



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

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*In the Matter of*  
**Berk Trade & Business**

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Docket No. 91-5-SP

**Decision of the Secretary**

This case arises from an appeal by the Office of Student Financial Assistance Programs, U.S. Department of Education (OSFAP), of the Initial Decision issued in this case by Chief Administrative Law Judge John F. Cook on December 10, 1992.

At the hearing, the parties agreed that Berk Trade & Business School (Berk) failed to timely refund unearned tuition to lenders. This resulted in lenders receiving excess interest and special allowance payments from the Department's Stafford Loan program. This appeal is centered on OSFAP's use of a simplified formula to estimate Berk's actual liability to the Department for the excess interest and special allowance payments. The parties further agreed that computing Berk's actual liability involved complex calculations that both wished to avoid -- presumably because of the expense and time required.

In his Initial Decision, Judge Cook held that OSFAP failed to provide legal authority for use of the simplified formula and failed to demonstrate a factual relationship between the simplified formula and the computation of Berk's actual liability. Therefore, Judge Cook found Berk liable only for the amount they admitted to owe.

On appeal, OSFAP argues that it met its burden of production by using the simplified formula to compute Berk's liability -- if Berk desired to dispute OSFAP's estimate, Berk should have performed the calculation of actual liability. OSFAP does not address the basis for Judge Cook's holding -- the lack of legal authority authorizing use of the simplified formula or a factual basis for accepting the simplified formula as an accurate estimator of actual liability. I therefore affirm the Initial Decision.

This decision does not preclude OSFAP from using the simplified formula in the future. However, any future use must be preceded by enactment of appropriate legal authority or a factual demonstration that the simplified formula is an accurate estimator of actual liability.

So ordered this 19<sup>th</sup> day of March, 1993.

  
Richard W. Riley

Washington, DC