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

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| In the Matter of | **Docket No. 18-54-SP** |
| **HOUSTON COMMUNITY COLLEGE (TX)** | Federal Student Aid Proceeding |
| | PRCN: 201720629592 |
| Respondent. | |

Appearances: Vidal G. Martinez, Esq., Martinez Partners LLP, for Houston Community College

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

Before: Robert G. Layton, Judge

## DECISION

Houston Community College ("HCC") is a two-year public postsecondary institution offering associate degrees. HCC is appealing the Department of Education's ("Department") Final Program Review Determination ("FPRD") that was issued on July 27, 2018. Federal Student Aid ("FSA"), an office of the Department, conducted an offsite program review of HCC from March 20, 2017, through April 26, 2017 to evaluate the institution's administration of Title IV funds. FSA issued a Program Review Report ("PRR") on June 2, 2017. HCC responded to the PRR, and FSA then issued a FPRD based on its findings.

The FPRD imposes a liability on HCC to return $596,152 to the Department for violations of Title IV of the Higher Education Act of 1965, as amended 20 U.S.C. § 1070 *et seq.* and its implementing regulations for the 2014/2015 and 2015/2016 award years. The FPRD finds

that HCC delivered Title IV funds to ineligible students who held invalid high school diplomas in violation of 34 C.F.R. § 668.32(e). The FPRD was for students who obtained invalid high school diplomas from five diploma mills[1] identified at a December 10, 2014 meeting hosted by the Texas Attorney General's Office ("TXAG"), which an HCC official attended. The diploma mills identified were: Lincoln Academy; Marque Learning Center; Southwest Academy; Parkview Home School[2]; and I. Jean Cooper Private School. FPRD, Ex. Ed-1 at 9. Although the review covered award years that spanned from July 1, 2012 through June 30, 2016, the FPRD limits liability to Title IV funds disbursed after the TXAG meeting to the ineligible students who received awards during the Spring 2015, Summer 2015, Fall 2015, and Spring 2016 terms. *Id.* at 9, 11. HCC is appealing the FPRD's findings pursuant to 34 C.F.R. § 668.113. The appeal procedure is set forth in 34 C.F.R. Part 668, Subpart H.

After briefing by the parties, an oral argument was held on October 1, 2019 in Washington, D.C.[3]

## Issues

HCC contends in its opening brief that it is not liable because it was not required to immediately cease Title IV disbursements to students holding high school diplomas from the five entities identified in the TXAG meeting. Resp't Br. at 11. It argues that it complied with all statutes and regulations pertaining to the administration of federal financial aid, including 34

[1] A diploma mill refers to an institution that offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training and which is obtained with little or no education or coursework. *See* 20 U.S.C. § 1003(5).

[2] The FPRD and PRR refer to Parkview Home School and Park View Baptist interchangeably. They are the same entity.

[3] Although it was ultimately resolved, the parties were not in agreement as to whether FSA had reviewed additional information regarding the calculation of HCC's alleged liabilities. At the beginning of the oral argument, HCC offered documentation identified as "Proffer #1" that it asserted would serve to reduce its alleged liability. The tribunal provided FSA an additional three weeks from the date of the oral argument to review or review again the information contained in Proffer #1, after which the record would be closed. On October 21, 2019, HCC filed a consent motion withdrawing Proffer #1.

C.F.R. § 668.16(p) which calls for an institution to "develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education."

HCC asserts that, in accordance with the Federal Student Aid Handbook, it relied on self-certification when students stated on admission applications or financial aid applications that they had received high school diplomas. *Id.* at 7. Until the TXAG meeting, neither HCC nor FSA had any reason to believe that students were presenting invalid high school diplomas. *Id.* at 11. In HCC's opinion, the TXAG meeting only served to trigger its responsibility to develop and follow procedures to evaluate the validity of high school diplomas. *Id.*

In January 2015,[4] HCC created the High School Validation Committee ("HSVC") which was tasked with: (1) developing guidelines to review high school completion providers; (2) reviewing high school completion providers to determine validity; and (3) reviewing the HCC entity validation process annually. *Id.* at 3.

