



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

In the Matter of

MINNESOTA SCHOOL OF BUSINESS

Respondent

Docket No. 17-32-SA

Federal Student Aid Proceeding

ACN: 05-2016-73547

Appearances: Audrey B. Kaplan, Esq. for Minnesota School of Business

Angela L. Sierra, Esq. Office of the General Counsel, U.S. Department of Education,
Washington, DC, for Federal Student Aid

Before: Robert G. Layton, Administrative Judge

DECISION

On April 11, 2017, the U.S. Department of Education issued a Final Audit Determination Letter to Minnesota School of Business (MSB), containing a review of the school's participation in Title IV and its use of those funds. Although there were a number of findings, MSB only appeals Finding 2016-003, pertaining to Closed School Loan Discharges.

Under the Federal Direct Loan Program regulations, a student can be eligible for a "closed school loan discharge" if they are unable to complete the program of study for which the loan was made because the school at which they were enrolled closed, or if the student withdrew from the school within 120 days prior to its closing and the student did not complete their educational program through a teach-out at another school or by transferring academic credits to another school. *See 34 C.F.R. §685.214*. FSA's Final Audit Determination found two MSB students eligible for a closed school discharge, and found the school liable for the amount of \$30,426.00. MSB appeals, contending that neither student is eligible for a closed school loan discharge.

Issues

MSB contends that neither student is eligible for a closed school loan discharge. Student 1, enrolled at the Elk River campus, was notified on June 29, 2016 that he was being expelled for failing to meet MSB's Satisfactory Academic Progress (SAP) standards. *Ex. R-1*. First, the school says that Student 1 did not leave the school within the 120 day window before its closure,

asserting a closure date of December 31, 2016. Second, MSB contends that Student 1 is ineligible for a closed school loan discharge regardless of the date of school closure. Because Student 1 was expelled in violation of MSB's academic standings policy, the school argues, he cannot be eligible under the statute that requires a student be either unable to complete their education due to a school closure or to have withdrawn.

MSB also contends that Student 2 is ineligible for a closed school loan discharge. Student 2 transferred from MSB Plymouth to MSB Blaine in July 2016. FSA said this transfer qualifies as withdrawal from Plymouth and enrollment in a teach-out program at Blaine, so Student 2 is eligible for a closed school loan discharge. MSB submits two arguments for the claim that Student 2 is not eligible.

First, because the two campuses are both a part of MSB, the school argues that Blaine is not "another school" as described in the regulation for teach-outs. That language requires that the student "did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." *34 C.F.R. §685.214(c)(C)*.

Second, MSB contends that Student 2's transfer to Blaine is not a teach-out because she previously signed an agreement with Plymouth acknowledging that she may have to take classes at other MSB campuses in the course of completing her education.

Therefore, MSB contends that Student 2's official withdrawal date for the purposes of calculating eligibility for a closed school loan discharge is the date of her withdrawal from Blaine on October 2, 2016, and not the date of her withdrawal from Plymouth on July 2, 2016. Using the date of her withdrawal from Blaine would render her ineligible for a closed school loan discharge, as it falls after Plymouth's closure on September 23, 2016, and 271 days before Blaine's closure on June 30, 2017.

FSA says Student 1 and Student 2 are eligible for closed school loan discharges for their Federal Direct Loans, and that MSB is liable for the \$30,426.00 in loan discharges. FSA argues that Student 1 left the school within 120 days of its closure, stating that the school's closure date was September 23, 2016, not December 31, 2016. FSA also says Student 1's expulsion is a withdrawal. FSA says that by not following through with his expulsion appeal, Student 1 was choosing a form of withdrawal from the school. To support such a broad interpretation of withdrawal, FSA cites the Secretary's comment to the closed school loan discharge regulation for the Federal Family Education loan program ("FFEL"), arguing that an expansive reading of eligibility requirements warrants finding Student 1 eligible for a closed school loan discharge in this case.

FSA says Student 2 withdrew from Plymouth within 120 days of its closure, and that she withdrew from Blaine before completing her educational program. This would mean she meets requirement of not completing her program through a teach-out and fulfils the closed school loan discharge requirements. See §685.214(c)(C).

