



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

HOUSTON COMMUNITY COLLEGE (TX)

Docket No. 18-54-SP

Federal Student Aid Proceeding

PRCN: 201720629592

Respondent.

DECISION OF THE SECRETARY

The question presented in this case is whether an institution participating in Title IV of the Higher Education Act of 1965 (HEA), as amended 20 U.S.C. § 1070 *et seq.* (Title IV), is liable for funds disbursed to students after the institution discovered those students' secondary school credentials (i.e., high school diplomas or equivalent) did not render them eligible for Title IV funds. Based on the following analysis, I find that an institution is liable for such disbursements.

A student must qualify for Title IV funds prior to disbursement by the school.¹ To qualify for Title IV funds, among other things, a student generally must have "a high school diploma or its recognized equivalent."² A qualifying credential is more than a piece of paper,³

¹ *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 7 (citing *In re Hamilton Professional Schools*, Dkt. No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003)).

² The regulation provides several alternative ways to qualify for Title IV without holding a high school diploma, but these alternatives are not at issue in the present appeal. 34 C.F.R. § 668.32(e) (alternatively allowing a student to become eligible by obtaining a passing score on a qualifying, independently administered test as allowed in the regulations, enrolling in an institution that participated in an approved State process, being home-schooled and meeting certain other criteria, or demonstrating an ability to benefit from the education offered by completing sufficient hours of instruction toward a degree).

³ The regulation at 34 C.F.R. § 600.2 *Recognized equivalent of a high school diploma* defines that term as follows: "The following are the equivalent of a high school diploma—

- (1) A General Education Development Certificate (GED);
- (2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;
- (3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or
- (4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation

but rather demonstrates the holder of the credential “completed an actual curriculum” and received “minimally sufficient levels of instruction.”⁴ Holding a credential from a diploma mill⁵ – an entity that, for a fee and with little to no coursework, provides a credential that may be used to represent completion of an education program to the general public – does not render a student eligible for Title IV funds.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 Part of an institution’s duty as a fiduciary is to “ensure that Title IV funds are only disbursed to eligible students.”⁸ Institutions are required to verify student information to establish eligibility for Title IV funds prior to disbursements.⁹

Houston Community College (HCC) is a Title IV-participating two-year public postsecondary institution offering associate degrees.¹⁰ On December 10, 2014, an official from HCC attended a meeting held by the Texas Attorney General’s Office (TXAG), and attended by the Department’s Office of the Inspector General, to identify diploma mills.¹¹ Among the diploma mills identified were five operating in the Houston area: Lincoln Academy, Marque Learning Center, Southwest Academy, Parkview Home School, and I. Jean Cooper Private School.¹² During the meeting, TXAG informed HCC and other community colleges that these diploma mills “were providing students with fraudulent diplomas that were being used to obtain Title IV funds.”¹³ In January 2015, HCC created the High School Validation Committee (HSVC) to ensure the validity of the institutions listed by HCC students on their admissions or financial aid applications.¹⁴

The HSVC began reviewing high school diploma providers in 2015. On January 21, 2015, the HSVC deemed Lincoln Academy to be “an invalid high school diploma provider.”¹⁵ Immediately following a March 4, 2015, meeting, the HSVC deemed Marque Learning Center and Southwest Academy to be invalid providers.¹⁶ The HSVC deemed Parkview Home School

that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.”

⁴ *In the Matter of Fortis College (FL)*, Dkt. No. 12-55-SP, U.S. Dep’t of Educ. (Decision of the Secretary) (Mar. 17, 2015) at 3–4.

⁵ 20 U.S.C. § 1003(5) *Diploma mill*.

⁶ Federal Student Aid Handbook, 2014–2015 at App’x A-15; *In the Matter of Fortis College (FL)*, Dkt. No. 12-55-SP at 3–4.

⁷ 34 C.F.R. § 668.82(b) (“In the capacity of a fiduciary—

(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 *In the Matter of Bellefonte Acad. of Beauty*, Dkt. No. 17-28-SP, U.S. Dep’t of Educ. (Decision of the Secretary) (Nov. 2, 2020) at 3.

⁹ *Id.* at 4.

¹⁰ Decision at 1.

