THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

ROSE TRAINING INSTITUTE,

Respondent.

Docket No. 12-45-SP
Federal Student Aid Proceeding

DECISION OF THE SECRETARY

This matter comes before me on appeal by Rose Training Institute (RTI or Respondent) of the Initial Decision by Administrative Judge Ernest C. Canellos. In the case before Judge Canellos, Respondent appealed three findings of the Revised Final Program Review Determination (FPRD) issued on June 15, 2012, by the Office of Federal Student Aid (FSA) of the U.S. Department of Education (Department).[1] On April 15, 2013, Judge Canellos upheld two findings in the FPRD and issued his decision ordering Respondent to pay $61,730 to the Department for its failure to resolve conflicting information regarding students' high school diplomas (Finding #3) and the lack of documentation to support the return of Title IV funds (Finding #6).[2] Respondent now appeals the same three findings (3, 4, and 6) as below and urges that I dismiss the FPRD.[3]

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[1] The Program Review Report, issued on November 22, 2010, by FSA, contained seven findings. In the FRPD, two findings (1 and 7) were deemed closed due to the corrective action taken by the institution. Of the two additional findings, Finding #4 (misrepresentation) was deemed resolved because Respondent had ceased participating in Title IV programs, and the liabilities associated with #5 were addressed and included under Finding #6. Although only two findings (3 and 6) had associated liability, Respondent nevertheless appealed three findings: 3, 4, and 6. *See*, FSA ex. 2-9. A narrative of the final determination for Finding #4 was included in the FPRD to preserve the issue should Respondent resume participation in Title IV programs. *Id.* However, the hearing official declined to address Finding #4 in the Initial Decision as it is beyond the jurisdiction of the lower tribunal to adjudicate findings under subpart H that are without attached liabilities. *See, e.g.*, *In re Louise's Beauty College*, Dkt. No. 95-48-SP, U.S. Dep't of Educ. (April 17, 1996); *In re Chicago State University*, Dkt. No. 94-172-SA, U.S. Dep't of Educ. (April 26, 1996); *In re Barber-Scotia College*, Dkt. No. 99-26-SA, U.S. Dep't of Educ. (December 7, 1999); *In re La Lan 2000 Computer Training Center*, Dkt. No. 05-50-SP, U.S. Dep't of Educ. (August 20, 2010); and *In re Virginia Polytechnic Institute and State University*, Dkt. No. 11-30-SF, U.S. Dep't of Educ. (March 29, 2012). For this reason, Judge Canellos did not address Respondent's appeal of Finding #4, and I do not as well.

[2] The final amount comprises $49,953 for Finding #3 and $11,777 for Finding #6. Both findings include liabilities for Pell Grants ($40,125 and $5,623 respectively), Direct Loans ($9,669 and $6,114 respectively) and the cost of funds lost ($159 and $40 respectively).

[3] Respondent states that it believes "the Tribunal should issue a decision dismissing the FPRD Report…" (emphasis added). *See*, Frankie Solomon, Correspondence to the Secretary (dated December 10, 2012; date stamped May 17, 2013), unnumbered p. 4 (hereafter referred to as "RTI brief"). I note, as did counsel for FSA in its brief, that with the exception of the first three paragraphs in its appeal to me, Respondent submitted verbatim the reply brief that it submitted to Judge Canellos on December 10, 2012. Respondent, however, neglected to change the date on the

In this appeal, Respondent reiterates verbatim the arguments that were adjudicated in the Initial Decision and ostensibly adds three more.[4] Two of these newly-raised arguments seem to address Finding #3 and are discussed below.[5]

First, Respondent asserts that Judge Canellos "used state law" in his decision but fails to explain this statement or articulate how Judge Canellos's decision was an improper application of the law.[6] For this reason, I remain unclear as to Respondent's claim and cannot give it credence. In the same paragraph, Respondent also makes the point that the institution relied on representations by Department employees that certificates of completion were acceptable to establish eligibility for Title IV funds. This is not a new argument; Respondent raised it in the proceeding below. It was not the basis of Judge Canellos's determination of liability for Finding #3, and therefore, he did not address the question in his decision. Judge Canellos made his determination based on Respondent's failure to comply with 34 C.F.R. § 668.16(f), which requires Respondent to develop and apply an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs.[7] Arguments as to any guidance Respondent received and relied upon with regard to the certificates of completion as proof of eligibility are not germane to this finding as they do not address the issue of discrepancies in students' files.[8] For this reason, Respondent's argument is irrelevant and has no merit.[9]

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appeal or any language therein, which would explain why Respondent urges the tribunal to dismiss the FPRD, rather than requesting that I act on the Initial Decision. *See*, Reply Brief of the U.S. Department of Education's Office of Federal Student Aid to Respondent's Appeal to the Secretary (June 21, 2013), fn. 3, p. 3 (hereafter referred to as "FSA brief").

