THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

GALIANO CAREER ACADEMY,

Respondent.

Docket No. 11-71-SP
Federal Student Aid Proceeding

DECISION OF THE SECRETARY AND ORDER OF REMAND

This matter comes before me on appeal by the Galiano Career Academy (Respondent or GCA) of the Initial Decision by Administrative Judge (AJ) Richard F. O'Hair. On December 6, 2012, Judge O'Hair upheld three findings of the Final Program Review Determination (FPRD) letter issued on August 9, 2011, by the office of Federal Student Aid (FSA) of the U.S. Department of Education (Department).[1] As a result, FSA ordered Respondent to pay $3,635,550 to the Department for its failure to account properly for its receipt and disbursement of Title IV funds (for award years 2007/2008 and 2008/2009). GCA has appealed the AJ's ruling with regard to Findings One and Ten.

FSA conducted an audit of GCA's records to, among other things, investigate suspicions that GCA was disbursing Title IV funds to ineligible students based on invalid high school credentials. In the 2005/2006 and 2006/2007 award years, 54% and 46% of GCA students, respectively, self-reported that they did not have a high school diploma or GED on their Free Applications for Federal Student Aid.[2] This figure dropped to 19% for the 2007/2008 award year.[3] In reviewing a sample of 30 student ledgers from the 2007/2008 award year, an Institutional Review Specialist with the Department noted the "extraordinary number" of students with credentials from the same secondary educational entity: Columbus Academy.[4]

In the resulting program review, FSA concluded in Finding One that the owner of GCA, Mr. Galiano, colluded with his wife, Mrs. Teresi, to provide GCA students with documents purporting to be high school transcripts and diplomas. FSA ultimately found that Columbus was a diploma mill[5] and its credentials did not render the students receiving them eligible for Title IV

[1] FSA issued a draft program review report with 11 findings on December 31, 2009. FSA Brief, Exhibit (Ex.) 1, p. 1. GCA only appealed Findings 1, 5, and 10, to the AJ.
[2] FSA Brief, Ex. 17, p. 2.
[3] *Id.* at 3.
[4] *Id.* at 5.
[5] Generally, a diploma mill is an unaccredited entity that issues credentials purporting to be high school diplomas for a fee, with little to no coursework or attendance. *See* 20 U.S.C. § 1003(5) (2012); *In the Matter of Fortis College*, Dkt. No. 12-55-SP, U.S. Dep't of Educ. (Mar. 17, 2015) (Decision of the Secretary), at 2–4.

funds. FSA concluded that GCA owed the Department $1,137,921 for improperly disbursed funds, ineligible loans, and incidental liabilities.[6]

FSA concluded in Finding Ten that GCA failed to satisfy an order to conduct a file review of the account ledgers for all Title IV recipients in the 2007/2008 and 2008/2009 award years. FSA had required GCA to conduct a file review and to engage an Independent Public Accountant (auditor) to test the completed file review for accuracy and completeness.[7] The auditor's testing procedure was subject to approval by FSA.[8] FSA determined that GCA submitted an incomplete response and the file review provided no basis for FSA to estimate the appropriate liability for those years.[9] Therefore, FSA concluded that GCA owed the Department $3,635,550, the entirety of Title IV funds disbursed for the two award years.[10]

GCA bears the burden of demonstrating, with a preponderance of the evidence, that the AJ erred in his findings.[11] Based on the following analysis, I affirm the AJ's ruling on Finding One and set aside and remand the AJ's ruling on Finding Ten.

I. Finding One – Student Eligibility

The AJ found that Columbus Academy was "clearly a diploma mill."[12] On appeal, GCA contends the AJ erred by finding that Columbus was a diploma mill and that GCA knew or should have known that Columbus credentials would not confer Title IV eligibility on their recipients. Alternatively, GCA argues that students with Columbus credentials who completed six credit hours became retroactively eligible for Title IV funds and GCA should not be liable for disbursements made to those students. I reject both arguments and affirm the ruling of the AJ.

