



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

In the matter of

**ALVAREITA'S COLLEGE OF
COSMETOLOGY**

Docket Nos. 16-25-SP, 16-26-SP

Federal Student Aid Proceedings

PRCNs: 2016-1-05-29164
2016-1-05-29165

Respondent.

DECISION OF THE SECRETARY¹

Alvareita's College of Cosmetology (Alvareita College) has appealed the March 13, 2017, Decision issued by Administrative Judge Robert G. Layton (Administrative Judge).² The Decision upheld a total liability of \$652,734.40 for Alvareita College assessed by the office of Federal Student Aid (FSA).³

Based on the following analysis, I affirm in part and reverse in part the Administrative Judge's Decision.

Background

Alvareita College was an 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). The Alvareita A. Giles Living Trust held 100% ownership of the stock in Alvareita's College of Cosmetology, Inc., the corporate umbrella encompassing the two campuses of the college.⁴ The institution's namesake, Ms. Alvareita Giles, acted as CEO until her death on August 4, 2013.⁵ Upon her death, ownership transferred to each of her five

¹ Secretary of Education Betsy DeVos resigned as Secretary effective January 8, 2020. In accordance with 20 U.S.C. § 3412(a)(1) which states in pertinent part ". . . in the event of a vacancy in the office of the Secretary, the Deputy Secretary shall act as Secretary," Deputy Secretary Mitchell M. Zais began his service as the Acting Secretary upon the vacancy.

² *Alvareita's College of Cosmetology*, Dkt. Nos. 16-25-SP, 16-26-SP, U.S. Dep't of Educ. (Mar. 13, 2017) (Decision). Alvareita consisted of two locations: one in Godfrey, Illinois and one in Edwardsville, Illinois. Decision at 1. Each location filed a separate appeal arising from the same facts. The Administrative Judge consolidated the cases and issued a single decision.

³ *Id.* at 1, 6, 10.

⁴ *See Id.* at 2; Respondent's Petition for Appeal to the Secretary (Alvareita Brief) at 2.

⁵ Alvareita Brief at 2.

children, the trust beneficiaries.⁶ Sheila Fudge, one of Giles' daughters who had previously helped her mother with managing the institution, became the sole trustee of the trust.⁷

According to Fudge, she contacted FSA via phone August 16, 2013, following her mother's death, and informed FSA of that event.⁸ However, FSA did not receive a formal notice from Alvareita College of Giles' death or the change in ownership.⁹ On July 29, 2014, Alvareita College filed a recertification application on which Fudge had signed the name "Alvareita Giles."¹⁰ Subsequently, FSA investigated the matter and issued substantially similar Final Program Review Determinations (FPRDs) on March 31, 2016, for each Alvareita College location.¹¹

In Finding 1, FSA found a lack of administrative capability. The lack of administrative capability consisted of Alvareita College's failure to report Giles' death and the change in control of Alvareita College, and the falsification of Giles' signature on the recertification application.¹² The basis for the finding of a lack of administrative capability was Alvareita College's failure to report within 10 days a change in "[a] person's ability to affect substantially the actions of an institution if that person did not previously have this ability."¹³ Here, Alvareita College failed to report to the Secretary of Education within 10 days the ability of Sheila Fudge, as the successor trustee of the Alvareita A. Giles Living Trust, to now affect substantially the actions of Alvareita College. Pursuant to Finding 1, FSA required Alvareita College to revise its procedures and attend a training session.

In Finding 2, FSA found Alvareita College lost eligibility to participate in Title IV under 34 C.F.R. § 600.31(a)(1) when it underwent a change in ownership and control.¹⁴ Under § 600.31(a)(1), an institution ceases to be eligible to participate in Title IV programs when it undergoes a change in ownership unless the change in ownership fits into an excluded category involving certain family members under § 600.31(e)(1). FSA concluded that Alvareita College's change in ownership was not an excluded family transaction under § 600.31(e)(1), because Alvareita College failed to report the change under § 600.21(a)(6), and thus the change in ownership rendered Alvareita ineligible to make expenditures under Title IV after August 4, 2013.¹⁵ Accordingly, FSA found Alvareita College liable for all Title IV disbursements made after August 4, 2013, totaling \$652,734.40 in the aggregate for the campuses combined.¹⁶

Alvareita College appealed the FPRDs. On appeal, the Administrative Judge affirmed the FPRDs with regard to Finding 1 – Lack of Administrative Capability, agreeing with FSA that

⁶ Decision at 2.

