



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
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In the Matter of

Docket No: 16-19-SA

Arkansas Beauty School-Conway

Federal Student Aid Proceeding

ACN: 06-2015-52687

Respondent

Appearances: Ms. Tamara Harrison, President of Arkansas Beauty School-Conway

Donna S. Mangold, Esq. Office of General Counsel, U.S. Department of
Education, Washington, D.C. for Federal Student Aid

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

Arkansas Beauty School (ABS) was a proprietary educational institution that was located in Greenbrier, Arkansas and prior to its closing, participated in the Federal Student Aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751, *et seq.* In the U. S. Department of Education (Department), the office of Federal Student Aid (FSA) has jurisdiction over and oversight of these programs.

ABS lost its accreditation on March 13, 2015, and closed on June 6, 2015. One student filed a request for the discharge of her Title IV loan obligations since she was unable to complete her program of study in which she was enrolled due to the closure of the school. Once a student files a request under U.S.C. § 1087(c) and certifies that he or she was unable to complete a course of study because of the closure of the school, the Secretary of Education (Secretary) will

pay off the Title IV loans and discharge the obligations of the student. When student loans are discharged, the Secretary is subrogated to the student's rights to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682.214(e).

On January 29, 2016, FSA issued a Final Audit Determination (FAD) through the Department's Dallas School Participation Division. The FAD determined that ABS is liable for \$2,750.00 in closed school loan discharges and \$27 in imputed interest on the cost of the discharge amounts paid by the Department. After ABS's closure, one student who received Title IV, HEA loan funds for attendance filed claims for discharge of her Title IV, HEA loans due to ABS's closure. Having certified she was unable to complete her program of study due to the closure of ABS, the student filed an application for, and received approval of, the discharge of Direct Loans. The FAD asserted that under 34 C.F.R. §§ 674.33(g) and 675.214 of the Federal Perkins Loan and Federal Direct Loan Program regulations, the Secretary will discharge the borrower's obligation to repay a loan if the borrower did not complete the program of study for which the loan was made because the institution, at which the borrower was enrolled, ceased to provide educational instructions in all programs. By letter dated February 23, 2016, ABS filed a timely appeal of the Closed School Loan Discharge repayment in the amount of \$2,777.00 arising from ABS's closure.

In any Subpart H audit and program review proceeding, the educational institution has the burden of proving by the preponderance of the evidence that the Title IV funds received were lawfully disbursed and earned. If it fails to establish the correctness of the expenditure of Federal education funds under the criteria of the statutes and regulations, the institution must return the funds to the Department. 34 C.F.R. § 668.116 (d).

While ABS has the burden of proof in this proceeding, FSA also has the burden of providing adequate notice of its demand. Here, FSA has presented sufficient information to establish a prima facie case for its demand in the FAD. FSA established its prima facie case when it was shown a student applied for a closed school loan discharge and that student swore under penalty of perjury that the requirements for discharge were met. *See*, 34 C.F.R. §§ 682.402(d)(3), 685.214(c).

More specifically, FSA submitted evidence in support of findings that the student who sought discharge of her loans did not complete her program of study at ABS because of its closure and she did not complete such programs at another institution. The records provided from FSA further confirm that the loan was in fact discharged. ABS has provided no evidence to the contrary; and thus, has failed to meet its burden of proof to challenge the closed school loan discharge liability established in the FAD.¹

¹ ABS was not able to retain counsel or file redacted documents as directed due to the medical and financial constraints of the owner of ABS. ABS was not required to submit a brief under the terms of the Order Governing Proceedings, but consistent with the requirements by the Department, specifically FSA, ABS submitted a comprehensive explanation for the challenge to the FAD with the timely request for appeal. Consequently, the Tribunal relied on the applicable evidence submitted from ABS and FSA.

II. Issue

ABS argues that it should not be liable for a student's discharged Title IV, HEA loan since the student's last physical day was prior to the voluntary withdrawal of the institution from all of the Department's funded programs. The Respondent also asserts that the FAD did not take all of the relevant information into account, and ABS's closure is not the main reason that the student stopped attending the institution.

Under 20 U.S.C § 1070 and 34 C.F.R. § 685.214(c), this Tribunal must therefore determine whether the Secretary properly discharged the student's loan in question based on the student's withdrawal² from ABS and whether ABS shall be liable for the amounts established by the January 29, 2016 FAD.