The issues to be addressed are:

1. **When did the school close?**
2. **Is Student 1 eligible for a closed school loan discharge after receiving notice that he was being expelled?**
3. **Is Student 2 eligible for a closed school loan discharge by withdrawing from Plymouth within 120 days of its closure?**

Summary of Decision

Student 1 and 2 are eligible for closed school loan discharges under 34 C.F.R. §685.214. FSA's determination is **AFFIRMED**. Minnesota School of Business is liable for \$30,426.00 in loan discharges.

Finding of Facts

Educational instruction concluded at Elk River and Plymouth on September 23, 2016 (*Ex. Ed. 5*). December 31, 2016, was the date MSB lost eligibility to participate in Title IV programs (*Ex. Ed. 5*). For purposes of determining eligibility for loan discharge, the school closed on September 23, 2016.

The parties agree on the following facts.

Student 1

MSB's policy requires a student to be expelled if they fail to meet the school's Satisfactory Academic Progress (SAP) Standards. *See Resp't Br. 2*. A student who fails a class three times is subject to expulsion for failing to meet these standards. *Id.* In March 2016, Student 1 enrolled in a class at MSB's Elk River campus that he had attempted and failed twice before. *Ex. R-1*. Each time he attempted to repeat the class, he received a letter from the school reminding him of the SAP policy. Student 1 received a separate note from the professor of the class he was taking after he failed to submit a number of assignments during his third attempt. *Id.* On June 29, 2016, Student 1 received a letter from the school notifying him that he had failed the course and was therefore being expelled from MSB Elk River. *Id.*

On July 4, Student 1 asked to appeal his expulsion from MSB. *Ex R-2*. He stated that he wanted to finish his degree, but working at two jobs "took focus" from his schoolwork. *Id.* He offered to commute to the Madison campus if necessary. *Id.* His communications with the Dean of Students are inconsistent with any intention to withdraw from the program.

The Dean responded to Student 1 with instructions on how to appeal. *Id.* MSB states that "following the submission of an initial appeal letter, MSB never heard from [Student 1] again." *Resp't Br. 3*. The last communication in this appeal's evidentiary record relating to Student 1 is a message dated July 25, 2016 at 10:29 a.m. in an email chain included as part of Exhibit R-2. The

Dean of Students confirmed receipt of Student 1's appeal of his expulsion and his extension letter. The Dean told Student 1 that his request was with the Online Dean of Education, stating: "The online campus committee will review your request and communicate additional information with you." *Ex. R-2*. There is no evidence in this case record of any expulsion appeal communications to Student 1 after that date.

Student 2

On January 4, 2016, Student 2 enrolled at the MSB Plymouth campus. *Resp't Br. 3*. At that time, she signed an enrollment agreement which included a "Program and Course Offering Disclaimer" which stated: "Students may always make the choice to take most courses through an online/blended delivery and alternate campus options." *Resp't Br. 8, Ex. R-7*. On January 7, the school notified all students of its impending closure. *See Ex. R-3*. Student 2 remained enrolled. On February 3, 2016, Student 2 signed a document issued by the school. *Ex. R-4*. In that document, the school acknowledged the campus closure and explicitly offered Student 2 a teach-out plan. *See id.* The acknowledgement letter includes the following:

The campus will be creating individual academic plans to work with students through a teach-out process working to provide a sound academic environment while also allowing students to complete their program.... Online and virtual services provided through our central campus in the Twin Cities metro will continue to be available to students as well as services through other metro campuses of Globe University/Minnesota School of Business. While we will no longer have a location in the city of Plymouth, we are confident we will continue to serve both student and employer needs through the Maple Grove area location. *Ex. R-4*.

Following the letter is Student 2's plan for completion of her educational program, titled "Teach Out Plan Prepared For: [Student 2]." *Id.* The teach-out plans arranged for students to complete their programs either at other MSB campuses or online. *Ex. Ed. 7*. Blaine was one of the campuses at which Plymouth students could choose to finish their education. *See id.* On July 2, 2016, Student 2 withdrew from Plymouth. *Ex. Ed. 14*. She enrolled in MSB's Blaine campus on July 5, 2016. *Id.* On October 3, she received another teach-out acknowledgement from MSB, this time for the Blaine campus. *Ex. R-6*. This time, Student 2 chose to withdraw from the school. *Id.*

Principles of Law

The closed school discharge provision for Federal Direct Loans states that the Secretary will discharge a borrower's obligation to repay a Direct Loan "if the borrower... did not complete the program of study for which the loan was made because the school at which the borrower... was enrolled closed, as described in paragraph (c) of this section." 34 C.F.R. §685.214(a)(1).

