (VHD) is a participant in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV, HEA programs), 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 June 18, 2013, FSA issued a Final Program Review Determination (FPRD) assessing a liability of \$103,411.82 against VHD. This assessment was based upon a finding of a number of violations of the governing regulations following FSA's program review of VHD's compliance with the statutes and federal regulations as they pertain to the institution's administration of the Title IV programs during award years 2008-2009 and 2009-2010. VHD appealed this determination.

The statutes and regulations governing the Title IV, HEA programs require a participating institution to demonstrate it is capable of properly administering these programs. 34 C.F.R. § 668.16. 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). As this applies to its eligibility to receive Title IV funds, an institution must establish and maintain, on a current basis, any application for Title IV funds and program records that document (1) its eligibility to participate in the Title IV programs; (2) the eligibility of its educational programs for Title IV funds; (3) its administration of Title IV programs in accordance with all requirements; (4) its financial responsibility; (5) information included in any application for Title IV funds; and (6) its disbursement and delivery of Title IV funds. 34 C.F.R. § 668.24(a). In this proceeding, VHD bears the burden of proving by a preponderance of the evidence its expenditures were proper. 34 C.F.R. § 668.116(d). To sustain its burden, VHD must establish through the submission of credible evidence that it complied with program requirements. *In the Matter of Du Quoin Beauty College*, Dkt. No. 06-51-SP, U.S. Dep't of Educ., at 3 (May 14, 2009).

A program review of twenty-one files from the 2008-2009 and 2009-2010 award years was conducted by FSA. The Program Review Report, issued on February 28, 2011, identified 16 findings. The FPRD states that VHD failed to adequately address 11 of the 16 findings after submitting two responses. For Finding 1, the FPRD states that VHD failed to keep accurate attendance summary documents and time cards for its students. For Finding 2, the reviewers found that VHD received Federal Pell Grants via electronic funds transfer from the Department for four students, but did not distribute these funds to the students. In Finding 3, the reviewers found that VHD made early disbursements of Federal Pell Grants to 11 students in the sample prior to the students completing the payment period for which they had been paid these grants. 34 C.F.R. § 685.301(b)(3)(B). For Finding 4, the FPRD states that VHD failed to correct Return of Title IV (R2T4) calculation errors despite multiple submissions made to the Department, and returned Title IV, HEA program funds that students were entitled to receive. In Finding 5, the reviewers found that VHD paid late R2T4 funds for three students. For Finding 6, the FPRD states that VHD did not return Title IV funds for one withdrawn student.

In Finding 7, the reviewers found that due to VHD's inaccurate attendance records, the institution reported four students to the National Student Loan Data System (NSLDS) as having graduated, when they had completed less than the required 1800 clock hours. In addition, VHD failed to report one student to NSLDS. For Finding 8, the FPRD states that VHD improperly paid a credit balance for four students beyond the regulatory limit of 14 days from the date of occurrence. The FPRD also noted that if corrected ledger cards for students #1 and 3 in Findings #5 and 8 indicate credit balances for these students, VHD must make appropriate payments to the students. 34 C.F.R. §§ 668.164(e)(1)–(2). In Finding 9, the reviewers found that VHD failed to correct disbursement dates of Title IV funds and therefore the dates in the Common Origination and Disbursement record do not match the dates on the student account ledger for 21 students in the sample.

On appeal, VHD acknowledges the liability set out in the FPRD, but asks the Department to forgive it of all repayment requests. VHD admits that it has faced challenges administering the Title IV program with full compliance due to inexperienced staff and a lack of knowledge. It explains that it understands its fiduciary duty and recognizes that it must establish and maintain accurate program and fiscal records related to its use of the Title IV funds. VHD does not factually dispute any of the findings that give rise to the liabilities identified in the FPRD, but pleads that paying the liabilities will force it to close its doors. VHD elaborates on four reasons it proposes as to why it should have its liabilities eliminated.

VHD first argues that it has experienced challenges administering the Title IV programs due to its inexperienced staff and a general lack of knowledge about how to properly administer the programs. FSA responds that when the school signed its program participation agreement with the Department, it promised to act at all times as the Department's fiduciary. FSA continues, stating that VHD asserted that it had already attained the means to properly administer the programs and therefore a lack of knowledgeable staff cannot provide a defense.

VHD's second argument is that it has now put in place measures so that it is in full compliance with Department standards and it will implement a plan with a focus on achieving specific Title IV objectives. FSA responds that because VHD was operating as the Department's fiduciary, it was expected to have systems in place to ensure compliance before its Title IV participation. FSA states that any evidence of VHD's current practices, much less its promised future practices, is irrelevant absent a clear showing that this evidence is probative of the fact that the questioned expenditures with the FPRD were proper, or that the institution complied with program requirements. 34 C.F.R. § 668.116(f)(3).

VHD's third contention is that it now has a more knowledgeable financial aid staff. FSA responds that assuming that this is true, it still cannot support disregarding the established liabilities. FSA continues, stating that by employing capable personnel, VHD is only potentially positioning itself to retain its Title IV eligibility.

VHD's fourth and final argument is that payment of the identified liability would cause the school financial hardship and force it to close. FSA responds that VHD's financial exigencies have no effect on whether the liability amount specified in the FRPD is valid and should be sustained. *In the Matter of Humphrey's College*, Dkt, No, 99-15-SA at 2, U.S. Dep't of Educ., (May 18, 1999) (certified by the Secretary, July 25, 2000).

I find that VHD has offered no evidence to contest the liabilities, and therefore, it has not met its burden of persuasion to establish that its Title IV expenditures were proper. In as much as the tribunal is bound by all applicable statutes and regulations, it has no authority to waive these statutes and regulations, or rule them invalid. 34 C.F.R. § 668.117(d); *In the Matter of Columbia Beauty College*, Dkt. No. 08-17-SA, U.S. Dep't of Educ., at 4 (Apr. 7, 2009). For the same reason, as well-meaning as this request for a forgiveness of liability may be, the tribunal is without authority to give relief to VHD to forgive, or excuse, the established liability. *See In the Matter of Barber-Scotia College*, Dkt. No. 12-44-SA, U.S. Dep't of Educ., at 4 n.3 (Jan. 2, 2013). Accordingly, I must affirm the findings and the liabilities established by the FRPD in the amount of \$103,411.82. Further, if corrected ledger cards for students # 1 and 3 in Findings #5

and 8 indicate credit balances for the students, VHD must make the appropriate payments.

**ORDER**

On the basis of the foregoing, it is hereby **ORDERED** that Visions in Hair Design, Institute of Cosmetology, pay \$103,411.82 to the U.S. Department of Education.

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Judge Richard F. O'Hair

Dated: November 20, 2013

**SERVICE**

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

Ms. Lazonnie Belton  
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