



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

In the Matter of
JAGIELLONIAN UNIVERSITY,

Docket No. 14-05-SA

Federal Student Aid
Proceeding

Respondent.

ACN: 11-2010-28388

Appearances: Miroslaw Klimkiewicz, Director, Krakow, Poland, for Jagiellonian University.

Denise Morelli, 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

The Jagiellonian University (Jagiellonian), a postgraduate Polish institution, is a participant in the federal student aid program 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 October 25, 2011, Jagiellonian submitted its annual compliance audit for January 1, 2010 through December 31, 2010 to the Department. The audit found that Jagiellonian failed to calculate and return Title IV funds for three students, identified as SRN1, SRN3 and SRN14, who either abandoned their studies or were dismissed by the university before the end of the academic semester. The Department issued a letter and several reminders to Jagiellonian outlining the findings of the audit. The FSA correspondents further requested that the university submit documentation to aid with verifying the total amount owed to the Department. Jagiellonian failed to file any response or produce any form of documentation. It now contends that it did not receive any initial notification and this contributed to its delayed response.

As a result of Jagiellonian's failure to comply with the regulation, FSA's Foreign Schools Team on December 13, 2013, issued a Final Audit Determination (FAD) assessing liabilities for all Title IV funds disbursed to the three students identified in the audit report for the 2010 fiscal year, finding Jagiellonian liable to the Department for \$61,595.

When an institution signs a program participation agreement with the Department for the purpose of disbursing federal student financial aid, that institution agrees to comply with all Title IV program requirements and to act as a fiduciary over those funds. 34 C.F.R. §§ 668.82(a), (b)(1). 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 must also comply with all Title IV statutory and regulatory requirements. 34 C.F.R. § 668.16(a). The issue in this case focuses on whether Jagiellonian properly calculated and returned Title IV funds after students withdrew or abandoned their studies before the end of the semester. If a recipient of Title IV funding withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV funds the student earned as of the student's withdrawal date. 34 C.F.R. § 668.22(a). An institution is required to return any unearned tuition and fees within 45 days from the date a student withdraws. 34 C.F.R. § 668.22 (j).

In this type of proceeding, the institution has the burden of proving by a preponderance of the evidence that it has satisfied its role as a fiduciary for federal student aid funds, and the disbursement of those funds was in accordance with statutory and regulatory guidelines. 34 C.F.R §§ 668.14, 668.82 (a) and (b), and 668.116(d). *See also, In the Matter of Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Sept. 26, 1991). Jagiellonian has failed to meet this burden.

Jagiellonian argues that the university properly filed updated Student Status Conference Reports (SSCR) for the three students and was therefore in compliance with 34 C.F.R. § 682.610. Next, the institution contends that the auditor incorrectly calculated the time of SRN3's withdrawal and therefore it should only be held liable for the corrected amount of these funds. Jagiellonian concludes by asking that all liabilities be waived because the students incurred administrative costs while attending the university.

Jagiellonian challenges the FAD charges by arguing that the University complied with 34 C.F.R. § 682.610 by timely filing updated SSCRs for the three students in question. They contend that the SSCR provided the Department with ample notice of the students' enrollment status and therefore it should not be held liable for the full award. While it is true that the SSCR provides updated information, Jagiellonian also has a legal responsibility to determine the total amount of Title IV funds that each student is responsible for up to the date of withdrawal. 34 C.F.R. § 668.22(a). Jagiellonian failed to compute these amounts. Further, Jagiellonian must return any unearned tuition and fees within 45 days from the date of withdrawal. 34 C.F.R. § 668.22 (j). This they have also failed to do. More importantly, Jagiellonian did not provide the Department with any form of documentation to support its assertion that the findings of its auditor and the FAD were erroneous. These documents would have allowed the Department to verify each student's withdrawal date and correctly assess the amount of funding to be returned. Based on these facts, the conclusions from the December 2013 FAD must stand and Jagiellonian is liable for all Title IV funds disbursed to the three students.

Jagiellonian requests that liabilities for these students should be waived because the students incurred administrative costs while attending the institution. I cannot comply with this

request because I have no authority to offset, waive or reduce any monies an institution may owe to the Department. *See* 34 C.F.R. § 668.118; *In the Matter Of Modern Beauty School*, Dkt. No. 98-109-SP, U.S. Dep't of Educ. (Mar. 14, 2001); certified by the Secretary (Oct. 11, 2001). My authority in this case is limited to determining whether Jagiellonian adequately calculated and returned Title IV funds for three students who withdrew from the institution before the end of the school semester. Accordingly, I can only adjudicate that issue and decide whether the liability determined by the FAD is proper.

Even if I had the power to offset money, Jagiellonian's request does not stand on solid ground. After the 2010 compliance audit found that Jagiellonian failed to determine the amount of Title IV funds the three students earned prior to ending their studies, the institution did not submit any form of documentation or supporting evidence to refute the findings. Jagiellonian's inability to account for funding gives the Department authority to demand full payment of all funds disbursed. *See In the Matter of Helma Institute of Massage Therapy*, Dkt. No. 11-83-SP, U.S. Dep't of Educ. (Mar 21, 2013); *In the Matter of Anthony's Barber Styling College*, Dkt. No. 97-1-SP, U.S. Dep't of Educ. (Aug 1, 1997), affirmed by the Secretary (May 6, 1999). Since Jagiellonian is unable to provide sufficient rebuttal evidence through comprehensive file reviews, I must affirm the FAD ordering Jagiellonian to repay the total amount disbursed to all three students (\$61,595).

Jagiellonian also attempts to rebut the findings and liabilities found in the 2009 and 2011 FADs the Department issued it. I find these challenges fall outside the scope of this appeal and, thus, are not at issue in this case. The matter in question before me focuses solely on the December 13, 2010, FAD.

Failure to comply with the applicable statutes and regulations will constitute grounds for Department action to be brought against the school. Jagiellonian has a fiduciary duty to act in the best interest its stakeholders. Simply filing an updated SSCR is not sufficient to fulfill this duty. Jagiellonian has failed to meet its burden of proof by showing that the institution did not violate 34 C.F.R. § 668.22 and did in fact calculate and return unearned Title IV funds.

ORDER

On the basis of this finding, it is hereby **ORDERED** that Jagiellonian University pay \$61,595 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: May 14, 2014

SERVICE

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

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