Once the HSVC found an entity failed to satisfy the federal student eligibility requirements, HCC contends it immediately ceased awarding and disbursing financial aid funds to students who listed the ineligible entity on admissions or financial aid applications. *Id.* at 8. HCC contends that, contrary to the FPRD's finding, it acted swiftly to prevent improper disbursals after the TXAG meeting by forming the HSVC, and by that committee's subsequent work to root out fraudulent providers of high school diplomas. Reply Br. at 1. According to HCC, it cannot be held liable for improper disbursals if the Title IV funds were disbursed before

[4] There is a discrepancy as to when the HSVC was created. Respondent's reply to FSA's letter dated October 15, 2015 suggests that the HSVC was created on December 19, 2014. Ex. R-3 at 3. However, Respondent's brief indicates that the HSVC was created in January 2015. Resp't Br. at 3. This decision will adopt the later date for purposes of analysis. The date discrepancy does not affect this tribunal's decision.

the HSVC determined the validity of a high school diploma provider. Reply to the PRR, Ex. R-4 at 11. It contends that "there was simply no way to reasonably respond faster than was done. . . in the Spring of 2015." Resp't Br. at 10.

During the oral argument, HCC spoke extensively about its development of the HSVC and the activities the entity engaged in to compile a list of fraudulent actors or entities that provided invalid high school diplomas. HCC pointed out those efforts were not just for the school's benefit but also for the benefit of other community colleges in Texas. HCC again argued that it worked as quickly as possible to root out the fraudulent actors involved.[5] HCC further argued that it fully complied with the applicable federal regulations at 34 C.F.R. 668.16(a) and (p).

FSA asserts that the regulatory provisions applicable to this situation are 34 C.F.R. §§ 668.16(a) and 668.32(b), and that 34 C.F.R. § 668.16(p) is not relevant. According to FSA, having a policy or procedure to identify fraudulent high school diplomas is a remedial measure HCC should already have in place. FSA contends that HCC should have been checking the validity of its students' high school diplomas before the TXAG notified it that there were fraudulent providers. But FSA asserts that this issue is not relevant to the amount of the liability here. The Department only seeks liability for Title IV funds awarded to HCC's students with fraudulent high school diplomas from the entities identified by the TXAG, and only for the time after the diploma mills were identified. FSA asserts the school awarded funds after HCC was explicitly notified that students with credentials from schools identified by the TXAG were ineligible to receive federal funds because they did not have a valid high school diploma.

HCC submits multiple alternative arguments. It argues the liability assessed by FSA

[5] See Transcript of Oral Argument at p. 16 ("There is almost not a single moment faster that this committee could have acted.")

constitutes a penalty. It argues that it is the Department's burden to prove the exact amount of awarded, yet unpaid student loans. *Id.* at 12. It also argues that imposing a liability for all funds disbursed to ineligible students instead of seeking a liability of only unpaid student loans creates an undefined strict liability standard. *Id.* at 13.

HCC also argues this tribunal should reduce any liability assessed against HCC by offsetting the recoveries obtained by the TXAG from litigation verdicts or settlement proceeds collected from the invalid high school diploma providers. *Id.* at 12. Finally, HCC argues that the overall liability should be offset by the money HCC saved the Department by providing the Department the database HCC created to combat fraudulent diploma providers. *Id.* at 13.

FSA contends that pursuant to 34 C.F.R. § 668.16(a) HCC had a fiduciary duty to administer Title IV funds in accordance with all statutory provisions of Title IV and all applicable regulatory provisions prescribed under that statutory authority. Ed. Br. at 4. That duty requires an institution to ensure that a student meets all Title IV eligibility requirements before it awards Title IV funds to a student. *Id.* A student who receives a diploma from a diploma mill is not eligible to receive Title IV funding because the diploma is invalid and the student does not meet the eligibility requirements set out in 34 C.F.R. § 668.32(e). Therefore, HCC had a fiduciary duty to ensure that it immediately ceased awarding and disbursing Title IV funds to students holding diplomas from the five institutions identified at the TXAG meeting. *Id.* at 6. FSA argues that 34 C.F.R § 668.16(p) is inapplicable to the question of liability because HCC's liability stemmed from HCC awarding funds to ineligible students after it was put on notice of the existence of diploma mills in violation of 34 C.F.R. § 668.16(a) and 34 C.F.R. § 668.32(e). *Id.* at 7.