A. Columbus Academy was a Diploma Mill

An institution has a fiduciary duty to the Department to ensure that Title IV funds are only disbursed to eligible students.[13] An institution "is subject to the highest standard of care and diligence" in administering Title IV programs and accounting for funds it receives.[14] A student generally demonstrates eligibility by holding a high school diploma or its recognized equivalent.[15]

A credential from a diploma mill does not render a student eligible for Title IV funds. Generally, a diploma mill is an entity that offers diplomas for a fee with little or no coursework and which has no accreditation from a recognized accrediting agency.[16] The Federal Student Aid

---

[6] FPRD, p. 8.
[7] *Id.*, p. 19.
[8] *Id.*
[9] *Id.*, p. 22.
[10] *Id.*, p. 23.
[11] *Central State University*, Dkt. No. 12-32-SA, U.S. Dep't of Educ. (Sept. 2, 2014) (Decision of the Secretary), at 1 (citing 34 C.F.R. § 668.116(d)).
[12] AJ Decision at 5.
[13] 34 C.F.R. § 668.82(a); *In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008), at 3.
[14] 34 C.F.R. § 668.82(b)(1).
[15] *Id.* § 668.32(e).
[16] 20 U.S.C. § 1003(5) (2012).

Handbook warns institutions about diploma mills. The Handbook states that, where the validity of a diploma is in question, the institution could request verification from the state department of education as to whether the school's diploma was recognized by the state.[17] Under Florida law, a private high school must provide instructional services, including regular school attendance during the school day.[18]

The FSA investigation found that Columbus was a diploma mill because: Columbus offered credentials for $199, with a "no-risk 30-day unconditional money back guarantee";[19] most students finished the program in two to four weeks; there was no attendance policy;[20] there was no academic interaction of any kind; students had an unlimited opportunity to take a graduation exam; the exam was proctored by family members or friends of the test taker; Columbus exams were sometimes held at GCA facilities; and Columbus has no physical address, instead using the address of "House of Ceramic Tile, Inc." in registration materials submitted to the state.[21] GCA has provided no evidence to contradict these findings.

GCA argues that Mr. Galiano was diligent in his effort to determine Columbus' legitimacy. GCA's only support for this assertion is that Mr. Galiano reviewed the Florida Schools Choices list, found Columbus listed there, and concluded it was a registered private school.[22] However, the Florida Department of Education website specifically warned the public that the list of schools did not "imply approval or accreditation by the [Florida] Department of Education."[23] Furthermore, FSA provided evidence that Mr. Galiano intentionally misled reviewers by asserting that he earnestly looked into Columbus' status at arm's length, when in fact his wife was the owner of Columbus and it came into existence on October 8, 2007, very close in time to the events that precipitated the investigation.[24]

As a recipient of Title IV funds, GCA had a fiduciary duty to the Department to act with diligence to ensure that it only disbursed funds to eligible students.[25] Such diligence included making reasonable efforts to verify the validity of a secondary education entity where GCA had reason to suspect that it was a diploma mill. I find it implausible that GCA could fail to notice the opening of Columbus in 2007, owned by Mr. Galiano's wife, and the sudden influx of students with Columbus credentials. I also find it highly unlikely that Mr. Galiano would be wholly unfamiliar with the many characteristics of Columbus that make it a classic diploma mill. With this heightened knowledge, GCA had a duty to make an earnest effort to ensure that Columbus credentials rendered their holders eligible for Title IV funds before GCA made disbursements to them.[26]

---

[17] FSA Brief, Ex. 27, p. 1.
[18] FLA. STAT. ANN. § 1002.01(2) (West 2014); *In the Matter of Fortis College*, Dkt. No. 12-55-SP, U.S. Dep't of Educ. (Mar. 17, 2015) (Decision of the Secretary), at 2–3.
[19] FSA Brief, Ex. 7, p. 2
[20] *Id.* at 7.
[21] *Id.*, Ex. 8, p. 1, Ex. 9, p. 2, Ex. 1, pp. 8–10.
[22] GCA Brief, p. 24 (referencing its briefs before the AJ).
[23] FSA Brief, Ex. 9-1.
[24] FPRD, pp. 5–6; FSA Brief, Ex. 17, pp. 7, 9.
[25] 34 C.F.R. § 668.82(b)(1).
[26] *In the Matter of Fortis College*, Dkt. No. 12-55-SP, U.S. Dep't of Educ. (Mar. 17, 2015) (Decision of the Secretary), at 5 (holding that an institution, in its role as the Department's fiduciary, must take reasonable follow-up

By its own terms, the Florida Schools Choices list did not warrant the legitimacy of Columbus or other schools. Therefore, GCA's review of that list was plainly insufficient to satisfy GCA's obligation. There is no evidence that GCA contacted Columbus to determine the nature and quality of its academic instruction. There is also no evidence that GCA contacted the Florida Department of Education or FSA to determine whether Columbus' credentials rendered students eligible for Title IV funds.

