



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

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

Docket No. 14-37-SP
Federal Student Aid Proceeding

Respondent.

DECISION OF THE SECRETARY

This matter comes before me on appeal by the Bio-Chi Institute of Massage Therapy, LLC (Bio-Chi), of the December 18, 2014, Decision by Chief Administrative Judge Ernest C. Canellos (CAJ).¹ The Decision addressed a June 24, 2014, Final Program Review Determination (FPRD) issued to Bio-Chi by the office of Federal Student Aid (FSA). The sole issue on appeal is Finding Five of the FPRD. In Finding Five, FSA stated that Bio-Chi failed to complete required verification of student aid documents. Therefore, FSA found Bio-Chi liable to the Department to repay \$30,649.00. On appeal, the CAJ affirmed FSA's Finding Five.

Based on the following analysis, I affirm the CAJ's Decision.

I. Background

Bio-Chi is an institution of higher education in Sioux City, Iowa, offering one-year non-degree programs.² FSA conducted a program review at Bio-Chi in January of 2012. Subsequently, FSA issued a program review report on June 11, 2013.³ In the program review report's Finding Five, FSA found that Bio-Chi had failed to complete the required verification of students' financial aid applications in seven instances.⁴ Therefore, FSA required Bio-Chi to "resolve the verification deficiencies for the [seven cited] students".⁵ FSA also required Bio-Chi to "review the student files of all Title IV, HEA recipients in the 2010-2011, 2011-2012, and 2012-2013 (year to date) award years."⁶ For each student cited for verification, FSA required

¹ The AJ acted as the hearing official assigned under 34 C.F.R. § 668.114(a).

² Decision, p. 1.

³ FPRD, p. 3.

⁴ The data in an application which must be verified is: 1) household size; 2) number enrolled in college; 3) adjusted gross income (AGI); 4) U.S. income tax paid; and 5) other untaxed income and benefits. FPRD, pp. 16-17.

⁵ FPRD, p. 18.

⁶ *Id.*

Bio-Chi to provide the requested information in spreadsheet format along with hard copy documentation.⁷

On June 24, 2014, FSA issued the FPRD. FSA stated it granted two extensions to Bio-Chi's deadline for providing the information.⁸ In the end, Bio-Chi provided a spreadsheet indicating which students received aid, but did not provide supporting documentation to demonstrate it accurately completed the verification process.⁹ Ultimately, FSA found Bio-Chi liable for certain funds distributed to both the students cited in the program review report "as well as [those] detailed in Appendix B" of the FPRD.¹⁰ Appendix B listed a total of ten students, some with multiple entries over the course of three award years.¹¹ FSA described the owed funds as: "\$27,198.00 in Federal Pell Grant Funds," \$826.00 for "cost of funds liability," and \$2,625.00 for the "estimated actual loss" resulting from improper distribution of Direct Loan funds.¹² Thus, Bio-Chi accrued a total liability under Finding Five of \$30,649.00.

Bio-Chi appealed the FPRD. During the hearing process, FSA withdrew other findings, leaving only Finding Five at issue in the appeal.¹³ Regarding Finding Five, the CAJ found that FSA had properly notified Bio-Chi of the basis of its liability, so Bio-Chi bore the burden of demonstrating that it complied with all Title IV requirements.¹⁴ The CAJ then concluded that Bio-Chi failed to make arguments germane to the issues before him.¹⁵ Citing a lack of evidence contradicting FSA, and based on his own review of the record, the CAJ upheld the entire amount of liability.¹⁶ Bio-Chi has appealed the CAJ's ruling.

II. Analysis

To participate in Title IV, HEA programs, institutions must demonstrate, among other things, their ability to apply an adequate system to identify and resolve discrepancies in the information the institutions receive with regard to students' financial aid applications.¹⁷ Institutions are required to retain significant records, including the Institutional Student Information Record used to determine eligibility for Title IV funds and related documentation showing students' eligibility.¹⁸ Each award year, the Secretary published in the Federal Register the Free Application for Federal Student Aid (FAFSA) information that an institution and an applicant may be required to verify.¹⁹ Institutions must have written policies and procedures for obtaining the necessary documentation from applicants to verify their FAFSA information.²⁰

⁷ *Id.*, pp. 18-19.

⁸ *Id.*, p. 19.

⁹ *Id.*

¹⁰ *Id.*, p. 20.

¹¹ *Id.*, p. 31.

¹² *Id.*, p. 20.

¹³ Decision, pp. 1-2.

¹⁴ *Id.*, p. 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 34 C.F.R. § 668.16(f).

¹⁸ *Id.* § 668.24(c).

¹⁹ *Id.* § 668.56(a).