FSA further asserts that the total liability the FPRD imposes on HCC is correct. The

amounts students may have wrongfully repaid on Direct Loans cannot reduce total liability because the liability is based on an estimated loss calculation, and not on the actual Direct Loan amounts disbursed. *Id.* at 8. FSA argues the amount that the TXAG collected in judicial proceedings against the five named entities is inapplicable to this proceeding because it was paid to the State of Texas not to the Department. *Id.* Finally, FSA argues that HCC's equity arguments fail because this tribunal does not have jurisdiction to hear them. *Id.* at 9.

The issues to be addressed are:

1. **Did HCC, in a timely manner, meet its responsibility to cease disbursements to students holding credentials from the five diploma mills identified at the December 2014 TXAG meeting?**
2. **Does the liability imposed on HCC by FSA constitute a penalty?**
3. **Can HCC reduce its total liability by asserting equitable factors?**

## Summary of Decision

While this proceeding is not a negative judgment on HCC's overall record of participation in the Title IV program, in these circumstances, HCC's fiduciary duty required it to cease disbursements to ineligible students before Spring 2015 disbursements were made. FSA's determination is **AFFIRMED.** HCC is liable to pay the Department $596,152 for violations of 34 C.F.R. § 668.32(e).

## Findings of Fact

It is undisputed that an HCC official was present at the December 10, 2014 meeting hosted by the TXAG. At that meeting, the HCC official was alerted about current and impending TXAG enforcement actions against five diploma mills operating in the Houston area:

Lincoln Academy; Marque Learning Center; Southwest Academy; Parkview Home School; and I. Jean Cooper Private School. FPRD, Ex. Ed-1 at 9. When FSA learned of HCC's presence at the meeting, it sent HCC a letter dated October 15, 2015. Ex. R-2. The letter said that: a petition had been filed against Lincoln Academy on March 17, 2014 with a press release dated August 14, 2014; a petition had been filed against Marque Learning Center on December 5, 2014 with a press release dated the same day; a petition had been filed against Southwest Academy on January 8, 2015 with no press release; a petition had been filed against Parkview Home School with a press release dated the same day; and a petition had been filed against I. Jean Cooper Private School on August 14, 2015 with a press release dated August 17, 2015. *Id.* at 1-2. This letter also requested a written summary from HCC of "actions, if any, the institution took after it became aware of the information provided by TXAG at the December 2014 meeting." *Id.* at 3.

HCC sent a reply letter dated October 29, 2015 summarizing the detailed procedures and safeguards it instituted after the TXAG meeting. Ex. R-3. Among other things, HCC charted its current high school completion workflow processes, proposed changes to its online admissions application and changes to financial aid processing, and assembled the HSVC consisting of administrators from various academic and student service departments. *Id.* at 2.

After the TXAG meeting, over the course of several weeks, HCC created the HSVC, which held meetings to review current and proposed processes and recommended changes. *Id.* On January 21, 2015, the HSVC conducted its first review of a high school diploma provider and deemed Lincoln Academy to be an invalid high school diploma provider.[6] *Id.* According to the letter, "students who reported invalid high schools on their federal application (ISIR) or admissions application were identified and, if applicable, future aid cancelled." *Id.* HCC held

[6] HCC believes that students holding credentials from Lincoln Academy were the only ineligible students for Spring 2015 Title IV funding.

individual student meetings and developed options for students affected by the invalid high school determination. *Id.* at 3.