Based on the evidence presented, I find that Columbus both fit the Federal definition of a diploma mill and failed to meet Florida's statutory definition of a private school. Credentials issued by Columbus did not render students eligible to receive Title IV funds. GCA knew or should have known that Columbus was a diploma mill during the 2007/2008 and 2008/2009 award years. Therefore, GCA is liable for funds disbursed to students whose eligibility was erroneously based on holding Columbus credentials.

B. Holders of Columbus Academy Credentials Did Not Become Retroactively Eligible for Title IV Funds

GCA alternatively argues that, under 34 C.F.R. § 668.32(e)(5), students with Columbus credentials who completed the equivalent of six credit hours of instruction at GCA became retroactively eligible for Title IV funds.[27] I recently ruled on substantially the same argument in *In the Matter of Fortis College*. In that case, I affirmed the Department's long-standing rule that a student must qualify for Title IV assistance prior to disbursement of Title IV funds.[28] Thus, even where students demonstrated an ability to benefit by actually graduating from programs, the institutions were liable to the Department for disbursement of ineligible funds.[29]

The six credit hour rule did not provide retroactive eligibility for students erroneously determined to be eligible by the institution. Rather, demonstrating an ability to benefit under this provision required students "to pay for these six credits without the benefit of title IV, [Higher Education Act] program assistance" and, afterwards, to receive an initial determination of eligibility.[30]

GCA makes no assertion that it made a new eligibility determination for the students in question after completion of six credit hours. Its theory of retroactive eligibility cannot prevail.

---

actions commensurate with the evidence available to it); s*ee In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008), at 2–3.

[27] GCA Brief, p. 22.

[28] *In the Matter of Fortis College*, Dkt. No. 12-55-SP, U.S. Dep't of Educ. (Mar. 17, 2015) (Decision of the Secretary), at 7 (citing *In re Hamilton Professional Schools*, Dkt. No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003)).

[29] *Id.* (citing *In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008); *In re Avalon Beauty College*, Dkt. No. 04-24-SP, U.S. Dep't of Educ. (Dec. 20, 2005)); *In re Hamilton Professional Schools*, Dkt. No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003) ("If a student was never eligible to receive Title IV funds, the fact that the student graduated does not cure his or her ineligibility . . . . [S]tudents' ultimate completion of their academic program[s] does not mitigate the fact that an institution awarded Title IV assistance to students who were ineligible to receive the assistance under the standards measured by Congress.").

[30] 75 Fed. Reg. 66,832, 66,921 (Oct. 29, 2010).

GCA is liable for funds disbursed to ineligible students. Therefore, I affirm the AJ's holding in Finding One that GCA is liable to the Department for $1,137,921.

II. Finding Ten – Liability Calculation

The remaining issue is whether FSA properly required GCA to conduct a file review and, based on that review, how to properly calculate GCA's liability to the Department. The AJ found that FSA properly ordered a file review and was justified in calculating GCA's liability as 100% of the funds disbursed in the 2007/2008 and 2008/2009 award years. I agree that FSA properly ordered the file review, but disagree that FSA adequately justified a finding of 100% liability.

A. FSA Properly Ordered a File Review

Institutions are required to maintain comprehensive program and fiscal records as a condition of participating in Title IV funding.[31] The institution "shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General" and other entities "in the conduct of audits, investigations, program reviews, or other reviews authorized by law."[32] FSA's program review report documented a number of errors, including 17 students out of a sample of 30 whose eligibility for Title IV funds came from "diploma mill" credentials, and 11 students out of a sample of 30 whose student ledgers contained errors in fund amounts and disbursement dates.[33] FSA stated that a file review was warranted to determine, among other things, if other students held ineligible credentials, the amount of missing Title IV aid and the correct disbursement amounts and dates.[34]

GCA argues that FSA is barred from ordering a file review unless there is an error rate in the record sample of 10% or higher.[35] GCA cites to no statutory or regulatory authority that prohibits the Department from ordering a file review absent an initial program review that uncovers a certain finding of errors. As an initial matter, I believe the Department may reasonably order a file review even in the absence of a record sample with an error rate of 10% or more if the review is justified by other circumstances. For instance, a file review may be justified where an institution has failed to provide evidence that it properly applied required policies to its students.[36]

