**UNITED STATES DEPARTMENT OF EDUCATION**
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
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In the Matter of

**Institute of Allied Medical Professions,**

Respondent.

**Docket No.: 14-68-SP**

Federal Student Aid Proceeding

PRCN: 20101022706

Appearances: Ronald L. Holt, Esq. and Julie G. Gibson, Esq. of Dunn & Davison, LLC, Kansas City, MO, for the Institute of Allied Medical Professions

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

Before: Angela J. Miranda, Administrative Law Judge

# DECISION

## I. Jurisdiction and Procedural History

The Institute of Allied Medical Professions (IAMP) was a private, non-profit school located in the State of New York. The school provided a sixteen-month Diagnostic Medical Sonography (DMS) program. This program was accredited by the Accrediting Bureau of Health Education Schools (ABHES) and as of February 21, 2008 was provisionally eligible to participate in various federal student aid programs that are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV).[1] The United States Department of Education (Department), the Office of Federal Student Aid (FSA) has jurisdiction and oversight over Title IV programs.

[1] 20 U.S.C. § 1070 *et seq*. (2012); 42 § U.S.C. 2751 *et seq*. (2012).

From November 16 to November 20, 2009, FSA's New York/Boston School Participation Team performed an on-site program review at IAMP to assess the school's compliance with Title IV program requirements. The reviewers examined samples of student files from the 2008-2009 and 2009-2010 award years. On August 1, 2012, FSA issued a Program Review Report (PRR) identifying twenty Findings against IAMP, and IAMP subsequently responded over a period of time. After considering IAMP's responses, FSA released a Final Program Review Determination (FPRD) on September 22, 2014. The FPRD included final determinations on ten of the original twenty Findings (Finding 2, 3, 4, 5, 8, 10, 11, 12, 13, and 19) and assessed financial liabilities of $2,376,018.82.[2]

In the process of responding to the PRR, the Respondent concurred in liabilities for some of the final Findings. In this proceeding the Respondent timely appealed four of the final Findings, (Finding 2, 3, 12, and 13) and argues duplicated liabilities must be deducted from the Findings that the Respondent concurred (Findings 4, 5, 8, 10, 11, and 19).[3] Upon submission of initial/opening briefs, the alleged/assessed liabilities for the Findings appealed could not be reconciled with the FPRD and the parties were directed to clarify the liabilities argued in each of their briefs and to support their arguments by the evidence of record.[4] The Department cited the Established Liabilities – Duplicate Liabilities Removed spreadsheet at page 49 of the FPRD as the primary source for the liabilities assessed with each of the final Findings. The Department further cited Appendix D illustrating interest (Cost of Funds and Administrative Cost Allowance) for unduplicated liabilities associated with Finding 2 and noted Appendix E provided for interest (Cost of Funds and Administrative Cost Allowance) for Finding 3 but reported the interest attributable to unduplicated liabilities is not currently identifiable.

Upon review of the evidence of record and arguments presented, the unduplicated liabilities for the appealed Findings is $2,212,495.41, which includes interest (Cost of Funds and Administrative Cost Allowance) for Finding 2 in the amount of $75,342.92 as of the date of the FPRD.[5] This amount is exclusive of any interest (Cost of Funds and Administrative Cost

[2] *See* Final Program Review Determination dated September 22, 2014. At page 48 of the FPRD, a summary of liabilities of these ten Findings was displayed in spreadsheet form. On page 49 of the FPRD, a spreadsheet containing established liabilities with duplicate liabilities removed showed the total liabilities which included unduplicated liabilities for each of the ten Findings in the final determination, plus allowable interest, plus liabilities to lenders.

[3] The briefs submitted offered a variety of calculations as to the amount of liabilities to which the Respondent concurred. The calculations submitted were difficult to reconcile with the computations in the FPRD. Page 49 of the FPRD illustrates the unduplicated liabilities for the Findings to which the Respondent concurred equaling $142,621.80 but this does not include amounts that may be owed to lenders or allowable interest (Cost of Funds and Administrative Cost Allowance). The final calculation of the concurred liabilities is best left to FSA and is only relevant here as to the removal of duplicated liabilities for the appealed findings.