In March 2015, HCC reviewed its procedures based on experiences with invalidating Lincoln Academy and students affected by its decision. *Id.* On March 4, 2015, the same day that Title IV funds were disbursed to HCC, the HSVC held its second meeting to review providers including Marque Learning Center and Southwest Academy. *Id.*; FPRD, Ex. Ed-1 at App. D. Immediately after HCC made its Spring 2015 Title IV disbursements, both Marque Learning Center and Southwest Academy were only then deemed invalid providers for the purpose of qualifying for federal financial aid. The disbursements included funds for students holding credentials from those entities. *Id.*; Ex. R-4 at 8. After the disbursements were made, students who listed Marque Learning Center and Southwest Academy on their Free Application for Federal Student Aid ("FAFSA") were then identified and their *future* aid cancelled. Ex. R-4 at 8.

The HSVC reviewed the eligibility of Parkview Home School in May 2015 and deemed it an invalid provider. *Id.* at 9. The HSVC did not review the validity of I. Jean Cooper Private School after the TXAG meeting because HCC determined that no current students reported receiving a high school diploma from it. Ex. R-3 at 3. The HSVC reviewed more than 200 providers between January 21, 2015 and June 30, 2017 and identified 63 invalid providers for the purpose of qualifying for federal financial aid at HCC. Ex. R-4 at 3. To facilitate the process of identifying students who have indicated that they have received a high school diploma from an invalid institution, HCC developed computer programming to verify admissions application information against FAFSA information. *Id.* at 12.

FSA issued its FPRD on July 27, 2018. It found HCC liable for disbursing Title IV funds to ineligible students who held high school diplomas from the five institutions identified at the

TXAG meeting during the Spring 2015, Summer 2015, Fall 2015, and Spring 2016 terms.

Of the 297 ineligible students identified in the PRR, 265 of those students received funds during the Spring 2015 and Summer 2015 terms, while the remaining 32 ineligible students received funds during the Fall 2015 and Spring 2016 terms. PRR, Ex. Ed-1 at 38. 260 of the 265 ineligible students identified in the PRR for the Spring 2015 term received their high school diplomas from Marque Learning Center or Southwest Academy. Ex. R-4 at 11. In the FPRD, FSA agreed with HCC that 4 students identified as ineligible were eligible. FPRD, Ex. Ed-1 at 11-12. It also agreed with HCC that three Lincoln Academy students received aid for the Spring 2015 term in error and the students who were originally determined to meet Ability to Benefit ("ATB") requirements for the Spring 2015, Summer 2015, and Fall 2015 terms did not qualify. *Id.* at 12. The remainder of the students identified in the PRR were deemed ineligible.

## Principles of Law

Title IV eligibility requires that a student:

(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part;

(3) Is enrolled in an eligible institution that participates in a State "process" approved by the Secretary under subpart J of this part;

(4) Was home-schooled, and either-

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law; or

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

34 C.F.R. § 668.32(e).

A high school diploma received from a diploma mill is "really not a high school diploma at all, but merely a credential that does not qualify its holder for Title IV funds." In the Matter of Fortis College, Dkt. No. 12-55-SP, U.S. Dep't. of Educ. (Mar. 17, 2015) (Decision of the Secretary) at 3.

HCC is a fiduciary when it administers the Title IV program. 34 C.F.R. § 668.82(a). As a fiduciary, HCC is "subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under Title IV programs." 34 C.F.R. § 668.82(b)(1).

34 C.F.R. Part 668, Subpart H "establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program . . . ." 34 C.F.R. § 668.111(a). An institution requesting review of the final audit determination or final program review determination has the burden of proving that expenditures questioned were proper and that it complied with program requirements. 34 C.F.R. § 668.116(d)(1)-(2).

34 C.F.R. Part 668, Subpart G establishes regulations for the imposition of a fine or the limitation, suspension, or termination of an institution's participation in the Title IV, HEA program. 34 C.F.R. § 668.81(a)(2)-(3). The Department has the burden of persuasion for any Subpart G fine, suspension, limitation, or termination proceeding. 34 C.F.R. § 668.89(b)(3)(ii). A

fine proceeding is commenced when the Department sends an institution a notice that informs it of the Secretary's intent to fine it, the amount of the fine, and the alleged violations constituting the basis for the action. 34 C.F.R. § 668.84(b).