III. Legal Framework/Applicable Laws and Regulations

Under 20 U.S.C § 1070, the Secretary administers the provisions of Title IV of the Higher Education Act. The Department's regulations specify procedures for which an institution must adhere to when the institution closes and a student cannot complete his or her program of study. Under 20 U.S.C. § 1087(c), the Secretary of Education shall discharge a student's liability on a loan if the student was unable to complete the program of study in which he or she was enrolled due to the closure³ of the school.⁴ This section of the Act explicitly states that a "borrower whose loan has been discharged pursuant to Section 437(c)(2) shall be deemed to have been assigned to the United States the right to a loan refund up to the amount discharged against the institution."⁵

A discharge relieves students of the obligation to repay Federal loans for a program that they will be unable to complete because of the school's closure.⁶ In order to qualify for a discharge of a loan, the regulations specify that a student must submit a written request and a sworn statement to the Secretary indicating that he or she received loans to attend school; the student did not complete the program of study at that school because the institution closed while he or she was enrolled (or the student withdrew no more than 120 days before the school closed); and the student did not complete the program through a teach-out program⁷ or by transferring academic credits earned at the closed school.⁸

The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for

² There is no distinction between official and unofficial withdrawal in 34 C.F.R § 685.214. In this particular instance, whether the official (withdrawal date of record) or unofficial withdrawal (last date of attendance) date is used, the outcome is the same as both are within the 120-day window described in the regulations.

³ 34 C.F.R §§ 685.214(a)(2)(i); 682.402(d)(1)(ii)(A) (defining a school's closure date as the date on which the school ceases to provide educational instruction in all programs, as determined by the Secretary).

⁴ 20 U.S.C. § 1087(c)(1).

⁵ HEA §437(c)(2); 20 U.S.C. § 1087(c)(2); 34 C.F.R. § 685.214(e).

⁶ 20 U.S.C. § 1087(c);

⁷ 34 C.F.R. § 602.3 (defining a teach-out plan as a written plan developed by an institution that provides for the equitable treatment of students if the institution ceases to operate before all students have completed their program of study).

⁸ 34 C.F.R. § 685.214(c)(1)(i)(B).

this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.⁹

Additionally, a school is not merely responsible for the discharged tuition amount, but rather all fees and charges associated with the institution during the period at question.¹⁰ The regulations specify that an institution may credit a student's account for funds associated with one's tuition, room and board, books, supplies, and other educationally related goods and services provided by the institution.¹¹

Once a student loan is discharged, the Secretary, as the subrogee of the student's rights, is directed to pursue recovery against the closed school for the amounts forgiven.¹² The student is deemed to have assigned to the Secretary the right to a loan refund from the institution, its principals, affiliates, and their successors in the amount of the discharged loan.¹³ The Secretary reviews the application and determines if the borrower meets the qualifications for a discharge.¹⁴

Thus, in order to protect the Federal fiscal interest of the United States and the taxpayers by extension, the Secretary is authorized under 20 U.S.C. § 1099(c) to relieve students of their obligation to repay Federal loans for an educational program that would be impossible to complete due to the institution's closure.¹⁵ By assigning liability to an institution for closed school loan discharges, the closed school is held responsible for the discharged liability. This in turn, minimizes the Department's debt and protects the integrity of the loan program.¹⁶

IV. Analysis

ABS argues that the loan discharge was improper because the student's last physical day of attendance was prior to the school's closure and ABS's closure is not the main reason that the student stopped attending the institution.¹⁷ In furtherance of this argument, ABS submitted the calculation to establish treatment of funds when a student withdraws from a clock-hour program.¹⁸ Thus, ABS concludes that the Secretary should not have discharged the student's loan under the applicable regulations.¹⁹

In this case, the regulatory language is clear and there is no ambiguity. The regulations specify requirements that a student must complete in order to qualify for a discharge of a loan.²⁰ The Department's regulations recognize that a student cannot complete a program of study at

⁹ 34 CFR 685.214(c)(B); 34 C.F.R. § 685.214(b).

¹⁰ 34 C.F.R. 668.164(c)(1)(ii).

¹¹ *Id.*

¹² 34 C.F.R. § 682.214(e).

¹³ 34 C.F.R. § 682.402(d)(5)(i); 20 U.S.C § 1087(c)(2).

¹⁴ 34 C.F.R. § 682.214(c).

¹⁵ 20 U.S.C. § 1099c(e)(1)(B).

¹⁶ *Id.*; see also 59 Fed. Reg. 61,664, 61,688 (Dec. 1, 1994) (emphasis added).