A case from 2010, *In re LA LAN 2000 Computer Training Center*, is GCA's sole authority for its assertion that FSA improperly ordered the file review and therefore the review should be ignored. In that case, the AJ stated that because certain purportedly missing documents were found in the file after the program review, the institution was not obligated to perform a file review.[37] First, I find this language to be dicta because the AJ does not rely on it for his resolution of the case. In fact, the AJ held that FSA properly ordered the file review on a

---

[31] 34 C.F.R. § 668.24.
[32] *Id.* § 668.24(f).
[33] FPRD, pp. 5, 16.
[34] *Id.*, pp. 6, 19.
[35] GCA Brief, p. 10.
[36] *In re LA LAN 2000 Computer Training Center*, Dkt. No. 05-50-SP, U.S. Dep't of Educ. (Aug. 20, 2010), at 13.
[37] *Id.* at 8.

number of other grounds and upheld liability for 100% of the Title IV funds disbursed by the institution. Second, I note that departmental cases have upheld an order for a file review where an *initial* error rate of 10% or more was present, regardless of whether an institution later corrected enough of those initial errors to reduce the sample's error rate below 10%.[38] I do not consider the dicta in *In re LA LAN 2000 Computer Training Center* compelling authority to abandon the rule that the initial error rate guides FSA staff to determine when to order a file review.[39]

Finally, GCA has actually performed the file review which uncovered the errors at issue in this appeal. I find no basis to allow GCA, as a fiduciary of the Department, to avoid liability for identified errors in its record keeping. Therefore, I reject GCA's arguments on this issue.

B. The Record Does Not Adequately Support a Finding of 100% Liability

In the past, the Department has assessed 100% liability for Title IV funds where an institution has failed to provide a file review within the time period provided,[40] or has failed to provide a closeout audit after the school closed.[41] In cases where an institution has provided some system of records, the Department generally assesses liability as a percentage of funds based on the percentage of errors in the records, even in cases with inaccurate or fraudulent record keeping.

In one case, *In re Hamilton Professional Schools* (Hamilton I), the AJ considered "unrebutted and persuasive allegations of fraud" made by FSA toward an institution.[42] FSA found that the institution had falsified attendance records to secure additional funds. The AJ held that, at best, the institution had engaged in "extreme negligence that is clearly serious enough to establish a violation of the Respondent's fiduciary duty relative to the protection of federal funds." In the related decision on the institution's liability (Hamilton II), another AJ found that because the institution "significantly and deliberately altered files" the institution "cannot be relied upon to conduct a full file review."[43] Yet even where the Department believed the institution's records were wholly unreliable, the Department calculated liability using the "well-established method" of an error rate projection.[44] The AJ stated that this method "is well-suited to a situation where the institution's files are compromised by evidence of falsification and fraud."[45]

In another case, *In re Martin University*, the Department ordered an institution to conduct a full review of all student files in two award years for which the institution had obtained

---

[38] *E.g., In re St. Petersburg College*, Dkt. No. 08-19-SP, U.S. Dep't of Educ. (July 9, 2010), at 3.
[39] *Id.*
[40] *In re Classic Beauty Colleges*, Dkt. Nos. 96-147-SP, 97-33-SP, 97-58-SP, and 97-59-SP, U.S. Dep't of Educ. (Sept. 30, 1997).
[41] *In re Velma B's Beauty Academy*, Dkt. No. 13-09-SA, U.S. Dep't of Educ. (Dec. 4, 2013); *In re Institute of Medical Educ.*, Dkt. No. 12-59-SA, U.S. Dep't of Educ. (Feb. 14, 2013); *In re Southern College and Southeastern Academy*, Dkt. Nos. 01-42-SA and 01-43-SA, U.S. Dep't of Educ. (Apr. 29, 2002).
[42] *In re Hamilton Professional Schools*, Dkt. Nos. 01-13-EA and 01-14-ST (Sept. 7, 2001).
[43] *In re Hamilton Professional Schools*, Dkt. No. 02-49-SP (June 11, 2003).
[44] *Id.*
[45] *Id.*

verification documents.[46] Even though the institution refused to provide the required review, and only provided 30% of the required files, FSA did not set the institution's liability at 100% of funds for those award years. Instead, FSA set the liability as all funds for the students whose files were left out of the review. Even then, FSA reduced the liability from 147 students to 36 students based on information submitted after FSA issued the FPRD.[47]

