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

In the Matter of

SUMMIT SALON AND BEAUTY SCHOOL,

Respondent.

Docket No. 13-03-SA

Federal Student Aid Proceeding

ACN: 08-2011-22678

Appearances: Ms. April McMicken, Director, and Ms. Cynthia Bell, President, Woodland Park, CO, for Summit Salon and Beauty School.

Denise Morelli, Esq., Office of the General Counsel, U. S. Department of Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Summit Salon and Beauty School (Summit) operated as a vocational institution, offering postsecondary programs in cosmetology and participating in Federal student financial assistance programs that are 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. § 2751 *et seq.* The Office of Federal Student Aid (FSA), of the U.S. Department of Education (ED), administers and oversees these programs.

As an eligible post-secondary institution receiving and disbursing Title IV funds, Summit submitted the required compliance audit for fiscal year 2011. That audit report found that Summit miscalculated the amount of Title IV funds it had to return to ED (R2T4) for ten of eleven students who dropped out during the audit period, prior to completion of their program of study. After reviewing the audit, on September 14, 2012, FSA issued a preliminary report requesting that Summit submit documentation for the students for whom R2T4 calculations were made. Neither Summit nor its auditor provided those documents, despite repeated requests from FSA to obtain such documentation. Without this information, FSA claims it couldn't correctly determine the students' eligibility during the enrollment periods in question. As a result, on

December 20, 2012, FSA issued a Final Audit Determination (FAD) finding Summit liable for the return of all Title IV funds received in 2011 for those ten students.

It is well established that in any audit review proceeding such as this one, the institution has the burden of proving by a preponderance of the evidence that its expenditures were proper. *See, 34* C.F.R. § 668.116 (d). Any failure to meet this burden in establishing its compliance means that the institution must return to ED the funds in question. After careful review of the record, and for the reasons explained below, I find that Summit failed to establish that the R2T4 funds calculations for the ten students in question were correct. Specifically, I find that the documentation it had provided throughout this appellate process is insufficient to determine the proper calculations. I find that since there is no way to determine the proper amount of R2T4 funds for these students during the period covered by the audit, all Title IV funds for those students must be returned to ED.

I.

On appeal, Summit does not expressly contest the finding that its R2T4 calculations were incorrect, but argues that any such miscalculation resulted from inaccurate guidance from ED. However, as provided in the program participation agreement between ED and eligible Title IV post-secondary institutions, each institution eligible to participate in Title IV programs owes a fiduciary duty to ED. As a fiduciary, Summit is required to comply with all applicable regulatory provisions. 34 C.F.R. § 668.14(b) (1). One such provision requires Summit to determine the amount of Title IV funds it earned for education of its students who withdrew prior to completion of their program of study. Any Title IV aid received in excess of the amount earned must be returned to ED. 34 C.F.R. § 668.22. I find no evidence of clearly contradictory advice from ED regarding the R2T4 subject and, as a consequence, I find that any miscalculations of the refunds required under the R2T4 are the sole fault of Summit.

Given that responsibility, the burden rests with Summit to provide all the necessary documents to determine the correct R2T4 calculations. FSA notified Summit of this requirement on at least eight separate occasions, and requested the same documents from Summit's auditor, who was, according to the record, apparently unable to produce them. According to FSA, the documents Summit did produce were insufficient to accurately calculate the R2T4 funds. Upon careful review of the record, I find that the documents Summit provided are not sufficient. They do not meet the regulatory requirement of records maintained in a "systematically organized manner" such that they are "readily available for review," as required by 34 C.F.R. § 668.24(d). My review of the file indicates that Summit failed to submit any documents for one student, and documents meant to support the calculations for the remaining students are incomplete and often incoherent. For example, attendance records have names handwritten across the top and only include dates and check marks. No certification of the person taking attendance, the student, or anyone else is included. Likewise, electronic R2T4 forms are crossed out and corrected by hand, with no certification of who made the changes and no explanation of why the changes were made or what the impact of the change indicates.

It was incumbent upon Summit to provide all the documentation necessary to determine the correct R2T4 calculations to ensure the correct expenditure of federal student aid for the period during which the students were eligible. 34 C.F.R. § 668.16(d) (1). Summit took on this

responsibility as part of the fiduciary role it accepted when it entered into its participation agreement, thus becoming eligible to accept Title IV aid on behalf of its students. *See generally, In re Rose Training Institute*, Dkt. No. 12-45-SP, U.S. Dep't of Educ. (April 15, 2013). Clearly, Summit failed in its duty relative to the R2T4 requirement.

II.

The amount for which Summit remains liable is also at issue. FSA has requested Summit be held liable for the full amount of all Title IV funds disbursed to the ten students at issue plus interest, for a total of $46,590.38. In Appendices D and E of the Final Audit Determination, FSA provides the total loan principle and cost of funds for loans and grants for each of the ten students at issue, totaling $51,363.38. FSA does not address why it seeks only the return of $46,590.38 as Summit's liability. However, since FSA's demand falls within the range of the demand in the FAD, I find this amount to be supportable and reasonable.

While the documents Summit did provide do seem to suggest that some of the Title IV funds were properly disbursed and expended on behalf of the students, the precise amount of the appropriately used funds is not discernible. When an institution does not provide sufficient documentation such that FSA is precluded from determining the precise measure of ED's actual losses, as is the case here, the institution will be liable for the full amount of Title IV funds for the students in question. *See In re Columbia Beauty College*, Dkt. No. 08-17-SA, U.S. Dep't of Educ. (April 7, 2009). This is true regardless of whether that documentation shows the possibility that a precise measure of liability is something less than all Title IV funds for those students. Therefore, I find that Summit's failure to comply with FSA's request for further documentation of Title IV expenditures, precluded FSA's ability to determine a precise measure of the Department's actual loss. As a consequence, I find that FSA's calculation of liability reasonable and supportable.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Summit Salon and Beauty School pay $46,590.38 to the U.S. Department of Education.

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Ernest C. Canellos
Chief Judge

Dated: July 29, 2013

SERVICE

A copy of the attached document was sent by Certified U.S. Mail, Return Receipt Requested, to the following:

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