¹⁷ *Request for Review* at 1.

¹⁸ *Request for Review* at 10.

¹⁹ *Request for Review* at 1.

²⁰ *Id.*

that school if the institution closed while the student was enrolled (or the student withdrew no more than 120 days before the school closed) and require that the student submit to the Secretary a sworn statement indicating that he or she received loans to attend school and the student did not complete the program through a teach-out program²¹ or by transferring academic credits earned at the closed school.²²

Relying on the February, 2015 time card, ABS claims that a return was not necessary because the student withdrew prior to the institution's closure.²³ The student attended 49 hours of classes in February then stopped attending classes but made no attempt to formally withdraw.²⁴ Since the student did not formally withdraw, the institution "dropped" the student from classes in March, 2015²⁵ after which she accumulated 215 credit hours.²⁶ Although the student's last physical day of attendance was prior to the school's closure, the evidence shows she was enrolled in the school until ABS administratively determined she had withdrawn and both her date of last attendance and the date administratively withdrawn was within 120 days of the school's closure. As such, the student should not be denied the opportunity to recover the value of a discharged loan.²⁷

A review of the evidence in this case clearly establishes that the student completed all requirements in order to qualify for a discharge of a loan. The student submitted the required written request to the Secretary indicating that she received a loan to attend the school, but did not complete the program of study because the institution closed.²⁸ In the Loan Discharge Application, the student certified that she was unable to complete the program at ABS due to the closure of the school, and that she was enrolled in the program of study within 120 days from when the school closed.²⁹ Additionally, the student also specified in her Loan Discharge Application that that she did not complete the program of study at another school.³⁰

In addition to submitting the required written request to the Secretary, a student must also be enrolled at the school or withdrawn from the school within 120 days prior to the closure date.³¹ According to the Respondent's Request for Review, ABS closed on June 6, 2015, and ABS determined a withdrawal date for the student in March 2015.³² Following the regulatory guidelines, a withdrawal date during the period February 6, 2015 to June 6, 2015 would entitle the student to a Title IV loan discharge because it is within the 120 days of the school's June 6th

²¹ There is no evidence that the student completed the program through a teach-out program or by transferring credits earned to another institution.

²² See 34 C.F.R. §§ 685.214(c)(1)(i)(B).

²³ *Id.*

²⁴ *Request for Review* at 1, 2-7.

²⁵ *Request for Review* at 10. Notably, this form indicates ABS established withdrawal dates of March 20, 2015 and March 24, 2015, which present some conflicting information as to the actual established withdrawal date, but is inconsequential to this analysis, as the evidence shows the student continued to be presumed enrolled for at least a period of time after she stopped attending classes in February 2015.

²⁶ *Id.*

²⁷ See 34 C.F.R. § 685.214.

²⁸ See 34 C.F.R. § 685.214(c)(1).

²⁹ ED Exh. 3 at 014.

³⁰ *Id.*

³¹ See 34 C.F.R. § 685.214(f)(1).

³² *Request for Review* at 1.

closure.³³ Thus, the withdrawal date established by ABS in March 2015³⁴ is within 120 days of the school's closure, as is the student's date of last attendance.³⁵

FSA cites multiple cases in support of its argument that the discharge was proper since the student withdrew within 120 days of the school's closure. Specifically, FSA analogizes this case to *College of Visual Arts*, in which students were granted a discharge of their Title IV loan obligations on the basis of their inability to complete their program of study because of the school's closure.³⁶ Like *College of Visual Arts*, the student in this case certified that she was unable to complete her education because of the closure of the school and subsequently, requested that the Secretary discharge her Title IV loan in question.³⁷

Under *College of Visual Arts*, this Tribunal established that the applicable Federal statutes, regulations, and case law specify that upon closure of a school, the Secretary has the authority to discharge students' loans if they are unable to complete their academic program due to the school's closure and then recover the value of the discharged loan from the institution.³⁸ Thus, the HEA explicitly gives the Secretary the authority to assign liability to a closed school for a discharged loan.³⁹ The Secretary can utilize his promulgated authority to pursue recovery for a student that withdrew within 120 days of the institution's closure.

