**UNITED STATES DEPARTMENT OF EDUCATION**
OFFICE OF HEARINGS AND APPEALS
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WASHINGTON, D.C. 20202
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In the Matter of

**Cosmetology Career Institute,**

**Docket No. 21-48-SP**

Federal Student Aid Proceeding

PRCN: 2021-4-06-30387

Respondent.

Appearances: Ronald L. Holt, Esq., and Douglas M. Seacord, Esq.,
Rouse Frets White Goss Gentile Rhodes, P.C., for
Respondent Cosmetology Career Institute

Christle Sheppard Southall, Esq., Office of the General Counsel, for
U.S. Department of Education, Federal Student Aid Office

Before: Elizabeth Figueroa, Administrative Law Judge

# DECISION

## I. Introduction

### A. Summary of this Decision

This Decision upholds the findings and liabilities in the Final Program Review Determination (FPRD) that Respondent Cosmetology Career Institution (CCI) has challenged in this matter. Specifically, the finding of liability in the amount of $107,230, for closed school loan discharges, is supported and, therefore, affirmed. 34 C.F.R. § 668.118(b).

### B. Procedural History of this Case

On November 8, 2021, CCI, through its counsel, filed a Request for Review dated November 6, 2021. The request challenges the FPRD issued by the Federal Student Aid Office (FSA) of the U.S. Department of Education (the Department) on September 23, 2021.

By Order Governing Proceeding issued on December 2, 2021, the Office of Hearings and Appeals (OHA) set deadlines by which the parties' briefs, including any reply brief, and any exhibits, were to be filed.

On January 13, 2022, CCI filed a brief, in which it asserts that it is not responsible for the liabilities assessed in the FPRD, together with Exhibits (Exh.) R-1 through R-7. On February 23, 2022, FSA responded with a brief outlining the reasons that the FPRD is supportable and should be upheld, together with Exhs. ED-1 through 15. On March 17, 2022, CCI filed a reply brief.

The issues having been fully briefed, the administrative record is closed, and this matter is ripe for decision.

## II. Jurisdiction

On September 23, 2021, FSA sent the FPRD to CCI. By request for review dated November 6, 2021, CCI requested review of the FPRD, pursuant to 20 U.S.C. § 1094(b) and 34 C.F.R. § 668.113. CCI's request for review was received by the Administrative Actions and Appeals Service Group, U.S. Department of Education (AAASG), on November 8, 2021, and was, therefore, timely filed within 45 days of CCI's receipt of the FPRD, as required by 20 U.S.C. § 1094(b)(1) and 34 C.F.R. § 668.13(b). OHA has authority to hear this case. 20 U.S.C. § 1234; 34 C.F.R. § 668.117. Jurisdiction is established.

## III. Findings of Fact

Based on the evidence presented by the parties, I make the following findings of fact:

1. CCI was a proprietary cosmetology educational institution located in Greenville, Texas, and owned by New Growth Partners, LLC. Request for Review; Exhs. R-6, ED-2.

2. On November 19, 2013, CCI entered into a Program Participation Agreement with the Department to participate in federal student aid programs, including the Direct Loan Program. Under the Program Participation Agreement, CCI agreed to account for Federal funds entrusted to it and abide by all participation and administration requirements. Exh. ED-2.

3. On December 10, 2016, New Growth Partners, LLC, doing business as CCI, sent a letter to the National Accrediting Commission for Career Arts and Sciences, the Department's Dallas FSA office, and the Texas Department of Licensing and Regulation's Education and Examination Division, informing them that CCI permanently closed and ceased all training and education activities as of December 10, 2016. Exh. R-7.

