



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

In the Matter of

**BIO-CHI INSTITUTE OF MASSAGE
THERAPY,**

Respondent.

Docket No. 14-37-SP

Federal Student Proceeding

PRCN: 201220427767

Appearances: Daniel D. Dykstra, Esq., Sioux City, Iowa, for Bio-Chi Institute of Massage Therapy.

Denise Morelli, Esq., Office of the General Counsel, U. S. Department of Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Bio-Chi Institute of Massage Therapy (Bio-Chi) is a proprietary institution of higher education located in Sioux City, Iowa, providing one year non-degree programs. It is accredited by the Accrediting Commission of Career Schools and Colleges and was eligible to participate in the federal student financial assistance programs that are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1071 *et seq* and 42 U.S.C. § 2751 *et seq*. The Office of Federal Student Aid (FSA), of the U.S. Department of Education (ED), provides administrative oversight of these programs.

Reviewers from FSA's School Participation Division -- Kansas City, conducted a program review at Bio-Chi on January 9-13, 2012, focusing on Bio-Chi's administration of the Title IV programs. A program review report was issued on June 11, 2013, after which the parties exchanged information in an effort to resolve some of the adverse findings of the report. Subsequently, on June 24, 2014, FSA issued a Final Program Review Determination (FPRD) affirming three adverse findings and resulting in FSA's demand for the return of \$59,573.00. By letter dated August 7, 2014, Respondent's counsel filed a request for review challenging the findings of the FPRD. In the course of the briefing process of this appeal before me, counsel for

FSA withdrew two of the findings -- the sole finding remaining is that Bio-Chi failed to perform the required verification of the information in the student aid financial applications of students selected for such verification. As a result, FSA reduced its demand to a return of \$30,649.00.

At the outset, it must be recognized that Bio-Chi, as a Title IV eligible institution always acts as a fiduciary, thereby owing to ED the highest standard of care and diligence in its administering the Title IV programs at their institution and ensuring that the federal funds entrusted to them are properly accounted for. *See*, 20 U.S.C. § 1094, 34 C.F.R § 668.14, and 34 C.F.R. § 668.82 (a) and (b). In addition, it is well established that in a Subpart H -- audit or program review -- proceeding, the institution has the burden of proving by a preponderance of the evidence that it has disbursed Title IV funds in accordance with statutory and regulatory guidelines. 34 C.F.R. § 668.116 (d). If it fails to establish the correctness of its expenditure of federal funds, it must return all such funds to ED. Once an eligible institution is given adequate notice of the demand by FSA in its FPRD, the established burdens of proof are implemented.

During the program review, FSA determined that Bio-Chi had failed to properly complete required verifications for students in the review sample that were selected by FSA for verification. As a consequence of this finding of error, FSA ordered that Bio-Chi perform a full-file review of all students whose records had been directed to be verified. Upon FSA's review of Bio-Chi's submissions, it was determined that the required verification was not accomplished for seven students. FSA demanded the return of all the Title IV aid disbursed to those students.

I note at the start, that Bio-Chi has failed to provide any evidence regarding the allegations relative to failure to verify student information, as alleged. Bio-Chi's entire submission is directed to rebuttal of issues not before me. Despite that fact, I have examined the record as it pertains to the issue before me and make the following findings. First, FSA has provided adequate notice of its demand by virtue of its detailed FPRD. Second, Bio-Chi has not rebutted the allegations in any way. Third, the resulting loss of federal funds is \$30,649.00, broken down as follows: \$27,198.00 (Pell Grants disbursed to the students at issue; \$826.00 (cost of funds), and \$2,625.00 (estimated actual loss for ineligible loans).

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Bio-Chi Institute of Massage Therapy repay to the United States Department of Education the sum of \$30,649.00.

Ernest C. Canellos
Chief Judge

Dated: December 18, 2014

SERVICE

A copy of the attached document was sent to the following:

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