



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
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In the Matter of

**PROFESSIONAL CAREER TRAINING
INSTITUTE (TX)**

Docket No. 19-55-ST

Federal Student Aid
Termination Proceeding

OPE-ID: 04082300

Respondent.

DECISION

Professional Career Training Institute (“PCTI”) is a proprietary for-profit institution. It participated in the Federal Pell Grant and Direct Loan Programs authorized by Title IV of the Higher Education Act of 1965, as amended 20 U.S.C. § 1070 *et seq* and 42 U.S.C. § 2751 *et seq*. (Title IV). Within the U.S. Department of Education (“FSA”) the office having jurisdiction over and oversight of these programs is the office of Federal Student Aid (“FSA”).

On July 11, 2019, the undersigned received a written Request for a Show Cause Hearing and Request for Review in the above-styled proceeding. The Requests were filed by Ms. Carrie Poole, CEO of PCTI. In this proceeding, PCTI challenges FSA’s termination of its right to participate in programs authorized under Title IV. The termination action was taken in Part II of a letter dated July 2, 2019 and was taken under the authority of 20 U.S.C. § 1094(c)(1)(F) and FSA's regulations at 34 C.F.R. Part 668, Subpart G.

PCTI also challenged the imposition of an emergency action. That proceeding was addressed by a separate decision affirming the emergency action. *See In the Matter of Professional Career Training Institute, Docket Number 19-54-EA*, U.S. Dep’t of Educ. (October 17, 2019). The emergency action order states PCTI may not make or increase awards or make other commitments of aid to a student, disburse program funds, institutional funds, or other funds as assistance to a student under Title IV, HEA programs. PCTI may not certify an application for a loan, deliver loan proceeds to a student, or retain the proceeds of a loan made after this emergency action took effect under the Federal Stafford Loan or Federal Plus programs unless a particular procedure was provided for in the initiation of the emergency action. 34 C.F.R. § 668.83(d) (1).

In this proceeding FSA has the burden of proof to show that termination is appropriate. 34 C.F.R. § 668.89(b)(3)(ii). To meet its burden, FSA must prove both “that the institution committed the statutory or regulatory violations alleged” and the result of such violation should be termination. *In the Matter of North Carolina Academy of Cosmetic Art, Dkt. No. 98-129-ST*, U.S. Dep’t of Educ. (November 24, 1998) at 2. The argument and evidence submissions were complete on April 25, 2020.

Because FSA has the burden of proof, it has the right to file the last brief. However, the Second Order on the Briefing Schedule did not authorize FSA to submit additional evidence with that final brief after filing their initial brief by December 27, 2019. The order states FSA may file a reply brief by February 11, 2020, which FSA did, but the order does not allow for the submission of evidence along with that brief. FSA filed additional evidence with its reply brief. While PCTI did not raise an objection on the matter, this tribunal must still address it. Due process and fairness require that FSA may not submit additional evidence with their final brief, since PCTI did not have an opportunity to respond to that evidence. FSA submitted additional

evidence alongside their reply brief labelled: ED Exhibits 180 -182, ED Exhibits 183 -198, SUPPLEMENTAL EXHIBITS, and Supplemental Exhibit list. These unauthorized exhibits are stricken from the record.

FSA contends PCTI failed to meet its fiduciary duty in several ways. FSA argues that PCTI obstructed the Department's review of the institution through general falsification of documents, falsification of Workforce documentation, and efforts to cover up misconduct at PCTI. FSA Initial Brief at 8-14. FSA found the general documents falsified by PCTI included student account ledgers, high school application status on PCTI applications, and high school documentation such as transcripts and diplomas. FSA Br. at 8-10. FSA argues that PCTI tried to cover up misconduct at the school including misconduct related to class schedule lengths, the housing connection between PCTI and Helping Hands ("HH"), and efforts to prevent students from talking with Department reviewers by sending classes home or through threats of losing housing funds. FSA Br. at 12-14. FSA asserts that PCTI falsified Free Application for Federal Student Aid ("FAFSA") documentation for students, such as marital and dependency status, prior degree status, and high school graduation status. FSA Br. at 14-22. FSA further argues that PCTI illegally certified Direct Loans for students, unethically induced students to attend PCTI, and illegally retained students credit balances and applied them to housing charges where the school had no legal right to do so. FSA Br at 22-30. FSA contends that PCTI made multiple misrepresentations to students and prospective students about educational programs, financial charges assessed by the school, and the employability of PCTI graduates. FSA Br. at 30.

FSA argues these actions violate numerous provisions of the regulations governing Title IV and ultimately violate the highest standard of care and diligence required in administration of a Title IV, HEA program. 34 C.F.R. § 668.82 (a) and (b).

A teleconference was held on October 1, 2019. Following this teleconference, both

parties stated that a live hearing was not needed.

Issues

FSA's overarching contention is that an institution must meet its fiduciary duty to FSA and meet the administrative capability standards or face termination of eligibility to receive Title IV funds. FSA asserts that, here, PCTI has not met either duty and therefore must face termination. A breach of fiduciary duty is enough to warrant termination. 34 C.F.R. §668.82(c)(1). FSA details numerous other violations of the Title IV program which are sufficient to warrant termination.

The first of the Title IV violations asserted by FSA is that PCTI obstructed its program review and investigation of PCTI. FSA determined PCTI falsified documents to hide its misconduct. The documents included student ledger cards, student applications to PCTI, Workforce fund applications, and falsified high school diplomas and transcripts. FSA found the requested student ledgers did not include running balances, student applications had been changed, and Workforce fund applications were misdated. FSA found these falsifications violated PCTI's obligation to fully cooperate with FSA when it was conducting oversight activities. 34 C.F.R. 668.24(f).

FSA also identified class schedules that were changed to cover up shorter program lengths, as well as efforts by PCTI to hide students' housing arrangements with HH and the school. FSA found PCTI paid students to hide its institutional misconduct, and a class was sent home early to avoid having students interviewed by FSA.

FSA determined that PCTI falsified FAFSA documents to receive Title IV funding for ineligible students, in violation of 34 C.F.R. 668.32 and 20 U.S.C. §1091. PCTI staff also filled out FAFSA applications for students to make it easier to "illegally obtain Title IV funds." The students were ineligible because of prior degree status and high school graduate (or equivalent)

status. PCTI falsified FAFSA documentation to receive Federal Pell Grant funds for students who already had prior degrees and, thus, were ineligible for Pell Grants under 34 C.F.R. 668.32(c)(2). FSA found PCTI also falsified marital and dependency statuses on student FAFSA applications.

FSA also found PCTI had given its students invalid high school diplomas. Those who had diplomas stating they graduated from University Park Academy (“UPA”) were given diplomas after completing a packet of work or an online test, with no classroom instruction. The UPA (or sometimes Knowledge First) diplomas were backdated to a date before students started attending PCTI, although they were supposedly “earned” while students were attending PCTI.

FSA found PCTI’s Career Pathway program was a sham. No PCTI student was designated as participating in a Career Pathways Program when PCTI coded students with FSA for disbursement of Title IV funds.

Among the most disturbing charges was FSA’s determination that PCTI illegally certified direct loans for students by filling out Master Promissory Notes (“MPNs”) and taking out these loans on behalf of students without the students’ knowledge or consent. FSA found this behavior is a violation of 34 C.F.R. §§ 685.200(a)(1)(ii), 685.201(a)(1) and (2)(ii), 685.301(a)(1) and that this practice has imposed an unfair financial burden on already disadvantaged students.

