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

In the Matter of	**Docket No. 05-26-SP**
DENVER ACADEMY of COURT REPORTING,	Federal Student Aid Proceeding
Respondent.	PRCN: 2002-4-08-200254

Appearances: Charles M. McCloud, Chairman, for Denver Academy of Court Reporting, Westminster, Colorado.

Sarah L. Wanner, 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

Denver Academy of Court Reporting (DACR) is a proprietary educational institution that participates in the Federal Student Aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751, *et seq.* The Office of Federal Student Aid (FSA), U.S. Department of Education (ED) administers the various HEA programs. On March 10, 2005, FSA issued a Final Program Review Determination (FPRD) in which it identified financial liabilities allegedly resulting from the closure of DACR's branch campus in Colorado Springs in December 1995. On March 28, 2005, DACR appealed this determination.[1]

When an institution elects to cease operations before its enrolled students have completed their educational program, Title IV of the HEA provides that the Secretary of Education shall discharge a student borrower's liability if the student does not complete that educational program at another institution. The student has the option to take advantage of any "teachout" that is

[1] FSA's July 11, 2005, Motion for Entry of Default Judgment is denied.

offered, and if the student declines that offer, or only takes partial advantage of it, but still does not complete the original program, the loan will be discharged. 20 U.S.C. § 1087(c)(1). This loan discharge provision applies whenever a main campus, or any branch campus, is closed. 34 C.F.R. § 682.402(d)(1)(ii)(C). This discharge provision applies to any student who was in attendance when the campus closes, or who withdrew within 90 days of the closure. 34 C.F.R. § 682.402(d)(3)(ii)(B). The affected student is responsible for initiating the loan discharge procedure. 34 C.F.R. § 682.402(d)(3). When the loan is discharged, the student is deemed to have assigned to the Secretary the right to a loan refund from the institution, its principals, affiliates, and their successors in the amount of the discharged loan. 34 C.F.R. § 682.402(d)(5)(i).

DACR's primary location is in Denver, Colorado, and it operated an approved, additional location in Colorado Springs, Colorado, until it closed the Colorado Springs location on December 20, 1995. DACR reported that the affected Colorado Springs students would be "taught out", meaning they would be able to complete their educational programs, at Rocky Mountain Technical College.[2]

In 1999, Macwil Educational Services, Inc. (Macwil) purchased DACR; but prior to the sale, DACR avers that a Macwil representative contacted FSA and was informed verbally that there were "no outstanding liabilities" pending against DACR or its affiliates. Despite its conversation with FSA, Macwil required DACR's former owner to place the funds from the sale of DACR in escrow until any potential liability issues between DACR and FSA regarding the closed Colorado Springs location were resolved.

Nothing else transpired until FSA learned in 2002 that there were 15 students from the closed Colorado Springs location who did not take advantage of the "teachout" opportunity DACR offered them and did not use DACR educational credits they had earned for program completion following transfer to another institution. When FSA issued a program review report in July 2002 that listed the potential liability for these discharged student loans, Macwil representatives contacted the former owner, Mr. Charles Jarstfer, who in turn contacted FSA and provided it with available liability-related information regarding the students in question. DACR points out that Mr. Jarstfer's ability to supply the requisite student documents to defend the liability was severely hampered because of the length of time elapsing from the date of closure and the date of demand, which was well beyond the three-year record retention requirements set out by FSA.

FSA informed Mr. Jarstfer that it would resolve this liability issue by late December 2002; however, this did not occur until March 10, 2005 when the FPRD was issued. DACR claims its ability to fully defend FSA's liability claim received another setback in January 2004 when Mr. Jarstfer died from injuries incurred as a result of an accident at his home. DACR maintains that not only did it not have all of the relevant student files, but now it was also deprived of the corporate knowledge of the former owner. Despite these circumstances, on March 25, 2005, DACR paid ED the full amount of the claimed liability, $146,530. This

[2] FSA raised no objection to this arrangement.

payment was accompanied by its contention that the liability assessment was unjust, primarily because of the lateness of the original assessment – seven years after the campus closed, and then a delay of another three years before the issuance of the FPRD.

DACR also argues that it should not be held liable because the 15 students at issue were not eligible for loan discharges because they either dropped out of school more than 90 days before the closure, or they transferred to either Rocky Mountain Technical College or DACR's main campus to complete their program of studies. DACR has the burden of proving that these 15 students were not eligible to have their loans discharged, and it has not succeeded in meeting that burden here. 34 C.F.R. § 668.116(d).