²⁰ *Id.* § 668.53.

Institutions that participate in Title IV programs are held to the highest standard of care and diligence.²¹ Institutions act as a fiduciary of the Department.²² They must be able to account for all federal funds distributed by them.

Bio-Chi primarily argues that it “substantially complied” with FSA’s request for documentation.²³ For instance, it did not provide a signed copy of a student’s tax return because the student had e-filed.²⁴ Bio-Chi argues that because it provided the required information “by way of spreadsheet,” the finding of liability is excessive.²⁵ Counsel for FSA responds that Bio-Chi had ample notice and opportunity to provide the required verification, failed to do so, and absent the submission of the required documentation Bio-Chi has not met its burden.²⁶

I am unpersuaded by Bio-Chi’s argument. Bio-Chi owes the Department “the highest standard of care and diligence” in handling and accounting for Title IV funds. Although FSA recognized that Bio-Chi submitted a spreadsheet, FSA found Bio-Chi’s supporting documentation insufficient to complete the required verification for ten students. Partially complying with an FSA request, while failing to submit all required documentation, does not satisfy Bio-Chi’s high burden of diligence.

Alternatively, Bio-Chi argues that its liability should be reduced to \$11,037.00.²⁷ Bio-Chi’s theory is that FSA only required reimbursement for funds disbursed to seven students mentioned individually in the program review report.²⁸ Bio-Chi suggests that FSA erred in the FPRD by calculating its liability based on funds disbursed to ten students.²⁹

I do not find any error in FSA’s calculation of liability. FSA noted in the FPRD that it required Bio-Chi to not only verify the FAFSAs of the seven cited students, but also required Bio-Chi to review all student files from three award years. Ultimately, FSA found liability stemming from ten total students over three award years as described in Appendix B of the FPRD. Bio-Chi does not point to any error in FSA’s methodology or calculation of liability. I find that FSA properly assessed liability for the ten students in question and I find no basis to alter FSA’s calculation.

Finally, Bio-Chi argues that a third party administrator monitored and handled “all funds” and “[a]ll funds went to the students.”³⁰ Bio-Chi asserts the CAJ erred by not waiving its liability to the Department. On the other hand, Bio-Chi claims the Department’s actions were “inappropriate, inefficient, and unacceptable” throughout the review process, especially complaining that the Department did not communicate sufficiently with Bio-Chi or act in a

²¹ *Id.* § 668.82(b)(1).

²² *Id.* § 668.82(a); *In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep’t of Educ. (Jan. 15, 2008), at 3.

²³ Petition for Review (Bio-Chi Brief), p. 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Appeal Response of Federal Student Aid, p. 5.

²⁷ Bio-Chi Brief, p. 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, p. 3.

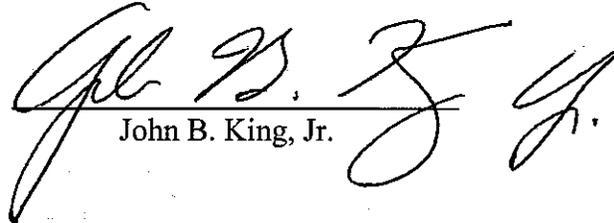
timely manner.³¹ Based on these circumstances, Bio-Chi argues the Department “should be estopped from requiring Bio-Chi from paying any funds.”³²

Despite Bio-Chi’s assertions, it describes no specific prejudice it suffered during the course of FSA’s review related to the liability in question in Finding Five. Bio-Chi does not suggest it failed to complete the required verification of student records, or took any other ill-advised action, because of a written misstatement by the Department. I find no basis for Bio-Chi’s estoppel argument. In any case, the equitable doctrine of estoppel would not be a ground for letting Bio-Chi retain money it is liable to repay to the Department.³³

ORDER

ACCORDINGLY, the Decision by Chief Administrative Judge Ernest Canellos is HEREBY AFFIRMED, and Bio-Chi is liable to the Department for \$30,649.00.

So ordered this 19th day of April 2016.


John B. King, Jr.

Washington, D.C.

³¹ *Id.*, pp. 3–4.

³² *Id.*, p. 4.

³³ *Cannella Schools of Hair Design*, Dkt. Nos. 98-78-SA & 98-73-SA, U.S. Dep’t of Educ. (Decision of the Secretary) (Dec. 12, 2000), at 4 (citing *OPM v. Richmond*, 496 U.S. 414, 424–433 (1990) (“this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds”)).

Service List

Greer Armandroff
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4616

Daniel D. Dykstra, Esq.
Heidman Law Firm, L.L.P.
1128 Historic 4th Street
P.O. Box 3086
Sioux City, IA 51102-3086

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