FSA determined PCTI breached its fiduciary duty to provide accurate and truthful information to students and to not act in a manner that is harmful to beneficiaries of Title IV programs. There was a housing scheme between PCTI and HH that promised free housing to students that enrolled at PCTI according to statements made by students. PCTI promised students free housing but then claimed the money for housing “ran out”. PCTI then forced students to pay for half of their rent. Some students were evicted.

FSA found PCTI illegally retained student disbursements of Title IV funds in excess of

the charges that the students had to pay PCTI, in violation of 34 C.F.R. § 668.164(h). FSA determined PCTI could not retain student credit balances to apply to housing charges as PCTI had not contracted with students for housing. FSA argues PCTI did not have authorization to retain student balances under 34 C.F.R. §688.165(b) given the lack of a housing agreement. Department reviewers were unable to trace alleged 2018 rental payments to debits on PCTI accounts.

Finally, FSA determined that PCTI misrepresented key features of the educational program at PCTI, the financial charges assessed by the institution, and employment prospects upon graduation. Students were told that they would receive “excellent” training that would help them to obtain a job in their field, but the standard of instruction fell far below that promise. Many students said they did not feel like they were being prepared. Beginner and advanced students took the same classes, some teachers did not give instruction, and students would show up to class only to end up sleeping or playing on their phones. FSA found that students were not given access to their student accounts when requested and were not informed about the amount of financial aid they received. The students were not even aware that they had loans. FSA also found several PCTI prospective students were told that they were guaranteed jobs upon completing courses at PCTI.

PCTI’s overarching contention is that FSA has failed to establish that termination is the appropriate action pursuant to the standard set forth by In Matter of North Carolina Academy of Cosmetic Art. PCTI argues that FSA has not established “that the institution committed the regulatory or statutory violations alleged” and that “the result of the violation should be termination or a fine”. In the Mater of North Carolina Academy of Cosmetic Art, Dkt. No. 98-129-ST, U.S. Dep’t of Educ. (November 24, 1998) at 2. PCTI contends FSA has not met its burden given that the evidence presented by FSA is less credible than that provided by PCTI and

given that in cases dealing with similar accusations of violations, termination was not the action taken.

PCTI claims it does have a Career Pathways Program in place and that the evidence presented supports this claim. PCTI says FSA's determination that the Career Pathways Program is a sham should be afforded no weight and is outside the scope of this action. PCTI asserts student statements contrary to the existence of such a program are unreliable and FSA mischaracterized these statements in assessing the program. PCTI argues that FSA has no jurisdiction to determine the validity of UPA diploma's and FSA is prohibited by Federal law from second guessing the academic requirements of UPA for awarding high school diplomas pursuant to 20 U.S.C. §1232(a). PCTI argues the potential for inappropriate interference by the Federal government in matters related to states' control over education is a concern of the current administration.

PCTI downplays the evidence substantiating the claims of document falsification. PCTI argues inaccuracies on documentation in student files alone are not sufficient to carry FSA's burden of persuasion regarding document falsification. In the Matter of Bais Fruma, Dkt. No. 93-171-ST, U.S. Dep't of Educ. (March 9, 1995) (Decision of the Secretary) at 3. PCTI asserts FSA's evidence is of dubious reliability and the changes made to student documentation were updates of student graduation status, not attempts to hide misconduct. PCTI contends students completed requisite work and were awarded diplomas for doing so as corroborated by a declaration from the Program Coordinator from UPA. PCTI argues the dates on diplomas were the result of UPA dating polices, not of misconduct by PCTI. PCTI further responds to Workforce fund allegations made by FSA by arguing that there is no regulatory requirement for applications for these funds to be submitted before students begin classes.

PCTI contends the omission of living expense charges on student ledgers was due to confusion over the system used to track student charges. PCTI further argues the omission of these charges in the ledgers provided to reviewers during the initial review does not prove intention on PCTI's part to hide anything. FSA reviewers had full access to the student account management system, and sworn statements provided by PCTI staff support this position.

PCTI contends it did not attempt to obstruct FSA's review by reporting inaccurate class schedules and that this position is supported by sworn statements by PCTI instructors and documents provided by PCTI. PCTI determined the evidence relied upon by FSA is unreliable hearsay by disgruntled employees and students with criminal records that cannot be trusted. PCTI claims they tried to make students more accessible to reviewers, not less.

PCTI argues the allegations by FSA about student payment and that PCTI sent students home to prevent interaction with FSA are not supported by evidence. PCTI contends the statements of students regarding conversations with PCTI staff about not talking to FSA about the housing provided to them by HH is unreliable because the students have criminal histories. PCTI also submitted sworn statements from staff to the contrary. PCTI additionally contends that payments made to students were done so in ordinary course of business and not as an attempt to buy the students' silence. PCTI says the allegation of sending students home early are refuted by sworn statements to the contrary. PCTI asserts the statements used by FSA show that FSA's position are dubious and poorly supported.

PCTI argues that allegations of student loan theft are improbable because of the numerous security redundancies and safeguards in place. The school asserts that FSA has failed to meet its burden of proof. PCTI contends the preponderance of the evidence does not support claims of loan certification without student knowledge, pointing to sworn declarations by PCTI staff that the alleged certification did not occur. PCTI argues FSA claims of students not

knowing that they had loans before speaking with FSA are false. In support of its assertion, PCTI notes that although the student claimed that they did not take out loans, the students were receiving notices about loans. PCTI bolsters its assertions with two student statements that expressly acknowledge that those students took out loans. PCTI contends FSA has provided no motive for PCTI to engage in loan theft.

PCTI argues that any discrepancies in marital and dependency status on PCTI and FAFSA applications do not point to PCTI staff filing the FAFSA applications. PCTI contends foreign degree equivalency with a U.S. bachelor's degree is determined at the discretion of the institution, citing the 2018-19 FSA Handbook, Vol. 1, Chap. 6 at 1-83. Accordingly, PCTI asserts that if FSA's view differs from that of PCTI, this is a "simple regulatory violation" that does not merit termination of eligibility.

PCTI argues it did not illegally retain student credit balances as they received student authorization to retain funds to use towards future institutional charges pursuant to 34 C.F.R. §668.165(b). PCTI argues FSA misreads the governing law when FSA asserts there needs to be a contract between the institution and the student for housing to charge student credit balances with living expenses. PCTI determined that the FSA Handbook at Volume 4, Chapter 14 at 4-31 allows the institution to contract with a third-party to provide housing. PCTI argues that this was what it did with HH and Workforce Training and Development, Inc. ("WTDI"). PCTI argues the cited provision of the FSA Handbook means that the Title IV funds were appropriately applied. PCTI addresses FSA's claim that an investigator was unable to tie rental payments to debits to PCTI accounts by engaging Case Sabatini audit firm and showing that the payments were trackable "with minor exceptions."

