



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

In the Matter of

Docket No. 13-60-SP

JAY'S TECHNICAL INSTITUTE,

Federal Student Aid
Proceeding

Respondent.

PRCN: 2010 3062 7229

Appearances: Jermaine S. Thomas, Esq., Barnes and Turner, Houston, TX, for Jay's Technical Institute.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Jay's Technical Institute (Jay's) is a proprietary institution of higher education located in Houston, Texas. It is accredited by the Council on Occupational Education and participates 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.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is charged with administration and oversight of these programs.

From June 21, 2010, to June 25, 2010, FSA conducted a program review at Jay's to determine the institution's compliance with federal regulations pertaining to its administration of Title IV programs. FSA reviewers examined randomly selected student files from the 2008-2009 and 2009-2010 award years and issued a program report on February 25, 2011. After reviewing input from Jay's, FSA issued a Final Program Review Determination (FPRD) on July 19, 2013,

that affirmed eight actionable findings¹ and demanded the return to ED of \$258,759.52. By letter dated September 23, 2013, Respondent's CEO filed a written Request for Review in the above-captioned proceeding challenging Findings 3, 7, and 10 in the FPRD.² During the course of this proceeding, FSA accepted as dispositive additional documentation provided by Jay's and, as a result, Finding 10 is no longer in issue. The remaining issues on appeal before me involve allegations that Jay's improperly disbursed funds (1) to students who did not have a valid basis of admission and (2) to students who did not meet selective service requirements, with a revised total liability assessment of \$238,901.19.

DISCUSSION

As a general rule, in order to participate in the Title IV programs, an institution must enter into a program participation agreement with ED that sets forth various requirements which mandate that the institution use Title IV funds solely for the purposes specified in each individual student assistance program. 20 U.S.C. § 1094; 34 C.F.R. § 668.14. Further, as a fiduciary of these federal funds, held in trust for the intended student beneficiary and the Secretary of Education, *see* 20 U.S.C. § 1094(a)(1); 34 C.F.R. § 668.14, the institution owes ED the highest standard of care and diligence in administering Title IV programs efficiently and ensuring that the funds are properly spent. 34 C.F.R. § 668.82(a), (b). In this proceeding, Jay's bears the burden of proving by a preponderance of the evidence that its expenditures were properly disbursed and that it complied with all Title IV program requirements, 34 C.F.R. § 668.116(d). *See In the Matter of Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Decision of the Secretary) (Sept. 26, 1991).

FINDINGS

In the first contested finding before me (Finding 3 of the FPRD), FSA asserts that Jay's improperly disbursed Title IV funds to students B2-5, B2-6 and B2-7, who did not have a valid basis of admission. Only eligible students, i.e., students who are academically qualified to study at a postsecondary level, may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. During the award years relevant to this proceeding, a student was required to have a high

¹ Finding 12 of the FPRD determined that Jay's violated provisions of the Clery Act. *See* 34 C.F.R. § 668.46. Although serious, it did not result in a monetary finding and, therefore, is not jurisdictionally before me.

² Jay's did not appeal Findings 1, 1a, 4, 5, 6, and 11 in the FPRD. Therefore, liabilities for these findings are final and must be repaid by the institution.

school diploma or its equivalent or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. *See* 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e) (2009-2010). A student who lacked a valid high school diploma or its equivalent could meet this requirement by passing an approved and independently administered ability-to-benefit (ATB) test prior to receiving Title IV funds, 34 C.F.R. § 668.32(e)(2) (2009-2010), or by satisfactorily completing 6 credits or equivalent coursework toward a degree or certificate offered by the institution. 20 U.S.C. § 1091(d) (2008). Without meeting one of these requirements, a student is ineligible to receive Title IV funds.³

As part of its admissions process, Jay's required students to submit a copy of a high school diploma or general equivalency diploma (GED), or, in the alternative, accepted a passing test score for students who had taken the approved Wonderlic ATB test. Since Jay's required such documentation as part of its admissions process, it was required to maintain the documents utilized in determining students' eligibility to receive Title IV funds. FSA asserts that Jay's failed to provide proof of a valid high school diploma, GED, or passing ATB test score for students B2-5, B2-6 and B2-7, and therefore improperly disbursed \$7,126 in Pell Grant funds and \$11,250 in FFEL loan funds to these students. Specifically, Jay's distributed \$1,741 in Pell Grant funds to student B2-5, for which Jay's submitted a copy of a high school diploma with an "altered graduation date." Jay's also distributed \$4,731 in Pell Grant funds and \$3,750 in loan funds to student B2-6, for which Jay's submitted a certificate of completion in Welding, and \$654 in Pell Grant funds and \$7,500 in loan funds to student B2-7, for which Jay's submitted a certificate of proficiency for 7 credit hours in truck driving training, both of which are clearly insufficient to act as a high school diploma or GED.