## Analysis

The parties agree that HCC disbursed Title IV funds to students holding high school diplomas from diploma mills. The question is whether HCC should be held liable for these disbursements. What event created liability, and what was a reasonable time for HCC to stop disbursing funds to ineligible students?

HCC contends that the TXAG meeting did not require it to immediately cease disbursements of Title IV funds to students who obtained high school diplomas from the identified institutions. It argues that the TXAG meeting only required it to develop and implement procedures to evaluate the validity of students' credentials as delineated in 34 C.F.R. § 668.16(p) and that it could not be held liable for improper disbursements to students who held high school diplomas from entities that had not been reviewed for validity by the HSVC at the time of the disbursements. Resp't Br. at 11; Ex. R-4 at 11. FSA argues that the TXAG meeting required HCC to immediately cease disbursements to students holding high school diplomas from the identified institutions. Ed. Br. at 6.

This tribunal agrees with FSA's assertion that the December 10, 2014 TXAG meeting, attended by an HCC official, gave HCC adequate notice that it needed to immediately identify students holding credentials from the entities in question and to cease Title IV disbursements to them.[7] The purpose of that meeting was to "alert educational institutions, specifically community

[7] This tribunal is aware that FSA deemed eligible for Spring 2015 term Title IV funding students who indicated that they received their high school diploma from Parkview Home School. PRR, Ex. Ed-1 at 38. According to FSA,

colleges in or near the Houston area, about TXAG enforcement actions focusing on entities . . . that issue diplomas or other certificates of completion of secondary education, without providing legitimate secondary school education." FPRD, Ex. Ed-1 at 9. At the meeting, the TXAG identified Lincoln Academy, Marque Learning Center, Southwest Academy, Parkview Home School, and I. Jean Cooper Private School as diploma mills. *Id.* Once notified of the existence of these five diploma mills, it was HCC's responsibility to cease disbursements to the affected students until it could re-establish student eligibility based on alternative credentials. Because HCC failed to cease disbursements, it did not "exercise the highest standard of care and diligence" required by a Department fiduciary.[8] 34 C.F.R. § 668.82(b)(1).

HCC waited to stop disbursements until immediately after it made the Spring 2015 disbursements. This timing by a fiduciary is troubling. HCC had the time and the ability to cease disbursements to the affected students before the Spring 2015 term Title IV funds were disbursed on March 4, 2015. HCC waited for nearly three months after the TXAG meeting to take action. Only after it made the Spring 2015 disbursements did HCC identify students who received their credentials from one of the five identified diploma mills. HCC acknowledges that between December 2014 and February 2015, it cancelled future aid to students who reported invalid high schools on their federal application or admissions application. Ex. Ed-3 at 3. That establishes HCC was able to identify those students holding credentials from the identified diploma mills and cancel their federal aid before Title IV funds were disbursed. HCC did not follow a

these students were deemed eligible because the TXAG did not file a petition against Parkview Home School nor issue a press release until April 20, 2015, more than one month after Spring 2015 term disbursements had been made. Even though this decision implies that Parkview students should have been deemed ineligible for Spring 2015 term funding, this tribunal only has jurisdiction to rule on the liability actually imposed on HCC by FSA. *See* 34 C.F.R. § 668.118(b) ("The hearing official's decision states and explains whether the . . . final program review determination issued by the designated [Department] official was supportable, in whole or in part.") Consequently, this tribunal cannot assert additional liability on HCC.

[8] The fiduciary relationship is of critical importance to the stability of the Title IV program. Title IV cannot function unless FSA can rely on the institutions to properly spend Title IV funds which come from federal tax dollars.

reasonable timeframe for stopping disbursements to ineligible students.

Even if this tribunal accepts HCC's argument that it could not be held liable for improper disbursements of Title IV funds before the HSVC determined the validity of a high school diploma provider, the evidence shows that the HSVC had the ability to review all of the institutions at issue before the Spring 2015 term disbursements were made. HCC created the HSVC and had the ability to review high school diploma providers as early as January 21, 2015, when it reviewed Lincoln Academy. Ex. R-4 at 2.