⁷ Alvareita Brief at 2.

⁸ Respondent's Opening Brief on Appeal, Exhibit R-15 ("Declaration of Sheila Fudge").

⁹ Federal Student Aid's Brief on Appeal to the Secretary (FSA Brief) at 3.

¹⁰ Declaration of Sheila Fudge.

¹¹ FSA issued the FPRD for the Edwardsville location under the serial number PRCN 2016-1-05-29164 and the FPRD for the Godfrey location under the serial number PRCN 2016-1-05-29165. The substantive content of the FPRDs is virtually identical and they are hereafter referred to collectively and interchangeably.

¹² FPRDs at 3–5.

¹³ 34 C.F.R. § 600.21(a)(6).

¹⁴ FPRDs at 5–9.

¹⁵ 34 C.F.R. § 600.31(a)(1).

¹⁶ Decision at 2.

Alvareita College failed to report the change in ownership.¹⁷ However, the Administrative Judge reversed with regard to Finding 2 – Ownership Change Not Reported or Reported Late. The Administrative Judge concluded that Alvareita College’s change in ownership was a transfer to a family member, making it an excluded transaction under 34 C.F.R. § 600.31(e).¹⁸ Therefore, the transfer did not trigger Title IV ineligibility under § 600.31(a)(1). Nevertheless, in affirming Finding 1, the Administrative Judge upheld FSA’s determination that Alvareita College was liable for \$652,734.40. I will now turn to my analysis of these issues.¹⁹

Analysis

Under 34 C.F.R. § 600.21(a)(1)-(11), institutions participating in Title IV must report to the Secretary no later than 10 days after certain changes occur, such as changes in operations, structure, program offerings or other changes.²⁰ These changes include a person gaining the “ability to affect substantially the actions of the institution if that person did not previously have this ability.”²¹ This circumstance arises when, for example: (1) a person holds a 25 percent “ownership interest” in the institution, either alone or together with other family members, or (2) a person becomes a general partner, chief executive officer or chief financial officer of the institution.²² Reporting must be accomplished “in a manner prescribed by the Secretary.”²³ Failure to timely report “may result in adverse action.”²⁴

The regulation at 34 C.F.R. § 600.31 separately addresses changes in ownership of an institution. The general rule is that a change in ownership of a private nonprofit, private for-profit, or public institution automatically ceases the institution’s eligibility to participate in Title IV.²⁵ However, a change in ownership and control “reported under § 600.21 and otherwise subject to this section [§ 600.31]” does not include within its scope a transfer from an owner to his or her family member.²⁶

The first question before me is whether Alvareita College failed to report a change in ownership under 34 C.F.R. § 600.21. Alvareita College does not argue that it submitted any formal notice of Ms. Giles’ death or the change in ownership of Alvareita College from the Alvareita A. Giles Living Trust to the five children of Ms. Giles, the beneficiaries of the trust. Even if Alvareita College could provide hard evidence that Sheila Fudge, one of Ms. Giles’ children and a trust beneficiary, attempted to report these events by telephone almost 2 weeks after the fact, there is no basis to conclude that such a phone call would have satisfied the regulatory requirement of giving notice to the Secretary within 10 days. Therefore, the Administrative Judge correctly affirmed FSA’s Finding 1.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7–8.

¹⁹ *Id.* at 10.

²⁰ 34 C.F.R. § 600.21.

²¹ *Id.* § 600.21(a)(6).

²² *Id.* § 600.21(a)(6)(i), (iii).

²³ *Id.* § 600.21(a).

²⁴ *Id.* § 600.21(e).

²⁵ *Id.* § 600.31(a)(1).

²⁶ *Id.* § 600.31(e).

