



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

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In the matter of

**GALIANO CAREER ACADEMY**

**Docket No. 11-71-SP**

Federal Student Aid Proceeding

Respondent.

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**DECISION OF THE SECRETARY**

This matter comes before me on appeal from the Galiano Career Academy (GCA) of the December 1, 2015 Decision on Remand issued by Chief Administrative Judge Ernest C. Canellos (CAJ). On remand, the CAJ was tasked with taking further briefing on the correct calculation of GCA's liability in light of certain departmental precedent. In the Decision on Remand, the CAJ agreed with the office of Federal Student Aid (FSA) that no such calculation could be made. The CAJ left in place FSA's finding that GCA is liable for 100% of the Title IV funds it disbursed in the 2007-2008 and 2008-2009 award years.

Based on the following analysis, I will reverse the CAJ's decision.

I. Background

GCA was a for-profit trade school in Altamonte Springs, FL.<sup>1</sup> FSA conducted a program review of GCA ultimately resulting in issuance of a Final Program Review Determination (FPRD) on August 9, 2011. FSA found GCA liable based on several findings. In Finding One, previously considered on appeal, FSA found GCA liable for \$1,137,921. The Secretary affirmed that finding on July 10, 2015, and it is not at issue in the present case. In addition, another finding not appealed to the Secretary found GCA liable for \$49,060.

At issue in this case is Finding Ten, which established \$3,635,550.00 in liability, representing 100% of the Title IV funds GCA disbursed in the 2007-2008 and 2008-2009 award years. Because the amounts described above are a subset of the liability in Finding Ten, only the difference between the amounts is at issue in this case: \$2,448,569.

FSA asserted in Finding Ten that GCA failed to adequately account for its distribution of all Title IV funds in the two relevant award years. On appeal, Office of Hearings and Appeals (OHA) Administrative Judge Richard F. O'Hair upheld FSA's finding. GCA appealed to the Secretary. The Secretary set aside the OHA decision with regard to Finding Ten, citing a

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<sup>1</sup> Former President of Galiano Career Academy Agrees to Plead Guilty to Theft of Federal Funds, Obstruction, and Aggravated Identity Theft, U.S. Dep't of Justice (Jun. 13, 2013), <https://www.justice.gov/usao-mdfl/pr/former-president-galiano-career-academy-agrees-plead-guilty-theft-federal-funds>

number of past OHA decisions, and remanded the case for a new calculation of liability that conformed to past precedent.<sup>2</sup>

The CAJ addressed the case on remand. While GCA offered two alternative calculations of liability, FSA maintained its position that it was impossible to make any calculation other than 100% liability because GCA's system of records was tainted by fraud. The CAJ agreed and issued a decision on remand holding GCA liable for 100% of the Title IV funds in question.<sup>3</sup> GCA has since appealed that decision. I now turn to my analysis.

## II. Analysis

The crux of the Secretary's Order of Remand was that departmental precedent and past FSA practice supported assessing an institution's liability based on an error rate projection even when a school's system of records showed limited, non-systematic evidence of fraud and tampering that was not likely to have impacted all of the data.<sup>4</sup> The CAJ's decision on remand did not address these past cases.

In response to GCA's appeal, FSA argues that GCA's case is distinguishable from the cases cited in the Secretary's Order of Remand. FSA asserts that GCA engaged in "widespread fraudulent manipulation of its records."<sup>5</sup> Its support for this assertion is the fact that Michael Gagliano, GCA's former President and School Director, pled guilty to acts of fraud, including several specific instances of tampering with student records, and was sentenced to six years in prison. FSA asserts that this criminal judgment contradicts the Secretary's conclusion in the Order of Remand. Specifically, FSA argues that GCA engaged in such extensive fraud that all of its records are unusable.<sup>6</sup>

Counsel for GCA counters that FSA is inappropriately attempting to impose a liability amount designed to punish GCA rather than recover actual losses.<sup>7</sup> GCA further argues that there is no support for FSA's assertion that this case presents a scenario of "rampant fraud."<sup>8</sup> In fact, Michael Gagliano pled guilty to altering two documents from a single student file, as evidenced by a surveillance video.<sup>9</sup> Mr. Gagliano also admitted to falsifying attendance records for one other student to obtain loan funds after she ceased attending GCA.<sup>10</sup>

I disagree with FSA's position. The evidence submitted by FSA does not establish the presence of rampant fraud in this case in a way that distinguishes it from previous similar cases considered by the Department. Mr. Gagliano's guilty plea does not establish that acts of fraud

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<sup>2</sup> *Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (Jul. 10, 2015) (Decision of the Secretary).

<sup>3</sup> Decision, p. 4.

<sup>4</sup> *Galiano Career Academy*, p. 6 (citing *In re Hamilton Professional Schools*, Dkt. No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003); *In re Hamilton Professional Schools*, Dkt. Nos. 01-13-EA and 01-14-ST, U.S. Dep't of Educ. (Sept. 7, 2001); *In re Martin University*, Dkt. No. 13-10-SP, U.S. Dep't of Educ. (Nov. 6, 2013)).

<sup>5</sup> FSA Brief, p. 6.

<sup>6</sup> *Id.*, p. 9.

<sup>7</sup> GCA Brief, pp. 6-7.

<sup>8</sup> *Id.*, pp. 7-8.

<sup>9</sup> *Id.*, p. 8.

<sup>10</sup> *Id.*, p. 9.

permeated GCA's records such that they were wholly unreliable – he pled guilty to tampering with only a handful of student records. FSA did not supply evidence clearly showing that he falsified any other records. As the Department held previously, an error rate projection is the proper way to assess liability when an audit exists, but evidence of fraud or tampering makes a full file review unreliable.

Because FSA has not advanced any error rate projection, I am left to rely on GCA's calculations. GCA alternatively recommends \$424,501 of liability based on the error rate found by the auditor, or \$545,406 of liability based on the original FSA sample.<sup>11</sup>

As stated in the Order of Remand, the auditor report contains discrepancies, such as in dates of disbursements of funds to each student's account. The simpler choice for an error rate projection, as used in past cases, is the original FSA audit sample. That amount, as advanced by GCA in its brief, is \$545,406.<sup>12</sup> I find this is the best estimate of GCA's liability under the circumstances. Thus, FSA's Finding Ten is modified to set liability at \$545,406.

### ORDER

ACCORDINGLY, the Initial Decision by Chief Administrative Judge Canellos is HEREBY REVERSED. GCA's liability stemming from Finding Ten is set at \$545,406.

So ordered this 28<sup>th</sup> day of November 2017.

  
Betsy DeVos

Washington, D.C.

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<sup>11</sup> *Id.*, p. 14.

<sup>12</sup> *Id.*, Ex. R-36.

**Service List**

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

Ronald L. Holt, Esq.  
Julie J. Gibson, Esq.  
Dunn & Davison, LLC  
Suite 2900, Town Pavilion  
1100 Walnut Street  
Kansas City, MO 64106

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