

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

In the Matter of

Docket No. 01-26-SP

STENOTOPIA BUSINESS SCHOOL,

Student Financial
Assistance Proceeding

Respondent.

PRCN: 200040217665

Appearances: Randy Scheff Gordon, President/Owner, Stenotopia Business School, for Respondent.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education,
Washington, D.C., for Student Financial Assistance Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

Stenotopia Business School (Stenotopia) operated as a proprietary institution of higher education. Until its closure in July of 2000, the school participated in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2752 *et seq.* On July 31, 2001, Stenotopia appealed the U.S. Department of Education (Department), Office of Student Financial Assistance Program's (SFAP) Final Program Review Determination (FPRD) dated June 19, 2001.^[1] The FPRD alleged that Stenotopia failed to submit a close-out audit report, as required by 34 C.F.R. § 668.26(b)(ii). The FPRD assessed liability for all Title IV funds disbursed by the school since June 30, 1998, the date of its last submitted audit.

The facts of this case are not in dispute. Stenotopia failed to submit a close-out audit for the period ranging from July 1, 1998, to July 28, 2000, the date the school stopped participating in the Title IV programs. As Stenotopia failed to submit its 1999 audit for the 1998-1999 award year, the close-out audit should have covered both the 1998-1999 and the 1999-2000 award years. According to both SFAP and Stenotopia, the school's CPA stated that he would submit the close-out audit but he never did. The FPRD assessed liability for Pell funds for the 1998-1999 award year in the amount of \$127,631, and for the 1999-2000 award year in the amount of \$49,475. SFAP calculated Stenotopia's Stafford loan liability utilizing the estimated loss formula.^[2] For both award years, SFAP calculated the estimated loss liability to be \$117,979

SFAP asserts that it made numerous attempts to contact the school's Certified Public Accountant (CPA) and the school itself regarding its failure to submit a close-out audit.^[3] SFAP argues that Stenotopia has a fiduciary duty to the Department to account for its expenditure of Title IV funds. In order to participate in the Title IV programs, SFAP argues that Stenotopia entered into a program participation agreement with the Department that mandates that it not only spend the funds properly but account for the expenditures by submitting financial and compliance audits by a qualified

independent auditor. SFAP states that financial and compliance audits as well as close-out audits are crucial to the Department's ability to ensure that schools properly account for Title IV funds. As the record establishes and the school acknowledges that it did not perform the required audits, SFAP asserts that the Department has no choice but to assess liability for the entire unaudited period.

Stenotopia argues that all Title IV funds were administered carefully, properly applied, and refunded to students in a timely manner, in accordance with all government rules and regulations. Therefore, Stenotopia contends that the Department has not been financially harmed in any way and an administrative offset should not be permitted. Stenotopia cites 34 C.F.R.

§ 81.31 to bolster its argument. Stenotopia asserts that its failure to submit its 1999 audit and its close-out audit did not cause harm to the Department. Stenotopia argues that SFAP's use of an estimated loss formula to calculate liability demonstrates that even SFAP does not believe that all Title IV funds were misspent. In fact, Stenotopia contends that the use of the institution's default rate of 4.8 percent evidences the Department's confidence 96.4 percent of all the loan monies were properly expended.

A school is required to submit a close-out audit covering the period from its last submitted audit to the date of closure within 45 days after the date the school's participation in the Title IV programs end. 34 C.F.R. § 668.26(b)(ii). It is a school's fiduciary responsibility to account for its expenditure of federal funds. *See In re Magic Touch Beauty Institute*, Docket No. 97-161-SP (July 2, 1998), certified by the Secretary (November 17, 1999); *In re Interamerican Business College*, Docket No. 96-20-SP, U.S. Dep't of Educ. (May 27, 1997); *In re Belzer Yeshiva*, Docket No. 95-55-SP, U.S. Dep't of Educ. (June 19, 1996); *In re Southern College and Southeastern Academy*, Docket Nos. 01-42-SA and 01-43-SA-SP, U.S. Dep't of Educ. (April 29, 2002). It is well-established by this tribunal that in the absence of a close-out audit, unless a school can otherwise account for the federal funds received, the school is liable for all Title IV funds received since the last submitted audit. *See In re Belzer Yeshiva*; *In re Midland Career Institute*, Docket Nos. 96-140-SP and 96-141-SP, U.S. Dep't of Educ. (July 30, 1998); *In re Magic Touch Beauty Institute*; *In re Excelsis Beauty College*, Docket No. 98-108-SA, U.S. Dep't of Educ. (October 4, 1999).

