

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

In the Matter of

Docket No. 94-96-SP

COSMETOLOGY COLLEGE,
Respondent.

Student Financial Assistance Proceeding

Appearances: Carol Schade , Loveland, CO., for Cosmetology College
Denise Morelli, Esq., Office of the General Counsel, United States Department of
Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

This matter involves an appeal by Cosmetology College (College) of a Final Program Review Determination (FPRD), dated April 7, 1994, issued by the Institutional Review Branch, Region VIII, Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). The FPRD found that College failed to file a close-out audit, which is required when an institution closes. Following receipt of the FPRD, College requested an administrative review of the FPRD and the matter was assigned to me for resolution.

The basic facts are not in dispute. In July 1992, Mrs. Carol Schade, then owner of College, sold College to Mr. Richard Szanto. Mr. Szanto apparently operated the school until December 4, 1992, when College ceased providing educational instruction. As a result of the closure, on March 31, 1993, ED notified College that since it had ceased operations, it must fulfill a number of regulatory requirements in order to close-out its participation in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV). On April 7, 1994, the Department issued the FPRD based on College's failure to meet the regulatory requirements identified in the March 31, 1993, close-out letter. The FPRD found that despite passage of a year in which to meet those close-out requirements, College failed to perform any of the actions called for in the letter. In particular,

College failed to submit a close-out audit covering the period, July 1, 1990, to December 4, 1992 (the last audit which College submitted was for the July 1, 1989, - June 30, 1990, period). Based on College's failure to submit the audit, ED directed College to return all Title IV funds for that period. These included \$161,252 in Pell funds and \$257,042 in Federal Family Education Loan

funds. In filing College's appeal, Mrs. Schade did not dispute these facts. She argued, however, that she had no personal liability, attributing such liability to the subsequent owner, Mr. Szanto.

Mrs. Schade asserts that after the sale of the College, she did not work at the College and claims she retained no ownership interest and no control of records for the College after that date. She contends that after the purchase, on September 9, 1992, Mr. Szanto applied for and received approval from the State of Colorado, Division of Private Occupational Schools, for a change of ownership and, on September 21, 1992, he received such approval from the National Accrediting Commission of Cosmetology Arts and Sciences. He did not, however, complete or submit a form requesting change of ownership from ED. Subsequently, on December 4, 1992, Mr. Szanto surrendered the College's license to the State of Colorado, relinquished all student financial records to the State; and permanently closed down the College's operations. Mrs. Schade claims that she neither knew about nor approved of Mr. Szanto's actions.

Mrs. Schade disputes any personal liability claiming she had no duty to file the close-out audit. She also claims no ability to conduct a close-out audit as she lacks the records that were relinquished to the State. Mrs. Schade's argument about the lack of records is unconvincing. See *Indiana Barber/Stylist College*, Dkt. 94-111-ST, U.S. Dep't of Educ. (March 23, 1995). In that case, relying on 34 C.F.R. § 668.116(d), which provides that a school must satisfy its burden of proving that questioned expenditures were proper, the judge found that an institution could not excuse its failure to comply with Title IV regulations by claiming that changed ownership occurred and records were unavailable.

To participate in Title IV programs, an institution must enter into a program participation agreement (PPA) which sets forth various requirements which must be met by the school. An institution must account for the federal student assistance funds by submitting to ED periodic compliance audits. 34 C.F.R. § 668.23(c). Additionally, when an institution ceases to provide educational services or otherwise loses its eligibility to participate in the Title IV programs, it must submit close-out audits to ED. 34 C.F.R. § 668.25(c). This audit report must be submitted to ED within 90 days from the date the school ceases operation. 34 C.F.R. § 668.25(c). In College's case, the close-out audit was to cover the time period from the time of the previous audit, July 1, 1990, to December 4, 1992, the date of closure. [See footnote 1 /](#)

The evidence clearly indicates that College lost its eligibility to participate in Title IV programs

when it closed in December, 1992. In both the March 31, 1993, close-out letter and the later FPRD, Mrs. Schade was put on notice that any change in ownership could not relieve College or her from meeting regulatory requirements. Specifically, the letter pointed out that while a change of ownership was reported to ED, no change of ownership had been approved by ED. Furthermore, the school's participation in Title IV programs occurred based upon a PPA executed by Mrs. Schade as the owner and she was responsible for the proper administration of all federal funds drawn down by the school. Despite these communications, Mrs. Schade and the College failed to respond to these requests for the close-out audit.

This current proceeding is not a change of ownership case. This is, rather, a closed school case in which College has failed to make the necessary accounting for federal funds it received. The

regulations governing participation in the Title IV programs clearly require College to provide ED with a close-out audit. Accordingly, I find that College's failure to provide a close-out audit or make any effort to properly account for any of the Title IV funds it received during the applicable 1990-92 period renders it liable for the return of all such funds . See In the Matter of National Broadcasting School, Dkt. No. 94-98-SP, U.S. Dep't of Educ. (December 12, 1994), In the Matter of Matter of Lehigh Technical School, Dkt. No. 94-193-SP , U.S. Dep't of Educ. (March 17, 1995) and In the Matter of Macomb Community College, Dkt. 91-80-SP, U.S. Dep't of Educ. (May 5, 1993). Absent the filing of the close-out audit, the College has failed to effectively account for any of the Title IV funds it received.

I will not address the question of personal liability of Carol Schade for the repayment of funds and her apparent trouble with the subsequent owner because it is not within my jurisdiction. The ultimate question regarding personal financial liability for funds owed to ED is a matter to be resolved between the respective contestants.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Cosmetology College pay to the United States Department of Education the sum of \$161,252 in Pell Grant funds and to refund \$257,042 to the appropriate FFEL lenders.

Judge Ernest C. Canellos

Dated: August 23, 1995

SERVICE

On August 23, 1995, a copy of the initial decision was sent by certified mail, return receipt requested to the following:

Carol Schade.
P.O. Box 5182
Loveland, CO. 80539

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

Footnote: 1 At the time of College's sale, Mrs. Schade, as owner, had a duty to file a compliance audit for the period July 1, 1990, to June 30, 1992. That compliance audit should have been filed by January 31, 1993, however, it was never submitted.