After reviewing Lincoln Academy and determining it was not a high school diploma provider, HCC waited to act for one and a half months, until March 4, 2015, until immediately after HCC was able to make the Spring 2015 disbursements. *Id.* at 3. The TXAG meeting notified HCC that it was very likely that these diploma providers were invalid. That notice to HCC from the TXAG about the diploma mills was further supported by HCC's subsequent finding that Lincoln Academy was an invalid provider.

As a fiduciary, HCC should have evaluated the other entities named at the TXAG meeting in the month and a half between January 20, 2015 and March 4, 2015. HCC would have found these diploma providers to be invalid and would have immediately ceased disbursements to students holding diplomas from them. Instead, the HSVC waited until March 4, 2015 to review other providers. This unusual timing allowed disbursements to be made to students holding credentials from the diploma mills.

HCC has also not established that the timeframes it followed were reasonable to meet its requirement to "develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education," as set

forth in 34 C.F.R. § 668.16(p).

HCC also contends that it is being held strictly liable for a penalty assessed against it by FSA. 34 C.F.R. Part 668, Subpart G appeals address fines, penalties, terminations, and other civil punishments. However, the finding which is on appeal from the FPRD in this matter specifically is made under and is subject to challenge under a 34 C.F.R. Part 668, Subpart H hearing, which addresses the recovery of improperly spent federal funds. Once HCC improperly disbursed Title IV funds to students holding credentials from diploma mills, it became subject to a Subpart H hearing for the recovery of those specific funds held by it as a fiduciary for FSA.

If this proceeding was punitive in nature, FSA could have held HCC strictly liable for $426,369, the total amount of improperly disbursed Direct Loans by HCC, in addition to $588,493.28, the total amount of improperly disbursed Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, and Federal Work Study funds including interest. FPRD, Ex. Ed-1 at 15. FSA only asserted a liability of $7,658.95, which was the estimated loss that the government could have incurred for the improper disbursements of Direct Loans. *Id.* The estimated loss was calculated based on loan subsidy data and the relationship between HCC's cohort default rate and the sector default rate. *Id.*

HCC alternatively contends that its total liability should be reduced because: (1) ineligible students have paid back some of the Direct Loans disbursed to them; (2) the State of Texas has collected millions of dollars in judgments rendered against the institutions at issue; and (3) the Department saved countless dollars when HCC provided it access to its database that was developed to identify fraudulent providers. Resp't Br. at 12-13.

HCC's total liability was correctly calculated. HCC owes $576,282.08 in Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, and Federal Work Study funds

that were disbursed to ineligible students. FPRD, Ex. Ed-1 at 15. The amount of interest due on these disbursements, the Cost of Funds, was calculated to be $12,211.20. *Id.* During the award years at issue, HCC disbursed $426,369.00 in Direct Loans to ineligible students. Rather than making HCC assume the risk of default on the Direct Loans by purchasing the ineligible loans from FSA or asserting a liability for the entire Direct Loan amount, an estimated loss on improperly disbursed Direct Loans was calculated at $7,658.95. *Id.* The estimated loss accounts for ineligible students who have paid back some of their Direct Loans.

The money that the State of Texas has collected in enforcement actions against the identified institutions cannot reduce HCC's total liability. Those actions involved different parties, and liabilities were paid to the State of Texas for violations of the Texas Deceptive Trade Practices Act. Resp't Br. at 12-13; Ex. R-2. HCC is liable in this proceeding for disbursing Title IV funds to ineligible students in violation of 34 C.F.R. § 668.32(e), a separate and distinct action from the actions pursued by the State of Texas.

Finally, HCC cannot mitigate its total liability by showing that it saved the Department countless dollars by providing it access to its database that identifies fraudulent providers. HCC is certainly to be commended for sharing its work and database to help the Department stop ineligible diploma mill related disbursements. But a mitigating factor such as this may not be considered in a 34 C.F.R. Part 668, Subpart H hearing. *See* In the Matter of Amarillo West Texas Barber Styling College, Dkt. No. 91-90-SA, U.S. Dep't. of Educ. (June 7, 1994) at 5 ("This tribunal sits without jurisdiction to waive the requirements of the Secretary's regulations, and must follow the regulations as they are written."); In the Matter of Humphreys College, Dkt. No. 99-15-SA, U.S. Dep't. of Educ. (May 18, 1999) at 2 ("Although mitigating factors are appropriately considered by the tribunal in termination or fine cases brought under 34 C.F.R.