The only authority I find for imposing blanket liability based on an inadequate file review completed by an independent auditor is *In re DeMarge College*.[48] In that case, among other things, FSA alleged that the institution "falsified students' records in order to increase its eligibility for Title IV funds."[49] Furthermore, after FSA ordered the institution to review all of its files, the institution engaged an auditor to review only a sample of 60 students.[50] On review, FSA found that the institution's own records contradicted each other.[51] Therefore, the institution failed to provide any suitable accounting of its disbursement.[52] However, even in *DeMarge*, FSA did not impose 100% liability for all funds, because FSA excluded any funds disbursed to students who graduated, presumably because those students received the benefit of the education provided by the institution.[53]

On appeal, FSA and GCA continue to argue about the error percentage in the auditor's attestation and whether the auditor reviewed all of the necessary records for the 2007-2008 and 2008-2009 award years. FSA argues that the attestation is so unreliable as to render the entire file review nonexistent.[54] The AJ agreed, finding that "the relatively high file review error rates assessed by its own auditors" supported 100% liability.[55] Even a cursory review of the auditor's data demonstrates that the error rate cited by the attestation is unsupported. Throughout the auditor's data, the "ledger date" and "correct date" for each disbursement are often discrepant. A significant amount of these discrepancies are greater than one week, and in many instances the dates are discrepant by a matter of months. These discrepancies alone preclude the Department from using the error rates asserted by the auditor as a basis for assessing liability.

However, I disagree that 100% liability is the only alternative measurement of liability. In the past, the Department has used an error rate calculation from the sample of records used for the initial program review, even where the Department found the institution's records to be, as a whole, too unreliable to even warrant a file review. Despite the Department's holdings in *Hamilton I* and *Hamilton II*, I do not consider an error rate projection the appropriate method of calculation where an initial sample cannot be trusted because of rampant fraud in an institution's record keeping. Yet I do not believe the case before me presents such a scenario.

---

[46] *In re Martin University*, Dkt. No. 13-10-SP, U.S. Dep't of Educ. (Nov. 6, 2013), at 4.
[47] *Id.* at 3–4.
[48] *In re DeMarge College*, Dkt. No. 04-39-SP, U.S. Dep't of Educ. (July 31, 2009).
[49] *Id.* at 5.
[50] *Id.* at 6.
[51] *Id.* at 11.
[52] *Id.*
[53] *Id.* at 6, n. 19.
[54] FSA Brief, p. 20.
[55] AJ Decision, p. 10.

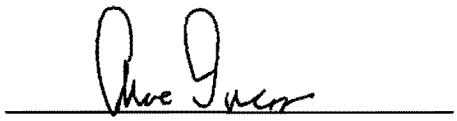
In the case before me, FSA argues that GCA is guilty of poor record keeping, but does not allege any widespread fraud in its system of records. FSA makes no assertion that the independent auditors engaged by GCA were incompetent, fraudulent, or otherwise failed to create an accurate data set using the files provided to them.[56]

I find that ignoring the data compiled by an independent audit, in the absence of any assertion of fraud or incompetence on the part of the auditor, and imposing 100% liability, is an extraordinary result and contrary to our case law. The Department has used an error rate calculation in the past where some record data exists, and like cases should be treated alike.[57] Even though FSA found the auditor's attestation unreliable, FSA could have calculated liability based on the error rate from the sample in the initial program review or could have derived a new error rate projection based on the data provided by the auditor. Either result would have been justified where FSA reasonably believed it could not rely on the auditor's calculated error rate, but did not find any evidence that the data assembled by the auditor was fraudulent or internally inconsistent. Accordingly, I remand the case to allow FSA to make a new liability calculation in conformance with this decision.

ORDER

ACCORDINGLY, the Initial Decision by Administrative Judge Richard F. O'Hair is HEREBY AFFIRMED IN PART as the Final Decision of the Department, and SET ASIDE AND REMANDED IN PART for further action as described above.

So ordered this 10th day of July 2015.



Arne Duncan

Washington, D.C.

[56] Transcript, pp. 82–84.

[57] *Westar Energy, Inc.* v. *FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

Service List

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4616

Mr. Ronald L. Holt, Esq.
Ms. Julie J. Gibson, Esq.
Dunn & Davison, LLC
Suite 2900, Town Pavilion
1100 Walnut Street
Kansas City, MO 64107

Mr. Russell B. Wolff, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110