



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

In the Matter of

CC'S COSMETOLOGY COLLEGE,

Respondent.

Docket No. 13-56-SP

Federal Student
Aid Proceeding

PRCN: 201240628004

Appearances: Chiquita Carter, Owner, CC's Cosmetology College, Tulsa, Oklahoma

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

Before: Judge Ernest C. Canellos

DECISION

CC's Cosmetology College (CC's) is a proprietary institution of higher education with its primary location in Tulsa, Oklahoma, offering various programs in cosmetology. It is accredited by National Accrediting Commission of Cosmetology, Arts and Science (NACCAS) and since 1998, has participated as an eligible postsecondary institution in the 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), within the United States Department of Education (ED), administers and oversees these programs.

After an on-site program review by its Dallas School Participation Division, on June 6, 2013, FSA issued a Final Program Review Determination (FPRD) assessing liabilities against CC's for the improper distribution of Title IV funds to students enrolled at an ineligible location. Based on these alleged violations FSA demanded that CC's return \$73,782.15 in misspent Title IV program funds to ED.

FACTS

CC's main campus in Tulsa, Oklahoma, was certified as an institution eligible to participate in the Title IV programs in 1998. On May 4, 2009, CC's submitted an electronic application to FSA for approval to add three new locations to its Title IV certification. These locations were in Texarkana, Texas, Texarkana, Arkansas and Idabel, Oklahoma (Idabel). On August 6, 2009, FSA issued an email notice informing CC's that the Texas and Arkansas locations had been approved. Although the notice did not directly address the Idabel location, the notice clearly advised CC's that it should not disburse funds at any additional location without approval from FSA. A follow-up email was sent to CC's on August 24, 2009, informing the school that an action had been taken on the Idabel location and it should go to the official website to view the action letter. On August 25, 2009, CC's resubmitted its application for approval of the Idabel location and this application was merged with CC's pending application for recertification. To this date the Idabel location has not been approved.

DISCUSSION

FSA asserted that Idabel was not approved originally because CC's had failed to submit documentation establishing that Idabel was accredited by NACCAS. Obviously this is correct since NACCAS' accreditation of the Idabel location did not occur until at least July 9, 2009 and, there is no evidence that a notice of such approval had been sent to FSA prior to its action denying CC's request relative to the Idabel location. Further, FSA contends that it has not yet approved the Idabel location or issued a decision on the school's recertification application because CC's has an open program review with findings that needed to be resolved. Consequently, FSA argues that as a result of Idabel's lack of eligibility status, CC's improperly disbursed Title IV funds to students at an ineligible location.

To participate in Title IV programs, an institution must enter into a program participation agreement with ED that sets forth various requirements which mandate when and how an institution may use Title IV funds. 20 U.S.C. § 1094; 34 C.F.R § 668.14. In its capacity as a fiduciary, CC's owes to ED the highest standard of care and diligence to ensure the proper and efficient administration of these federal programs. 34 C.F.R. § 668.82 (a) and (b). The sole issue in this proceeding is whether CC's should be held liable for disbursing Title IV funds at its Idabel location before that site's eligibility had been approved by ED.

It is clear, that in any audit or program review proceeding the institution has the burden of proving by a preponderance of the evidence that it has disbursed federal student aid funds in accordance with statutory and regulatory guidelines. *See* 34 C.F.R §§ 668.14, 668.82 (a) and (b), and 668.116(d). *See also, In the Matter of Sinclair Community College*, Docket No. 89-21-5, U.S. Dep't of Educ. (Sept. 26, 1991). Therefore, the burden rests on CC's to present clear and convincing evidence supporting its position in this case. Although I might be sympathetic to the school's circumstances, unfortunately, CC's has failed to meet its burden of proof. The record is abundantly clear — the Idabel location was not an approved location for Title IV purposes. The apparent mistake made by CC's in assuming that it was approved does not excuse it from its duty to properly account as a fiduciary for federal education funds entrusted to it.

In its defense, CC's contends that it should not be held liable for repaying the funds in question for several reasons. First, CC's argues that it did not receive the August 6, 2009, notice via email and

consequently was unaware of the contents of that notice. Next, CC's claims that NACCAS accredited the Idabel location on July 9, 2009, and therefore, it assumed that approval to disburse funds at the location in question had been granted because it met all its statutory obligations to be deemed an eligible site. 34 C.F.R. §§ 600.10(a) (2). Finally, it argues that it had no other choice but to resubmit Idabel's application on August 25, 2009, because it was unable to update the original electronic file it previously submitted.