4. CCI closed without prior notice to its students. Exh. R-4. CCI posted notice of its closing on its website. *Id*.

5. CCI did not find a teach-out partner school for its students to continue their studies. Exhs. R-4, R-5, R-6. CCI informed its students that it "worked to find a teach-out partner school in the proximity to Greenville and given our rural location this was not possible." Exh. R-6. Salon Boutique Academy, located 60 miles from CCI, was the closest institution with comparable beauty programs. Exh. R-5. In Fall of 2016, CCI contacted Salon Boutique Academy regarding a teach-out agreement, but did not enter into a formal teach-out agreement with Salon Boutique Academy. *Id*. However, Salon Boutique Academy said that it would be willing to accept CCI students who wished to complete their studies and CCI directed students who wished to complete their studies there. Exh. R-6. Salon Boutique Academy indicated that all CCI student credit hours would transfer, that tuition charges would be only for uncompleted coursework and at a rate comparable to CCI's, and that students could be assured of continuing their participation in federal loan programs. Exhs. R-4, R-5. CCI informed its students that Salon Boutique Academy would be "willing to accept" CCI students. Exh. R-6. None of CCI's cosmetology students transferred to Salon Boutique Academy. Exh. R-4.

6. After CCI closed on December 10, 2016, the Department approved Direct Loan discharges totaling $112,002.00 Exh. ED-1 at 7. That liability was established in a close-out Final Audit Determination (FAD) issued on July 10, 2020. *Id*.

7. After issuance of the FAD, the Department approved Direct Loan discharges for 13 additional students totaling $107,230.00. *Id*. Twelve of the 13 students who attended CCI at the time of its closure were granted school loan discharges based on applications they submitted to the Department. Exhs. ED-3-10, 12-15. In each application, the student certified that they were unable to complete the education program at CCI due to the closure of the school; that they did not complete the program at CCI prior to its closure; and, that they did not complete the educational program at another institution. *Id*. The Department discharged the thirteenth student's loan without an application based on National Student Loan Data System records that showed the student attended CCI through at least November 10, 2016, and did not subsequently re-enroll in a Title IV eligible institution within three years of that date. Exh. ED-11.

8. On July 20, 2021, FSA's School Eligibility and Oversight Service Group (SEOSG) conducted an off-site program review of CCI, which review was limited to determining liability for closed school Direct Loan discharges resulting from CCI's closure. Exh. ED- 1.

9. On July 27, 2021, FSA's Dallas School Participation Team issued a Program Review Report finding that closed school loan discharges in the total amount of $107,230.00 were granted to 13 CCI students. The Program Review Report contained a detailed list of the discharged loans, which list contained the first and last names of students, the

last four digits of their social security numbers, the type(s) of loans they received, the discharge post dates, and the amounts discharged. Exh. ED-1 at 9. [1]

10. On August 6, 2021, the Department sent, via e-mail and United States Postal Service, a letter to Mr. Thomas Kube, CCI's former President and Chief Executive Officer, together with a copy of the July 27, 2001 Program Review Report. Exhs. ED- 1, R-1 In its letter, the Department asked Mr. Kube to respond, within 30 days, to each finding in the Program Review Report by providing any supporting documentation that could resolve the liability identified for the 13 closed school loan discharges identified in the Program Review Report. *Id*.

11. Neither Mr. Kube nor anyone else on behalf of CCI responded to the Program Review Report.

## IV. The Final Program Review Determination

On September 23, 2021, the Department issued the FPRD to CCI, assessing it $107, 230 in liability for the 13 former students identified in the Program Review Report as having received closed school loan discharges. Exhs. ED-1, R-1. Attached to the FPRD as Appendix A was a List of Closed School Discharges that comprised the $107,230.00 in liability. Exh. ED-1 at 9. The list contained the first and last names of all 13 students, the last four digits of their social security numbers, the type(s) of loans they received, the discharge post dates, and the amounts discharged. *Id*.

## V. The Parties' Arguments

In its Request for Review and Brief, CCI argues that (1) the student loans at issue should not have been discharged because CCI made arrangements with another school, Salon Boutique Academy, to accept transferring CCI students and to credit them for work completed at CCI; (2) no causal relationship exists between the closure of the school and its former students' inability to complete their programs of study, as required for discharge under 20 U.S.C. § 1087(c)(1); (3) neither the closed school loan discharge statute nor regulation conveys an automatic right for the Department to reclaim the value of the discharged loan from the closed school; and, (4) even if discharge had been appropriate, the Department has not met its burden of providing adequate notice of its demand for repayment as it has failed to articulate an appropriate legal basis on which it asserts a right to the repayment of the discharged loans. Additionally, CCI asserts that due to the protracted delay between the time of CCI's closure and issuance of the Department's notice CCI may not have all its records available.

