



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

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*In the matter of*

**MARGATE SCHOOL OF BEAUTY**

**Docket No. 17-36-SA**

Federal Student Aid Proceeding

ACN: 4-2015-51906

Respondent.

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**DECISION OF THE SECRETARY**

Margate School of Beauty (Margate) has appealed the December 20, 2017, decision (Decision) issued by Chief Administrative Judge Ernest C. Canellos (Judge Canellos). The Decision upheld a Federal Student Aid (FSA) assessment of Margate's liability of \$52,056.31.

Based on the following analysis, I affirm Judge Canellos' Decision.

**Background**

Margate was an institution of higher education in Margate, Florida, participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1070, *et seq.* (Title IV). Margate ceased providing educational services on October 21, 2015, upon eviction from its physical location due to its landlord not renewing its lease and selling the property to other parties.<sup>1</sup> Subsequently, FSA issued a letter to Margate informing it that it was no longer eligible to participate in Title IV programs and required it to conduct Title IV close-out procedures.<sup>2</sup> On May 31, 2016, Margate submitted a close-out audit

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<sup>1</sup> FSA Brief, Ex. 2 (Letter dated Nov. 10, 2015, from FSA to Margate).

<sup>2</sup> *Id.*; 34 C.F.R. § 668.24(d)(4) ("If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a change of control as described in 34 CFR 600.31, it shall provide for—(i) The retention of required records; and (ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the [Federal Family Education Loan] Program, the appropriate guaranty agency."); 34 C.F.R. § 668.26(b)(2) ("If an institution's participation in a Title IV, HEA program ends, the institution shall . . . — (2) Submit to the Secretary within 45 days after the date that the participation ends . . . —(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter.").

to FSA covering the period from January 1 through October 21, 2015.<sup>3</sup> Margate did not provide sufficient documentation for the auditor to complete its work.<sup>4</sup>

On June 6, 2016, FSA informed Margate its close-out audit was incomplete and required Margate to submit a revised, complete audit.<sup>5</sup> No such audit was submitted.<sup>6</sup> On March 2, 2017, FSA issued a Final Audit Determination (FAD) finding Margate liable for all Title IV funds disbursed during the period in question, \$110,058.53.<sup>7</sup> Margate appealed the FAD.

On appeal, Margate argued it was impossible for it to provide additional required information to the auditor due to its eviction, precipitous closure, and quick loss of its staff to other jobs.<sup>8</sup> In arguing its position during the appeal, FSA revised its finding of liability down to \$57,318.31, considering the audit, though incomplete, as evidence that some Title IV funds were properly disbursed.<sup>9</sup> Judge Canellos generally approved of FSA's recalculation of liabilities, but struck \$5,262 from that figure because FSA sought to assess additional liabilities not contemplated in the audit or FAD.<sup>10</sup> Ultimately, Judge Canellos affirmed the FAD at the further reduced liability figure of \$52,056.31.<sup>11</sup>

Margate appealed Judge Canellos' Decision. I now turn to my analysis of that appeal.

### Analysis

An institution has a fiduciary duty to the Department to ensure that Title IV funds are only disbursed to eligible students.<sup>12</sup> An institution "is subject to the highest standard of care and diligence" in administering Title IV programs and accounting for funds it receives.<sup>13</sup> Among its obligations, an institution that distributes Title IV funds must maintain records demonstrating the eligibility of the students who received those funds.<sup>14</sup> An institution that closes its doors must also provide a close-out audit.<sup>15</sup>

On appeal, Margate's sole argument is that FSA's brief in the original appeal was "condescending and argumentative in so much as the letter to the Honorable Ernest Canellos [sic] clearly outlined explanations to the Findings exhibited 15-1 through to 15-10. It is my

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<sup>3</sup> FSA Brief, Ex. 5 (Salmon Sims Thomas & Associates Audit of Margate).

<sup>4</sup> Decision at 1-2; FSA Brief, Ex. 5 at 12.

<sup>5</sup> FSA Brief, Ex. 6 (Letter dated June 6, 2016, from FSA to Margate); 34 C.F.R. § 668.24(d)(4), § 668.26.

<sup>6</sup> FSA Brief, Ex. 8 (Final Audit Determination).

<sup>7</sup> *Id.*; 34 C.F.R. § 668.24(d)(4), § 668.26.

<sup>8</sup> Decision at 3.

<sup>9</sup> *Id.* at 3-4 (citing *In re Galiano Career Acad.*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (Decision of the Secretary) July 10, 2015, at 8).

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

<sup>12</sup> 34 C.F.R. § 668.82(a) ("A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary."); *In re Hope Career Inst.*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008), at 3.

<sup>13</sup> 34 C.F.R. § 668.82(b)(1) ("A participating institution 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 those programs.")

<sup>14</sup> 34 C.F.R. § 668.24(d)(1) ("An institution shall maintain required records in a systematically organized manner.")

<sup>15</sup> 34 C.F.R. § 668.24(d)(4), § 668.26.

opinion that the explanations were totally overlooked and given no consideration.”<sup>16</sup> Based on that argument, Margate requests that I dismiss the FAD.

The findings to which Margate refers are numbered 15-1 through 15-11 in the audit prepared by Margate’s auditor, Salmon Sims Thomas & Associates, on October 21, 2015.<sup>17</sup> The administrative record contains no letter from Margate to Judge Canellos specifically discussing the audit’s findings. The only other document Margate submitted is its letter dated June 21, 2017, requesting an appeal. Judge Canellos already considered and rejected the arguments Margate made in that letter.

Despite its argument regarding FSA’s brief, Margate does not challenge Judge Canellos’ ruling that Margate is liable for funds as projected based on an error rate from the audit. The law is clear about an institution’s Title IV obligations. Margate owed the Department the highest standard of care with regard to Title IV funds and must provide evidence that all funds were distributed to eligible students. As discussed earlier in this decision, past cases have addressed precisely these facts. Where an audit exists, but that audit is unreliable or incomplete, FSA properly assesses liability based on an error rate from the records at its disposal.<sup>18</sup> Therefore, I affirm Judge Canellos’ Decision upholding the finding of liability.

### **ORDER**

ACCORDINGLY, the Decision of Chief Administrative Judge Canellos is hereby AFFIRMED. Margate’s liability in the amount of \$52,056.31 is upheld.

So ordered this 16<sup>th</sup> day of October 2020.

  
Betsy DeVos

Washington, DC

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<sup>16</sup> Notice of Appeal at 1.

<sup>17</sup> FSA Brief, Ex. 5. Margate’s submissions do not clarify why it refers only to Findings 15-1 through 15-10 when the list of the auditor’s findings go through Finding 15-11.

<sup>18</sup> *Galiano*, Dkt. No. 11-71-SP at 8 (“In the past, the Department has assessed 100% liability for Title IV funds where an institution has failed to provide a file review within the time period provided, or has failed to provide a [close-out] audit after the school closed.”).

**Service List**

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