



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

BELLEFONTE ACADEMY OF BEAUTY

Docket No. 17-28-SP

Federal Student Aid Proceeding

PRCN: 201620729223

Respondent.

DECISION OF THE SECRETARY

Bellefonte Academy of Beauty (Bellefonte) has appealed the July 9, 2018, decision (Decision) issued by Chief Administrative Judge Ernest C. Canellos (Judge Canellos). The Decision upheld a total liability of \$41,629 against Bellefonte assessed by the office of Federal Student Aid (FSA) in its March 20, 2017, Final Program Review Determination (FPRD).

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

Background

Bellefonte was a proprietary institution of higher education 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). FSA conducted an on-site program review of Bellefonte in January 2016, examining a sample of student files from the 2014–2015 and 2015–2016 award years.¹ The FSA examiners issued a program review report on March 22, 2016, in which FSA made a number of adverse findings. On December 30, 2016, Bellefonte withdrew from participation in Title IV and ceased operations.² After considering Bellefonte's responses to the program review report, on March 29, 2017, FSA issued its FPRD, which contained six findings. Only two of the findings—Finding 2 and Finding 4—contained monetary demands. Bellefonte appealed Finding 4 to the Office of Hearings and Appeals. During that appeal, Bellefonte was granted leave to also appeal Finding 2. Only Findings 2 and 4, explained below, are under consideration in the appeal before me.

¹ Decision at 2.

² *Id.* at 1.

In Finding 2, FSA found Bellefonte liable for \$35,651 of Title IV funds based on 26 student records showing that Bellefonte incorrectly calculated the return of Pell Grant funds for students who withdrew from their programs. In Finding 4, FSA found Bellefonte liable for \$78,109 of Title IV funds based on 22 students whose eligibility for Title IV funds was not adequately established in Bellefonte's records. During the pendency of the appeal, FSA accepted evidence provided by Bellefonte that showed 18 of the students referenced in Finding 4 were eligible for Title IV disbursements. Inadequate documentation remained thereafter for four students. Therefore, FSA reduced Bellefonte's liability under Finding 4 to \$7,888.

On appeal, Judge Canellos identified the following three chief arguments advanced by Bellefonte:

1. FSA staff acted unprofessionally and in a discriminatory manner toward Bellefonte.
2. Bellefonte correctly performed all recordkeeping and calculations as verified by its auditor, who verified that Bellefonte had zero errors.
3. If Bellefonte erred in its Title IV responsibilities, it should be given an opportunity to make corrections rather than be held liable for the return of funds to the Department.³

After considering Bellefonte's arguments, Judge Canellos modified and affirmed the FPRD. Judge Canellos rejected Bellefonte's arguments about professionalism and discrimination as beyond the scope of the appeal, which rested exclusively on evidence probative of Bellefonte's compliance with Title IV requirements. Judge Canellos also affirmed FSA's conclusions that Bellefonte made errors in its Return to Title IV calculations and verification of student eligibility.⁴ Finally, Judge Canellos considered evidence submitted by Bellefonte and concluded that Bellefonte adequately demonstrated an additional student identified in Finding 4 was eligible for Title IV funds. Therefore, Judge Canellos reduced the Finding 4 liability to \$5,978 for the three remaining students and affirmed a total liability of \$41,629 (\$35,651 (Finding 2) + \$5,978 (Finding 4)).

Bellefonte 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 Title IV funds are only disbursed to eligible students.⁵ An institution "is subject to the highest standard of care and diligence" in administering Title IV programs and accounting for funds it receives.⁶ Among its

³ *Id.* at 3-4.

⁴ *Id.* at 4-5.

⁵ 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 Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008) at 3.

⁶ 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.")

obligations, an institution that distributes Title IV funds must maintain records and, upon request, provide them to demonstrate the eligibility of the students who received those funds.⁷

On appeal, Bellefonte repeats all three arguments made before Judge Canellos. First, Bellefonte argues that FSA staff “acted unprofessionally,” engaged in “discriminatory conduct and harassment,” and by these actions subjected Bellefonte to “prejudicial treatment and bias.”⁸ Second, Bellefonte argues it believes it has complied with all regulatory and statutory requirements under Title IV, as attested to by its auditor.⁹ Finally, to the extent Bellefonte may have violated any provisions of Title IV, it asserts it has no adequate notice from the Department of how it did so; and without such notice the Department violates Bellefonte’s right to due process by assessing liability.¹⁰

In evaluating Bellefonte’s first argument, I reaffirm the analysis of Judge Canellos that Bellefonte’s allegations of unprofessionalism and discrimination on the part of FSA are outside the scope of this appeal. Bellefonte is the Department’s fiduciary in administering Title IV programs. Whether Bellefonte handled Title IV funds and related records correctly is a matter solely determined by the documentary evidence the school presents. Accordingly, I affirm this element of the Decision.