[4] The Department's Supplemental Filing, represents assessed liabilities for the appealed Findings were $2,211,356.36, exclusive of any interest assessed as related to Finding 3. The Respondent continued to maintain the argument the liabilities assessed for Findings 2, 3, 12, and 13 are not supported by the facts or controlling legal authority but further reported in the supplemental filing the Respondent is not contesting the amounts of liabilities the Department contends flow from the alleged violations.

[5] Unduplicated liabilities for Finding 2 are $2,119,438.72, unduplicated liabilities for Finding 3 are $16,574.72, unduplicated liabilities for Finding 12 are $1,094.80, and unduplicated liabilities for Finding 13 are $44.25. Notably the Department's Supplemental Submission suggests there are no liabilities identified for Findings 12 and 13 but this is clearly inconsistent with the evidence on page 49 and the narratives included in the FPRD.

Allowance) for Findings 3, 12, and 13 as well as any interest (Cost of Funds and Administrative Cost Allowance) for Finding 2 that are allowable after the date of the FPRD.

This appeal is governed by the procedures set out in 34 C.F.R. Part 668, Subpart H. A timely request for review was submitted, the parties were notified of the hearing process, briefs along with relevant evidence has been accepted and reviewed, and this matter is ready for decision.[6]

## II. Issue

The general issue is whether the Findings of the FPRD, as related to the appealed Findings are supported by facts and controlling legal authority. More specifically as to the appealed Findings the following issues are before this Tribunal:

1. Whether Title IV funds were distributed by IAMP at West 34th Street in New York City (West 34th) while the location was an ineligible location;

2. Whether IAMP provided externships consistent with the regulatory requirements;

3. Whether IAMP correctly calculated Return of Title IV Funds; and

4. Whether IAMP correctly determined Student withdrawal dates.

## III. Legal Framework/Applicable Laws and Regulations

To participate in Title IV programs, an eligible school must enter into a Program Participation Agreement (PPA) with the Department that conditions a school's initial and continuing eligibility upon compliance with statutory requirements, regulatory requirements, and any additional requirements specified in the PPA.[7] Furthermore, the statutes and regulations governing Title IV programs require a school to demonstrate that it is capable of properly administering these programs.[8] In its capacity as a fiduciary of these federal funds, an eligible school owes the Department the highest standard of care and diligence to ensure the funds are efficiently administered and properly spent.[9] In proceedings such as these, the school has the burden of proving by a preponderance of evidence that it properly disbursed Title IV funds on behalf of the student beneficiaries.[10]

When a school applies for Title IV eligibility, it submits an application to the Department

[6] 34 C.F.R. §668.11, *et seq.* (2014).
[7] 20 U.S.C. § 1094 (2012); 34 C.F.R. §§ 668.14, 668.16(a) (2014).
[8] 34 C.F.R. § 668.16 (2014).
[9] 34 C.F.R. § 668.82(b) (2014).
[10] *See In the Matter of Sinclair Cmty. Coll.*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Decision of the Secretary) (Sept. 26, 1991).

that includes its educational programs and locations at which the school offers those programs.[11] Eligibility extends only to those locations identified and approved in the Department's notice of eligibility, PPA, and Eligibility and Certification Approval Report (ECAR).[12] When changing its address or adding an additional location, a school must obtain approval from both its accrediting agency and licensing agency.[13] Schools must follow all reporting requirements as related to updating application information and must follow all applicable requirements as related to disbursement of funds, some of which require approval by the Secretary prior to disbursement.[14] Provisionally certified schools seeking to expand eligibility beyond that which is provisionally certified must have Department approval before Title IV funds are distributed.[15] An eligible institution may not distribute Title IV funds for an educational program offered at an additional location for which approval has not been granted by the Department, and therefore, any Title IV funds disbursed at the ineligible location must be repaid.[16]

Eligibility for educational programs extends only to locations or programs the Department approves in the school's application.[17] In certain circumstances, an eligible institution may enter into written agreements with ineligible institutions or organizations to provide part of the educational program of students enrolled in the eligible institution.[18] When written agreements between an eligible institution and an ineligible institution are used to provide part of the educational program, the Secretary will allow the program to maintain eligibility if the ineligible institution provides less than 50 percent of the educational program and meets all other regulatory requirements.[19]

