



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

**HAIR FASHIONS BY KAYE BEAUTY
COLLEGE**

Docket No. 17-45-SP

Federal Student Aid Proceeding

PRCN: 2014-3072-8655

Respondent.

DECISION OF THE SECRETARY

Hair Fashions by Kaye Beauty College (Hair Fashions) has appealed the April 10, 2018, decision (Decision) issued by Chief Administrative Judge Ernest C. Canellos (Judge Canellos). The Decision upheld a Federal Student Aid (FSA) assessment of Hair Fashions' liability of \$2,479,734 as reflected in FSA's Final Program Review Determination (FPRD).

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

Background

At one time, Hair Fashions served as an institution of higher education in Indianapolis, Indiana, 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). Hair Fashions contracted with GEMCOR, Inc., which provided recordkeeping services to Hair Fashions and other institutions related to Title IV student records.¹ Incident to a program review at GEMCOR, FSA audited Hair Fashions' Title IV files.

Finding inconsistencies, FSA issued a program review report on July 25, 2016, listing 14 adverse findings and requiring Hair Fashions to conduct a full file review.² Hair Fashions closed its operations on October 15, 2016, and on November 10, 2016, Hair Fashions notified FSA it did not intend to provide the required information including the file review.³ On July 6, 2017,

¹ FPRD at 3.

² *Id.*; 34 C.F.R. § 668.24(d)(2) ("An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.").

³ FPRD at 3, 7, 10, 15, 17, 19–20; Decision at 3.

FSA issued the FPRD in which FSA found Hair Fashions liable for all Title IV funds disbursed in the 2012–2013 award year, totaling \$2,479,734. Hair Fashions appealed.

On appeal, Judge Canellos considered Hair Fashions’ arguments that the review required by FSA was too burdensome and that Hair Fashions’ owner, Kaye Maxwell, could not adequately respond because she had to rely on others to manage the school due to illness and age.⁴ After reviewing these arguments, Judge Canellos upheld FSA’s finding of liability based on Hair Fashions’ recordkeeping obligations under Title IV.⁵

Hair Fashions has 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.⁶ An institution “is subject to the highest standard of care and diligence” in administering Title IV programs and accounting for funds it receives.⁷ Among its obligations, an institution that distributes Title IV funds must maintain records and, upon request, provide them to FSA to demonstrate the eligibility of the students who received those funds.⁸ An institution that closes its doors must also provide a close-out audit.⁹ The Department’s administrative decisions hold that where an institution has failed to provide a file review within the time period provided,¹⁰ or has failed to provide a close-out audit after the school has closed, a 100 percent liability for Title IV funds is assessed.¹¹

⁴ Decision at 3–4.

⁵ 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.”).

⁶ 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.

⁷ 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.”).

⁸ 34 C.F.R. § 668.24(d)(1) (“An institution shall maintain required records in a systematically organized manner.”); *Id.* § 668.24(d)(2).

⁹ 34 C.F.R. § 668.24(d)(4), § 668.26.

¹⁰ *In re Classic Beauty Coll.*, Dkt. Nos. 96-147-SP, 97-33-SP, 97-58-SP, and 97-59-SP, U.S. Dep’t of Educ. (Sept. 30, 1997).

¹¹ *In re Velma B’s Beauty Acad.*, Dkt. No. 13-09-SA, U.S. Dep’t of Educ. (Dec. 4, 2013); *In re Inst. of Med. Educ.*, Dkt. No. 12-59-SA, U.S. Dep’t of Educ. (Feb. 14, 2013); *In re S. Coll. and Se. Acad.*, Dkt. Nos. 01-42-SA and 01-43-SA, U.S. Dep’t of Educ. (Apr. 29, 2002).

On appeal, Hair Fashions reiterates its argument that “there are no assets or funds” to comply with the close-out audit requirement.¹² Hair Fashions also notes that, prior to this review, it was in good standing with its accreditor.¹³ Hair Fashions also argues it was prejudiced by the ongoing FSA review because it dissuaded potential buyers from purchasing the institution.¹⁴

Despite Hair Fashions’ arguments, the law is very clear about an institution’s Title IV obligations. Hair Fashions 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.¹⁵ Where no file review is provided, or no close-out audit is conducted, FSA properly sets the liability at 100 percent of Title IV funds at issue—in this case, \$2,479,734.¹⁶ Therefore, I affirm Judge Canellos’ Decision upholding the finding of liability.

ORDER

ACCORDINGLY, the Decision of Chief Administrative Judge Canellos is hereby AFFIRMED. Hair Fashions’ financial liability of \$2,479,734 is upheld.

So ordered this 16th day of October 2020.


Betsy DeVos

Washington, DC

¹² Hair Fashions’ Notice of Appeal at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 34 C.F.R. § 668.82(b)(1).

¹⁶ *E.g. In the Matter of Galiano Career Acad.*, Dkt. No. 11-71-SP (U.S. Dep’t of Educ.) (July 10, 2015) (Decision of the Secretary) at 6.

Service List

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