



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

---

In the Matter of

**AMERICAN BEAUTY ACADEMY**

Respondent

---

**Docket No. 17-64-SA**

Federal Student Aid Proceeding

ACN: 03-2015-70000

**DECISION**

On November 20, 2017, the undersigned received a written Request for Review in the above-styled proceeding from Edward Gillespie, President of American Beauty Academy (“ABA”). ABA challenges the findings presented in a Final Audit Determination provided with an enclosed letter, which was issued by the U.S. Department of Education, Federal Student Aid (FSA) office. The Request was filed pursuant to 34 C.F.R. § 668.113 (a). The appeal procedures for these proceedings are set forth in 34 C.F.R. Part 668, Subpart H.

ABA has a number of separate actions concerning its participation in the Title IV, HEA program. Those actions include the November 17, 2015 revocation of ABA’s Program Participation Agreement ending ABA’s participation in Title IV based on ABA’s failure to comply with the 90/10 rule,<sup>1</sup> the imposition of liability assessed by FSA due to ABA’s failure to comply with the 90/10 rule, and a close-out audit liability due to student loan discharges. All of those matters have separate review procedures apart from this appeal. An initial decision was recently issued by the undersigned in the Final Program Review Determination liability in a separate appeal (Office of Hearings and Appeals Docket Number 17-57-SP). The only action contested in this decision is FSA’s Final Audit Determination, which imposes a liability on ABA of \$757,340.

ABA stopped participating in the Title IV loan program on November 17, 2015. 34 C.F.R. § 668.26(b)(2)(ii) provides that when an institution stops providing education or loses its eligibility, it must submit a close-out audit, with a Letter of Engagement required within 45 days. An independent audit of all funds the institution received is due within 90 days in the form of a close-out audit.

In addition to the close-out audit requirement, under 34 C.F.R. §§ 682.402(d) and 685.214, Title IV student loan borrowers may apply for a loan discharge when a school closes.

---

<sup>1</sup> The “90/10 rule” is based on statutes and regulations which require that proprietary schools receive no more than 90 percent of funding from Title IV funds. The 90/10 rule liability is not at issue in this appeal, and is discussed further in Docket Number 17-57-SP.

If the discharge is granted by the loan holder, any amounts already repaid by the student are also refunded. Students who are able to complete their educational programs, either through a teach-out or by transferring the credits attained to another school, are not eligible for discharge. Any students whose loans are discharged automatically assign their rights under the loan to the Department, and §§ 682.402(d)(5) and 685.214(e) give the Department the authority to recover those liabilities from ABA for the loan amounts discharged. Here, the Department determined the loan discharge liability owed by ABA was \$757,340.

ABA's review request was filed pursuant to 34 C.F.R. § 668.113 (a). The appeal procedures for these proceedings are set forth in 34 C.F.R. Part 668, Subpart H. ABA also requested information from FSA under the Freedom of Information Act which is not a subject under the authority of this administrative appeal.

Upon receipt of ABA's request for review at the Office of Hearings and Appeals, the undersigned was assigned to conduct the hearing for this appeal, and issued an Order Governing Proceedings. ABA has the burden of proof in this proceeding. *See* 34 C.F.R. § 668.116 (d). On November 21, 2017, ABA was ordered to file its brief and supporting evidence by December 27, 2017.

ABA did not file any further pleadings after it filed its request for a review. ABA did not comply with the Order Governing Proceedings to file its initial brief by December 27, 2017.

On January 5, 2018, counsel for FSA filed a motion for default judgment based on ABA's failure to file its brief. In response, rather than issue a default judgment at that time, on January 12, 2018, this Tribunal entered an order on FSA's motion for default judgment, directing ABA to show cause why the record should not be closed and giving ABA one final opportunity to comply. That order was sent to ABA by email scan delivery with received receipt, at the email address which ABA asked for orders to be delivered to.<sup>2</sup> ABA did not comply by the final deadline, and on February 15, 2018, FSA renewed its motion for default judgment.

Because ABA has not provided any filing after being given repeated opportunities to do so, the administrative record in this appeal is ordered closed. The Respondent has abandoned its appeal. ABA has failed to meet its burden of proof.

34 C.F.R. §668.117(c)(3) provides in relevant part that:

The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

Since ABA failed to provide its brief and supporting evidence, this decision must be based on a review of the evidence in the administrative record as it exists.