The law regulating eligible locations under Title IV is well-settled. An institution must be designated as an eligible location to participate in Title IV programs. 34 C.F.R. § 600.20(a) (1990). This designation does not extend to any additional locations established after the institution receives its initial eligibility determination. 34 C.F.R. § 600.10(b) (3) (1990). This tribunal has held that an institution seeking to establish an additional location must apply to ED for approval. 34 C.F.R. § 600.10(b) (3), 600.30(a) (3). *See also, Baton Rouge College*, Docket No. 95-147-SP, U.S. Dep't of Educ. (Aug. 6, 1995). Until any additional location is approved by ED, students at the new location are ineligible to receive Title IV funds. *See In Re Puerto Rico Barber & Technical College*, Docket No. 91-36-SP, U.S. Dep't of Educ. (Feb. 10, 1993); *In Re Louise's Beauty College*, Docket No. 95-48-SP, U.S. Dep't of Educ. (Apr. 17, 1996); *In Re LeMoyne-Owen College*, Docket No. 94-171-SA, U.S. Dep't of Educ. (May 18, 1995).

FINDINGS

CC's main campus in Tulsa, Oklahoma was approved to participate in Federal Student Financial Assistance Programs in 1998. CC's took the initial step of applying for FSA's approval; however, the law specifically mandates that an institution seeking to disburse Title IV funds must meet all the eligibility requirements before approval is granted. 34 C.F.R. §§ 600.10. CC's failed to submit a complete package to FSA in its May 4th application because, I find that NACCAS had not granted Idabel accreditation until July 9, 2009. Consequently, I find that Idabel did not possess one of the Title IV statutory requirements at the time CC's submitted its electronic application. Additionally, FSA's August 6, 2009 notice granted approval of the Texas and Arkansas locations; however, the notice specifically stated that CC's should "not disburse funds to any location that has not been authorized by the Department." Although CC's claims it did not receive this notice, the August 24, 2009 notice was available and further provided CC's with an additional update on Idabel's status.

CC's fiduciary duties are clearly outlined in the plain reading of the statute and regulations. Additionally, the precedent set by this tribunal regarding the matter, is clearly dispositive of this case. *See Baton Rouge College*, Docket No. 95-147-SP, U.S. Dep't of Educ. (Aug. 6, 1995). CC's arguments before me are not persuasive. Even if CC's did not receive the August 6th notice as it claims, the August 24th notice was sent via email to two separate school accounts. One email address was the same account used for a number of exchanges between FSA's Dallas region and the school. Finally, even if CC's was not given any form of notification it has a fiduciary responsibility to wait until clear approval from ED had been granted. *In Re Puerto Rico Barber & Technical College*, Docket No. 91-36-SP, U.S. Dep't of Educ. (Feb. 10, 1993). If CC's had any doubt or concerns about the status of the Idabel location it had a duty to use the highest standard of care by investigating the school's eligibility status before it disbursed any Title IV funds. 34 C.F.R. §§ 668.14, 668.82 (a). Further, CC's reapplication on August 25th has no legal significance -- if anything, CC's efforts to resubmit an updated application for the Idabel location underscores the fact that it knew it

had the responsibility to wait for approval from ED.

I find, therefore, that CC's has failed in its fiduciary responsibility to act within the guidelines of statutes and regulations governing Title IV federal programs. Clearly, CC's failed to assure that the Idabel additional location was approved by ED as an eligible location and, as a result, the students enrolled at that Idabel campus were ineligible to receive federal education funds. This tribunal has no authority to waive the rules. Consequently, CC's is liable to return to ED \$73,782.15, the amount of Title IV education funds that it improperly disbursed to students at the unauthorized Idabel campus.

ORDER

On the basis of the forgoing finding, it is hereby **ORDERED** that CC's Cosmetology College pay to the United States Department of Education the sum of \$73,782.15.

A handwritten signature in black ink, appearing to read 'Ernest C. Canellos', is written over a horizontal line.

Ernest C. Canellos
Chief Judge

Dated: July 7, 2014