Part 668, Subpart G, there is no legal basis that authorizes the tribunal to consider such factors in audit or program review determination cases brought under 34 C.F.R. Part 668, Subpart H. . . ."); In the Matter of Prairie View Agricultural and Mechanical University, Dkt. No. 10-32-SP, U.S. Dep't. of Educ. (August 3, 2011) at 3 ("In spite of the sympathy I might have for the situation that Prairie View finds itself and especially under the mitigating circumstances propounded, I do not have any discretion in this matter.") 34 C.F.R. § 668.32(e) makes clear the requirements for student eligibility. HCC violated this regulation when it disbursed Title IV funds to ineligible students and must be held liable to return those disbursements.

Under 34 C.F.R. § 668.16, an institution must demonstrate that it can adequately administer its participation in the federal student aid programs. The Secretary considers an institution to have that administrative capability if the institution:

"…**(a)** Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;" and

"…**(p)** Develops and follows procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education."

In December 2014, HCC was notified by the Texas Attorney General's Office that there were five diploma mills issuing invalid high school credentials. In January 2015, HCC created a committee known as the "High School Validation Committee" to review providers of high school diplomas including (1) developing guidelines and the criteria upon which to review these

providers, (2) actually review these providers based on the agreed-upon and adopted guidelines and criteria, and (3) continued review of HCC's validation process annually.

Both parties correctly note that HCC had an obligation to develop procedures to evaluate the validity of a student's high school credential when it becomes aware of any indicia of invalidity. Here, however, HCC had been placed on notice that the diplomas were very likely invalid. HCC affirmatively had direct and conclusive knowledge that the students for whom they continued to award Title IV funds were not eligible to receive it. While FSA commended HCC both in its written submissions and at oral argument for the institution's efforts in developing its procedures as well as HCC's investigative efforts to root out other fraudulent providers, the time it took to implement these initiatives does not negate that the institution had specific knowledge as of December 2014 – without doing anything further – of the ineligibility of some of its students. It continued to award Title IV funds to these students, which resulted in HCC failing to meet its obligations under 34 C.F.R. §§ 668.16(a) and 668.32(e). Consequently, HCC remains liable for all Title IV funds awarded to these ineligible students after the institution received notice in December 2014.

## Conclusions of Law

1. **HCC did not meet its responsibility to cease disbursements to students holding credentials from the five diploma mills identified at the December 2014 TXAG meeting in a timely manner.**

2. **The liability imposed on HCC by FSA is not a penalty. It is a debt owed to the Department for improper expenditures of Title IV funds.**

3. **HCC cannot reduce its total liability by asserting equitable factors.**

## Order

HCC made Title IV disbursals to ineligible students in violation of 34 C.F.R. § 668.32 (e). FSA's FPRD is **AFFIRMED**. HCC is liable for $596,152.

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Robert G. Layton
Administrative Law Judge

**DATED: APRIL 29, 2020**

# NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This is 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 a party's right to appeal this decision as set forth in 34 C.F.R. § 668.119.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. An appeal must be filed 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 unbound copy addressed to:

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

**Notice: Due to the consequences from the current COVID-19 event, OHA is unable to directly accept hand delivery or courier-delivered mail or parcels at the OHA's physical location and delivery by U.S. Mail to OHA will be delayed due to modifications to interoffice mail delivery.**

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

## SERVICE

A copy of this decision was sent by OES automatic generated notice and by email scan, delivery receipt requested, to:

Vidal G. Martinez, Esq.
Martinez Partners LLP
919 Milam Street Suite 525
Houston, TX 77002
vidal@martinez.net

And to:

Alexandra Sweeney, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
alexandra.sweeney@ed.gov