



In the Matter of

**COMPTON COMMUNITY COLLEGE
DISTRICT,**

**Docket No. 05-78-SP
Federal Student Aid Proceeding**

Respondent.

DECISION

This matter comes before the Secretary on appeal by the office of Federal Student Aid (FSA). FSA requests that I reverse the Initial Decision issued by Chief Administrative Judge Ernest C. Canellos on July 23, 2008, which reduced the liability of Respondent, Compton Community College, from \$892,910 to \$64,847.69.

The basis of FSA's appeal is that the Initial Decision erred in reducing Respondent's liability because, in FSA's view, the "administrative record is devoid of evidentiary support" of the claims made by Respondent, notwithstanding that the "hearing official adopted" Respondent's claims. According to FSA, contrary to the findings of the Initial Decision, Respondent did not meet its burden of proof regarding whether it calculated Federal Pell Grants correctly and also failed to show that it disbursed Federal student financial assistance funds only to students who had demonstrated an ability to benefit from the educational services provided by Respondent. In addition, FSA argues that Respondent failed to come forward with evidence that students had provided the institution with proof of a high school diploma when required.

For its part, Respondent concedes that the issues before me are evidentiary issues for which it carries the burden of proof, but, in opposing FSA's appeal of the Initial Decision, Respondent argues that the Initial Decision should be upheld because the record included evidence sufficient to persuade Judge Canellos that FSA's allegations and assessed liabilities were unreasonable and unwarranted.

Judge Canellos ruled on two findings that are in dispute on appeal:¹ the improper administration of an ability-to-benefit exam and the failure to comply with student aid program

¹ Judge Canellos rejected FSA's allegation that Respondent disbursed \$19,101 in Federal funds to students who were not regular students with declared majors. FSA does not challenge this finding, and I find no reason to modify it.

requirements governing Pell Grant disbursements.² In resolving the question of what Respondent must pay as a result of its liability for the improper administration of an ability-to-benefit exam, Judge Canellos agreed with Respondent's auditor that the number of students who had not been properly administered an exam should be reduced from 61 to 20 students. According to Judge Canellos, "handwritten records that Compton submitted into evidence before the tribunal...is certainly more persuasive than a rather tenuous assessment of skepticism of the auditor's credibility" by FSA. On this basis, Judge Canellos determined that Respondent met its burden of proof with regard to 41 students. I disagree.

In applying the burden of proof to Respondent's evidence, Judge Canellos does not provide an explanation of why the "sample of documents" is sufficiently persuasive of student eligibility for 41 students. Indeed, my review of the record is in accord with FSA that "there is not a scintilla of evidence in the administrative record" to identify the documents the auditor used to reduce the number of students improperly administered an ability-to-benefit exam. Judge Canellos reaches a different conclusion by holding that Respondent provided missing documents that supported the auditor's attestations. In contrast, FSA argues that "[a]t no time, in any evidence that is within the administrative record, did the auditor identify the names of the students who correspond to th[e] [student] numbers" used by the auditor. Even Judge Canellos concluded that there are "substantial problems" with some of the documents submitted by Respondent. Judge Canellos observed that some of the documents are not relevant to this case, and some documents are missing "significant information."

On the basis of the foregoing and in ordinary course, I would remand this matter for further fact-finding, but I decline to do so here. I am convinced that the record will sustain only one result; namely, that Respondent's burden has not been met. It is evident in the record and from the judge's observations that many documents submitted by Respondent either lack credibility or are not probative of the issues in dispute. Moreover, the judge deferred to the auditor's attestations, which I find entirely unwarranted without the work papers upon which the attestations are based. The auditor updated her report on two occasions -- each time further reducing the liability owed to the Department based on documents presented to the auditor that were once missing from the student files of the institution. Not surprisingly, the changing audit reports eventually triggered FSA's response requesting access to the auditor's work papers to enable FSA to review these documents to consider whether the reductions in liability were proper. Respondent failed to provide the work papers. Respondent's failure to submit its work papers does not reflect favorably upon the credibility of the auditor's attestations. Moreover, FSA's request for the audit work papers is reasonable and within its authority pursuant to 34

² To be eligible to receive student financial assistance under the HEA, a student attending an eligible postsecondary institution must have a high school diploma, its equivalent, or a demonstrated "ability to benefit" from a program of study offered by the institution. To qualify for eligibility by proof of a demonstrated ability to benefit, a student must be administered a standardized or industry developed test measuring the prospective student's aptitude to complete successfully the program of study to which the student has applied. 20 U.S.C. §§ 1088(b) & 1091(d).

C.F.R. § 668.23.³ Accordingly, I reverse Judge Canellos on the Pell Grant and the ability-to-benefit exam findings, and conclude that Respondent did not meet its burden of proof.

ORDER

ACCORDINGLY, I HEREBY ORDER Compton Community College District to repay the U.S. Department of Education \$871,039.

So ordered this 25th day of November 2009.



Arne Duncan

Washington, D.C.

³ Judge Canellos concluded that Respondent could substitute the submission of audit work papers with documents from student files. This case, however, involves the conclusions and attestation of the auditor. What is at issue is whether the documents used by the auditor to reduce Respondent's liability demonstrate that the auditor's reductions are accurate in light of the circumstances of the auditor's significant changes and "updates." In this light, Judge Canellos is mistaken when he concludes that he owes the customary degree of deference to the auditor's attestation. Moreover the Department's regulations highlight an additional reason why no such deference is due. Upon request, an institution "must" require a firm conducting a compliance audit to provide the Department with access to its "audit work papers." 34 C.F.R. § 668.23(e)(1)(ii). The auditor did not comply.

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