An eligible school must disburse funds consistent with regulatory requirements.[20] An eligible institution may not make a disbursement to a student who is ineligible due to withdrawal.[21] A school must perform a Return of Title IV (R2T4) calculation when a student withdraws from the school to determine the amount of Title IV grant or loan assistance a student has earned, consistent with the regulatory requirements, as of the properly determined withdrawal date as well as the amount the school must return to the Department.[22] When deciding on the proper withdrawal date, a number of factors are considered including whether the school requires taking attendance.[23] A school is considered to require taking attendance if the school itself has an attendance requirement or if the school requires students to demonstrate attendance in its program.[24] For a school required to take attendance, a student's withdrawal date

[11] 34 C.F.R. § 600.20 (2014).
[12] 34 C.F.R. § 600.10(b) (2014).
[13] *See* 34 C.F.R. § 600.21(a) (2014); Federal Student Aid, U.S. Dep't of Educ., Federal Student Aid Student Handbook 2008-2009, Vol. 2—School Eligibility and Operations (2008).
[14] 34 C.F.R. § 600.21(a),(d) (2014).
[15] 34 C.F.R. § 600.20(c)(1)(i), (f)(3) (2014).
[16] *See, e.g., In the Matter of CC's Cosmetology Coll.*, Dkt. No. 13-56-SP, U.S. Dep't of Educ. (July 7, 2014)
[17] *See* 34 C.F.R. §§ 600.10(b)(2), 600.20(a)(2), (e)(1)(ii), (e)(2)(v) (2014).
[18] 34 C.F.R. §668.5(c)(2014).
[19] 34 C.F.R. §668.5(c)(1)-(3) (2014)
[20] 34 C.F.R. § 668.164 (2014).
[21] 34 C.F.R. §668.164(g)(2014).
[22] 34 C.F.R. § 668.22(a) (2014).
[23] *See* 34 C.F.R. § 668.22(b)-(c); *In the Matter of Kevosnik Sch. of Hair Design*, Docket No. 13-04-SP, Dep't of Educ. (May 28, 2014).
[24] 34 C.F.R. § 668.22(b)(3)(i)(B)-(C) (2014).

must be the last date of academic attendance as determined in the school's attendance records.[25]

## IV. Analysis

Upon review of the entire record and as explained herein, IAMP failed to establish by a preponderance of evidence the expenditures questioned or disallowed were proper and that IAMP complied with all program requirements. Thus, this Tribunal affirms Findings 2, 3, 12, and 13 in the FPRD.

### Finding 2

The FPRD found that IAMP improperly disbursed Title IV funds to students enrolled at an unapproved, and thus ineligible, location. In a letter dated February 21, 2008, the Department granted IAMP provisional Title IV eligibility for its principal location in Elmhurst, New York (Elmhurst) and its additional location in Valhalla, New York (Valhalla). Together with the February 21, 2008 letter, the PPA and ECAR fully described IAMPs eligibility to participate in Title IV programs on a provisional basis. IAMP's Title IV eligibility extended only to locations in Elmhurst and Valhalla. Furthermore, the PPA advised IAMP it must obtain the Departments prior approval before disbursing Title IV funds to students attending a location different from those identified in the ECAR. On December 11, 2008, ABHES approved IAMP's location at West 34th, effective December 19, 2008. ABHES also approved a separate classroom at Elmhurst to teach-out[26] students attending that location until November 1, 2009. Notably, the approval from ABHES specifically declares approval by ABHES does not constitute eligibility to participate in federal Title IV programs and IAMP was encouraged to research all relevant requirements. On December 18, 2008, IAMP filed an electronic application (E-App) with the Department to report the West 34th location. IAMP reported West 34th as an address change but failed to report that Elmhurst and West 34th were operating at the same time. There is no evidence that IAMP contemporaneously submitted the West 34th location approval by ABHES to the Department. In this proceeding, IAMP submitted evidence showing guidance from a Department representative was sought, but the evidence fails to show sufficient communication was established between IAMP and the Department or due diligence on behalf of IAMP.[27] Despite the PPA's clear statements explaining the scope of IAMP's provisional Title IV eligibility and the ECAR clearly identifying the eligible locations, IAMP still disbursed Title IV funds to students enrolled at West 34th without the Department's approval. The Department eventually approved the location at West 34th by granting IAMP provisional eligibility in a PPA, dated November 10, 2011 and at the same time, the Department notified IAMP that any Title IV funds disbursed to students attending West 34th before this approval were improper. The PRR addressed the issue, and the FPRD assessed unduplicated liabilities totaling $2,119,438.72 for all Title IV funds disbursed before November 10, 2011 to students attending West 34th.