Finally, PCTI contends it made no misrepresentations to its students. PCTI argues student feelings as to what they learned in class are not enough to show misrepresentation on the part of

PCTI regarding its educational program. PCTI contends FSA has failed to present sufficient evidence to support its allegations of misrepresentation under 34 C.F.R. § 668.71. PCTI determined the descriptions of classes used by FSA, provided by former instructors, are hearsay and so are less reliable than the sworn statements provided by PCTI staff. PCTI contends the unsworn statements made by students regarding financial charge misrepresentation are rebuttable by evidence that students knew they had loans and are worth less than sworn statements by PCTI staff. PCTI further calls into question the veracity of the student statements given the criminal histories of the students.

The issues to be addressed are:

- 1. Has FSA met its burden of proof and showed that PCTI committed violations of Title IV statutory provisions which warrant termination of PCTI's eligibility to participate in Title IV?**
- 2. Has PCTI raised a sufficient defense to the imposition of termination of eligibility?**

Summary of Decision

FSA has met its burden of proof and has shown that PCTI committed deeply disturbing violations of Title IV statutory provisions, and has also shown that termination is the appropriate action. PCTI has not established a valid defense to eligibility termination.

Findings of Fact

On February 5, 2019, FSA's Kansas City and Third-Party Servicer Oversight teams told PCTI they would be conducting a program review at PCTI during the week of March 4, 2019. ED Ex. 134. PCTI was provided with an outline of the review and the types of documents the institution was required to make available for review. *Id.* On March 4, 2019 FSA issued a letter to PCTI asking for student ledger cards with running balances, among other documents. ED Ex. 136. In addition to obtaining student documents, FSA interviewed staff at PCTI including CEO

Carrie Poole, Head of Admissions Karl Minor, PCTI accountant Samuel Sze, and Financial Aid Director Lourdes Nieves. ED Ex. 137-139.

According to Mr. Minor, if a student has not completed high school but want to attend PCTI, he directs them to get a GED. *Id.* Mr. Minor did not mention a Career Pathways program during the interview on admission. *Id.* At no time did any PCTI staff indicate to reviewers that PCTI provided housing. ED Ex. 133. Mr. Minor was asked about housing and he said that PCTI had nothing to do with housing. *Id.* During the interview of Mr. Sze and Mrs. Poole, Mrs. Poole asked how she was to know about diploma mills. ED Ex. 138. Department interviewers told Mrs. Poole about a list of diploma mills compiled by the Texas Attorney General and asked about UPA's accreditation. *Id.* Mrs. Poole provided reviewers with a document including a National Center for Education Statistics number and a note to look up on the FAFSA website. *Id.* Interviews were also conducted with numerous students at the institution. ED Ex. 132-5.

As they left the school on Thursday, March 7, 2019, reviewers were approached by two students. ED Ex. 140. The students were worried about several issues at the school. ED Ex. 141. The students had been lured into attending PCTI by being promised free housing, and how had problems with rental payments. *Id.* Students also got surprise notifications for loans that they did not take out. *Id.* Student file documentation had been changed for the review, and PCTI staff were telling students not to talk about housing being provided. *Id.*

After this, FSA placed PCTI on the Heightened Cash Monitoring (HCM) 2 system of payment. ED Ex. 155. Investigation of PCTI and possible affiliate entities continued and intensified after the review. ED Ex. 133-3.

A week after the review, Ms. Nieves contacted FSA reviewer Danielle Dillon. ED Ex. 142. Ms. Nieves told Ms. Dillon about PCTI activities and gave FSA documents corroborating those activities. ED Ex. 142. High school diplomas and student ledgers were falsified and

students were promised free housing. ED Ex. 147. Ms. Nieves was forced to sign a PCTI response to a complaint filed against PCTI with FSA. The response included false information about fraud and housing. Dillion Decl. at ¶ 20; *See* ED Ex.148. The student's complaint was that PCTI committed fraud in Title IV program aid. ED Ex.148. That student, along with another student, signed an agreement with PCTI for free housing for a year with HH. *Id.* The student said a Workforce Board representative told them that PCTI is known for misappropriating funds. PCTI contacted the Workforce Board and stated there was no evidence to support the student's claim, and the student had not been in recent contact with Workforce. *Id.*

Given the serious nature of the information uncovered during the initial review, FSA determined it was necessary to conduct an additional review. FSA conducted an additional on-site review the week of May 13, 2019. ED Ex. 132-4. An FSA accountant was brought in to review financial documents. ED Ex. 161. Interviews and declarations were obtained from many students. ED Ex. 132 at 4-6.

FSA found many PCTI actions that breached their Title IV fiduciary duty. *See generally* ED Ex. 132. PCTI did not provide student ledgers with a running account balance, and omitted the charges made by the institution for living expenses. ED Ex. 132-5. These charges were only provided once their omission was questioned by reviewers and students alike. ED Exs. 154 and 161.

PCTI committed numerous acts of falsification and misconduct. *See generally* ED Ex. 132. PCTI falsified the marital status of 20 students on their FAFSA applications. ED Exs. 132 and 172. PCTI falsified the dependency status of Student 30, telling her to falsely state that she was a ward of the court on her FAFSA application. ED Ex. 30 at 1, 2, and 10. PCTI falsified the high school graduation, GED, and home school status of 59 students on their FAFSA applications. *See* ED Ex. 170. Some PCTI students were provided with UPA diplomas after

completing either an “online test” or a packet of work. *See* ED Exs. 16, 89, 92, 100, 105, and 120. These diplomas were backdated to appear to have been issued before the students started attending PCTI. ED Exs. 142 and 170. PCTI misrepresented the prior graduation status of 24 students on their FAFSA applications to cause ineligible students to receive Pell Grants. ED Exs. 132 and 171. PCTI illegally certified Direct Loans on behalf of 11 students. ED Ex. 132. One example is Student 118, who sought an education elsewhere after attending PCTI for the 2018-2019 year. Student 118 attempted to apply for Federal Aid to use at a new school but was turned down, because they could not receive more federal aid until the 2020-2021 year. ED Ex. 118. Student 118 was unaware they had received any federal aid while at PCTI, and had not applied themselves for the 2019-2020 year. *Id.* PCTI falsified 55 high school diplomas which were used as the basis for Title IV eligibility. ED Ex. 132.

PCTI illegally retained 30 student credit balances and illegally paid out 15 student credit balances late. *Id.* PCTI engaged in misrepresentations to its students regarding its educational programs, financial charges made by PCTI, and employment prospects following graduation. *See* ED Exs. 4, 16, 20, 45, 52, 61, 63, 64, 92, 100, 109, 117, 118, and 121 (financial misrepresentations); ED Exs. 32, 33, and 109 (employment prospects); ED Exs. 64, 109, and 118 (educational misrepresentations). PCTI told students not to talk with Department reviewers regarding housing. ED Exs. 4 at 1-2, 10 at 1-6, 57 at 1-2, 117 at 1-3. PCTI sent classes home early to avoid having students talk with reviewers. ED Exs. 45 at 1-2, 118 at 1-2, and 158. PCTI claimed classes ran from 8-2, however classes habitually ran from 9-1. ED Exs. 157-158. PCTI attempted to pay students to remain quiet during FSA’s review. ED Exs. 61 at 1-3, 64 at 1-2, 92 at 1-2, and 100 at 1-2. PCTI induced students to attend using promises of free housing. Later, those students were told housing would not be fully paid for, and often evicted. ED Exs. 10 at 1-

6, 20 at 1-4, and 60 at 1-3. The only reason some students attended PCTI was to get the free housing being offered. *See* ED Exs. 20 and 128.