¹¹ *Id.* at 2; FPRD at 7.

¹² Decision at 6–7 (citing FPRD at 9).

¹³ HCC Brief at 3.

¹⁴ Decision at 3.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

invalid in May 2015.¹⁷ In all, the HSVC identified 63 invalid providers out of more than 200 providers evaluated from January 21, 2015, to June 30, 2017.¹⁸

As the HSVC identified invalid providers, HCC canceled future Title IV aid to students who sought to qualify with credentials from those providers.¹⁹ However, HCC did not identify all five of the diploma mills at issue in this appeal prior to disbursing student aid in Spring 2015. For instance, HCC disbursed Title IV aid for the Spring 2015 semester on March 4, 2015, including to students with credentials from Marque Learning Center and Southwest Academy, which HCC deemed to be ineligible providers immediately thereafter.²⁰

Federal Student Aid (FSA) conducted a program review of HCC in 2017. FSA concluded that HCC had disbursed Title IV funds to students with ineligible credentials.²¹ In its July 27, 2018, Final Program Review Determination (FPRD), FSA found HCC liable for the ineligible disbursements, but limited the scope of liability to ineligible disbursements in 2015 and 2016, after the TXAG meeting, to students with credentials from the five diploma mills identified at that meeting.²² A total of 297 ineligible students were originally identified by FSA: 265 who received funds in the Spring 2015 and Summer 2015 terms, and 32 who received funds during the Fall 2015 and Spring 2016 terms.²³ Of the 265 students receiving funds in the Spring 2015 and Summer 2015 terms, 260 held credentials from Marque Learning Center and Southwest Academy.²⁴ When FSA issued the FPRD, it found 4 of the 297 students to be eligible, and therefore calculated liability based on the remaining ineligible students.²⁵ FSA's liability figure combines the amount of Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, and Federal Work Study funds disbursed to ineligible students (\$576,282.08), interest due on that amount (\$12,211.20), and the estimated loss for Direct Loans made to ineligible students (\$7,658.95).²⁶ The sum total of these three amounts is \$596,152.23.²⁷

HCC appealed the FPRD to the Department's Office of Hearings and Appeals, which assigned the case for a hearing conducted by Administrative Law Judge (ALJ) Robert G. Layton. In his April 29, 2020, decision (Decision), the ALJ concluded that HCC had a responsibility to cease disbursements to ineligible students in a timely manner and failed to do so.²⁸ The ALJ also rejected arguments by HCC that the liability found in the FPRD constituted a penalty and that

¹⁷ *Id.*

¹⁸ *Id.* At the time HCC filed its brief, it indicates the list of invalid providers has grown to 129. HCC Brief at 14.

¹⁹ Decision at 7.

²⁰ *Id.* at 8. Furthermore, although HCC had already identified Lincoln Academy as a diploma mill prior to the Spring disbursement, three students with Lincoln Academy credentials received Title IV aid in error. HCC Brief, Ex. R-4 (Letter dated June 30, 2017, from counsel for HCC to U.S. Department of Education) at 12.

²¹ Decision at 2.

²² FPRD at 12; Decision at 1–2.

²³ Decision at 9.

²⁴ FPRD at 8.

²⁵ Decision at 9.

²⁶ FPRD at 10.

²⁷ *Id.*

²⁸ Decision at 17.

FSA should reduce the amount of liability based on equitable factors.²⁹ HCC has since appealed the ALJ's Decision to me.

HCC's Appeal to the Secretary

In an appeal under 34 C.F.R. Part 668 Subpart H (Appeal Procedures for Audit Determinations and Program Review Determinations), the institution bears the burden of showing that all expenditures were proper and that the institution complied with program requirements.³⁰ In a subsequent appeal before the Secretary, the appealing party bears the burden of demonstrating, with a preponderance of the evidence, that the hearing official erred in his or her findings.³¹

HCC does not dispute FSA's or the ALJ's factual findings, but makes several arguments as to why it should not be liable for the disbursements. I consider each argument in turn.

