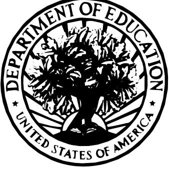

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

COLLEGE OF VISUAL ARTS,

Respondent.

Docket No. 14-23-SA

Federal Student Aid Proceeding

ACN: 05-2013-30670

Appearances: Mark W. Vyvyan, Esq., Fredrikson & Byron, Minneapolis, Minnesota, for the College of Visual Arts.

Jennifer L. Woodward, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

The College of Visual Arts (CVA) was a private, four year institution of higher education located in St. Paul, Minnesota, offering educational programs leading to a Bachelor of Fine Arts Degree. These programs were accredited by the Higher Learning Commission and were eligible to participate in the Federal Pell Grant and the Federal Family Education Loan Programs that are authorized under 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*. In the U. S. Department of Education (ED), the office having jurisdiction and oversight of these programs is the office of Federal Student Aid (FSA).

CVA ceased providing education and closed on June 30, 2013. As one consequence of such precipitous closure, a number of the students could not complete their respective educational programs; however CVA had arranged a teach-out for students to complete their programs at the Minneapolis College of Art and Design (MCA&D). Despite the fact that the teach-out was approved by CVA's accrediting agency, one of those students chose not to take advantage of the opportunity to complete their education at MCA&D. As a consequence, that student filed a request under the provisions of 20 U.S.C. § 1087(c), to the Secretary of Education

to pay off the student's Title IV loan obligations on the basis of inability to complete their program of study because of their school closure. In such situation, once the Secretary pays off the loans, he then discharges the obligations of any student who applies to ED for such discharge and certifies that they were unable to complete their education because of the closure of the school. Once a student is discharged, the Secretary is subrogated to the student's rights to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682.214(e).

After reviewing a close-out audit, FSA issued a Final Audit Determination (FAD) dated March 11, 2014, finding that $14,500 was due for the one student's loans that were discharged under the above provisions. In addition, the FAD asserted a claim for an additional $127 in imputed interest. By letter dated April 25, 2014, Respondent's Chairman of the Board filed a Request for Review in the above-captioned proceeding challenging the findings of the FAD. In any Subpart H -- audit and program review -- proceeding, the Respondent has the burden of proving, by a preponderance of the evidence, that the Title IV funds it received were lawfully disbursed, earned and maintained. If it fails to establish the correctness of the expenditure of federal education funds, the Respondent must return the funds to ED. 34 C.F.R § 668.116 (d).

This is not the first case that this tribunal has decided in this area. *See, In re Denver Academy of Court Reporting,* Docket No. 05-26-SP, U.S. Dep't of Educ. (Sept. 27, 2005) and *In re Tri State College of Massotherapy,* Docket No. 12-53-SP, U.S. Dep't of Educ. (Jan. 9, 2013). CVA's counsel points out that there are differences in these cases from the present one -- the difference being that here CVA took all the actions that were required by statute and regulation when it closed. Specifically, it entered into a Teach-out and Transfer Agreement with MCA&D; that agreement was approved by its accrediting agency, and CVA's students could matriculate into the new nearby school seamlessly. In summary, CVA's counsel asserted that CVA attempted to comply with all ED directives relative to school closings and should not be responsible to pay for the student in question. 20 U.S.C. §1094(f)(2) and 20 U.S.C. §1099b(c)(3).

Although the Respondent has the burden of proof in this proceeding, FSA has the burden of providing adequate notice of its demand. Here, FSA has presented sufficient information to establish a *prima facie* case for its demand in the FAD. It has shown that the student at issue had certified in an application for relief that they did not complete their programs of study at CVA because of its closure and that they did not complete such programs at another institution. Further, FSA records confirm such claims. I have examined the record and am convinced that the statutes in question give to a student of a closed school the right to have their Title IV loan obligations paid off by the Secretary and then have the Secretary reimbursed by the closed school. The statute and regulations only require that the student complete some perfunctory actions and then assist the Secretary in recouping the Title IV funds from the institution once the school is closed. 34 C.F.R. § 685.214 (c). I find that there is no exception built into the law for a school to avoid repaying these loans when it closes through a good faith setting-up of a teach-out program if the student chooses not to continue. Therefore, I AFFIRM the demand in the FAD.

I believe in this situation an observation is appropriate. I am personally familiar with the developments in the Title IV area surrounding the subject of closed schools. On this issue, over

time, it became apparent that students were being required to pay off Title IV loans they incurred at a school that eventually closed. Those students took on substantial debt that was repayable and yet, such students were unable to complete their education and as a consequence, were less likely to afford their repayments. Congress created a two-prong potential remedy to assist students in the closed school situation. One was to require that a closed school create a teach-out whereby students could transfer to a new school and complete their education. Separately, although it appears to me to be congruently, the Secretary was given the authority to relieve such students of their loan liabilities. Of course, a student could only avail themselves of one of those remedies not both – the only way to read the pertinent authorities is that it is the student who choses which alternative. The only stated requirement is that the student certifies that they did not complete their program because the school closed and they did not complete the program at another school either in a teach-out or by transferring credits from the closed school. In looking back, it would have avoided conflict if the authorities had made specific provision for a situation where an acceptable teach-out alternative is available and the student chooses not to attend. The student may have a good explanation for the selection. One ponders – might it not have been appropriate for the regulations to require the student to provide some explanation of their choice?

On the one hand, it is the student who is better able to determine whether a new program at a new school would suit them. On the other hand, the closed school has provided education to the student and has created an approved teach-out that provides for the transfer of credits and admission to a school that the accrediting agency has apparently determined to be equal to the closed school. Separately, under normal conditions, the closed school would have earned the tuition and fees it charged the student for that one-year of successful education. This leads to the possible anomalous situation where the student could be relieved of their Title IV loan obligations and yet be liable under contract law to pay for the education that they contracted for and received from the closed school.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that the College of Visual Arts pay to the United States Department of Education the sum of $14,627.00, in a manner as required by law.

____

Ernest C. Canellos
Chief Judge

Dated: August 14, 2014

SERVICE

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

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