Student eligibility requires that the student:

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed...

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school... 34 C.F.R. 685.214(c)(1)(i).

(B) is at issue for in the case of both students, and (C) is at issue for Student 2 only.

The regulation also specifies that “a school’s closure date is the date that the school ceases to provide educational instruction in all programs,” and defines a school as a school’s “main campus or any location or branch of the main campus.” 34 C.F.R. §685.412(i-ii). This section mandates which date should be used to calculate closed school loan discharge eligibility, and will also be used to answer the question of whether Student 2’s enrollment at Blaine was enrollment in a teach-out program.

Analysis

Student 1

To qualify for a closed school loan discharge, a student must either have been unable to complete their program of study because the school for which the loan was made closed, or have withdrawn from the school within 120 days prior to its closure. According to the regulation, a school’s closure date is the date on which the school ceases to provide educational instruction. 34 C.F.R. §685.214(a)(2)(i). September 23, 2016 was the last date of instruction for three MSB campuses, including Elk River and Plymouth, which were the schools attended by Students 1 and 2, respectively. See Ex. Ed. 5. December 31, 2016 was the date on which the program lost eligibility to participate in Title IV programs. Ex. Ed. 4. Therefore, the school closure date for Elk River and Plymouth, for the purposes of calculating closed school loan discharge eligibility, is September 23, 2016. Student 1 received his expulsion letter on June 29, 2016, which is within 120 days of the September 23 closure date.

On June 29, 2016, Student 1 was notified that he was being expelled due to his failure to comply with MSB’s SAP policy. Ex. R-1. In order to qualify for a closed school loan discharge, a student must either be unable to complete his program of education due to the closure of the school at which he is enrolled, or have withdrawn within 120 days prior to that school’s closure. See 34 C.F.R. §685.214.

FSA says that Student 1's expulsion was appealable and therefore not final, and that his decision not to follow through with the appeals process is a withdrawal.¹ In support, they quote the Secretary's comment on the school loan discharge regulation for the Federal Family Education loan program ("FFEL"):

The Secretary agrees with the sentiment expressed at the regional meetings and by the negotiators that conditions at the school immediately preceding its closing may cause a deterioration in the educational program that would cause a student to withdraw. A student who withdraws under these circumstances should be deemed to have been unable to complete his or her educational program because of the school's closure. *59 Fed. Reg. 2486 at 2488 (January 14, 1994) (proposed rule)*.

FSA correctly identifies the expansive view of eligibility requirements for a closed school loan discharge. However, it is not appropriate to use this expansive view to find a student unable to complete the program due to closure in cases such as this one in which the student was expelled. The Department is categorically bound to follow what Congress lays down in plain language. *College America-Denver, Dkt. No. 06-24-SP, U.S. Dept't. of Educ. (Decision of the Secretary) at 4*. Here, the regulation is plain and clear.

The regulation does not contain the word expulsion. See 34 C.F.R. §685.214. However, as Respondents point out in their reply brief, Title 34 does distinguish a status of expelled from a status of withdrawn elsewhere in its regulations. Resp't Br. 3. 34 C.F.R. §682.208 (due diligence in servicing a loan) includes the line: "To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—(A) The school notifies the lender under 34 CFR 668.21(a)(2)(ii) has withdrawn or been expelled prior to the first day of classes..." 34 C.F.R. 682.208(f)(1)(iii). Courts should disfavor interpretations of statutes that render language superfluous (*Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253), which would be the case in §682.208 if we were to assign "withdrawn" and "expelled" the same meaning. Therefore, they must have distinct meanings. A term appearing in several places in a statutory text is generally read the same way each time it appears. *Ratzlaf v. United States*, 510 U.S. 135, 143. It follows that "withdraw" should be given the same meaning in the closed school loan discharge section as it has in the loan servicing section, and that expelled and withdrawn cannot have the same meaning in §685.214, either.

This conclusion is supplemented by dictionary definitions of the two words. According to Merriam-Webster, the first definition of "withdraw" as an intransitive verb is "to move back or away," and the second is "to remove oneself from participation." Although the second is more applicable to a school setting, both require personal agency and a decision to remove oneself. By contrast, the applicable definition of "expel" in Merriam-Webster is "to force to leave (a place, an organization, etc.) by official action." "Force" requires unwillingness on the part of the expelled. The two definitions are incompatible. Student 1 cannot have both been expelled and withdrawn.