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[25] 34 C.F.R. § 668.22(b)(1) (2014) (2014).

[26] As the accrediting agency, ABHES may require an institution or program that closes or plans to close to submit a teach-out plan as a mechanism to monitor the services provided to the students and allow the institution's or program's accreditation to continue through the closing. *See*, http://www.abhes.org/schoolclosureguide.

[27] On December 18, 2008, Thomas Haggerty, IAMP's President for the 2008-2009 and 2009-2010 award years, emailed Tracy Nave, a Department official, to ask whether IAMP correctly filed the West 34th as an address change. The record does not indicate whether Ms. Nave ever answered Mr. Haggerty's question.

In challenging the liabilities assessed in Finding 2, IAMP argues a distinction between "change in address", which only requires an eligible institution to "Report and Go", and adding a location, which requires Department approval before disbursement of funds. IAMP argues this distinction is reflected in the applicable regulations, and the Department's own guidance in the Applicable FSA Student Handbook, as well as being in accord with the PPA. IAMP argues the Department is at fault because IAMP acted in good faith to notify the Department of the change in address and the Department failed, for a period of three years, to advise IAMP that the change to West 34th location constituted an additional location, thereby requiring Department approval prior to the disbursement of funds. In furtherance of this argument, IAMP cites precedential decisions from the Office of Hearings and Appeals.

IAMP's argument is unpersuasive. The distinction as claimed is not well developed by IAMP and relies on uses of certain phrases that IAMP seems to be interpreting in isolation instead of in context. The argument of acting in good faith based on an email communication that fails to show any "meeting of the minds"[28] belies the fiduciary duty IAMP owes as an institution provisionally approved to participate in federal Title IV programs. IAMP's reliance on *In the Matter of Paul's Beauty College*[29]and *In the Matter of Cannella Schools of Hair Design and Kankakee Academy of Hair Design*[30] is unconvincing as these cases are distinguishable, interpreting predecessors to the current applicable regulations and not the regulations in effect since at least 2008, the first award year reviewed in this case. Most importantly, this argument fails to acknowledge the importance of the conditions of participation in federal Title IV programs consistent with the terms of the PPA, which in this case extends only provisional certification, and ECAR, which provided no reasonable basis for IAMP to disregard the specific conditions of participation.

Under the approved PPA and the applicable Title IV provisions, IAMP was required to obtain prior Department approval for West 34th before it disbursed Title IV funds to students attending that location. IAMP's Title IV provisional eligibility only extended to the two locations listed in the PPA and ECAR, Elmhurst and Valhalla. Because West 34th was not on the ECAR, IAMP needed prior approval from the Department before disbursing Title IV funds to students attending the West 34th location. Furthermore, the applicable statutes and regulations required IAMP, as a provisionally certified school, to obtain approval for any additional location that provided more than fifty percent of its educational programs. The record implies that when West 34th opened, it was operating in conjunction with Elmhurst and Valhalla.[31] Thus, as an additional location providing more than fifty percent of IAMP's educational program, IAMP needed prior Department approval for West 34th for Title IV eligibility.

Because IAMP failed to meet its burden of proving it had the Department's prior approval for West 34th, IAMP must return all Title IV funds disbursed to students attending West

[28] Close scrutiny of the email communications reveals the communication was incomplete. Each party to the email raised questions that were left unanswered, and Ms. Nave gave no indication that IAMP had properly reported the West 34th location.
[29] Docket No. 92-14-ST (July 13, 1993).
[30] Docket No. 96-15-EA (March 19, 1996).
[31] IAMP did not indicate the exact date of when West 34th opened. ABHES accredited West 34th on December 11, 2008, effective date December 19, 2008. Elmhurst did not close until October 31, 2009, implying that there was an overlap where both locations were open.

34th before the location was approved on December 10, 2011. Finding 2 is affirmed.