Jay's asserts that students B2-5, B2-6 and B2-7 did meet the eligibility requirements, citing National Student Loan Data System (NSLDS) records for the three students to show that they each also received Title IV funds at another postsecondary institution and concluding that they, therefore, must meet Title IV eligibility requirements. In response, FSA urges that the mere fact that another institution disbursed funds to these students does not alone suffice to establish that they met Title IV eligibility requirements because it is impossible for ED to determine whether that institution complied with proper eligibility documentation requirements.

Jay's further argues that students B2-6 and B2-7 meet Title IV eligibility requirements because they completed six credits of postsecondary education. FSA points out that the credits

³ Finding 3 of the FPRD originally found insufficient documentation to establish Title IV eligibility for students #1, 11, 12, B2-1, B2-2, B2-3, B2-4, B2-5, B2-6 and B2-7. On appeal, FSA accepted documentation submitted for students #12 and B2-2; therefore, those liabilities are no longer at issue. Jay's did not appeal the liabilities assessed for students #1, 11, B2-1, B2-3 and B2-4, therefore those liabilities are final, with the only liabilities at issue in this proceeding concerning students B2-5, B2-6 and B2-7.

completed must be applicable towards a degree or certificate at the institution the student is currently attending, and that credits or training at another institution are insufficient to establish Title IV eligibility. *See* 20 U.S.C. § 1091(d). Accordingly, I find that without the submission of proper documentation for students B2-5, B2-6 and B2-7, Jay's has failed to carry its burden of proving these students' eligibility to receive Title IV funds. Consequently, it is liable for the return of Title IV funds disbursed to these students, as well as to the uncontested students # 1, 11, B2-1, B2-3 and B2-4, for a revised total liability of \$23,798.00.

In the second contested finding (Finding 7 of the FPRD), FSA asserts that Jay's improperly disbursed Pell Grant funds and loan funds to students #7, 30, B5-1, B5-3 and B5-4, who did not meet selective service requirements.⁴ In addition to the other Title IV eligibility requirements, male students subject to registration with the Selective Service must register in order to receive federal aid. 20 U.S.C. § 1091; 34 C.F.R. §§ 668.32(j), 668.37(a). If a student claims that he was not required to register, he must provide the institution with documentation sufficient to establish the reason for which he was exempt. 34 C.F.R. § 668.73(c). However, a student who was required to register but did not do so may still be found eligible by the institution to receive Title IV funds if he can demonstrate by clear and unambiguous evidence that he was unable to present himself for registration due to reasons beyond his control or that he is over the age of 26 and did not knowingly or willfully fail to register when he was required to do so. 34 C.F.R. § 668.37(d). In order to qualify for this exemption, the student is obligated to submit to the institution an advisory opinion from Selective Service that it does not dispute the student's claim that he did not knowingly or willfully fail to register and is not negated by other incontrovertible evidence. 34 C.F.R. §§ 668.37(d), (e).

On appeal, Jay's asserts that students #7, 30, B5-1, B5-3 and B5-4 did meet the eligibility exemption in 34 C.F.R. § 668.37(d). In support, Jay's submits affidavits from its Financial Aid Director, criminal record histories, and letters from Selective Service. In rendering a decision of the student's eligibility, Jay's Financial Aid Director considered the following criteria: (1) Where the student lived when he was age 18-25; (2) Whether the student claims that he thought he was registered; and (3) Why the student claims he was not aware of the widely publicized requirement to register when he was age 18-25. Specifically, Jay's review of the Selective Service Information Letter claimed that no notices were sent to students #7, 30 and B5-3 regarding the requirement to register, and that one or more pieces of correspondence informing student B5-1 of the requirement to register were sent, which were not returned as undeliverable. Jay's found that student B5-4 was incarcerated between the ages of 18-25 and that, during

⁴ Finding 7 of the FPRD originally found insufficient documentation for students # 7, 12, 30, B5-1, B5-2, B5-3 and B5-4. ED Ex. 1-17. On appeal, however, FSA accepted documentation for students # 12 and B5-2; therefore, those liabilities have been eliminated and are no longer at issue in this proceeding.