The reasons for why a school is unable to submit a close-out audit do not alter the requirement that it do so. *See In re Magic Touch Beauty Institute*. Stenotopia has stated that its accountant assured the school the work would be done and that it does not have the funds to pay for such an audit. Stenotopia has also assured the tribunal that it carefully and properly administered the Title IV programs. However, Stenotopia's mere assertion that it has properly expended federal funds without any demonstration that it has done so is not sufficient. While the unfortunate circumstances affecting Stenotopia (i.e. lack of funds) may make it difficult to comply with the audit regulations, the school cannot rely upon these excuses as a defense or shield from liability. It is also beyond the authority of a hearing official to waive the close-out audit requirement. *See In re Magic Touch Beauty Institute* and *In Re Interamerican Business College*.

In a Subpart H proceeding, the tribunal must also determine whether the institution has met its burden of proof showing that the Title IV expenditures questioned in the FPRD were disbursed properly. 34 C.F.R. § 668.116(d). In this regard, the tribunal must examine the record to determine whether the evidentiary submissions from the institution document or account for the institution's expenditure of Title IV funds. *See In re Jesode Hatorah*, Docket No. 95-57-SP, U.S. Dep't of Educ. (June 29, 1995). This tribunal has discouraged SFAP from attempting to recover all Title IV funds if the institution has provided some degree of relevant data to more appropriately calculate the Department's loss. *In re SamVerly College of Barber Hairstyling*, Docket Nos. 96-144-SP and 96-45-ST, U.S. Dep't of Educ. (June 21, 2000).

Stenotopia submitted three volumes of student files in its request for review.^[4] Although SFAP is correct in asserting that the submission of "a handful of student files" does not relieve Stenotopia of its burden to account for its expenditure of Title IV funds, SFAP understates the amount of documentation submitted by the school. In a Subpart H proceeding, the tribunal recognizes that in the first instance, SFAP ought to have the opportunity to review the student files submitted by a school. The tribunal assumes (and SFAP does not indicate otherwise) that SFAP's initial review has

uncovered no relevant data that could reliably be used to reduce the school's liability. Certainly the evidence submitted with Stenotopia's initial request for review consisting of a hodgepodge of incomplete and poorly identified data submitted by the school without any attempt at analysis, supports SFAP's determination that this data was not useful for that purpose. [\[5\]](#)

Finally, Stenotopia's argument that SFAP's use of the estimated loss formula demonstrates that the Department believes that the majority of Title IV loan funds were properly spent is without merit. The use of estimated loss formula to calculate federal student loan liability is intended to calculate the actual harm done to the Department for improperly expended or unaccounted for student loan funds. [\[6\]](#) It does not indicate the Department's opinion as to the percentage of student loans that were properly made.

Accordingly, I find that Stenotopia failed to submit a close-out audit or otherwise account for its expenditure of Title IV funds. Stenotopia has also failed to meet its burden in demonstrating that it properly expended Title IV funds for the 1998-1999 and 1999-2000 award years. Therefore, Stenotopia remains liable for the amount of \$295,085, as assessed in the FPRD.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Stenotopia Business School pay to the U.S. Department of Education the sum of \$295,085.

Judge Richard I. Slippen

Dated: July 31, 2002

SERVICE

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

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[\[1\]](#) Since the submission of this appeal, SFAP has changed its name to the Office of Federal Student Aid (FSA). For purposes of this decision, it will be referred to by its former name as the charging document, the FPRD, and all

subsequent submissions name SFAP as the Department's authorized office for initiating this action.

[2] The estimated loss formula measures the estimated loss to the Department that has or will result from ineligible loans disbursed by the school. Under this formula, an institution's cohort default rate is multiplied by the total amount of ineligible loans disbursed during a given award year to yield an estimated expenditure of defaulted loans. This estimate is then added to estimated loan subsidies and interest payments made by the Department to yield the estimated loss formula liability. *See In re Christian Brothers University*, Docket No. 96-4-SP, U.S. Dep't of Educ. (January 8, 1997).

[3] *See* Resp. Ex. 2, Appendix to the FPRD.

[4] These documents were submitted to SFAP for its review. Stenotopia submitted approximately 60 student files and other miscellaneous documents. The student files submitted were not uniform nor are all complete. In fact, some consist only of a single page, a document titled Financial Aid Worksheet.

[5] A school that fails to provide the tribunal with an adequate explanation of its submissions does so at its peril. *See In re Hair Interns School of Cosmetology*, Docket No. 98-91-SP, U.S. Dep't of Educ. (November 5, 1998), citing *In re Clark Atlanta University*, Docket No. 93-106-SP, U.S. Dep't of Educ. (Decision on Remand II, December 22, 1997).

[6] The estimated loss formula only applies to certain Federal student loans. It cannot be applied to Pell or other grant programs as the Respondent suggests in its brief.