¹ There are no facts in the record that show Student 1 decided not to follow through with his appeal. The facts show that Student 1 intended the exact opposite, as he requested information on how to follow through with the appeal, and then successfully commenced his appeal consistent with the requested information.

There is no evidence that Student 1 tried to withdraw by failing to follow through with his appeals process. As noted above, the definition of withdrawal requires a decision to leave enrollment. Student 1 made no such decision; in fact, his email appealing his expulsion expresses his clear intention to continue his enrollment.

The expansive Departmental view of withdrawal protects students who chose to leave their programs before the school's actual closure because the school was deteriorating. However, even under the broadest interpretation of the word "withdraw," Student 1 manifested no intent to do so. Student 1 clearly expressed his intent to stay in school.

MSB's withdrawal and attendance policies list two ways a student can withdraw: either by notifying the Dean of Education of an intention to withdraw, or by missing ten consecutive business days of classes. Student 1's potential expulsion resulted from attempting a class three times without passing. That is not one of the two ways a student can withdraw.

MSB maintains that because he was expelled, Student 1 cannot be eligible for a closed school loan discharge, stating that "the student never had an opportunity to withdraw once the expulsion was issued and anything after the expulsion is immaterial to these proceedings." Resp't Reply Br. 6. However, as MSB states in their initial brief, there is an appeals process for expulsion. MSB argues in its brief that, after submitting an initial appeal letter, Student 1 failed to follow up with the school. There is nothing in this appeal's evidentiary record to support that argument. Student 1's expulsion appeal was received by the appeals committee, and Student 1 was informed his appeal had been filed. Student 1 was further told that the committee would review his appeal and would communicate further information with Student 1. The expulsion appeal was filed, but there is no evidence MSB acted on the appeal. As noted by FSA in its brief, because the expulsion was appealable, it was not final. Ed Br. 5. Therefore, because there is no evidence that the appeal process was completed, there is no evidence that Student 1 was expelled. MSB has the burden of proof in this proceeding (34 C.F.R. §668.116(d)) and has not proven Student 1 is ineligible due to an expulsion.

Because MSB has not provided proof that the expulsion appeals process was completed, it has failed to prove Student 1 was expelled. A student is eligible for a closed school loan discharge if he was unable to complete the program in which he was enrolled, or if he withdrew within 120 days prior to the school's closure. *See* 34 C.F.R. §685.214. Student 1 did not withdraw from MSB Elk River. Because there is no evidence that the expulsion was final, Student 1 was enrolled at the time of the school's closure. Student 1 was unable to complete his program of study because the school closed while he was enrolled, and he is therefore eligible for a closed school loan discharge. 34 C.F.R. 685.214(c)(B).

Student 2

On February 3, approximately one month after she enrolled at MSB's Plymouth campus, Student 2 received a letter from the school notifying all students that the campus was closing and that teach-out plans were available for students who wanted to complete their educational programs. *Ex. R-4*. Student 2 signed the letter, formally acknowledging that she had received the

information and planned to continue her degree through a teach-out program. *Id.* On July 2, 2016, Student 2 withdrew from Plymouth (*Ex. Ed. 14*) and on July 5, 2016, she enrolled at MSB's Blaine campus. *Id.* She withdrew from Blaine on October 3, 2016. *Ex R-6.*

The closed school loan discharge regulations require that a student have withdrawn from the school within 120 days of its closure. 34 C.F.R. §685.214(c)(B). They also require that the student did not finish their program of study through a teach-out program. 34 C.F.R. §685.214(c)(C). A teach-out program is an agreement between schools that allows students from the closing school to complete their education at a different school. 34 C.F.R. §602.24(c). If Student 2's enrollment at Blaine constitutes enrollment in a teach-out program, then her withdrawal date is July 2, 2016, the date she withdrew from Plymouth. If her enrollment at Blaine does not constitute enrollment in a teach-out program and is instead an internal voluntary transfer, as is alleged by MSB, then her withdrawal date is October 3, 2016, the date she withdrew from Blaine.

MSB's first argument for its assertion that Student 2's transfer to Blaine was not a withdrawal and subsequent enrollment in a teach-out program is a textual one. In its reply brief, MSB emphasizes the closed school loan discharge regulation provision about teach-outs, which requires that a student "did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school" 34 C.F.R. §685.214(c)(C). Because Blaine is simply another campus of MSB, they argue, it is not "another school" and cannot count for the purposes of a closed school loan discharge.