periods of continuous incarceration, the student was exempt from registering. Reportedly, after visiting with the students and reviewing their respective statements, Jay's Financial Aid Director found that students # 7, 30, B5-1, B5-3 and B5-4 were not aware of their obligation to register, were "at-risk teens," never received mentoring from a parent or school counselor regarding the requirement to register, and lived in several different residences between the ages of 18-25 without remaining in a single residence for over one year. Jay's administrator, therefore, concluded that the students never received any of the notices purportedly sent to them from the Selective Service. Students # 7, 30, B5-1, B5-3 and B5-4 all affirmed that, had they known of the requirement, they would have registered. Based on consideration of the above information, Jay's administrator found that all 5 students met the exemption criteria of 34 C.F.R. § 668.37(d).

In response, FSA argues that this documentation does not provide an adequate basis for making a determination as to whether the students knowingly and willfully failed to register. First, FSA asserts that the affidavits submitted by Jay's Financial Aid Director are virtually identical for all five of the students in question, consisting of general statements that could be applied to practically any student who grew up in an "at-risk" environment and lacking any specific facts to show why each individual student did not knowingly or willfully fail to register. FSA further asserts that nothing in the record, aside from the aforementioned general statements by Jay's Financial Aid Director, suffices to show that the individuals did not receive notice from their schools or from other sources regarding the obligation to register. Specifically, for student B5-1, FSA states that the record establishes that Selective Service did, in fact, send him notices of his obligation to register. Moreover, FSA describes the only information provided by the students themselves as "notations on a form," merely stating that they did not know of their obligation, without any further explanation.

FSA further points out that information about the need to register is readily available in United States high schools, post offices, unemployment offices and "numerous other places. Given the fact that this information is available throughout the public domain, FSA argues that there should be a presumption that the individuals knew of the requirement unless the institution can provide specific evidence to the contrary, which Jay's has failed to do. With regard to student B5-4, FSA states that the fact that a student has a significant criminal record between the ages of 18 and 26 is insufficient to meet the exemption in 34 C.F.R. § 668.37(d) because, unless the student was continuously incarcerated from the age of 18 until the age of 26, which none of the students in the case at bar were, he was still required to register during the time periods for which he was not incarcerated.

Given the fact that the selective service eligibility requirement clearly places the burden on the student to prove that he did not knowingly or willfully fail to register, it appears clear that

none of the students at issue are able to meet such a burden. 34 C.F.R. § 668.37(d). Accordingly, I find that Jay's is liable for the return of Pell Grant and loan funds disbursed to students #7, 30, B5-1, B5-3 and B5-4 in the amount of \$35,490.37.⁵

CONCLUSION

Based on my review of the record, I affirm FSA's revised liability determinations and demand for \$238,901.19⁶ are fully supported and must be repaid to ED. Although Jay's asserts that this amount should be reduced by \$65,597.64 to a total of \$193,162.28 based upon the documentation it submitted for students B2-5, B2-6 and B2-7 in Finding 3 and students #7, 30, B5-1, B5-3 and B5-4 in Finding 7, I find that Jay's has failed to meet its burden of establishing that the Title IV disbursements made to these students were proper. Consequently, Jay's is liable for the full amounts assessed by FSA for Findings 3 and 7, \$23,798 and \$35,490.37 respectively, as well as for the remaining uncontested findings of the FPRD.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Jay's Technical Institute pay \$238,901.19 to the U.S. Department of Education.

Ernest C. Canellos
Chief Judge

Dated: July 1, 2014

⁵ Rather than requiring Jay's to purchase ineligible FFEL loans, FSA applied its established estimated loss calculation to determine the loss to ED that has or will result from ineligible loans certified by Jay's. Under this formulation, an institution's most recent cohort default rate is multiplied by the total amount of ineligible loans disbursed during a given award year to produce an estimated loss resulting from defaulted loans. *See In Re Selan's System of Beauty Culture*, Docket. No. 93-82-SP, U.S. Dep't of Educ. (Dec. 19, 1994). This estimate loss is then added to the loan subsidies and interest payments made by ED to yield the estimated actual loss formula liability. Here, the estimated loss calculation yields a final liability of \$35,490.37, for Finding 7.

⁶ The amount calculated by adding the total liability determinations for Findings 1, 1a, 3, 4, 5, 6, 7 and 11 of \$223,750.48 to the total interest paid of \$15,150.71, is \$238,901.19.

SERVICE

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

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