FSA took emergency action against PCTI. ED Ex 132. FSA issued a notice on July 2, 2019 that it intended to terminate PCTI’s Title IV program eligibility. *Id.* In that notice, FSA stated:

Professional's misconduct is exemplified by its efforts to obstruct the Department's review and investigation, its improper inducement of low income and homeless students to enroll by promising free housing and valid high school diplomas, its unauthorized submission of loan requests and documents, its falsification of student Free Applications for Federal Aid (F AFSAs) to illegally obtain Title IV, HEA program funds to which it was not entitled, its failure to timely pay student credit balances to its needy students, its falsification of records to mask its egregious misconduct, its failure to maintain accurate records, and its misrepresentations to students.

July 2, 2019 Emergency and Termination Action.

On October 17, 2019, the Emergency Action was affirmed by this tribunal. In the Matter of Professional Career Training Institute, Dkt. No. 19-54-EA, U.S. Dep’t of Educ. (October 17, 2019).

Principles of Law

When an institution signs the program participation agreement (“PPA”) with FSA to participate in Title IV programs, the institution agrees to comply with all Title IV program requirements. The institution must use Title IV funds solely for the purpose specified in each individual student assistance program because the funds are held in trust for the intended student beneficiary and the Secretary. 20 U.S.C. § 1094(a)(1); 34 C.F.R. §668.14.

In signing the PPA, an institution accepts the accompanying fiduciary duties. 34 C.F.R. §668.82(a), (b). As a fiduciary, an institution is “subject to the highest standards 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). An institution has a duty to fully cooperate

with FSA, other governmental agencies, and accreditors when they are conducting oversight activities. 34 C.F.R. §668.24(f). Fiduciaries are expected to operate honestly with FSA and provide accurate and truthful information when recruiting students to attend their institution. 34 C.F.R. Part 668, Subpart F.

To participate in Title IV programs, an institution must be capable of adequately administering Title IV programs. This means that the institution must comply with all statutes and regulations applicable to Title IV. 34 C.F.R. §668.16(a). The Secretary considers an institution to have the necessary administrative capability if, among other procedures, policies, and standards, the institution:

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.

34 C.F.R. §668.16(p)

Ineligibility to participate in Title IV programs may also be found based on a judicial finding of fraud involving Title IV funds. 34 C.F.R. §600.7(a)(3)(ii).

The regulation governing termination of institutions from participation in Title IV programs states:

The Secretary may limit and terminate an institutions participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program if the institution or servicer –

- (i) Violates any provision of or applicable to Title IV of the Higher Education Act, any regulatory provision prescribed under that statutory authority...

34 C.F.R. § 668.86(a)(1)(i). When such violations amount to a breach of the fiduciary duty of the institution, that breach constitutes grounds to terminate eligibility of said institution to participate in Title IV programs. 34 C.F.R. § 668.82(c)(1). The violations do not necessarily need to be on-

going to justify termination of eligibility if the conduct is sufficiently egregious to violate the fiduciary duty of the institution. In the Matter of Yorketowne Business Institute, Dkt. No. 92-33-ST, U.S. Department of Educ. (Decision of the Secretary) (July 1, 1993).

34 C.F.R. Part 668, Subpart G lays out that regulations for the imposition of termination of an institution's participation in the Title IV program. 34 C.F.R. §668.81 (a)(3). FSA has the burden of persuasion for any Subpart G termination proceeding. 34 C.F.R. §668.89(b)(3)(ii). To meet its burden of persuasion, FSA must prove both "that the institution committed the statutory or regulatory violations alleged" and that the result of such violations should be termination. In the Matter of North Carolina Academy of Cosmetic Art, Dkt. No. 98-129-ST, U.S. Dep't of Educ. (November 24, 1998). A termination proceeding begins when a designated department official sends a notice to the institution that informs it of the Secretary's intent to terminate its eligibility, cites the consequences of the action, identifies the alleged violations that are the basis of the action, and specifies the proposed effective date and ability to request a hearing. 34 C.F.R. §668.86(3)(b) (1) – (4)(c).

Only eligible students enrolled in eligible programs may receive Title IV program funds. 34 C.F.R. §668.32; 20 U.S.C. §1091. 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 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”. 20 U.S.C. §1003(5). 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.

To be eligible for a Pell Grant a student must not have a prior bachelors or professional degree. 34 C.F.R. §668.32(c)(2). The FSA Handbook sets out the procedures that Title IV participants are to follow concerning foreign degrees:

[A] student with a baccalaureate or professional degree from a foreign school usually isn’t eligible for a Pell Grant. But because a foreign degree often won’t translate neatly into the American classification, the school must judge whether it equates to a U.S. bachelor’s degree. If the student provides written documentation that the foreign degree is not equivalent to a bachelor’s degree awarded in the United States, you may determine that he does not have a bachelor’s degree. Documents supporting such a conclusion may include information about the type of school the student attended and total years of education leading to the degree.

Occasionally a student will complete all the requirements for a bachelor's degree but will continue taking undergraduate courses without accepting the degree. Your school must decide whether and at what point the student completed the baccalaureate course of study. If your school determines that the student did complete a bachelor's program (regardless of whether the student accepted the degree), then the student is no longer eligible to receive a Pell Grant.

2018-2019 FSA Handbook, Vol. 1, Ch. 6 at 1-83

A student is eligible to receive a Federal Direct Subsidized or Unsubsidized loan if they meet the relevant Title IV eligibility criteria. 34 C.F.R. §685.200(a)(1)(ii). To get a loan, a student needs to fill out a FAFSA application and a Master Promissory Note (MPN). 34 C.F.R. §685.201(a)(1), (2)(i). If eligible, the student needs to have their institution originate a loan record and submit that record to FSA. 34 C.F.R. 685.201(a)(2)(ii). The institution must ensure that the student is eligible and has an MPN before originating the loan. 34 C.F.R. §685.201(a)(2)(ii). The institution has an obligation to ensure that the loan information submitted to FSA is complete and accurate. 34 C.F.R. §685.301(a)(1).

The amount of Title IV money available as assistance to an eligible student is based on a student's cost of attendance at the institution, the student's financial need, and the student's expected family contribution. 20 U.S.C. §§1087ll-1087ss. FSA uses information provided on student FAFSA applications to arrive at the assistance available for each student.

If Title IV funds are distributed by the institution through crediting a student's account and the total amount of all Title IV funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the student must pay, the institution must pay the resulting credit balance directly to the student or parent. The payment of these credit balances must happen as soon as possible but no later than 14 days after the balance occurred or 14 days after the first day of classes in a payment period if the balance occurred before that time. 34 C.F.R. §668.165(h). Institutions can hold credit balances to cover future payment period charges if they obtain valid authorization from the student. 34 C.F.R. §668.165(b).

The 2018 -2019 FSA Handbook states the following regarding institutional charges to student Title IV fund accounts:

Institutional charges are generally those for tuition and fees, room and board, and other educational expenses that are paid to the school directly. If a fee (like a registration or technology fee) is required for all students in a program, it should be considered an institutional charge. Similarly, if a charge is part of an enrollment agreement or any addendum or if the school routinely debits a student's ledger account for the amount with the tuition and fees, it is an institutional charge. A charge does not have to appear on a student's account to be considered an institutional charge. All charges for tuition, fees, and room and board (if contracted with the school) must be considered institutional charges.