The Department counters that it properly discharged the loans for the 13 students identified

[1] These students are identified in Exh. ED-1, in the FPRD's Appendix 1. To avoid disclosure of Personally Identifiable Information (PII), these students have not been identified by name or otherwise in this decision.

in the FPRD; that Title IV and the applicable regulations create a right of recovery for the Department against a closed school for the value of the loan amounts discharged; that CCI is liable for the amount of the discharged student loans; and, that CCI has not demonstrated that it is not liable for the closed school loan discharges.

## VI. Issues Presented

Based on the challenges to the FPRD that CCI has advanced, and the arguments made by the parties, the issues presented are as follows:

1. Did the Department fail to satisfy its burden of production because its notice to CCI was inadequate as it lacked authority for the basis of its right to seek reimbursement for the student loan discharges?

2. Does the Department have authority to seek reimbursement from CCI for the loan discharges granted to the 13 students at issue in the FPRD?

3. If the Department satisfied its burden of production, has CCI met its burden of proof in demonstrating that the 13 students were not eligible for closed school loan discharges?

4. Were the 13 student whose student loans were discharged eligible for closed school loan discharges under 34 C.F.R. § 685.214 if they had a readily available option to complete their programs and, consequently, no causal relationship existed to justify loan discharges?

5. Is the liability assessed in the FPRD for school loan discharges due to CCI's closure supportable in fact and law?

6. Is CCI absolved of liability for the school loan discharges based on its not having retained records concerning the 13 student loans at issue?

## VII. Discussion and Conclusions of Law

### A. Adequacy of Notice of Demand for Repayment of Closed School Loan Discharges

In Subpart H appeals of final program review determinations, FSA bears the burden of production, while the institution bears the burden of proof. 20 U.S.C. §§ 1234a(a)(2), 1234a(b)(3); 34 C.F.R. § 668.116(d).

Title 20 U.S.C. § 1234a(a)(2) requires the Department to state a prima facie case. It does not require the Department to establish or prove a prima facie case, but merely to provide notice to the recipient. *Application of the State of South Dakota*, Dkt. No. 91-24-R (Sec. Dec. Oct. 21, 1991) at 2–3. FSA has the burden of providing adequate notice of its demand. *In the Matter of Housatonic*, Dkt. No. 15-36-SP, U.S. Dep't of Educ. (July 26, 2016).

Although CCI does not challenge the factual basis for the granting of the closed school

loan discharges or the loan amounts discharged, CCI argues that the FPRD did not provide it with adequate notice because the notice does not articulate a legal basis that supports the Department's right to repayment of the discharged loans. CCI argues that FSA did not meet its burden of production due to this deficiency in the notice.

As FSA points out, its Program Review Report provided CCI with adequate notice of both the liability and amount sought. The Program Review Report provided the total amount of liabilities and detailed information about the liability determination. Exh. ED-1. The Program Review Report contained a detailed list of the discharged loans, which list contained the first and last names of students, the last four digits of their social security numbers, the type(s) of loans they received, the discharge post dates, and the amounts discharged. *Id*. The Program Review Report cited 34 C.F.R. §§ 685.214(c)(1)(i), 685.214(c)(1)(i)(C), and 685.214(b). *Id*. Additionally, the Program Review Report cited to and quoted the text of 34 C.F.R. § 685.214(e), which provides that a student borrower is deemed to have assigned to and relinquished the borrower's right of recovery to the Secretary upon discharge of the loan. *Id*. CCI did not respond to the Program Review Report, although allowed the opportunity to do so.

The FPRD later issued to CCI also provided sufficient notice and support for the assessed liability. It specifically stated that students who received loans filed claims for discharges and that CCI was subject to the Department's claim of restitution on discharged Title IV, HEA loans based on its Program Participation Agreement, Title IV of the HEA, and all applicable regulatory provisions. Exh. ED-1 at 1-11. Additionally, the FPRD included, as Attachment C, a copy of the Program Review Report, which cited to, among other authority, 34 C.F.R. §§ 685.214(b), 685.214(c)(1)(i), 685.214(c)(1)(i)(C), and 34 C.F.R. 685.214(e). *Id*.