**Finding 3**

The FPRD assessed unduplicated liabilities of $16,574.72 for IAMP's failure to provide externships as contracted, thus contrary to the regulatory requirements. The on-site review revealed multiple concerns with the externship portion of the approved program, including but not necessarily limited to, the starting of externships (delayed start after completion of the classroom/theory portion of the program), limitations in variety of experiences encountered in the externship, monitoring and overseeing the externship activities, having insufficient externship sites in which to place students upon completion of the classroom/theory portion of the program, and failure to have adequate written agreements from the institution which was to provide the externship experience. Based on these revelations, the Department found IAMP was entitled to federal funds only for 687 clock hours of the externship portion of the approved program.[32] The Department reduced externship hours based on the theory IAMP violated the enrollment agreement with the students and the enrollment agreement is the basis upon which the Department provides payment to the school on behalf of the student, therefore the Department was justified in disallowing 313 hours for the externship program for the years under review.

The Respondent argues liabilities under Finding 3 are not supported because IAMP had approval from ABHES and the Department for 1000 externship hours and contends when ABHES accredited IAMP's externship program, neither the course description nor the policies set out in the catalog and enrollment agreement required that the externship program would or must be served at multiple facilities. IAMP argues it is unfair for the Department to require compliance with the regulatory requirements of 34 C.F.R. §668.5 and render the entire DMS program ineligible for Title IV funds.

Having considered the arguments of the parties and the applicable regulations, the question of whether IAMP provided the DMS program externships as contracted seems somewhat irrelevant. The on-site review, as addressed in the PRR, Respondent's responses, and the FPRD clearly show failures of the DMS program externships. Evident failures include failure to place students into externships shortly after completing classroom work, thus creating breaks in the educational process some of which were significant; failing to have school staff adequately monitor externships; and failure in establishing externships that provide a diverse scope of experiences. The most significant failure is the failure to provide diverse scope of experience and the revelation that many of the externships were in placements with facilities, that were not

[32] The Department arrived at this determination by finding an "ineligible location cannot offer more than 50 percent of an approved educational program and thus established total program hours could not exceed 1374 clock hours. Despite having an approved program that included 1687 clock hours with 687 clock hours classroom/theory and 1000 clock hours externship, the Department disallowed 313 hours (determined by subtracting 1374 from 1687) and therefore calculated the unduplicated liability of $16,574.72. Notably the Department does not reconcile this methodology with the actual language of the applicable regulation. *See* 34 C.F.R. §668.5(c)(3)(ii)(A), which provides the ineligible institution or organization may provide more than 25percent but less than 50 percent of the educational program if additional conditions are met. By disallowing only 313 hours of the externship portion, the Department has in effect allowed IAMP to contract with an ineligible institution for 50 percent of the approved program, when the regulation clearly allows contracting for less than 50 percent.

institutions eligible to participate in federal Title IV programs but that provided 50 percent or more of the approved program.

The regulations at 34 C.F.R., Part 668, Subpart A, set out the general provisions as related to student assistance. As general provisions, these regulations apply to any institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.[33] The general provisions specifically allow eligible institutions to enter into written arrangements to provide educational programs, however when an eligible institution enters into a written arrangement with an ineligible organization certain conditions must be followed.[34] If an ineligible institution provides more than 25 percent but less than 50 percent of the educational program, additional conditions are imposed.[35]

IAMP attempts to bolster the argument it was unfair to require compliance with 34 C.F.R. §668.5 by arguing IAMP did not violate its own written policies or procedures, and the regulations prohibiting contracting "more than 50 percent"[36] of the DSM programs at ineligible sites was not violated or does not apply. IAMP's arguments are unpersuasive. As indicated previously the regulations allowing written agreements between eligible institutions and ineligible institutions are general provisions that all eligible institutions must follow. Whether or not the externship programs were provided by IAMP to the enrolled students consistent with the enrollment agreement seems irrelevant to the general provisions to which an eligible institution must adhere. The simple statements by IAMP that the applicable regulation was not violated or do not apply without further support for such statements is unconvincing and, in this case, unsupported by the evidence in the PRR and the FPRD. Based on the sample of students reviewed, the Department determined IAMP contracted with an ineligible institution beyond that which is allowed by the general provisions. As such, the Department assessed liabilities for 313 credit hours. IAMP, which has the burden of proof, has failed to prove the externship placements for the students identified in the sample received 1000 hours of practical experience in placements that did not violate the general provisions of the applicable regulation.