2018-2019 FSA Handbook, Vol. 4, Ch. 2 at 4-28

The FSA Handbook contains the following guidance for institutions that use third parties to provide housing or materials:

The law allows a school to credit a student's account with FSA funds to pay for institutionally provided housing or to pay for charges incurred at a school-owned bookstore. However, it is not necessary that the school actually own the student housing or the bookstore. The school may enter into a contract with a third party to provide institutional housing and/ or bookstore services. A school that has such a contractual agreement for housing and books and supplies is viewed as providing the goods and services itself.

As allowed under 34 CFR 668.164(c), with the student's authorization a school may credit his or her account with Title IV, HEA funds to pay for housing and for educationally related goods and services from the bookstore. If a third party operates the bookstore, the school must have a written contract or other legal agreement with it, under which the student is able to charge the goods and services. Other FSA requirements apply to housing. . . . [T]he school must include the contracted third-party housing among the locations for which it fulfills the requirements for reporting campus crime and safety information.

2018-2019 FSA Handbook, Vol. 4, Ch. 2 at 4-31

Student loans are classified as general exceptions to dischargeable debt under 11 U.S.C. §523:

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)

(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

Institutions have a duty, inherent in a fiduciary standard of conduct, to operate in a truthful manner when dealing with students. This duty means that institutions are not allowed to make misrepresentations to students, or prospective students, regarding their educational programs, the financial charges assessed by the institution, or the employability of its graduates. 34 C.F.R. §§ 668.71-668.74.

Analysis

The issues to be addressed are: whether FSA has met its burden of persuasion by proving PCTI violated statutory and regulatory provisions of Title IV and that termination is appropriate and whether PCTI has raised a defense that would render termination inappropriate.

FSA's overarching contention is that PCTI has not met its fiduciary duties to FSA and has not met the administration capability standards required to participate in Title IV programs. PCTI's overarching contention is that FSA has failed to meet its burden of proving that the alleged violations occurred or that termination is the appropriate action. PCTI argues that FSA has not met its burden because the evidence presented by FSA is less credible than that presented by PCTI. PCTI also relies on prior rulings of this tribunal that found termination was not appropriate in matters with similar violations. PCTI Resp. Br. at 5.

PCTI has not met its fiduciary duties or the administration capability standards set out by

34 C.F.R. §§ 668.14, 668.82(a) and (b)(1), and 668.16(a) respectively. In signing a PPA with FSA, PCTI accepted fiduciary duties. As a fiduciary, PCTI is “subject to the highest standards of care and diligence in administering the [Title IV] programs and in accounting to the Secretary for the funds received under Title IV programs.” PCTI’s actions show that it has not met the “highest standards” set forth in 34 C.F.R. § 668.82(b)(1). PCTI has misappropriated Title IV funds in numerous ways. PCTI has illegally certified Federal Direct Loans, illegally obtained Pell Grants for ineligible students, misrepresented the eligibility of students to receive Title IV funds by falsifying high school diplomas and other FAFSA information, obstructed numerous Department reviews of PCTI, misused Title IV funding for housing charges, and made misrepresentations regarding educational programs, financial charges, and employment to its students.

The violations listed above show that PCTI lacks the capability to administer a Title IV program pursuant to 34 C.F.R. §668.16(a). 34 C.F.R. §668.16(a) states that an institution must comply with all statutes and regulations applicable to Title IV to capably administer a Title IV program. The discussions above and below show that PCTI failed to comply with numerous statutes and regulations applicable to Title IV.

PCTI repeatedly interfered with and deceived FSA as it conducted the program review. PCTI staff changed student files to hide misconduct. A prime example of this conduct is seen with the student ledger cards requested by reviewers during the first review. FSA requested student ledgers with running account balances, however they were given student ledgers that were later found to be missing “Living Expense Adv” charges by the school. *Id.* at 9. These charges were later provided to FSA by PCTI after reviewers and students questioned the absence of the charges from the student ledgers. PCTI argues that the missing information was due to a mistake caused by the schools account management software. PCTI Response Brief at 19. PCTI

also argues that the omission of these charges does not prove an intent to hide anything from FSA. *Id.*

PCTI knew ahead of time that these charges were requested by FSA and it is highly unlikely that an institution whose student account management software is separated into categories would forget this fact during a Department review. The omission took place against a backdrop of student statements that PCTI staff told them not to disclose information regarding housing to Department reviewers and while PCTI staff represented that the school played no part in student housing. Intent to hide information from FSA is not an element that must be proven in order to arrive at a conclusion of obstruction; it is enough that the review was obstructed by actions taken by PCTI. The omission of these charges is obstruction on the part of PCTI, in violation of 34 C.F.R. §668.24(f) and a violation of the institution's fiduciary duty to comply with the provisions of Title IV and administer Title IV programs properly 34 C.F.R. 668.16(a).

PCTI further engaged in obstruction by attempting to cover up shorter class lengths than it reported to FSA. While PCTI administrators provided contrary sworn statements, the statements provided by students and former PCTI professors regarding class times has significantly more probative value than the sworn statements. The sworn statements provided are self-serving. PCTI administration has an interest in maintaining the school's Title IV programs. This is especially true because under 34 C.F.R. §668.14(b)(25) the institution agreed to be liable for any misspent Title IV funds when the school signed the PPA with FSA. The consistency between student and professor statements regarding class times is more probative than self-serving statements by administration. Both former professors interviewed told FSA that class times changed from 9-1 to 8-2 during the week of the review. *See* ED Exs. 157 and 158. Student statements lend support to the former professors' statements. *See* ED Exs. 4 and 92. This action by PCTI violates the institution's duty regarding oversight activities under 34 C.F.R. §668.24(f).

PCTI also obstructed FSA's review by sending a class home to avoid having students interviewed. PCTI again provided sworn statements to negate this action, however once again this tribunal finds that the statements provided by PCTI administration hold little probative value when weighed against statements by students and former PCTI professors. Student statements reveal that during Department review Mrs. Poole sent an HVAC class home early to prevent the class from speaking with FSA. ED Exs. 45 and 118. Student 45 was only able to speak with the reviewers because the student approached them off-site. A former PCTI professor's statement supports those made by students: Poole sent the HVAC class home during the review. ED Ex. 158. Given the alignment between student and professor statements and the self-interest involved in the statements provided by PCTI administration, this tribunal concludes that PCTI did send students home to avoid Department reviewers. PCTI made students less accessible to FSA in doing so, which violated its duty under 34 C.F.R. §668.24(f).

PCTI stopped students from talking with Department reviewers about their housing situations with threats to cut off funds for housing. Numerous students provided statements in which they state that PCTI administrators, often Mrs. Poole, told them to keep quiet about their housing arrangement when talking to reviewers or else they would lose funds for that housing. *See* ED Exs. 4, 10, 57, 117, 61, 92, and 100. PCTI further tried to use payment to keep students quiet, with Mrs. Poole asking one student to take a check, go home, and not "rat her out". *See* ED Ex. 61. PCTI attempted to present students with payments for housing in return for silence regarding that housing. PCTI claims these statements are worth less than the sworn statements provided by PCTI staff. This tribunal finds the student statements, which all support one another, and the obstructive actions taken by PCTI during review lend the sworn statements provided by PCTI little probative value. The attempts by PCTI to muzzle students and keep their housing information away from Department reviewers is a violation of PCTI's duty to FSA under 34

C.F.R. §668.24(f).