Whether HCC Met its Legal Responsibilities

First, HCC asserts that the Department is holding it to a standard without reasonable and fair notice.³² HCC believes its creation of the HSVC and subsequent review satisfied its legal responsibilities and "[t]here was simply no way to reasonably respond faster" than HCC did.³³ HCC further argues that it "received only five names in December 2014, and by March 2015, HCC had found 47 invalid high school providers. It is circular reasoning to punish HCC for discovering invalid providers."³⁴ HCC also asserts the Department's standard is too strict, because "if the Department of Education determines that loans were awarded to students who were ineligible, then the institution that awarded those funds is liable for the funds in their entirety."³⁵ FSA counters that the TXAG meeting provided adequate notice that students holding credentials from the five providers identified at that meeting were not eligible for Title IV funds.³⁶

I agree with FSA. The record shows that HCC became aware on December 10, 2014, that the five institutions in question were diploma mills. At the meeting, TXAG informed HCC about the legal action it was taking against the diploma mills. TXAG had already filed suit against Marque Learning Center on December 5, 2014, on the basis that it "was not providing

²⁹ *Id.*

³⁰ 34 C.F.R. § 668.116(d) ("An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.
(2) That the institution or servicer complied with program requirements.").

³¹ *Central State University*, Dkt. No. 12-32-SA, U.S. Dep't of Educ. (Sept. 2, 2014) (Decision of the Secretary) at 1 (citing 34 C.F.R. § 668.116(d)); *see* 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.").

³² HCC Brief at 11–12.

³³ *Id.* at 11–13.

³⁴ *Id.* at 14.

³⁵ *Id.* at 17.

³⁶ FSA Brief at 8–9.

valid secondary education.”³⁷ Soon after, TXAG filed suit on January 8, 2015, against Southwest Academy.³⁸ As such, HCC was well aware that the five institutions could not confer credentials that qualified their holders for Title IV disbursements. Nevertheless, on March 4, 2015, HCC disbursed funds to 260 students holding credentials from Marque Learning Center and Southwest Academy for the Spring 2015 semester.

As a fiduciary, HCC owes the highest standard of care and diligence to the Department when handling Title IV funds. Although HCC created the HSVC to identify additional diploma mills, its handling of entities other than the five institutions is not relevant to this matter. HCC already knew the five institutions were diploma mills even before it formed the HSVC. HCC states it “had a policy and procedure for checking the validity of high school diplomas prior to January 2015.”³⁹ HCC fails to demonstrate why it was impossible or unreasonable to ensure the eligibility for Title IV of all students who received funds in the March 4, 2015, disbursement.

HCC accurately states that institutions are liable to repay Title IV funds awarded to ineligible recipients.⁴⁰ Accordingly, HCC is liable for funds disbursed to students based on holding credentials that HCC already knew did not confer Title IV eligibility prior to disbursement.

Whether Equitable Factors Reduce HCC’s Liability

Alternatively, HCC argues that FSA should have calculated its liability differently. First, HCC argues that FSA’s entire calculation is arbitrary because it does not provide a “detailed analysis of the supposed defaulted loans from students that listed the 5 specific diploma mills on their applications.”⁴¹ Then, HCC suggests it should receive “extra credit” for TXAG verdicts and settlements from litigation against diploma mills.⁴² Further, HCC believes it should be credited for the amount of time and money it spent creating a database of diploma mills which HCC provided to the Department.⁴³ Finally, HCC asserts that “many of these students graduated and paid their loans back” and “[t]he Department should not be permitted to collect money that has already been paid back by the borrower.”⁴⁴

First and foremost, liability for disbursement of Title IV funds to ineligible recipients is not subject to reduction for equitable considerations. Liability “is simply the amount of funds erroneously distributed, which the Department must recover. It is not punitive in nature . . . [and] is not subject to reduction”⁴⁵ Eligibility determinations must be made prior to disbursements and liability attaches upon making erroneous disbursements.⁴⁶ Students cannot

³⁷ FPRD at 8.

³⁸ *Id.*

³⁹ HCC Brief at 8.

⁴⁰ *Id.* at 18.

⁴¹ *Id.* at 15.

⁴² *Id.* at 15, 16.

⁴³ *Id.* at 16–17.

⁴⁴ *Id.* at 16.