CCI's argument that the Department's notice of demand was inadequate is not persuasive. The Department articulated both factual and legal grounds for the liability assessed for closed school loan discharges associated with the 13 students contained in the FPRD. FSA provided evidentiary support demonstrating that the discharges were made in accordance with the statutory and regulatory requirements. *See* Exhs. ED-1 and 3 – 13. It is clear from the entire record that Respondent had adequate notice of the basis for the liability and the amount sought by FSA in this matter. Thus, FSA met its burden to establish a prima facie case and sufficiently identified the basis for the liability and the amount sought by FSA.

In arguing that the notice was inadequate, what CCI really claims is that FSA did not provide and does not possess sufficient authority for its legal demand. CCI's claim is intertwined with its argument that the Department lacks authority to reclaim the value of the discharged loan, which issue is addressed immediately below.

### B. The Department's Authority to Reclaim the Value of the Discharged Loans

CCI argues that neither the statute nor the regulation conveys an automatic right for the Department to reclaim the value of the discharged loan from the closed school, nor does either indicate that the legal forms, evidentiary burdens, or even filing procedures applicable to the pursuit of any such borrower claims are to be swallowed up by Department fiat. CCI notes that

both 20 U.S.C. § 1087 and 34 C.F.R. § 685.214 state that the Department assumes whatever legal rights may have been available to the borrower of a discharged loan against the borrower's closed school. CCI claims that although the text of 34 C.F.R. § 685.214(e) points to a contract theory of recovery, the FPRD does not allege a cause of action rooted in contract principles and there is no reference to any other applicable law by which a student may have a right to a student loan refund from CCI.

CCI's interpretation of the rights conferred on the Department is not persuasive. The Department's right of recovery is grounded in statutes and regulations that make clear the intent of the law is to allow the Department to seek reimbursement for closed school loan discharges. The Department's authority to collect on Federal Direct Loan funds for which students received closed school loan discharges has been previously addressed and is well-settled. *See In the Matter of College of Visual Arts*, Dkt. No. 15-05-SP, U.S. Dep't of Educ. (July 20, 2015); *In the Matter of Pennsylvania School of Business*, Dkt. No. 15-04-SA, U.S. Dep't of Educ. (Oct. 27, 2015); *In the Matter of Hawaii Business College*, Dkt. No. 10-09-SP, U.S. Dep't of Educ. (Aug. 16, 2010).

When a student is unable to complete the educational program in which he or she is enrolled due to an institution's closure, Title IV requires the Secretary to discharge the student borrower's liability on his or her loans by repaying the amount owed to the lender and then recovering the value from the closed school. 20 U.S.C. § 1087(c)(1). This section of the Act explicitly states that a "borrower whose loan has been discharged pursuant to [Section 437(c)(1)] shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution." *Id*.

Additionally, Title IV prescribes that when an institution decides to cease operations, that school must submit a teach-out plan to the accrediting agency. 20 U.S.C. § 1099(b)(3)(C). The statute defines a "teach-out plan" to be a "written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan." 20 U.S.C. § 1094(f)(2).

To implement the directives of Title IV, the Department implemented regulations governing closed school loan discharges and teach-out plans. The regulations provide for specific criteria a student borrower must meet in order to qualify for a discharge, specifying that such a student must submit a written request and sworn statement to the Secretary indicating that he or she received loans to attend school, did not complete the program of study at that school because the institution closed while the student was enrolled (or the student withdrew no more than 120 days before the school closed), and the student did not complete the program through a teach-out or by transferring academic credits earned at the closed school. 34 C.F.R. § 685.214(c). The regulations bar students from receiving a discharge if they "complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." 34 C.F.R. § 682.402(d)(3)(ii).

