



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

In the Matter of

Docket No. 18-67-SP

SALINAS BEAUTY COLLEGE

Federal Student Aid Proceeding

Respondent

PRCN: 2014-2-09-28573

Appearances: Jim Monroe, President, Salinas Beauty College

Karen S. Karas, Esq. for the Office of the General Counsel, U.S. Department of Education, Washington, DC, for Federal Student Aid

Before: Robert G. Layton, Administrative Law Judge

DECISION

Salinas Beauty College (“Salinas”) was a for-profit school that offered non-degree programs. Salinas is appealing the Department of Education’s (“Department”) Final Program Review Determination (“FPRD”) that was issued on September 5, 2018. The Department provides grants, loans, and work-study funds to eligible students attending institutions of higher education through Title IV of the Higher Education Act, 20 U.S.C. 1070 *et seq.* Until September 8, 2015, Salinas participated in the Title IV programs. To ensure compliance, Federal Student Aid (“FSA”), an office of the Department, conducted a program review of Salinas from March 3, 2014 through April 4, 2014. FSA issued a Program Review Report (“PRR”) on July 1, 2014, and Salinas submitted its written response to the PRR on October 2, 2014. After considering Salinas’ response, on September 5, 2018, FSA issued a FPRD based on the findings.

The FPRD assessed liabilities against Salinas for three errors: inaccurate attendance records (in Finding 5), incomplete verification of information (in Finding 7), and failure to monitor satisfactory academic progress (SAP) (in Finding 8). The largest of those liabilities, for inaccurate attendance records, was withdrawn by FSA for various reasons, including consideration of the report by Salinas' independent public accountant, other information, and the fact that Salinas' withdrawal from the Title IV program eliminated the need for further remedial action. The part of Finding 8 relating to the attendance records was also withdrawn. One of the two remaining liabilities pertained to Salinas not verifying one student's application information properly (in Finding 7). The Finding 7 liability was for \$5,550, plus \$56 in cost of the funds. The second remaining liability pertained to Salinas not properly monitoring two students for Satisfactory Academic Progress (in Finding 8). The Finding 8 liability was for both students totaled \$6,475, plus \$65 for the cost of funds.

After the withdrawal of Finding 5, the total liability FSA seeks to impose has been reduced from \$206,141 to \$12,146.

Issues

Salinas' initial appeal letter and opening brief asserted defenses on the inadequate attendance records liability. As noted above, that liability has since been withdrawn by FSA. For its part, Salinas admitted making errors, but "despite our mistakes, we handled the financial aid in good faith and leaned toward the good of the students at all times." *Initial Appeal Letter*. In its initial brief, Salinas characterizes the liability as a punitive fine, and detailed the extremely difficult personal circumstances faced by its president that have flowed from of Salinas' liabilities. *Salinas' Initial Brief, at 3*.

FSA contends that Salinas is not being fined but is liable for its failure to verify application information in Finding 7, and for its failure to monitor satisfactory academic progress in Finding 8.

The issues to be addressed are:

1. Are the amounts which FSA seeks for Finding 7 and Finding 8 considered fines, and subject to the defense that Salinas was acting in good faith?

2. Under 34 C.F.R. § 668.53(a)(2), is Salinas liable for failing to properly resolve conflicting information in the student's application in Finding 7?

3. Under 34 C.F.R. § 668.34(a)(5), is Salinas liable for failing to determine if Students 44 and 50 were making satisfactory academic progress in their educational programs as set forth in Finding 8?

Summary of Decision

FSA has withdrawn Salinas' liability for Finding 5, and the liability owed by Salinas is therefore reduced from \$206,141 to \$12,146. The liabilities assessed are not fines, but are debts for improper expenditures of Title IV federal funds. Under Finding 7, Salinas is liable for failing to properly resolve conflicting information in the student's application. Under Finding 8, Salinas is liable for failing to determine if Students 44 and 50 were making satisfactory academic progress in their educational programs. The Department's determination as amended by the withdrawal of Finding 5 is **AFFIRMED**. Salinas is liable for \$12,146, and any additional interest.

Findings of Fact

FSA issued a letter to Mr. Jim Monroe, President of Salinas Beauty College, on September 5, 2018. It included the Final Program Review Determination (FPRD), which specified the liabilities found by the program review, instructions for paying the liabilities, and notification of the right to appeal. *Exhibit ED-1*, at 2. The FPRD found Salinas liable for a total of \$206,141. *18-67-SP Salinas Beauty FPRD*, at 18.