[4] Respondent's filing enumerates three bases for its appeal; however, the first argument listed concerns the issue of misrepresentation (the subject of Finding #4), so it is, in fact, duplicative of the argument raised in the proceeding below. As discussed above, this finding had no attached liabilities and was therefore beyond the hearing official's review. For this reason, I also decline to address the argument.

[5] Respondent also addresses Finding #3 on unnumbered pages two and three of its appeal.

[6] RTI brief at unnumbered p. 1.

[7] Initial Decision at 3.

[8] Even assuming *arguendo* that Respondent's argument was legally sufficient, its irrelevance precludes it from affecting the lower decision because the decision was based on different grounds, *i.e.*, the failure to resolve discrepancies.

[9] This argument might have been plausible if the Initial Decision had been decided on the basis of the adequacy of the documentation or the acceptability of the students' credentials. However, the two students' records to which this argument might have applied were determined noncompliant based on the inconsistencies within their files. Although the narrative in Judge Canellos's decision cites the certificates of completion for both Student K.S. and Student Z.A., the basis of his decision was the inconsistencies in their records, not whether the students' high school credentials were sufficient for eligibility. For this reason, the reliance argument is irrelevant. It is clear upon reviewing these two students' records that they contain discrepancies that Respondent had a duty to resolve. First, as Judge Canellos noted, the fact that the students' files contain certificates of completion rather than a diploma or GED is, in and of itself, inconsistent with their Attestation Forms; these were discrepancies in need of resolution. Student K.S. affirmed in her Attestation Form that she had met all requirements for a high school diploma or a GED, yet, the record contains neither. *See*, FSA ex. 10-1. Student Z.A. signed her Attestation Form but left blank her high school name and graduation date. The student's failure to complete the form while still signing it creates an inconsistency within the document itself and begs the question as to what the student is verifying. *See*, FSA ex. 13-1, 13-2.

Respondent's second[10] argument takes issue with Judge Canellos's conclusion that "Rose was on clear notice that there were apparent inconsistencies in the information relative to the eligibility of those students."[11] RTI argues that it did not have any such clear notice and that nothing in the relevant statutes or policy issued by the Department provides guidance for it to follow in determining when schools are diploma mills. Respondent also requests that the Department provide documentation of any contacts it had with RTI prior to June 28, 2010, when the Department conducted its site visit, as proof of the clear notice.

Regarding the diploma mill issue, Respondent misconstrues the liability determination in the Initial Decision. As discussed above, the hearing official found that Respondent had failed to reconcile inconsistencies in the students' files. This determination alone is sufficient to establish liability. The issue of whether the students' credentials – whether they were certificates of completion or diplomas from diploma mills – were acceptable to establish eligibility is inapposite to the finding that RTI did not resolve discrepancies in the students' file. Therefore, this argument was outside of the hearing official's consideration and irrelevant to the Initial Decision. It remains so on appeal.

As to Respondent's claim that it had no clear notice, it is apparent to me, in my reading of the Initial Decision, that the hearing official's conclusion about RTI being on "clear notice" references the fact that the inconsistencies in the record were so significant as to be obvious. Thus, the discrepancies were clearly visible, rendering Respondent on "clear notice" of the defects. To the extent that Respondent ignored these inconsistencies, the school failed in its duty to the Department to exercise the highest standard of care and diligence to ensure the proper and efficient administration of its programs. 34 C.F.R. § 668.82(b). Moreover, if Respondent seeks actual notice of the errors contained in the students' records, all it need do is examine the Program Review Report issued by FSA on November 22, 2010.[12] For these reasons, Respondent's argument is without merit.

Regarding the remaining arguments proffered by Respondent in its appeal before me, they were raised in the proceeding below. I find that Judge Canellos properly heard and reviewed these arguments and Respondent's evidence, and his determinations contain no reversible error. Nothing in Respondent's appeal sheds new light on the two findings at issue, and for this reason, Respondent's arguments are unavailing.

ORDER

ACCORDINGLY, the Initial Decision by Administrative Judge Ernest C. Canellos is HEREBY AFFIRMED as the Final Decision of the Department.

IT IS HEREBY ORDERED that Respondent shall pay the U.S. Department of Education $61,730.

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[10] Enumerated as #3 in the appeal but the second of the two issues I am addressing in this decision.
[11] RTI brief at unnumbered p. 2.
[12] *See*, FSA ex. 1-10.

So ordered this 20th day of October 2014.

Arne Duncan

Washington, D.C.

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