



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

CC's Cosmetology College.

Docket Number 94-214-SP

Respondent.

Student Financial
Assistance Proceeding

DECISION OF THE SECRETARY

I. Facts & Procedure

CC's Cosmetology College. (CC) is a proprietary school offering vocational programs in cosmetology at locations in Tulsa and Durant, Oklahoma and Paris, Texas. CC is eligible to participate in the Federal Pell Grant and Federal Family Education Loan Programs, authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. section 1070 and 42 U.S.C. section 2751. CC is a clock hour institution and the students relevant to this appeal were enrolled in a 1500 hour cosmetology course at the Durant location.

In February of 1994, the office of Student Financial Assistance Programs, (SFAP) of the U.S. Department of Education, (Department) conducted a review of CC's Title IV program administration for the award years of 1991-1992 and 1992-1993. SFAP's review report included ten, (10) adverse findings. CC took corrective action and the Final Program Review Determination (FPRD) issued by SFAP on October 14, 1994 included one unresolved violation. Specifically, SFAP found that the Durant campus was certified by the Department to participate in Title IV programs effective June 23, 1992, and therefore CC improperly disbursed funds for payment periods preceding Durant's eligibility. In sum, SFAP determined that Respondent improperly expended \$26,767.00 in Pell Grant payments. CC appealed this finding.

On December 11, 1996, Judge Ernest C. Canellos rendered a decision in this case finding that Respondent improperly disbursed Pell Grant awards to students at its Durant campus. The Court also ordered Respondent to repay the improperly disbursed funds.

II. Discussion

The issue on appeal is whether or not Respondent must repay Pell Grant funds disbursed for payment periods prior to the date of its program participation eligibility. It is undisputed that CC's original campus location was eligible to participate in the Federal Pell Grant Program. 34 C.F.R. section 600.10(b)(3) states, in pertinent part, that:

Eligibility does not extend to any location that an institution

establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location ...

In accordance with this regulation, and 34 C.F.R. section 600.30(a)(3)¹, CC applied to extend its eligibility to the new Durant branch. In a Certification Notice the Department approved CC's request effective June 23, 1992. 34 C.F.R. section 690.7 provides that:

If an institution begins participation in the Federal Pell Grant Program during an award year², a student enrolled and attending that institution is eligible to receive a Federal Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

Accordingly, the students at Respondent's Durant branch were eligible to receive Pell Grant funds for the payment period which included June 23, 1992 and any subsequent period. Thus, Judge Canellos accurately decided that CC improperly disbursed Pell Funds for the full award year during the 1991-1992 since the institution was not eligible until June 23, 1992.

Overpayments resulted when funds were disbursed by CC for the full award year, prior to the date of institutional eligibility. 34 C.F.R. section 690.79(a)(2) provides that:

The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore those funds to its Federal Pell Grant account even if it cannot collect the overpayment from the students.

Under the authority of this regulation, Judge Canellos properly ordered Respondent to repay the Department for any overpayment which constitute an unauthorized use of federal funds.

Respondent asserts on appeal that it "conducted extensive research and thoroughly examined all relevant policies, procedures, and regulations available prior to disbursing payments." Respondent's Brief, p. 1. CC also contends that the Department's failure to provide accurate, timely information prevented its compliance with the applicable regulations.

¹34 C.F.R. section 600.30(a)(3) requires eligible institutions to notify the Secretary of any additional locations in a timely manner after they are established.

²The period of time from July 1st of one year through June 30th of the following year constitutes an award year. 34 C.F.R. section 600.2.

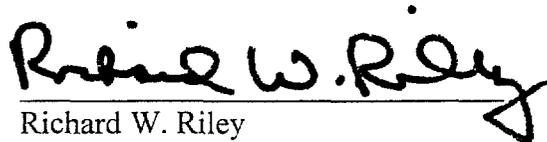
Respondent's Brief, p.1. Notwithstanding Respondent's diligence and good faith, the determination made by CC that the Durant branch students were eligible to receive Pell Grant funds for the entire award year was erroneous and resulted in overpayments. Judge Canellos correctly determined that Respondent assumed the responsibility of complying with Title IV requirements when it elected to participate in the Pell Grant program. No inefficiency on the part of the Department may excuse the Respondent of its regulatory duties. Morgan Community College v. Richard Riley, Secretary of the United States Department of Education, 968 F. Supp 1411 (1997).

III. Conclusion

Respondent erroneously determined that it was permitted to disburse funds for any payment period during the award year, as long as the actual disbursement was made after the date eligibility was issued. As a result, CC improperly disbursed Pell Grant funds for the entire award year to Durant campus students, when its eligibility only extended to the payment period which included June 23, 1992, and payment periods, subsequent to that date. Thus, Respondent must be held accountable for the overpayments.

ORDER

It is hereby ordered that CC's Cosmetology College immediately and in a manner prescribed by law, repay the amount of \$26,767.00 to the United States Department of Education.


Richard W. Riley

Washington, DC
October 1, 1997

SERVICE

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