IAMP did not comply with this regulation because it contracted 50 percent or more of its educational program to ineligible institutions that carried out the externship portion of the DMS program. The Department has failed to explain why it treated the ineligible locations where the externships were carried out differently from how the Department treated the ineligible location in Finding 2. Despite this seemingly parallel circumstance, the Department imposed a liability only for 313 credit hours provided in the externships. Since IAMP failed its burden of proof here, the liability assessed by the Department in Finding 3 of the FPRD is affirmed.

**Findings 12 and 13**

[33] 34 C.F.R. §668.1 (2014).
[34] 34 C.F.R. §668.5(c) (2014).
[35] 34 C.F.R. §668.5(c)(3)(ii)(A)-(C) (2014)
[36] The applicable regulation uses the plain language "provides more than 25 percent but less than 50 percent" (34 C.F.R. §668.5(c)(3)(ii)(A)). The Department and the Respondent consistently interpreted this regulation to allow an eligible institution to contract with an ineligible institution to provide 50 percent of an approved program. Neither the Department nor the Respondent has adequately explained how the plain language of the regulation including the phrase "less than 50 percent" is the same as, and equivalent to "50 percent", as both the Department and Respondent present in their briefs.

Findings 12 and 13 involve incorrectly calculating the Return of Title IV (R2T4) funds upon withdrawal of a student and untimely determination of a Student's withdrawal/withdrawal deficiencies. At Finding 12 the PRR identified three instances when IAMP incorrectly calculated the R2T4. In IAMP's response, IAMP disagreed with the evaluation as related to only Student 72.[37] Finding 13 of the PRR identified eight instances where IAMP made untimely determinations of a student's withdrawal/withdrawal deficiencies.[38] Student 72 is duplicated in Findings 12 and 13 and duplicated liabilities have been removed from the established liabilities spreadsheet at page 49 of the FPRD.

Review of the evidence establishes IAMP failed to correctly calculate its R2T4 for Student 72 because the school used the incorrect withdrawal date. The evidence shows the last date of attendance by Student 72 was July 14, 2009, and IAMP stopped disbursing Title IV funds for Student 72 on July 24, 2009. IAMP justified July 24th as the appropriate withdrawal date for its R2T4 calculation based on IAMP's policy of waiting until a student misses eight consecutive days before determining a withdrawal. The FPRD assessed $1,094.80 in unduplicated liabilities at Finding 12.[39]

IAMP used the incorrect withdrawal date when calculating the R2T4 for Student 72 because, as a school that requires taking attendance, IAMP should have used Student 72's last day of attendance as the withdrawal date. Although the record does not explicitly state that IAMP requires taking attendance, it can be inferred the requirement exists. In the enrollment agreement, students may be terminated for failing to meet "the school's attendance requirements. . . ."[40] In the catalogs, attendance is noted to be a factor in determining the student's academic standing. Furthermore, IAMP maintained an attendance record for the class Student 72 was enrolled when withdrawal was determined. These documents from the record strongly imply that IAMP has a requirement to take attendance. Thus, the appropriate withdrawal date should be the last day Student 72 attended classes, July 14, 2009. IAMP's policy to wait until a student misses eight consecutive days before determining a withdrawal, does not excuse IAMP from following the applicable regulations.[41] The regulation is clear and the correct withdrawal date at schools that require attendance to be taken is the student's last day of attendance.[42] Thus, IAMP used the incorrect date for its R2T4 calculation, and Finding 12 of the FPRD is affirmed.

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[37] The other students with incorrect calculations were Student 27 and 37, however the liabilities for these students were duplicated in Finding 4 and therefore not included in the Established Liabilities – Duplicate Liabilities Removed as indicated at page 49 of the FPRD. Consequently the evaluation of liabilities for Finding 12 is limited to those for Student 72.

[38] Liabilities were assessed for Students 3, 34, 35, 38, 45, 68, 72, and 74.

[39] Both parties allege that there are no financial liabilities for Findings 12 and 13 and cite to page 49 of the FPRD to support this allegation. However, the spreadsheet on page 49 indicates the contrary. *See supra* text accompanying note 2. Furthermore, the unduplicated liabilities for Finding 13 come directly from Student 38, as shown on pages 43 and 49 of the FPRD. Neither party addressed Student 38 in the briefs and supplemental briefs submitted and it remains unclear if this liability had been previously included in the total concurred liabilities by IAMO in response to the PRR.