The regulations also provide for the transfer to the Secretary of the student borrower's right of recovery against third parties after the Secretary discharges that student's loans. The provision states:

> (e) Transfer to the Secretary of borrower's right of recovery against third parties.
>
> (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.
>
> (2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

34 C.F.R. § 685.214(e).

These provisions create a right of recovery for the Secretary against a closed school upon discharge of student loans and make clear that the regulation preempts any conflicting state law. Review of additional regulatory history reveals that the purpose of the regulations applying to Title IV federally-backed student loans, among other considerations, is to "protect the Federal fiscal interest," suggesting that the procedures governing closed school discharges exist in part to protect the Federal government and subsequently the taxpayer. 59 Fed. Reg. 61,664, 61,688 (Dec. 1, 1994).

As held in *In the Matter of Hawaii Business College*, Dkt. No. 10-09-SP, U.S. Dep't of Educ. (Aug. 16, 2010):

> Under the provisions of 20 U.S.C. § 1087(c), the Secretary of Education is directed to pay off the Title IV loans of any such student and then discharge the obligations of those students who apply to ED for such discharge and certify that they were unable to complete their education because of the closure of their school. *Once the student is discharged, the statute directs the Secretary, as the subrogee to the students' rights, to pursue recovery against the closed school for the amounts forgiven*. (Emphasis added).

Contrary to Respondent's argument, the Department's right of recovery is grounded in statutes and regulations that clearly allow the Department to seek reimbursement for closed school loan discharges.

**C. Requirement for a Closed School Loan Discharge**

Under the Federal Direct Loan Program regulations, a student can be eligible for a "closed school loan discharge" if they are unable to complete the program of study for which the loan was made because the school at which they were enrolled closed, or if the student withdrew from the school within 120 days prior to its closing and the student did not complete their educational program through a teach-out at another school or by transferring academic credits to another school. 34 C.F.R. § 685.214.

The closed school discharge provision for Federal Direct Loans states that the Secretary will discharge a borrower's obligation to repay a Direct Loan "if the borrower… did not complete the program of study for which the loan was made because the school at which the borrower… was enrolled closed, as described in paragraph (c) of this section." 34 C.F.R. §685.214(a)(1).

Student eligibility requires that the student:

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed…

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school…

34 C.F.R. § 685.214(c)(1)(i).

A student applies for a closed school loan discharge by filing an application, sworn under penalty of perjury attesting that they meet the requirements for discharge. 34 C.F.R. § 685.214(c)(1)(i)(B). For the Federal Direct Loan Program, the Secretary reviews the application and, if it meets the requirements for discharge, the Secretary discharges the obligation. 34 C.F.R. § 685.214(c)(3)(ii).

**D. Causal Relationship Between School's Closure and Loan Discharges**

CCI argues that if students have readily available options to complete their programs, no causal relationship exists to justify loan discharges. According to CCI, the 13 students who received closed school loan discharges were given the opportunity to finish their program at a nearby school, Salon Boutique Academy, carrying over all existing credit hours with a tuition rate equivalent to or lower than that of CCI. CCI argues that because Salon Boutique Academy provided a real and reasonable option for students to complete their programs, students' decisions to choose not to continue and complete their education at Salon Boutique Academy does not form the basis for a valid loan discharge request, and, therefore, no liability should exist to be levied against CCI.

Under 20 U.S.C. § 1087(c), the Secretary of Education shall discharge a student's liability

on a loan if the student was unable to complete the program of study in which he or she was enrolled due to the closure of the school. 34 C.F.R §§ 685.214(a)(2)(i), 682.402(d)(l)(ii)(A) (defining a school 's closure date as the date on which the school ceases to provide educational instruction in all programs, as determined by the Secretary); 20 U.S.C. § 1087(c)(l). 5 HEA §437(c)(2); 20 U.S.C. § 1087(c)(2); 34 C.F.R. § 685.214(e). A "borrower whose loan has been discharged pursuant to Section 437(c)(2) shall be deemed to have been assigned to the United States the right to a loan refund up to the amount discharged against the institution." HEA §437(c)(2); 20 U.S.C. § 1087(c)(2); 34 C.F.R. § 685.214(e). If the borrower meets the qualifications for discharge, the Secretary grants the closed school loan discharge and the borrower is relieved of their obligation to repay their student loan. 34 C.F.R. § 682.214(c).Once a student's loan discharge is granted, the Secretary, as the subrogee of the student's rights, is directed to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682 .214(e). The student is deemed to have assigned to the Secretary the right to a loan refund from the institution, its principals, affiliates, and their successors in the amount of the discharged loan. 34 C.F.R. § 682.402(d)(5)(i); 20 U.S.C § 1087(c)(2).