---

<sup>2</sup> Receipts confirming email delivery to ABA for the Order Governing Proceedings, the Show Cause Order and for this Decision have been placed in the file record for this appeal.

In its October 19, 2017 request for review of this liability, ABA asserted that defenses pertaining to the other liability based on the 90/10 rule violations apply to the loan discharge liability.

ABA has not presented any evidence or arguments in this appeal factually contesting the \$757,340 student loan discharge liability arising from 34 C.F.R. §§ 682.402(d) and 685.214 that FSA assessed against ABA. ABA does assert arguments relating to due process and arguments relating to the 90/10 rule violations.

While the appeal request asserts that ABA's auditor could not complete the close-out audit without resolving the issues pertaining to the 90/10 rule violations and the resulting change in fund disbursement, the attached exhibits do not support that assertion. The ABA exhibits included an "Open Points" document from ABA's auditor asking that several "open points" be answered by ABA personnel before proceeding with the audit. The exhibits also included emails from ABA's auditor, again asking ABA to provide documents necessary for the auditor to perform the close-out audit, asking ABA if it agreed with the auditor's findings, asking ABA what it was going to do about the "pay backs" and asking ABA if it had corrected the prior years' findings. It appears ABA did not respond to its auditor, and those emails were followed by an email from the auditor canceling the audit.

ABA also asserted in its request for review that if it had not been denied due process on the 90/10 rule violations, a close-out audit (and presumably the related closed school loan discharge liability) would not have been necessary.

FSA acknowledges ABA did not receive notice in the related 90/10 case for over a year. It remedied that failure, and provided ABA the due process required at that time. 34 C.F.R. §§ 668.111-124 provide the required due process for institutions appealing liability determinations by FSA. In both the 90/10 appeal and in the present appeal, ABA has been provided the procedural safeguards set forth in those regulations. Those safeguards include information on how and when an institution is to make a request for a review, notification of the parties by the hearing official of the schedule for the hearing, prehearing conference procedures, hearing procedures, evidentiary standards, the right for a party to be represented by counsel, appeals to the Secretary of the hearing official's decision, and interlocutory appeals to the Secretary. Because those safeguards have been provided to ABA in this hearing process, ABA has been given the appropriate procedural due process, even though ABA has chosen not to participate in that process, and has chosen not to submit its briefs and evidence disputing the liability.<sup>3</sup>

---

<sup>3</sup> In its request for review, ABA also states that "If you have any questions, please email me at: [todonegal@msn.com](mailto:todonegal@msn.com). All correspondence regarding this matter should be sent to the address listed below in addition to the email address listed above, at a minimum." This decision has been sent by certified mail to the mailing address specified, and by email, return receipt requested, to the email address ABA provided.

## **ORDER**

The record in this appeal provides no evidence to contradict FSA's \$757,340 loan discharge liability arising from 34 C.F.R. §§ 682.402(d) and 685.214 assessed against ABA.

Although ABA has asserted violations of procedural due process, this proceeding has offered up the specified due process. ABA was given those opportunities to present its appeal, but ABA failed to respond to the briefing order and failed to file any brief with supporting evidence to support its appeal. ABA has been given a more than reasonable period of time to comply with the order governing proceedings and the order to show cause, both of which were issued to give ABA an opportunity to submit evidence in support of its appeal. Under 34 C.F.R. § 668.116(d), ABA has failed to meet its burden of proof. The evidence of record is uncontested concerning FSA's liability determination for ABA's closed school student loan discharge liability.

On the basis of the above findings, it is ordered that ABA pay to the U.S. Department of Education the sum of \$757,340 plus interest as set forth in the Final Audit Determination.

---

Robert G. Layton  
Judge

**Dated: April 6, 2018**

SERVICE

This order has been sent via US Postal certified mail and email, with confirmation delivery receipt, to:

Edward L. Gillespie, President  
American Beauty Academy  
5870 Lantern Court  
Sarasota, FL 34243  
(emailed to: [todonegal@msn.com](mailto:todonegal@msn.com) by DMS)

And to:

Alexandra Sweeney, Esq.  
Assistant General Counsel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-2110  
(emailed to: [Alexandra.Sweeney@ed.gov](mailto:Alexandra.Sweeney@ed.gov) by DMS)