[40] Enrollment Agreement of The Institute of Allied Medical Professions (printed Feb. 26, 2008) (on file with Dep't of Educ.).

[41] The record indicates that IAMP may have known July 14, 2009 was the proper date. Several of Student 72's withdrawal forms show July 14, 2009 as the printed withdrawal date.

[42] 34 C.F.R. § 668.22(b)(1) (2014).

Finding 13 of the PRR noted IAMP's failure to make timely determinations of a Student's withdrawal/withdrawal deficiencies. The PRR noted in many instances IAMP failed to follow federal regulations, Federal guidance in the form of a November 2004 Dear Colleague Letter (DCL 04-03), or its own policy as disclosed to students in the school catalog. In response to the PRR, IAMP concurred in all Findings by the reviewers and also reported an additional $44.25 FFEL Subsidized return for Student 38 remained unmade. Consequently, this amount is an unduplicated liability for which IAMP remains liable.[43]

## V. Findings of Fact

1. IAMP applied for eligibility to participate in the Title IV programs on June 26, 2007.

2. On February 21, 2008, IAMP was provisionally approved to participate in Federal assistance programs authorized under Title IV, the Higher Education Act. IAMP's PPA and ECAR shows that eligibility for the DSM program only extended to the locations at Elmhurst, NY and Valhalla, NY and that provisional status required prior approval from the Department for any substantial change or additional location. IAMP was specifically advised the PPA expiration date was June 30, 2009 and the reapplication date was March 31, 2009. Additionally, IAMP's DMS program was also approved for 687 classroom hours and 1,000 externship hours.

3. By letter dated December 11, 2008, ABHES approved IAMP's location at West 34th and a separate classroom at Elmhurst to teach out Elmhurst students. The effective date for the approval was December 19, 2008. IAMP was specifically advised the approval by ABHES does not constitute eligibility to participate in federal Title IV programs and IAMP was encouraged to research all relevant requirements governing Title IV eligibility for participation in such programs.

4. On December 18, 2008, IAMP filed an E-App to report the West 34th location. The record is devoid of any evidence that IAMP's December 2008 E-APP was materially complete as the record fails to establish IAMP, as soon as available, provided evidence of the approval of the location change by the accrediting agency. Instead, on December 18, 2008 by email at 9:35 am, Thomas Haggerty, IAMP's President at the time, asks Tracy Nave, a Department official, if changing the address for IAMP was properly completed by using Section F of the online application. In an email response on December 22, 2008 at 4:26 pm, Ms. Nave advises Mr. Haggerty she is unable to access the on-line application and asks if he is trying to submit a "redesignation of the main location" to which Mr. Haggerty replied "yes" at 5:02 pm. The record includes no further evidence of email communication on this question, thus failing to establish any answer to this initial inquiry by Mr. Haggerty as to whether the act of his using the on-line application to submit a change of address for IAMP satisfies IAMP's obligations in relation to disbursement of Title IV funds at a location other than locations identified in the PPA and

[43] Again, the briefs and supplemental briefs fail to clarify the liabilities assessed and the liabilities to which IAMP concurred. If this amount was included in the liabilities to which IAMP has concurred prior to filing this appeal, then this amount should be deducted from the liabilities assessed in this decision.

ECAR.

5. IAMP closed the Elmhurst location on October 31, 2009. IAMP did not timely report the location's closing to the Department or NYSED.[44]

6. From November 16 to November 20, 2009, FSA's New York/Boston School Participation Team performed an on-site program review at IAMP covering award years 2008-2009 and 2009-2010, a period when Mr. Haggerty was the school president and board member.

7. By Notice dated October 28, 2011, IAMP was granted provisional approval for participation in Federal financial assistance programs. IAMP was advised the PPA expired on September 30, 2014 and reapplication must be filed no later than June 30, 2014. This PPA, with an effective date of November 10, 2011, also approved IAMP's West 34th location. However, the Department notified IAMP that it failed to properly report the location at West 34th and that the issue would be addressed in the pending program review.

8. On August 1, 2012, the Department issued a PRR with twenty Findings against IAMP. IAMP eventually submitted responses.