CCI contends that the student loans at issue should not have been discharged because it made arrangements with another school to accept transferring CCI students and to credit them for work completed at CCI and, consequentially, the loan discharges are invalid because students could have completed their programs at the other school. However, an institution does not meet the requirements for a "teach-out" under 34 C.F.R. § 602.3 where there is no evidence of an agreement with another institution to permit students to complete their courses of study upon the institution's closing. Notification to students of impending closure and arranged informal meetings for students with other schools is insufficient to meet the requirements for a "teach-out.". *In the Matter of Tri-State College*, Dkt. No. 12-53-SP (Sec. Dec. Sept. 30, 2014). Here, CCI's informal agreement with Salon Boutique Academy and CCI's notice directing its students to contact Salon Boutique Academy, without more, do not meet the requirements for a "teach-out" under 34 C.F.R. § 602.3.

CCI's scenario in which students could have completed their programs at another school is not what is contemplated by the statute or regulation. Even if a formal agreement was in place, a student remains eligible for a closed school loan discharge if they chose not to complete their educational program at another institution. *In the Matter of College of Visual Arts*, Docket No. 15-05-SP, U.S. Dep't of Educ. (July 20, 2015). And, the Department may seek reimbursement of any closed school loan discharges given. *Id.* at 8 – 10.

Further, there is no requirement that students must complete their programs of study at another institution and students cannot be forced to do so. 34 C.F.R §§ 685.214(a)(2)(i), 682.402(d)(l)(ii)(A). The fact that the 13 former CCI students elected not to complete their programs of study at Salon Boutique Academy (or anywhere else, for that matter) – for reasons unknown on this record – does not render them ineligible for a closed school loan discharge. As this tribunal has held, "[e]ven if there are other factors preventing a student's completion of a program when a school closes, the regulations on discharge of student loans only require certification that the student's inability to complete his or education is caused by the school's closure and that the student did not complete the program through a teach-out plan or by transferring to another institution." *In the Matter of Arkansas Beauty College*, Dkt. No. 16-19-SA,

U.S. Dep't of Educ. (Sept. 28, 2016) at 6-7.

In support of its argument that the 13 former students were ineligible for discharges because they did not pursue the Salon Boutique Academy option, CCI asserts that a recently issued federal district court opinion, *Kennedy v. Stein*, 2021 WL 4509167 (M.D. Ga. Oct. 1, 2021), held that that the existence of a teach-out option renders students ineligible for a closed school loan discharge. CCI's reliance on *Kennedy v. Stein* is misplaced. In that decision, the Georgia District Court noted that 34 C.F.R. 685.214 requires that when an institution's closure is imminent, students who can complete their programs of study via teach-out plans are not eligible to have their student loan debt discharged by the Department but that if a student is unable to complete the program in which the student is enrolled due to the closure of the institution, the student can apply to have his or her federal student loan debt discharged. *Id.* at *3. The *Kennedy* court was not faced with the issue of closed loan discharges as the institution in *Kennedy* continued offering educational programs while it underwent a financial restructure. In short, the *Kennedy v. Stein* court did no more than identify completion of programs of study via teach-out plans as a determining factor of ineligibility for a closed school loan discharge in the context of risk assessments if the school would have permanently closed. Unlike here, the institution in *Kennedy* did not permanently close and students were able to complete their programs of study.

The 13 students at issue in the FPRD here could not complete their programs at CCI due to its closure on December 10, 2016, and did not complete their programs of study at another institution as demonstrated by the evidence submitted by the Department from its NSLDS system and attested to under penalty of perjury by these students. Hence, these students were eligible for and did receive closed school loan discharges. CCI has offered no evidence that refutes that the 13 students did not complete their programs of study following its closure. Further, CCI makes no argument and offers no evidence to show that these students were otherwise ineligible to receive closed school loan discharges aside from its position that there is no causal connection between CCI's closure and the students not completing their educational programs at CCI.