Next, I consider whether Bellefonte complied with Title IV. Bellefonte bears the burden of demonstrating that it complied with the program’s requirements. The applicable regulations in this matter are 34 C.F.R. § 668.22 (Finding 2) and 34 C.F.R. § 668.56(a) (Finding 4).

Under 34 C.F.R. § 668.22, institutions are required to properly calculate the return of Title IV funds to the Department when a student withdraws from a program. The date the student withdraws, i.e. the amount of the program the student completed, determines the amount of funds the institution is required to return.¹¹ Evidence in the record shows that the Department found fault with Bellefonte’s calculations and recalculated these amounts for 26 students, resulting in Bellefonte’s liability in Finding 2.¹²

Under 34 C.F.R. § 668, Subpart E, institutions are required to verify student information to establish that they are eligible for Title IV funds prior to disbursement. Each award year, in accordance with 34 C.F.R. § 668.56(a), the Department publishes a notice in the Federal Register detailing the information an institution and an applicant must verify in the Free Application for Federal Student Aid. The record demonstrates that FSA found Bellefonte failed to collect the required verification documents and failed to adequately verify eligibility for a number of

⁷ See 34 C.F.R. § 668.24(d)(1) (“An institution shall maintain required records in a systematically organized manner.”).

⁸ Bellefonte Brief at 3.

⁹ *Id.* at 4, 7.

¹⁰ *Id.* at 6–8.

¹¹ See generally 34 C.F.R. § 668.22(a) (“General. (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student’s withdrawal date in accordance with paragraph (e) of this section.”); FSA Student Aid Handbook 2014–2015, Vol. 5.

¹² FPRD at 9–12, and App’x D; FSA Ex. ED-10.

students, resulting in liability under Finding 4.¹³ Both FSA and Judge Canellos considered additional evidence of compliance submitted by Bellefonte: FSA reduced the number of students cited in Finding 4 from 22 to four, and then Judge Canellos further reduced the number to three in his decision.¹⁴

Bellefonte's broad assertion that it complied with Title IV does not contradict the specific liability found by the Department on Findings 2 and 4. It also does not satisfy Bellefonte's burden to demonstrate why the Decision should be overturned.¹⁵ Accordingly, I affirm Judge Canellos' determination that Bellefonte failed to comply with Title IV requirements as described in his Decision.

Finally, I consider whether FSA violated Bellefonte's right to due process by failing to provide notice of its deficiencies prior to assessing liability. The requirement of due process is flexible and calls for such procedural protections as a particular situation demands.¹⁶ Due process in an administrative proceeding is not the same as in a judicial proceeding because administrative and judicial proceedings are inherently different.¹⁷ Each administrative proceeding must be carefully assessed to determine what process is due based on the circumstances.¹⁸ The key provision is some form of hearing that allows the individual a meaningful opportunity to be heard.¹⁹

In this case, Bellefonte had the benefit of participating in an extensive review and hearing process, including the FSA audit, program review report, FPRD, an appeal before the Office of Hearings and Appeals, and now an appeal before me. FSA has provided documentation showing the student records containing errors on which FSA based its liability calculations. Regarding Finding 2, Appendix D of the FPRD lists 26 students with corresponding dollar amounts of liability from erroneous Return to Title IV calculations.²⁰ FSA has also filed an affidavit explaining how Bellefonte's method of calculating refunds "erroneously inflates the students percentage of aid earned" and how a proper recalculation resulted in Bellefonte's liability.²¹ Regarding Finding 4, FSA filed a complete spreadsheet listing all the students and corresponding liabilities.²²

Bellefonte not only had notice of the basis of its liability in this case, but actually provided responsive evidence which FSA accepted during the appeals process, significantly reducing FSA's liability demand in Finding 4. Bellefonte's participation in the appeals process demonstrates its foreknowledge of the financial liability at issue in this appeal and FSA's means of assessing it. Accordingly, I reject Bellefonte's arguments regarding due process.

¹³ FPRD at 15; FSA Brief, Ex. 3A.

¹⁴ Decision at 5.

¹⁵ 34 C.F.R. § 668.119(a) ("Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.").

¹⁶ *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Mathews v. Elridge*, 424 U.S. 319, 333 (1975).

²⁰ FPRD, Appendix D.

²¹ FSA Exhibit ED-10.

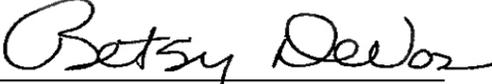
²² FSA Exhibit 3A (showing 22 students identified in Finding 4).

Based on the foregoing analysis, I affirm Judge Canellos' Decision upholding the findings of liability.

ORDER

ACCORDINGLY, the Decision of Chief Administrative Judge Canellos is hereby AFFIRMED. Bellefonte's financial liability of \$41,629 is upheld.

So ordered this 2nd day of November 2020.


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