9. The record suggests IAMP filed an electronic application with the Department on May 5, 2014 attempting to submit a Change of Official indicating Daniel Hwang is the new President of the institution. By letter dated July 18, 2014, Thomas J. Haggerty was advised the electronic application was incomplete and submitted with errors and consequently, Mr. Haggerty was deemed the presumptive/putative President of IAMP and thus responsible for responding to the PRR.

10. IAMP lost Title IV eligibility effective on May 23, 2014 and closed with a teach-out agreement on June 30, 2014.

11. After considering IAMP's responses to the PRR, the Department released an FPRD on September 22, 2014. The Department concluded that IAMP took appropriate corrective action to resolve Findings 9, 14, 16, 17, 18, and 20. The Department also closed Findings 1, 6, and 7. IAMP agreed to Findings 4,[45] 5, 8, 11, 15, and 19. These uncontested Findings total $142,621.80 in unduplicated liabilities, exclusive of any interest due.[46]

12. IAMP submitted a timely appeal with FSA's Administrative Actions and Appeals Service Group on November 24, 2014 to contest Findings 2, 3, 12, and 13. The appeal was

[44] In an agreement executed March 8, 2011, NYSED fined IAMP for failing to provide 30 days written notice of its plan to discontinue operation of the Elmhurst, NY location.

[45] Though IAMP disagrees with the liabilities assessed for Finding 10, the liabilities for Finding 10 are duplicated in Finding 4. Because IAMP has already agreed to pay for liabilities assessed for Finding 4, it did not appeal Finding 10.

[46] This figure is derived from page 49 of the FPRD. In its initial brief submitted on April 24, 2015, IAMP stated that the agreed to unduplicated liabilities totaled $143,651.29. In its supplemental brief, dated July 10, 2015, IAMP changed that figure to match the Department's figure of $181,237. *See also footnote 3, supra.*

forwarded to OHA on December 15, 2014 and assigned to an Administrative Law Judge on December 16, 2014.

13. Based on the PPA, dated February 21, 2009, and the accompanying ECAR, IAMP was granted provisional eligibility and certification for the Elmhurst and Valhalla locations. As a condition of provisional eligibility, prior approval by the Department was required before Title IV funds were dispersed at any location that would provide more than 50% of IAMP's approved educational program.

14. Although IAMP attempted to notify the Department of the location at West 34th street in December 2008, IAMP failed to establish the attempt and E-APP was materially complete by providing proof of the necessary approval from the accrediting agency or the NYSED for that location.

15. IAMP failed to establish compliance with general regulatory requirements regarding agreements with ineligible institutions or organizations. More specifically, IAMP entered into written agreements whereby ineligible institutions or organizations were contracted to provide a portion of an approved program that amounted to 50 percent or more of the eligible program.

16. IAMP improperly calculated Student 72's R2T4 calculation because it used the incorrect withdrawal date. As a school that requires taking attendance, IAMP needed to use the student's last day of attendance as the withdrawal date for the calculation. Student 72's last day of attendance was July 14, 2009, and IAMP improperly used July 28, 2009 as the withdrawal date for its R2T4 calculation.

17. IAMP's policy to wait until a student misses eight consecutive days before determining a student's withdrawal does not excuse its obligation to follow the provisions under 34 C.F.R. § 668.22, which requires IAMP to use the last day of attendance.

18. In its appeal to contest Findings 2, 3, 12, and 13 in the FPRD, IAMP did not meet its burden of proving that it complied with all Title IV requirements and that all funds were properly spent. Thus, IAMP is liable for the improperly disbursed Title IV funds that are associated with Findings 2, 3, 12, and 13.

## VI. Conclusion and Order

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that the Institute of Allied Medical Professionals pay to the United States Department of Education the sum of $2,212,495.4[47]1, exclusive of any interest due as related to the unduplicated liabilities for Findings 3, 12, and 13 of the Final Program Review Determination, and exclusive of interest due for Finding 2 after the date of the Final Program Review Determination.

[47] *See* footnotes 3 and 45, *supra.*

Dated: _August 31, 2015_

__/s/Angela J. Miranda____
Angela J. Miranda
Administrative Law Judge

SERVICE

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

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_____
Angela J. Miranda
Administrative Law Judge

Dated: _____