For Finding 7, the FPRD identified two students (Student 11 and Student 12) that lacked appropriate information verification for their applications. Student 11 did not receive any aid during the period at issue, so no liability was generated for that lack of verification. However, Student 12 received a Pell Grant of \$5,550 (plus \$56 in interest) during the period. *Id.*, at 8. The only response to FSA's request for Salinas to verify the information was for Salinas to state that "The student's issue has been resolved resulting in no additional action required." However, there was no supporting documentation of explanation for Salinas' bare claim that it was resolved. *Id.*, at 8.

For Finding 8, the program review before the FPRD said Salinas had failed to demonstrate that it properly monitored Satisfactory Academic Progress (SAP). FSA required that Salinas do a full file review, including in Independent Public Accountant's attestation about the review. *Ex. ED-1, Appendix B*, at 21. The IPA's report stated that there were two students who received a total of three Pell Grant disbursements at a time when it would have been impossible for the student to complete their programs in the timeframe required by SAP regulations. *Ex. ED-1, Appendix C2*, at 6. One student received two payments (of \$2,158 and \$2,159), and the other student receive a single payment of \$2,158. The three payments total \$6,475, with an additional \$65 for cost of funds for the three disbursements, for a total liability of \$6,540. *Ex. ED-1*, at 15.

The Finding 7 Pell Grant disbursement of \$5,550, plus \$65 for cost of funds, when combined with the Finding 8 Pell Grant disbursements of \$6,475, plus \$65 in cost of funds, the Finding 7 and Finding 8 liabilities total \$12,146.

Principles of Law

34 C.F.R Part 668, Subpart G contains the Department's provisions for Fine, Limitation, Suspension and Termination Proceedings. 34 C.F.R § 668.81 specifies that it is the regulation which governs the imposition of fines. Under 34 C.F.R § 668.89, the Department has the burden of persuasion for any Subpart G fine, suspension, limitation or termination proceeding. A fine proceeding under Subpart G is begun by sending a notice of the fine to the institution. That notice informs the institution of the intent to fine, the amount of the fine, and the basis of the violations for the fine. 34 C.F.R § 668.84(b). 34 C.F.R § 668.93 states that the amount of fines is based on, among other factors, the size of the institution and the gravity of the violation. That section specifies that it is based on the statutory authority of 20 U.S.C. 1094.

34 C.F.R Part 668, Subpart H provides the proceedings when an institution requests a review of a Final Program Review Determination. In such a review, the institution has the burden of proving: 1) that the institution's expenses questioned or disallowed by the FPRD were proper; and/or 2) that the institution or servicer complied with the program requirements. *Id.* § 668.116(d). After reviewing each party's submissions and oral arguments if applicable, the hearing official "states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part." *Id.* § 668.118(b).

An institution may participate in Title IV programs only if it enters into a written program participation agreement. An institution participating in Title IV is a fiduciary responsible for administering Federal funds. 34 C.F.R § 668.14.

Where an institution follows a policy of systematically failing to comply with the requirements of Title IV, FSA is entitled to recover the Title IV funds disbursed by the institution during the period in question. *In the Matter of Long Beach College of Business*, Dkt. No. 92-132-SP, U.S. Dep't of Education (July 14, 1994).

A Final Program Review Determination under Subpart H is not a fine, and is not punitive. At issue is whether or not Salinas, acting as a fiduciary while distributing federal funds, improperly disbursed federal dollars.

“The function of the program review is not to punish institutions for wrongful acts. The function is to safeguard the federal dollars which are disbursed through the program on behalf of FSA by institutions such as Salinas, and, where appropriate, require the institutions to repay wrongfully obtained funds.” *In re Salon and Spa*, Dkt. No. 16-23-SP, U.S. Dep't of Educ. (Jan. 18, 2018) at 2.

For Finding 7, if an institution has reason to believe that an applicant's application information is inaccurate, that institution must verify the accuracy of that information. 34 C.F.R. §668.54(a)(2).

For Finding 8, an institution must establish a reasonable satisfactory academic progress (SAP) progress for insuring an otherwise eligible student is making satisfactory progress in their educational program to receive Title IV funds. 34 C.F.R. §668.34(a)(2). For an institution such as Salinas, which has a program measured in clock hours, the program must be able to be completed in no more than 150 % of the published length of the educational program. 34 C.F.R.