The second question before me is whether the change in ownership of Alvareita College was an excluded transaction under 34 C.F.R. § 600.31(e)(1). The Administrative Judge ruled that it was an excluded transaction.²⁷ On appeal, FSA argues that the Administrative Judge erred because a change in ownership can only be an excluded transaction if it is “reported under § 600.21” to the Department within 10 days.²⁸ Regardless of the familial relationship between the prior and new owners, FSA asserts the change in ownership automatically renders an institution ineligible for participation in Title IV programs.²⁹

Prior to 2002, the applicable regulations provided that a change of ownership “does not include a transfer of ownership and control upon the retirement or death of the owner, to” a member of the owner’s family.³⁰ That version of the regulations did not predicate the exemption in § 600.31(e) upon the institution providing notice to the Department that the owner died. The final regulation of November 1, 2002, which added the phrase “reported under § 600.21” to 34 C.F.R. § 600.31, described the change as “[a]mending §§ 600.21, 600.31, and 668.174 to provide clarification and *additional flexibility to the change of ownership provisions by expanding the definition of family members* and broadening the transactions that are not considered to be a change of ownership.”³¹ Absent from the final regulation is any intent to impose severe consequences (e.g., ending Title IV eligibility) upon small, family-owned schools who are not timely in reporting, for example, an owner who died and left the institution to a family member.

I find that “reported under § 600.21” merely directs a reader of 34 C.F.R. § 600.31 to the type of ownership change described in § 600.21 and its expanded definition of “family member.” The regulation requires an institution to notify the Department of the owner’s death and transfer of ownership under § 600.21. However, that provision does not make proper reporting under § 600.21 a precondition of the excluded transaction. A transfer of ownership to a family member described in § 600.31 is an excluded transaction, fulfilling the Department’s goal of providing “additional flexibility to the change of ownership provisions.” Failure to report under § 600.21 is only a violation of § 600.21; it does not also trigger the default consequences under § 600.31. Thus, the ownership transfer of Alvareita College was an excluded transaction. The new owners’ failure to report the excluded transaction within 10 days did not trigger an automatic loss of Alvareita College’s Title IV program eligibility under § 600.31. Therefore, the Administrative Judge correctly reversed FSA’s Finding 2.

Finally, I must consider whether FSA provided sufficient grounds for Alvareita College’s liability in light of my findings. The Administrative Judge upheld \$652,734.40 of liability based solely on affirming Finding 1. However, FSA did not determine that Alvareita College became ineligible to distribute Title IV funds based on Finding 1. Without such a determination, Finding 1 does not provide a ground for imposing this financial liability.

²⁷ Decision at 7–8.

²⁸ FSA Brief at 5 (quoting 34 C.F.R. § 600.31(e)).

²⁹ *Id.* at 6.

³⁰ 34 C.F.R. § 600.31(e) (1995); 59 Fed. Reg. 22,344 (Apr. 29, 1994).

³¹ 67 Fed. Reg. 67,049 (Nov. 1, 2002) (emphasis added).

In the FPRDs, FSA stated in Finding 1 that Alvareita College failed to notify both its accrediting agency, the National Accrediting Commission of Cosmetology Arts and Sciences, and the Department of the change in ownership, falsified Alvareita Giles' signature on its recertification application, and failed to notify the Department that Giles had died.³² Based on Finding 1, the Department required Alvareita College to enact written procedures and attend a training course to ensure such a violation would not happen in the future.³³ According to FSA, Alvareita College "has taken the appropriate steps" required to remain eligible to participate in Title IV programs.³⁴

Based on my review of the record, I affirm Alvareita College's liability under Finding 1, which FSA concluded was satisfied by Alvareita College's training and revision of procedures. I also affirm the Administrative Judge's reversal of Finding 2. Because the financial liability arose only under Finding 2, and Finding 2 is hereby reversed, I also reverse Alvareita College's financial liability.

ORDER

ACCORDINGLY, the Decision of Administrative Judge Layton is hereby AFFIRMED with regard to Findings 1 and 2, and REVERSED with regard to the liability calculation. Alvareita College's financial liability is reduced from \$652,734.40 to \$0.

So ordered this 19th day of January 2021.



Mitchell M. Zais, Ph.D.
Acting Secretary

Washington, DC

³² FPRDs at 4.

³³ *Id.*

³⁴ *Id.* at 5.

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