**E. Retention of Records and Missing Records**

In its Request for Review, CCI stated that due to the protracted delay between the time of CCI's closure and issuance of the Department's notice all its records concerning the 13 student loans may not be available. CCI did not elaborate on this in either its Request for Review or Brief and did not explain reasons for or assert prejudice to it based on any missing records. In any event, institutions, including closed schools, are required to retain records until the latter of resolution of loans, claims or expenditures questioned in the program review, or the end of the retention period otherwise applicable under 34 C.F.R. § 668.24(d)(4), (e). "The passage of time from the start of a program review to issuance of an FPRD does not absolve an institution from its duty to provide records." *In the Matter of the Hair California Beauty Academy*, Dkt. No. 18-13-SP (Sec. Dec. Jan. 15, 2021) at 4-5.

**F. Respondent's burden of proof**

Respondent has the burden of proving that it should not be liable for the amount of student

loans for which recovery the Department seeks in the FPRD. 20 U.S.C. 1234a(b)(3); 34 C.F.R. § 668.116(d),

Respondent argues that the burden of proof set out in § 668.116(d) is inapplicable to school loan discharge proceedings because the Department lacks authority to reclaim the value of discharged loans and also that the burden of proof did not shift to it because the Department did not meet its burden of production. As found above, the Department has authority to assess liability for discharged loans and provided adequate notice to CCI and thus met its burden of production.

CCI has offered no evidence to prove it is not liable for the closed school loan discharges and, therefore, has not satisfied its burden of proof.

## VIII. Conclusion and Order

With respect to liability for Federal Direct Loan liabilities for closed school loan discharges for the 13 students who were granted loan discharges, the finding in the FPRD sufficiently demonstrates the existence of a prima facie showing that CCI is liable to the Department for the closed school loan discharges granted to the 13 students at issue. CCI failed to meet its burden of establishing that the closed school loan discharges should not have been granted or the liability for those discharges assessed to it and, therefore, it remains liable for these discharged amounts. The FPRD's liability assessed to CCI in the amount of $107,230 is supported and the FPRD is upheld.

Dated: May 27, 2022

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Elizabeth Figueroa
Administrative Law Judge

# NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 668.119.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. A party appealing the decision may submit proposed findings of fact or conclusions of law to the Secretary. If a party submits proposed findings of fact, then the findings must be supported by admissible evidence that is already in the record, matters that may be given official notice, or stipulations of the parties. Neither party may introduce new evidence on appeal. An appeal must be filed within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appeal shall clearly indicate the case name and docket number. The appealing party shall provide a copy of the appeal to the opposing party, simultaneously with its filing of the appeal. The opposing party will then have 30 days to file its response to the appeal to the Secretary and shall provide a copy of its response to the party who appealed the decision, simultaneously with its filing of the response.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed with OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

| Hand Delivery or Overnight Mail* | U.S. Postal Service* |
|---|---|
| Secretary of Education c/o Docket Clerk<br>Office of Hearings and Appeals<br>U.S. Department of Education<br>550 12th Street, S.W., 10th Floor<br>Washington, D.C. 20024 | Secretary of Education c/o Docket Clerk<br>Office of Hearings and Appeals<br>U.S. Department of Education<br>400 Maryland Avenue, S.W.<br>Washington D.C. 20202 |

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119. Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

SERVICE

Service completed by Office of Hearings and Appeals Electronic Filing System (OES) automatic email notice** sent to the email of record for the following registered e-filers:

Ronald Holt, Esq.
Douglas M. Seacord, Esq.
Rouse Frets White Goss Gentile Rhodes, P.C.
5250 W. 116th Place, Suite 400
Leawood, Kansas 66211

Christle Sheppard Southall, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W., Room 6E236
Washington, D.C. 20202

**Service and receipt thereof will be the date indicated in the confirmation of receipt email for E-filing consistent with 34 C.F.R. § 668.122. Hard copies will NOT follow.