The actions taken by PCTI reflect dishonest operation by a fiduciary with FSA and active efforts to use deceptive information when recruiting in violation of 34 C.F.R. Section 668 Subpart F.

As the United States Court of Appeals for the Tenth Circuit has stated “Title IV gives extensive enforcement authority to the Secretary indicating that Congress intended this mechanism to be the exclusive means for ensuring compliance with the statutes and regulations.” *L’ggrke v. Burke*, 966 F.2d 1346, 1348 (10th Cir. 1992). To carry out the responsibility to ensure the integrity of the Title IV programs, 34 C.F.R. §668.86(a)(1)(i) empowers the Secretary to terminate the participation in Title IV programs of any institution that violates any provision of or applicable to Title IV. PCTI has violated numerous provisions of and applicable to Title IV, as shown throughout this opinion. 34 C.F.R. §668.82(c)(1) states a breach of fiduciary duty by an institution constitutes grounds for Title IV eligibility termination. PCTI breached its fiduciary duties in numerous ways, as discussed above. These breaches alone are sufficient bases for termination, however other violations by PCTI support termination as well under 34 C.F.R. §668.86(a)(1)(i).

Ineligibility to participate in Title IV programs may be based on a judicial finding of fraud involving Title IV funds under 34 C.F.R. §600.7(a)(3)(i). This tribunal has previously determined that PCTI has committed fraud involving Title IV funds. *See In the Matter of Professional Career Training Institute*, Dkt. No. 19-54-EA, U.S. Dep’t of Educ. (October 17, 2019). This previous determination alone is sufficient to uphold termination of PCTI eligibility.

FSA has met its burden of proof. FSA established numerous instances of violations of Title IV statutes and regulations by PCTI. FSA has also shown that PCTI’s actions merit termination given the disturbing and egregious nature of PCTI’s violation of its fiduciary duties.

In the Matter of Yorketowne Business Institute, Dkt. No. 92-33-ST, U.S. Dep't of Educ. (Decision of the Secretary) (July 1, 1993). PCTI has not only violated numerous provisions of Title IV through its actions but has done so through targeting the most vulnerable of communities. PCTI purported to serve communities that are often overlooked or not given a chance, homeless individuals and individuals that were newly released from prison. PCTI CEO Carrie Poole stated that PCTI does not discriminate against students with backgrounds that most would consider hardened and undesirable, but that PCTI instead embraces them and makes significant efforts to help and serve them. *See* R-Ex 3. However, PCTI has taken these already vulnerable individuals from homeless or prison backgrounds and further saddled them with generally non-dischargeable student loans to misappropriate Title IV funds. The volume of violations coupled with the vulnerability of the individuals impacted provide numerous basis for the finding that FSA has met its burden of proof under 34 C.F.R. §668.89(b)(3)(ii).

Student records were redone to hide the fact that ineligible students were participating in Title IV programs. Ms. Nieves, PCTI's Financial Aid Director told FSA interviewers that PCTI was changing student applications to show that they had graduated from high school prior to attending PCTI when they had not. *See* ED Ex. 147. PCTI argues that these student documents were updated and not changed to conceal wrongdoing. *See* PCTI Response Br. at 16. PCTI further explains that these diplomas were earned through a Career Pathways Program at PCTI, as allowed under 20 U.S.C. §1091, making the students eligible to receive Title IV funding and making the diplomas valid. *Id.* at 9. PCTI addresses that all the allegedly falsified UPA diplomas were dated before the students started at PCTI by pointing to UPA's practice of awarding diplomas only two to three times a year. If a student completed the credits needed prior to the next scheduled graduation, the diploma would be backdated to the most recent ceremony. *Id.* at 18. PCTI cites In the Matter of Bais Fruma to argue that inaccuracies on documentation alone is

not sufficient to carry FSA's burden of persuasion regarding document falsification. *Id.* at 21.

This tribunal agrees with FSA's allegation of diploma falsification and the assertion that PCTI did not have a Career Pathways Program. PCTI claims that they were simply updating student records to reflect student high school graduation status, but that explanation is inconsistent with the facts here. Records were changed before the review. When a student is participating in a Career Pathways program, the institution they attend is required to enter a specific code to indicate this fact when reporting disbursement of Title IV money to FSA. PCTI's records indicate that they did not use the designated code for Career Pathways for any student receiving Title IV money for 2018 and 2019. *See* ED Ex. 174.

While PCTI argues it has had a Career Pathways program since 2015, this tribunal finds the facts do not support the argument. An institution with such a large number of students' Title IV eligibility supposedly coming from participation in a Career Pathways program would certainly mention the existence of the program to reviewers during the initial review. PCTI did not provide these records during first review. Instead of mentioning a Career Pathways Program, PCTI staff represented their students as high school graduates, with Mr. Minor telling reviewers that PCTI recruits from UPA. PCTI's Bais Fruma argument is ineffective here, as in that case the lack of reliable evidence of falsification was fatal to FSA's claim, whereas here there is sufficient and reliable evidence to uphold FSA's claims.

The above facts, considered along with student FAFSA applications indicating high school graduation status show that PCTI falsified these student documents. This action is a violation of PCTI's fiduciary duties and a violation of 34 C.F.R. §668.32, as these students were ineligible to receive Title IV funding and PCTI was aware of this fact. PCTI lured students into its programs with promises that they would be able to obtain a legitimate high school diploma. PCTI collaborated with UPA to provide students with a sham diploma after completing a packet

of work, or in some instances merely taking an online exam. PCTI attempted to portray many PCTI students as graduates of UPA before they attended PCTI, then later changed the story to say students were participating in a Career Pathways Program that did not exist. PCTI and UPA falsified high school diplomas and transcripts for students, and these documents were used as the basis of Title IV eligibility. PCTI's active participation with and acceptance of UPA diplomas violates its duty to the Secretary and FSA under 34 C.F.R. §668.16(p), in which an institution is supposed to investigate diplomas from dubious institutions. In past cases, otherwise vigilant institutions have accepted dubious diplomas, however PCTI is actively involved in promoting and producing UPA diplomas and uses these invalid diplomas as the basis for eligibility for Title IV funds. *See In the Matter of Fortis College* Dkt. No. 12-55-SP, U.S. Dep't of Educ. (March 17, 2015) (Decision of the Secretary).

PCTI argues that FSA has no jurisdiction to determine the validity of UPA diploma's and FSA is prohibited by Federal law from second guessing the academic requirements of UPA for awarding high school diplomas pursuant to 20 U.S.C. §1232(a). PCTI further argues the potential for inappropriate interference by the Federal government in matters related to States' control over education is a concern of the current administration.

PCTI is incorrect. FSA has guidelines for identifying institutions that operate as diploma mills. *See* 20 U.S.C. §1003(5). These guidelines exist because of the ability of FSA to review diploma requirements to ensure that the diploma is a valid basis for Title IV eligibility. PCTI's purported concerns of the current administration must lead the current administration to take the appropriate regulatory action to address these concerns. Unless the administration does so, these concerns do not lead to any enforceable policy relating to those concerns.