§668.54(a)(5) and 34 C.F.R. §668.54(b)(2).

An institution such as Salinas requesting a review of a Final Program Review Determination has the burden of proving: 1) that the institution's expenses questioned or disallowed by the FPRD were proper; and/or 2) that the institution or servicer complied with the program requirements. *Id.* § 668.116(d). After reviewing each party's submissions and oral arguments if applicable, the hearing official "states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part." *Id.* § 668.118(b).

Analysis

Nature of the Liability

Salinas characterizes the amount at issue here as a punitive fine. There is no support for that characterization.

The above principles of law spell out the distinctions between appeals within the Department under Subpart H (which address recovery of federal funds) and under Subpart G (which address fines, penalties, terminations and other civil punishments). The findings which are on appeal are specifically identified as subject to challenge in a Subpart H proceeding. The distinctions are further reinforced by the above detailed findings of fact relating to the FPRD. The findings were not factually contested, but the above review of the nature of those findings is important, because the program review enumerates specific ways that specific amounts of federal funds were not properly spent or accounted for by Salinas. Recovery of those funds from a fiduciary is not punitive in nature.

An institution's fiduciary duty requires it to account for the disbursement of Title IV program funds, and that requires the school to provide FSA with documentation of its expenditures while it held FSA's funds. For Findings 7 and 8, Salinas does not contest the facts. For Finding 8, to Salinas' credit, the facts forming the basis of the liability were identified by the IPA hired by Salinas.

This fiduciary relationship is of critical benefit to institutions such as Salinas. The institutions receive a major component of their school's funding from federal tax dollars, but in exchange are entrusted with the proper spending of those dollars. Title IV is not set up to be able to function unless FSA can rely on the institutions as fiduciaries to properly spend and document the use of Title IV funds.

The burden of proof in Subpart H proceedings is on the institution to show the funds it held for the Department were properly spent, and here, Salinas provides no evidence to factually contest Findings 7 and 8.

The facts above support FSA's imposition of liability in Finding 7 for failure to verify information. Salinas does not contest the inconsistency, and aside from the barest unsupported denial in the response to the program review report, has not submitted any evidence to show the application information was verified.

The facts above also support FSA's imposition of liability in Finding 8 for the two students who received Title IV funds at a time when they were failing to make satisfactory academic progress, as acknowledged by Salinas' own independent public auditor's report.

Therefore, Salinas is liable for the Finding 7 Pell Grant disbursement of \$5,550, plus \$65 for cost of funds, and is also liable for the Finding 8 Pell Grant disbursements of \$6,475, plus \$65 in cost of funds. The total liability for Salinas in this appeal is \$12,146.

Conclusions of Law

1. The amounts FSA seeks for Finding 7 and Finding 8 are not fines, and therefore are not subject to the defense that Salinas was acting in good faith.

2. Under 34 C.F.R. § 668.53(a)(2), Salinas is liable for failing to properly resolve conflicting information in the student's application in Finding 7.

3. Under 34 C.F.R. § 668.34(a)(5), Salinas is liable for failing to determine if Students 44 and 50 were making satisfactory academic progress in their educational programs as set forth in Finding 8.

Order

The FSA's liabilities imposed on Salinas from Finding 7 and Finding 8 are **AFFIRMED**. Because FSA has withdrawn the liabilities for Finding 5, the total liability for Salinas in this decision is ordered reduced from \$206,141 to \$12,146.

Robert G. Layton
Administrative Law Judge

DATE OF ORDER: FEBRUARY 14, 2020

NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This decision constitutes the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes the adversely affected party’s right to appeal this decision as set forth in 34 C.F.R. § 668.119.

A party may file an appeal to the Secretary within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appealing party shall provide a copy of the appeal to the opposing party. The appeal shall clearly indicate the case name and docket number.

A registered e-filer may file the appeal via OES, the OHA’s electronic filing system. Otherwise, appeals must be timely filed in OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one copy addressed to:

Hand Delivery or Overnight Mail	U.S. Postal Service
Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 550 12 th Street, S.W., 10 th Floor Washington, DC 20024	Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 400 Maryland Avenue, S.W. Washington DC 20202

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119.

Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

SERVICE

This Decision and Notice has been sent by OES automatically generated electronic email notification, email attachment, delivery confirmation requested, and by CMRRR # 7018 2290 0000 5069 4900 to:

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And by OES automatically generated electronic email notification and by email attachment, delivery confirmation requested, to:

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