The first problem with this argument is that the regulation itself defines the word "school." The regulation reads: "For the purposes of this section—(ii)"School" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible." 34 C.F.R. §685.214(a)(2)(ii). Plymouth and Blaine are separate schools for the purpose of school closures, and they must also be considered separate schools for the purposes of defining a teach-out, as the definition must maintain consistent throughout the section. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 ("A term should be construed, if possible, to give it a consistent meaning throughout the Act").

The second problem with this argument can be found in the teach-out acknowledgment letter which MSB had Student 2 sign in February. *Ex. R-4.* In the letter, MSB introduces the opportunity for Plymouth students to continue their education through teach-out programs, and writes:

Online and virtual services provided through our central campus in the Twin Cities metro will continue to be available to students as well as services through other metro campuses of Globe University/Minnesota School of Business. While we will no longer have a location in the city of Plymouth, we are confident we will continue to serve both student and employer needs through the Maple Grove area location. *Ex. R-4.*

Following the letter is a document labeled "Teach Out Plan Prepared For: [Student 2]." *Id.* With this letter, MSB designated other MSB campuses as potential teach-out locations. Even

if the regulation did not define another school in a way that precludes MSB's interpretation, MSB has already acknowledged that other MSB schools qualify as teach-out programs. It cannot now make the argument that Student 2's transfer to Blaine is not a teach-out because it is not "another school."

MSB's second argument is that Student 2's enrollment at Blaine is not a teach-out because it was instead a decision "to continue her education at an alternate MSB campus." *Reply Br. 8; Ex. R-7*. To support this argument, the school provided an excerpt from the "Program and Course Offering Disclaimer," which is signed by all MSB students at enrollment and includes the line: "Students may always make the choice to take most courses through an online/blended delivery and alternate campus options." *Id.* MSB's policies do not override federal regulations. The fact that Student 1 had acknowledged she might have to take classes at another campus at some point does not negate the fact that transferring campuses within 120 days of Plymouth's closure made her eligible for a closed school loan discharge.

In its appeal brief, MSB notes that Student 2 listed "personal" and "financial" reasons for her withdrawal from Blaine, and states that "this fact pattern would have USDE policy reimbursing students for closed school loan discharges when those students decide voluntarily for other reasons to withdraw from school." *Resp't. Br. 4*. The portion of the Secretary's comment included above under Issue #2 is applicable here. The Secretary said explicitly that "a student who withdraws under these circumstances [of possible deterioration in the educational program] should be deemed to have been unable to complete his or her educational program because of the school's closure." 59 Fed. Reg. 2486, 2488 (Jan. 14, 1994) (proposed rule). Students who withdraw within 120 days of the school's closure, as Student 2 did when she left the Plymouth campus, do not have to prove that the school closure caused their withdrawal. Rather, there is a presumption that they were unable to complete their educational programs due to the school's closure.

When Student 2 signed the teach-out acknowledgment on February 2, 2016, she was accepting that she would eventually have to leave Plymouth and continue her degree as part of a teach-out program elsewhere. When she transferred to Blaine in early June, she was enrolling in that teach-out. Neither of MSB's arguments negates that, especially when considered alongside the Secretary's comment.

Therefore, Student 2's withdrawal date is July 2, 2016 - the date that she withdrew from Plymouth. July 2 is within 120 days of the school's closure on September 23, so she qualifies under §685.214(c)(B). She then left Blaine on October 3, 2016, before completing her educational program, so she also qualifies under §685.214(c)(C), as she "did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." Student 2 is eligible for a closed school loan discharge.

Conclusions of law

1. The school closed on September 23, 2016.
2. Student 1 is eligible for a closed school loan discharge after receiving notice that he was being expelled.
3. Student 2 is eligible for a closed school loan discharge by withdrawing from Plymouth within 120 days of its closure.

ORDER

Student 1 and 2 are eligible for closed school loan discharge under 34 C.F.R. §685.214. FSA's determination is **AFFIRMED**. Minnesota School of Business is liable for \$30,426.00 in loan discharges.

Robert G. Layton
Administrative Judge

Dated: June 25, 2018

SERVICE

Service of this document was sent by OES automatic generated notice to counsel of record, and by U.S. Mail, certified, return receipt to:

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