⁴⁵ *In the Matter of Salon and Spa Inst.*, Dkt. No. 16-23-SP, U.S. Dep’t of Educ. (Decision of the Secretary) (Nov. 13, 2020) at 3.

⁴⁶ *Id.* at 4 (citing *In the Matter of Galiano Career Acad.*, Dkt. No. 11-71-SP, U.S. Dep’t of Educ. (Decision of the Secretary) (July 10, 2015) at 4.

retroactively become eligible for Title IV funds by, for example, graduating from their programs.⁴⁷ Also, as stated by the ALJ, liabilities paid to the State of Texas in separate litigation do not mitigate HCC's liability to the Department.⁴⁸ The Department acknowledges and appreciates the efforts HCC has made and continues to make to uncover diploma mills to avoid the misallocation of Title IV funds. Nevertheless, for the reasons described above, I reject all of HCC's arguments related to reducing its liability based on its expenditures and other events subsequent to the erroneous disbursements.

Regarding the inadequacy of FSA's calculation, the record does not support HCC's assertion. FSA indicates that, during the program review, "HCC was required to identify every student whose admission was based on a credential from the [five institutions]." ⁴⁹ HCC created a "Recipient Data Spreadsheet" listing students and providing their accompanying credentials upon which HCC made its Title IV eligibility determinations.⁵⁰

FSA based its liability calculation on the number of students who received disbursements from the five institutions after HCC became aware that the institutions were diploma mills and the credentials did not afford eligibility to their holders.⁵¹ FSA provided to HCC a list of student accounts as Appendix A of the FPRD upon which the liability calculation was based.⁵² Because it contained personally identifiable information, FSA provided Appendix A via a separate email with appropriate data encryption.⁵³

HCC does not argue with specificity in what way the spreadsheet it created, and the appendix created by FSA based on that spreadsheet, failed to establish which disbursements made to certain students were the basis of the liability. Based on the record before me, I find that HCC has not met its burden to show how the ALJ erred in affirming the FPRD.

Peripheral Arguments

In its brief, HCC explains that state law makes it difficult for it to obtain documentation verifying the eligibility of applications who attest to being home schooled.⁵⁴ HCC argues that some students, upon being rejected for having an invalid credential, resubmitted their applications claiming to be homeschooled.⁵⁵ HCC's assertions on this topic are not relevant to the present appeal. In this case, HCC learned of the five diploma mills in question directly from the TXAG meeting. The liability under consideration here derives solely from HCC's disbursement of funds to students holding credentials from those five diploma mills. HCC does not present evidence that FSA is assessing liabilities for any student with a credential from those five diploma mills who was initially rejected and then received Title IV funds by resubmitting a

⁴⁷ *Id.*

⁴⁸ Decision at 15.

⁴⁹ FPRD at 6.

⁵⁰ *Id.*

⁵¹ *Id.* at 6–7.

⁵² *Id.*, App'x A.

⁵³ *Id.* at 14.

⁵⁴ HCC Brief at 17.

⁵⁵ *Id.*

deceptive application claiming to be homeschooled. Therefore, I reject this argument as unpersuasive regarding the liabilities at issue in this case.

Conclusion

I agree with the ALJ's Decision and FSA's arguments on appeal. An institution is liable to the Department for Title IV funds disbursed to students holding ineligible credentials from diploma mills. Upon learning that a provider is a diploma mill, an institution has the responsibility as a fiduciary to ensure no disbursements are made based on erroneous eligibility determinations derived from such credentials. While the work HCC did to identify additional diploma mills is admirable, it had ample time to take the necessary steps to avoid Title IV distributions to ineligible recipients during the award years in question, but it failed to do so. FSA properly found HCC liable for making such disbursements in this case. I also acknowledge that many institutions of higher education, especially community colleges whose enrollments are declining, are facing financial challenges during this ongoing COVID-19 national emergency. Accordingly, while HCC must repay its liabilities, I encourage FSA to work with HCC on a reasonable payment plan for these liabilities, including the waiver of additional fees and any other penalties to the extent practicable.

ORDER

ACCORDINGLY, Judge Layton's decision in this case is AFFIRMED. HCC is liable for \$596,152 based on FSA's findings.

So ordered this 15th day of October 2021.


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