



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 16-56-SA

MCI INSTITUTE OF TECHNOLOGY,

Federal Student Aid Proceeding

Respondent.

Appearances: Mr. Charles Argo, Lake Worth, Florida, for MCI Institute of Technology.

Denise Morelli, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

MCI Institute of Technology (MCI), operated as a proprietary institute of higher education in West Palm Beach, Florida, until October 10, 2015 when it ceased providing educational services to students. While it was actively providing such educational services, it was eligible to participate in the Federal Pell Grant and Direct Loan, student financial assistance programs that are authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA) is the cognizant agency within the U. S. Department of Education (ED) that administers and oversees these programs. In accordance with the operative provisions of 34 C.F.R. § 600.40 (a)(1)(iii), MCI automatically lost its Title IV eligibility when it stopped providing educational services.

As an initial matter, to participate as an eligible post-secondary institution in the Title IV programs, an institution is required to execute a Program Participation Agreement with ED, requiring it to comply with all the program requirements and agreeing to act as a fiduciary when dealing with Title IV funds. 34 C.F.R § 668.82. As pertinent to the issues before me, 34 C.F.R. § 668.26 (b) required MCI, upon closing, to immediately notify the Secretary and within 45 days provide a letter of engagement of a qualified independent auditor to perform a close-out audit. MCI was then required to file the resulting audit within 45 days of that engagement letter. The record indicates that MCI failed to accomplish any of these required actions. Consequently, on November 1, 2016, FSA issued a Final Audit Determination (FAD) informing MCI that it failed to submit a required close-out audit covering the period January 1, 2014 to October 15, 2015,

and, therefore, it had failed to prove that the expenditures during that period had been correctly disbursed. The FAD demanded that MCI repay \$1,321,366 to ED. In an undated letter, received by FSA on December 8, 2017, Mr. Charles Agro filed an appeal of the demand in the FAD, "on behalf of the MCI Institute of Technology." In the appeal, Mr. Argo asserts that other individuals at MCI are the responsible parties for the debt and he is no longer in control of that organization.

As a preliminary matter, in my resolution of any dispute that results from a FAD, and in adjudging the resulting liability, it is important to recognize that after receiving an appropriate notice of a violation, the Respondent has the burden of proving that the questioned expenditures were correct and that it did not violate any regulatory requirements. 34 C.F.R. § 668.116(d). It is also important to note that throughout the processing of this appeal, MCI has not presented any evidence establishing the correctness of any of the expenditures of Title IV funds included within FSA's demand. Finally, it is of note that this action is against MCI and is not against any other individual. Whatever disputes might exist between the individuals associated with MCI, they are personal between them and are not germane to the action before me. It is obvious that the forum for settlement of any such dispute is not me or any other ED official.

On the merits, FSA in its responsive brief, argues that MCI has, as a matter of law, failed to satisfy its burden of proof in establishing that any of the expenditures that should have been covered by the close-out audit were correctly accounted for. It has been consistently recognized by this tribunal that it is likely that some of the expenditures were correctly disbursed, however, it is impossible for FSA to comply with its Title IV oversight responsibilities without the submission of a close-out audit or some equally verifiable evidence. *See, In the Matter of Velma B's College of Hair Design*, Docket No. 13-09-SA, U.S. Dep't of Educ. (Dec. 4, 2013).

FINDINGS and ORDER

I find that MCI Institute of Technology has failed to submit the required close-out audit or any other acceptable credible evidence sufficient to meet its burden of proof that the Title IV funds in issue were properly accounted for. Consequently, it is ORDERED that MCI Institute of Technology return to the United States Department of Education the sum of \$1,321,366 for the approved findings of its actionable failures to comply with the Title IV reporting requirements.



Ernest C. Canellos
Chief Judge

Dated: March 31, 2017

SERVICE

A copy of the attached decision was sent by certified U.S. mail, return receipt requested, to the following:

Mr. Charles Argo
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