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

In the Matter of	**Docket No. 12-45-SP**
	Federal Student Proceeding
ROSE TRAINING INSTITUTE,	PRCN: 201040427243
Respondent.	

Appearances: Rose Marie Solomon, President, Orlando, FL, for Rose Training Institute.

Russell B. Wolff, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.D., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Rose Training Institute (Rose) is a proprietary institution of higher education located in Winter Haven, Florida. It is accredited by the Accrediting Bureau of Health Education Schools 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*. The Office of Federal Student Aid (FSA) is the office within the U. S. Department of Education (ED) that administers and has cognizance over those programs.

From June 28, 2010 to July 2, 2010, FSA reviewers from its School Participation Team – Atlanta, conducted a program review at Rose to determine its compliance with the applicable Title IV student financial assistance regulations. Subsequently, on November 22, 2010, a program review report containing a number of adverse findings was forwarded to Rose for its information and action. After receiving and considering information submitted in response by Rose, on June 15, 2012, FSA issued a revised final program review determination (FPRD) that affirmed six actionable findings and demanded the return to ED of $71, 517.00. By letter dated July 26, 2012, Respondent's President filed a written Request for Review in the above-captioned proceeding challenging the findings in the FPRD. After reviewing Rose's brief and its

attachments, FSA reduced its demand to $61,730.00, for two of the findings in the FPRD.

The first adverse finding in dispute centers on the Title IV requirement found at 34 C.F.R. § 668.32 (e) (1) that to be eligible to receive Title IV aid, a student must have earned a high school diploma or its recognized equivalent. The FPRD determined that 12 of Rose's students failed to satisfy that requirement. The second adverse finding involves the requirement that an institution must determine the amount of Title IV aid it earned when a student withdraws from the institution prior to the completion of the student's program – the amount not earned must be returned to ED with 45 days of the student's last day of attendance at the institution. *See* 34 C.F.R. § 668.22 *et seq*. The FPRD found violations relative to such refunds for nine students; however, FSA subsequently removed its demand relative to five of those students.

Prior to discussing the individual instances of claimed violations of Title IV student aid regulations, it must be recognized that Rose, as the respondent in this action, has the burden of proving by a preponderance of the evidence, that its expenditures of Title IV funds were correct and that it followed program requirements. *See* 34 C.F.R. §668.116(d). This burden attaches after it is placed on notice of its failure to comply with the Title IV regulations – I find that FSA has provided such notice to the respondent through its issuance of the FPRD, referenced above.

As indicated above, in the first finding in dispute, the FPRD listed 12 students whose student files included conflicting information relative to their high school graduation credentials that had not been reconciled. Rose chose to address this finding relative to only nine of those students. Given the relative burdens of proof indicated above, by failing to provide any information relative to those three students, it has clearly failed to meet that burden and must repay the amounts of federal student aid awarded to those students. The nine students whose files contain discrepant information and are still in contest include:

> Student H.M. – The name of her high school was not included in her Rose registration form although she listed a graduation year of 2007. A high school diploma for H.W. from Belford High School was in the file and; on appeal Rose added a document from John Adams Virtual School, Aurora, Colorado stating that the student graduated from that school on March 11, 2011.
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> Student N.W. – The name of her high school listed by her on her Rose registration form was Lake Region High, however the file contained a diploma from Cornerstone Christian Correspondence School.
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> Student R.T. – She listed her high school as Oak Ridge Region High graduating in 2004. In her file, however, was a diploma from Continental Academy, with a graduation date of July 25, 2005.
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> Student A.T. – She listed her high school as Frostproof High with a graduation date of 2002, however, her file contained a diploma from Ridge Community High School, with a graduation date of May 22, 2006.

Student A.M. – She signed her name as A.T. on her Rose attestation form but listed no high school or graduation date. Her file included a diploma from Cornerstone Christian Correspondence School with a graduation date of May 22, 2003.

Student D.P. – She listed her high school as Auburndale High on her Rose Registration form with a graduation date of 2008. However, in the file was a diploma from the Florida Department of Education with a graduation date of December 1, 2009. Of interest, this graduation date is two months after her enrollment at Rose; and the signer of the diploma last held the post indicated on the diploma in 2003.

Student K.S. – She listed her high school as Lake Wales High School and attended from 2001 to 2005. Also included in her student file was a Certificate of Completion from that school. However, under Florida rules, a student receives such a Certificate of Completion when failing to pass a required test and, therefore, not eligible to receive a high school diploma.

Student S.F. – She claimed to have graduated from Cornerstone Christian School on September 13, 2009, after having attended there for approximately six weeks, i.e. from August 3, 2009 to September 21, 2009).

Student Z.A. – Her student file contained a copy of a Certificate of Completion from Ridge Community High School, dated May 22, 2006. As indicated above, a certificate of completion is issued in lieu of a high school diploma and, therefore, does not constitute eligibility to participate in Title IV programs.

In each of the above enumerated situations, Rose was on clear notice that there were apparent inconsistencies in the information relative to the eligibility of those students. That being the case, it was incumbent on Rose to reconcile the conflicting information so as to assure that only eligible students received federal student aid. *See,* 34 C.F.R. § 668.16 (f). This responsibility flows directly from the fiduciary status it assumed when it entered into its participation agreement and thus became an eligible institution dealing with Title IV aid. *See generally,* 34 C.F.R. § 668.82.

My review of the record relative to the first actionable finding indicates that Rose has presented totally unconvincing evidence that the students at issue were eligible to receive the Title IV aid they were given. In some instances the evidence is self-contradictory, and in all cases, clearly not persuasive. As a consequence, I find that Rose has failed to meet its burden of proof and persuasion and must repay ED $49,953.00, for this finding.

In the second disputed finding, FSA alleges that Rose did not make the required refunds to four students who had withdrawn from school, as required by 34 C.F.R. § 668.22. Of those four, Rose conceded liability for one student, provided no information as to the second, and contested liability for the following two students:

Student M.S. – FSA seeks the return of $1,783.00, in Pell Grant refund. ED's Common Origination Disbursement system showed an ineligible Pell grant disbursement of $1,783.00, on December 28, 2011, for attendance from October 5 through Oct 7, 2009.

Student T.T. – FSA seeks the return of $1,783.00, in Pell Grant refunds as well as return of $1,162.00 and $1,990.00 in Direct Loan refunds. The student's last day of attendance was October 20, 2009, yet she received a second Pell payment and the two Direct Loan payments all on December 23, 2009.

It is quite clear that neither of the contested students was eligible for the disbursements they received and those funds, totaling $5,718.00, must be returned. When added to the refunds for the two students who were either not contested or were conceded, the total return for this finding is $11,770.00.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ordered that Rose Training Institute repay to the United States Department of Education the sum of $61,730.00, for the two adverse findings, as enumerated above.

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Ernest C. Canellos
Chief Judge

Dated: April 15, 2013

SERVICE

A copy of the attached document was sent by Certified U.S. Mail, Return Receipt Requested, to the following:

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