Additionally, the Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.⁴⁰ In this case, even if the student was over the 120-days requirement, she could still be considered for a loan discharge under this provision, because the school lost accreditation prior to the school discontinuing all of its academic programs.⁴¹

Furthermore, the Respondent also asserts that the FAD did not take all of the relevant information into account, and ABS's closure is not the main reason that the student stopped attending the institution.⁴² Under certain circumstances FSA may have to determine whether a school has properly calculated if a return of Title IV funds is necessary after a student withdrawal, but those regulations are not the controlling regulations in this FAD. Even if there

³³ *FSA's Department Brief* at 5.

³⁴ ABS asserts that the student withdrew in March, 2015, while the student alleges that she attended the institution through May 18, 2015. There is no evidence to support the validity of this statement other than the student's Loan Discharge Application that specifies she attended through May 18, 2015. Moreover, submitted attendance records show the student last attended classes on February 19, 2015.

³⁵ *Request for Review* at 1.

³⁶ *See In re College of Visual Arts*, Dkt. No. 14-23-SA.

³⁷ *See* ED Exh. 3 at 014-15.

³⁸ *See e.g. id.*; *In re Matter of Pennsylvania School of Business*, Dkt. No. 15-04-SA, 2015 WL 10459890, at *1 (Oct. 27, 2015); *In re Hawaii Business College*, Dkt. No. 10-09-SP, 2010 WL 5763868, at *1 (Aug. 16, 2010).

³⁹ *See id.*

⁴⁰ 34 CFR 685.214(c)(B); 34 C.F.R. § 685.214(b).

⁴¹ *See id.*; ED Exh. 1 at 004.

⁴² *Request for Review* at 1.

are other factors preventing a student's completion of a program when a school closes, the regulations on discharge of student loans only require certification that the student's inability to complete his or education is caused by the school's closure and that the student did not complete the program through a teach-out plan or by transferring to another institution.⁴³ Thus, FSA only needed to determine whether the student stopped attending the institution within 120 days of the school's closure.⁴⁴

The closed school loan discharge provisions of Title IV provide a solution rooted in equity for students who are unable to earn their degrees due to a school's closure.⁴⁵ The student in this case should not be financially burdened because she borrowed money to finance an education that prematurely ended due to the school's closure.⁴⁶ Consequently, ABS's argument that the student withdrew prior to the school's closure and other factors contributed to her withdrawing from the institution are not persuasive, because the student stopped attending the school and was deemed to have withdrawn within the regulatory window to be eligible for discharge. Furthermore, if ABS intended to rely on the calculation for treatment of Title IV funds when a student withdraws from a clock-hour program, that reliance is misplaced due to the school's closure. A review of the evidence establishes that ABS failed to meet its burden of proving that a loan discharge was improper. Therefore, the student was properly granted a Title IV loan discharge, and ABS is properly assessed a liability in the amount of \$2,750.00 for a discharged loan plus \$27.00 in previously identified imputed interest.

V. Findings of Fact

1. The February 2015 Time Card establishes the student attended 49 hours of class in February 2015.
2. ABS lost eligibility to participate in Title IV, HEA programs on March 13, 2015 due to loss of accreditation.
3. ABS administratively processed a withdrawal of the student in March 2015.
4. ABS closed on June 6, 2015.
5. The student submitted a Loan Discharge Application dated September 29, 2015, certifying that she was unable to complete the program at ABS due to the closure of the school, she was enrolled in the program of study within 120 days from when the school closed, and she did not complete the program of study at another school.
6. The student's loan was discharged on November 18, 2015.
7. On January 29, 2016, the Department of Education's Dallas School Participation

⁴³ See 34 C.F.R. §§ 685.214(c).

⁴⁴ See 34 C.F.R. §§ 685.214(c)(1)(i)(B).

⁴⁵ See *Id.* (citing 59 Fed. Reg. 61,664 (Dec. 1, 1994)).

⁴⁶ See *In re College of Visual Arts*, Dkt. No. 15-05-SP (July 20, 2015).

Division issued a Final Audit Determination (FAD) establishing \$2,750.00 in liabilities and \$27.00 in previously identified imputed interest against Arkansas Beauty School (ABS) under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.*, and its implementing regulations.

VI. Conclusion and Order

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Arkansas Beauty School pay to the United States Department of Education the sum of \$2,750.00 for a discharged loan plus \$27.00 in previously identified imputed interest, in a manner as required by law.



Angela J. Miranda
Administrative Law Judge

Dated: September 28, 2016

SERVICE

A copy of the attached document was sent by U.S. Mail, certified, return receipt to:

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Angela J. Miranda
Administrative Law Judge

Dated: __September 28, 2016__