



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 202027

In the Matter of

**OHIO COLLEGE OF
MASSOTHERAPY**

Respondent

Docket No. 19-25-SA

Federal Student Aid Proceeding

ACN: 05-2016-62001

DECISION

By letter dated April 8, 2019, Jeffrey Morrow, President of Ohio College of Massotherapy (OCM) filed a written Request for Review in the above-styled proceeding. OCM did not submit a close-out audit for a period of time within the 2014-2015 and 2015-2016 academic years. As a result, the Department issued a liability for a total amount of \$211,680. OCM challenged the findings presented in a Final Audit Determination, dated March 1, 2019, issued by the U.S. Department of Education, Federal Student Aid (FSA) office. The Determination imposes a liability on OCM to repay \$211,680 to the U.S. Department of Education in obligations for Title IV funds disbursed. OCM's review request was filed pursuant to 34 C.F.R. § 668.113 (a). The appeal procedures for these proceedings are set forth in 34 C.F.R. Part 668, Subpart H.

OCM has the burden of proof in this proceeding. *See* 34 C.F.R. § 668.116 (d). On June 17, 2019, an Order Governing Proceedings was issued setting forth the briefing schedule for the parties. After various deadlines were missed and extensions were granted, the matter has been briefed and submitted for a decision.

34 C.F.R. § 668.82 imposes a fiduciary obligation on a participating institution for administration of Title IV, HEA programs. That obligation requires the highest standard of care and diligence administering the program and accounting to the Department for funds it receives under the program. The Final Audit Determination notes that OCM ceased participating in Title IV programs on September 22, 2016.

Under 34 C.F.R. § 668.26(b)(2)(ii), OCM was required to have a close-out audit performed and the resulting report filed with the Department within 90 days after it ceased participating in the program. OCM acknowledged before this tribunal that it did not file the close-out audit. OCM has failed to account for the Title IV, HEA funds it received during the unaudited period from January 1, 2015 to September 22, 2016. Because no close-out audit was submitted, the Department has identified as liabilities all the Title IV funds OCM received during the period.

OCM filed pleadings before this tribunal which detail the challenges arising from its loss of accreditation and subsequent closing. This decision recognizes that those challenges were significant and unfortunate. However, the law on this subject, as set forth below, is clear and longstanding. Because the institution received Title IV funds, it is under a duty to account for those funds, and if it cannot, the funds are a proper liability against OCM.

The close-out audit is required to confirm that the institution has met its fiduciary duty to account for Title IV funds for the period from OCM's last audit on January 1, 2015. Under 34 C.F.R. 34 C.F.R. §§ 668.24(a) and (b), OCM must maintain detailed program and fiscal records for Title IV, HEA program funds received. Because it is not able to generate those records without the institution's documentation, in the absence of those records, FSA is unable to responsibly oversee the disbursement of Title IV funds.

FSA rightfully points out that:

The regulations require institutions participating in Title IV programs to establish

and maintain comprehensive, accurate program and fiscal records related to their Title IV program funds. These records must account for the receipt and expenditure of Title IV funds by reflecting each Title IV program transaction, and separate those transactions from all other institutional financial activity. *In Re Galiano Career Academy*, Dkt. No. 11-71-SP, citing 34 C.F.R §§ 668.24(a) and (b).¹

OCM did not submit the close-out audit establishing the appropriateness of the spending of the Title IV funds it received. FSA was given no alternative to establishing a liability against OCM for all the funds it received during the period from January 1, 2015 through the end of its participation on September 22, 2016. *In Re Barone Beauty Academy*, Dkt. No. 17-46-SA (January 29, 2018).

OCM responded to its failure to submit a close-out audit by detailing its financial hardships and lack of money to pay for the audit. OCM pointed out that it had a long history of proper accreditation and administration of Title IV funds, and argues inaccurately that the 3 year time for maintaining Title IV records had passed before the FAD was issued. While this tribunal is deeply aware of the difficulties presented by OCM's closure, the reasons for why a school is unable to submit a close-out audit do not alter the requirement that it do so. *In Re Stenotopia Business School*, Dkt. No. 01-26-SP, citing *In Re Magic Touch Beauty Institute*, Dkt. No. 97-161-SP (July 2, 1998).

As stated in *Stenotopia*,

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 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 the hearing official to waive the close-out audit requirement. (*Stenotopia*, at p.2).

The specific restriction that it is beyond the authority of the hearing official to waive the

¹ *In Re Galiano Career Academy*, Dkt. No. 11-71-SP was reversed in part and remanded on other grounds.

close-out audit is mandated by 34 C.F.R. § 668.117(d).

Based on the facts presented in this case, FSA has established a prima facie case that OCM did not adequately account for its Title IV funds, as required by 34 C.F.R. § 668.116(d). The amount of liability, as assessed by FSA, is \$211,680 and covers the portion of the 2014-2015 award year after January 1, 2015 through the date of the school's closing on September 22, 2016. OCM had ample notice that compliance audits were required. The consequences of OCM's closure are unfortunate, but do not absolve OCM of the burden of proving that the school made proper Title IV expenditures, which is demonstrated through the required audit submission. Audit reports enable the Department to ensure that federal financial assistance programs are properly implemented. The requirement that all funds be returned when they are not properly accounted for is well established by previous decisions of this tribunal.

ORDER

On the basis of the above findings, it is ordered that the Ohio College of Massotherapy pay to the U.S. Department of Education the sum of \$211,680, as demanded in the Final Audit Determination.²

Robert G. Layton
Judge

Date of Decision: January 29, 2020

² FSA received no applications from students requesting closed school discharges, but stated that it reserved the right to use the program review process to recover any such potential liabilities from OCM, or for liabilities due to borrower defense claims.

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 4870 to:

Jeffrey S. Morrow
President
Ohio College of Massotherapy
225 Heritage Woods Drive
Akron, OH 44321
Email: jmorro321@gmail.com

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

Karen S. Karas, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
Email: Karen.Karas@ed.gov