In each instance, FSA has submitted credible, persuasive evidence indicating that the students dropped out within 90 days before the school closed, or did not complete the original program at another institution, and thus were eligible to receive loan discharges. It accomplished this by contacting the schools purportedly attended by DACR's students to determine whether they had completed their program, and also by referring to ED's National Student Loan Data System to confirm the absence of program completion. Consequently, the tribunal is satisfied that these students were eligible for loan discharges.

DACR complains first about the amount of time elapsing between the date the school closed and the date FSA presented the preliminary notification to DACR in December 2002. Second, it complains about another delay of over two years between the program review report and the FPRD. DACR explains that it is handicapped because relevant documentary evidence was discarded after the completion of the three-year retention period, and it is unfair to wait such a long period to seek reimbursement from it.

FSA argues that there is no deadline for students to apply for a loan discharge, so it is natural that FSA would wait to make an assessment on loan discharges until such time as it feels comfortable that all potential requests for loan discharges have been submitted. In this proceeding, FSA's program review letter was submitted eight months following the submission of the last loan discharge.

The tribunal finds that the amount of time it took FSA to prosecutes this case is not unreasonable. Furthermore, at the time of DACR's Colorado Springs closing, the mandatory record retention period was five years, not three as argued by DACR. 34 C.F.R. § 668.23(h)(3)(1995). Additionally, as shown by correspondence between the school and FSA, DACR was on notice of potential liabilities at the time it notified FSA of its intention to close the branch campus. Because of this, it had an obligation to retain all records that would have been relevant in addressing that subject.[3] Although laches has not been specifically raised as a defense in this proceeding, the tribunal finds that DACR is not entitled to any relief from such a claim because it has not shown that the delay in submitting the claim was unreasonable, or that

[3] FSA points out that DACR has benefited from this delay because not only has FSA not issued a demand for the interest expense ED has had to bear for these discharged loans, but DACR has enjoyed the interest from the use of these funds ultimately payable to ED.

there has been any prejudicial harm. *See, In the Matter of OIC Vocational Institute*, Dkt. No. 98-12-SP U.S. Dep't of Educ. (Sept. 23, 1998).

The tribunal notes that DACR has already paid the assessment levied by FSA, subject to the current appeal. Apparently this payment was made from the funds that were placed in escrow at the time of the 1999 sale of DACR to Macwil. It is highly unusual for a school to pay the amount of the assessment from an FPRD before the appeal is adjudicated. One might argue that such a payment deprives this tribunal of jurisdiction to hear the appeal. The tribunal finds that the unique facts of this case allow it to retain jurisdiction.[4] In other cases, the tribunal has implicitly held that FPRD findings that have no attached liability are not within its purview.[5] Moreover, the tribunal makes no finding that if the liability assessed in the instant FPRD were overturned, it would have the authority to order FSA to return the paid amount.[6] As stated, I do not believe there is a lack of jurisdiction in this case because it is clear that DACR simultaneously challenged the findings of the FPRD and requested that it be reimbursed in the amount of the payment.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that the findings of the Final Program Review Determination are approved and Denver Academy of Court Reporting's liability of $146,530 to the United States Department of Education, as set out in the Final Program Review Determination, is upheld.

_____

Judge Richard F. O'Hair

Dated: September 27, 2005

[4] In the instant proceeding, the school's owners, current and previous, had already made a contractual arrangement regarding potential liabilities and, when confronted with the FPRD at issue, paid the liabilities contingent upon a hearing.

[5] *See, In the Matter of Louise's Beauty College*, Dkt. No. 95-48-SP, U.S. Dep't of Educ. (April 17, 1996) and *In the Matter of Chicago State University*, Dkt. No. 94-172-SA, U.S. Dep't of Educ. (April 26, 1996).

[6] *See, In the Matter of Modern Trend Beauty School*, Dkt. No. 98-109-SP, U.S. Dep't of Educ. (August 15, 1996). (The tribunal held that it did not have the jurisdiction to order an offset of liabilities or otherwise compel FSA to pay a reimbursement request from the school.)

SERVICE

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

Mr. Charles M. McCloud
Chairman
Denver Academy of Court Reporting
9051 Harlan Street, Unit #20
Westminster, CO 80030

Sarah L. Wanner, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110