PCTI falsified Workforce fund applications to be able to receive WIOA Funds. PCTI argues that there is no date requirement to apply for Workforce funding, citing a lack of mention

of timing requirements by FSA and in the legislation governing Workforce funding. *See* 20 C.F.R. §680, Subpart B; PCTI Response Br. at 19.

PCTI is correct as there is no mention of a timing requirement in the controlling legislation. However, it should be noted that two students were turned away by the Workforce office because of inaccuracies in their applications and were advised that PCTI was “getting over” on them. ED Exs 20 and 117.

PCTI staff filled out student FAFSA information for students to improperly receive Title IV funding. There are multiple discrepancies between student applications to PCTI and FAFSA aid application regarding marital and dependency status to bolster this claim. PCTI argues these discrepancies do not indicate that PCTI was involved in filling out FAFSA applications for students. PCTI Response Br. at 33. PCTI points out the numerous security redundancies and safeguards in place to prevent student loan theft and says that it is unlikely that all of these would fail and allow Ms. Nieves to apply for Federal Aid on behalf of students. *Id.* at 27. PCTI also points to sworn testimony by Ms. Nieves that she did not fill out FAFSA forms for students as evidence that this did not occur. R. Ex-8; PCTI Response Br. at 32.

The record shows that PCTI filled out student FAFSA forms improperly to receive Title IV program money. The disparities between PCTI applications that indicated certain students were married and their FAFSA applications which indicated that they were not (and the parallel situation for the issue of dependency), coupled with student statements that PCTI staff filled out their FAFSA applications lead this tribunal to conclude that PCTI staff filled out student FAFSA applications. The sworn statement of Ms. Nieves provided by PCTI must be weighed against the information provided to FSA by Ms. Nieves. It goes against Ms. Nieves’s interest, as PCTI’s financial aid director, to provide evidence of fraud and wrongdoing on the part of PCTI involving Title IV funds. Ms. Nieves’s statements are corroborated with evidence. This tribunal

finds that Ms. Nieves's statements to FSA, and accompanying evidence, have more probative value than sworn statements provided by PCTI that serve the interests of the institution. These actions violate PCTI's fiduciary duties to FSA as falsifying these statuses resulted in improper award amounts being determined by FSA under 20 U.S.C. §§ 10871l-1087ss.

PCTI also falsified FAFSA applications for Pell Grant funds, reporting that students who indeed had a bachelor's degree or professional degree did not, in order to gain access to these funds. PCTI argues that foreign degree equivalency with a U.S. bachelor's degree is determined at the discretion of the institution, citing the 2018-2019 FSA Handbook, Vol 1, Chap. 6 at 1-83. PCTI Response Br. at 33. PCTI contends that it exercised its discretion pursuant to the FSA Handbook and that if FSA's view differs from that of PCTI it is a simple regulatory violation, which does not merit termination. *Id.*

On PCTI applications, numerous students indicated that they had prior degrees from foreign countries, but on the corresponding FAFSA application they were indicated as not having prior degrees. PCTI filled out the FAFSA forms and misrepresented student statuses. PCTI is correct that a school must judge the equivalence of foreign degrees earned to U.S. bachelor's degrees. However, FSA guidance states that foreign degree holders are usually ineligible for Pell Grants and that a school may judge a foreign degree to not be equivalent when provided with documentation by the student degree holder that supports that conclusion. Per the FSA Handbook, these documents may include information about the type of school where the degree was earned and the total number of years of education leading to the degree.

PCTI students with prior degrees did not indicate that they did not hold degrees equivalent to a bachelor's, in fact they indicated to PCTI that they had graduated from college and obtained a degree. PCTI ignored these indications, which also included statements by students explaining how many years of education they underwent to receive the degree. *See* ED.

Ex 171. PCTI knew that these students had obtained prior degrees that were equivalent to a bachelor's but ignored this information and misrepresented these students as eligible to receive Pell Grants to receive the Title IV funds.

PCTI's access to student FAFSA accounts allowed it to illegally obtain Direct Loans without students' knowledge. Students did not apply for loans as they were told the Workforce and/or Pell Grant money would cover the costs of the program, or that the program would be discounted due to Hurricane Harvey. *Id.* However, PCTI certified loans and drew down Direct loan funds that students did not ask for. *Id.* PCTI argues that the numerous security measures in place to avoid loan theft. PCTI points to student signed acknowledgements of loan requests and PCTI staff sworn statements that this practice did not go on at PCTI. *Id.* at 30-31. PCTI further argues that FSA has shown no motive for PCTI to engage in loan theft. *Id.* at 32.

The student statements made to reviewers regarding unknown loan notifications, PCTI access to student FAFSA information, and the funds that PCTI stood to gain access to through illegal certification all prove that PCTI engaged in illegal Direct Loan certification. The situation of Student 118, who sought an education elsewhere after attending PCTI, but found out that a FAFSA application had already been submitted for her for funds to use at PCTI bolsters the credibility of FSA's assertions. It defies logic that someone wishing to leave an institution would apply for Federal aid to be used to study at the same institution they wish to leave. PCTI's claim that the preponderance of the evidence does not show the institution engaged in this misconduct lacks support. FSA has presented reliable evidence in the form of student and staff statements, much of which comes from PCTI's own financial aid director. The numerous security redundancies that exist to prevent loan theft do exist but were circumvented by PCTI to misappropriate Title IV funds. PCTI had control over the FAFSA applications of its students and used that control to take out loans unbeknown to its students. FSA does not need to prove a

motive for PCTI's illegal conduct, just that they have committed the violations alleged, and FSA has done so.

PCTI illegally retained student credit balances of Title IV funds in violation of 34 C.F.R. §668.164(h). PCTI could not retain Title IV funds as the institution did not have proper authorization to do so under 34 C.F.R. §668.165(b). PCTI did not have a contract with the students to provide housing. The leases providing students with housing do not list students as the lessor but instead list HH, PCTI's former affiliate organization. ED Ex. 149. PCTI contends that it did have valid authorization to retain student credit balances as students signed a waiver expressly allowing PCTI to do so. PCTI Response Br. at 42; R-Ex. 9. PCTI further argues that FSA misreads the governing law as in the FSA Handbook at Volume 4, Chapter 14 at 4-31 it is written that an institution can contract with a third-party to provide housing. *Id.* at 43. PCTI asserts that the school need not contract with the students to apply credit balances to housing charges as institutional charges, so long as the school contracts with a third-party. *Id.* PCTI argues that it has contracted with HH and WTDI to provide housing and so the student credit balances were properly applied. *Id.*

The FSA Handbook does state that an institution may contract with a third party for housing, however the first mention of housing charges within the Handbook requires there to be a contract with students for housing charges to be allowed. The third-party portion of the Handbook cited by PCTI appears later in the guidance but there is no language suggesting that the contract requirement for student housing is negated by the presence of a third-party provider. Under the guidance, an institution cannot use Title IV student funds for student housing with a third party without an express agreement with the student who would be living in the housing.

PCTI argues it can charge students credit balances because it has an agreement with HH to provide housing to students (R-Ex. 23). But in responding to a student complaint filed with

FSA regarding Title IV fraud, PCTI stated the opposite - that it did not have any agreement offering or concerning free housing with any student. PCTI stated that it does not provide campus housing and that it does not have housing agreements with any third-party organizations. This statement was made on January 30, 2019 despite the existence of the agreement between PCTI and HH, being used to argue that PCTI had an agreement for housing, being signed on April 4, 2018. PCTI's own statements to FSA support the finding that PCTI was misusing Title IV funds by charging students for housing and using Title IV money to satisfy these charges.

PCTI's claim that the waiver it has with its students regarding retaining student credit balances for future institutional charges is valid is wrong. The waiver is not valid under 34 C.F.R. §668.165(b) given the lack of housing agreement between the students, PCTI and any third-party housing provider. PCTI staff has made it clear that PCTI does not provide housing and PCTI rejected the idea that it had any agreements with third party organizations for housing on January 30, 2019. PCTI could not legally make institutional charges for housing and so could not legally retain student credit balances. The waivers put forth by PCTI are vague and make no mention of housing, despite housing being a large charge to student accounts. This fact further leads this tribunal to the conclusion that PCTI was misusing Title IV funds by applying them to housing charges when they legally could not do so.

FSA argues PCTI engaged in unethical inducement of students by promising prospective students free housing if they attended PCTI. FSA Initial Br. at 25. FSA describes a housing scheme between HH and PCTI that promised free housing to students for enrolling at PCTI. *See* ED Ex. 4 at 1-2, 42 at 1-3, 45 at 1-2, and 64 at 1-2. FSA claims that PCTI harmed students by promising them free housing but then claiming the money "ran out" and forcing the students to pay half of their rent, leading to evictions. FSA Initial Br. at 25-26. PCTI argues that FSA's allegations are unsupported. PCTI Response Br. at 24. PCTI contends that student statements

made to FSA regarding PCTI staff urging student to keep quiet about housing is unreliable given the criminal histories of PCTI students. *Id.* PCTI also points to sworn statements to the contrary as evidence that students were not induced to attend PCTI with the promise of free rent. *Id.* at 25.

PCTI engaged in unethical inducement of students. The numerous statements made by students who needed housing and the consistency of those statements shows that there were promises made to needy individuals that were broken and that have resulted in undue hardship and financial burdens. PCTI provides sworn statements that housing was not offered to students as an incentive to attend the institution. The sworn statements are contradicted by numerous student accounts, and are unconvincing. PCTI enticed students with free rent and sought to keep student housing away from Department reviewers. It is especially disturbing for PCTI to claim a goal of helping the homeless and recently released prisoners, only to then question those students' truthfulness because they are recently released prisoners. There is no evidentiary rule or basis for discounting their statements due to criminal records relating to truthfulness.

Students were promised free housing for a year to attend PCTI. Once enrolled, they were soon saddled with the burden of having to pay half of their rent despite having planned to do otherwise. Several students made it clear that the only reason they attended PCTI was to take advantage of the year of rent being offered. These students were disadvantaged, in some instances homeless, and hoped that PCTI's offer provided them with a path towards a better life. That offer only served to hurt these students financially, led to students being evicted and imparted on students with generally non-dischargeable debt. This tribunal concludes that the evidence presented by FSA is convincing. PCTI did engage in unethical inducement.

Finally, FSA contends that PCTI made misrepresentations to its students and prospective students in violation of 34 C.F.R. §668.71-668.74. FSA claims that PCTI misrepresented key features of the educational program at PCTI and the financial charges assessed by the institution.

FSA Initial Br. at 30. FSA asserts that students were told that they would receive excellent training that would help them to obtain a job in their field. *Id.* at 31. However, many students were not prepared for a job. *See Id.* FSA also asserts that PCTI kept its students in the dark about their federal loan situation and information regarding federal aid was not disclosed to students when requested. *Id.* PCTI argues that students' feelings about what they learned in class are not enough to show misrepresentation on the part of PCTI regarding its educational programs. PCTI Response Br. at 44. PCTI also contends that the unsworn statements made by students regarding financial charge misrepresentation are rebuttable by evidence that students knew they had loans and are worth less than sworn statements by PCTI staff. *Id.* PCTI further calls into question the veracity of the student statements given the criminal histories of its students. *Id.* at 47.

This tribunal does not have jurisdiction to decide matters of criminal law, as was specifically made clear to counsel in the emergency action decision. PCTI counsel insisted on again alleging felonious conduct by opposing counsel. As also noted in the prior emergency action, such accusations against opposing counsel are unfortunate; however, this proceeding similarly lacks jurisdiction to consider matters pertaining to professionalism, or whether such accusations undermine the civility of the proceeding. It is not the place of this tribunal to reach out and extend its purview as it sees fit or as advocates may demand. None of the purportedly feloniously-obtained evidence provided any support for this decision.

The evidence in this record establishes that PCTI engaged in most egregious misrepresentation regarding educational programs, financial charges at PCTI, and employment prospects upon graduation. Students were not prepared for placement in their chosen field, as shown by statements recounting class time spent on phones or asleep, and statements telling of beginner and advanced students placed in the same classes with the same instruction. PCTI did not comply with its duty to inform its students on financial aid. The use of student criminal

histories to try and discredit these students' statements is again especially disturbing in light of its purported pride to be serving an underserved and disadvantaged portion of society. PCTI's guarantee of jobs to students also shows that PCTI engaged in misrepresentation regarding employment prospects upon graduation from the school. This decision finds that the termination sought by the designated department official is wholly warranted. 34 C.F.R. §668.91(a)(2)(i). This decision further finds that PCTI has violated the provisions of 34 C.F.R §668.14(b)(18)(i) and (ii). These further violations also support this decision's finding that termination of PCTI's participation is warranted. 34 C.F.R. §668.91(a)(3)(i).

Conclusions of Law

- 1. FSA has met its burden of persuasion by proving PCTI violated statutory provisions of Title IV and that termination is appropriate.**
- 2. PCTI has not raised any defense that would render termination inappropriate.**

Order

Pursuant to 34 C.F.R. § 668.91(a)(2)(i), the termination sought by FSA is wholly warranted. It is **ORDERED** that Professional Career Training Institute's eligibility to participate in Title IV programs is terminated.

Robert G. Layton
Administrative Law Judge

DATE OF DECISION: July 14, 2020

NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART G

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.91. The regulation does not authorize motions for reconsideration. The regulation requires that this decision must be served by certified mail on the institution and on the designated department official who began the proceeding, even though the parties have consented to electronic filing. 34 C.F.R. § 668.91(a)(1). The companion emergency action continues until a final decision is issued in these proceedings. 34 C.F.R. 668.91(c).

The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 668.92.

An appeal to the Secretary by a party must be filed with the designated department official by hand-delivery, mail, facsimile transmission, or by use of the Office of Hearings and Appeals Electronic Filing System (OES) 34 C.F.R § 668.92(a)(1)(ii). The procedures governing an appeal to the Secretary can be found at 34 C.F.R § 668.92.

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. The appealing party shall file a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official. 34 C.F.R § 668.92(c)(2).

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 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 § 668.91 and 34 C.F.R § 668.92. 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

This decision has been sent via certified mail, return receipt requested to:

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Chief Executive Officer
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227 West Airtex Drive
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Susan Crim
Administrative Actions and Appeals Service Group
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Washington, DC 20002-8019

And by OES electronic service to:

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