



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

In the Matter of

Docket No. 17-55-SP

Atlanta Beauty & Barber Academy,

Federal Student
Aid Proceeding

PRCN: 2014-2-04-28540

Respondent.

Appearances:

Ronald L. Holt and Nicole Polzin, Rouse Frets White Goss Gentile Rhodes, P.C.
for the Atlanta Beauty & Barber Academy

Karen Karas, the Office of the General Counsel, U.S. Department of Education,
Washington, D.C., for Federal Student Aid

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

DECISION

Atlanta Beauty & Barber Academy (ABBA) is a private proprietary postsecondary institution offering non-degree one-year programs.¹ ABBA is appealing a portion of the liability assessed in the U.S. Department of Education's ("Department") Final Program Review Determination ("FPRD") that was issued on August 2, 2017. Between 2010 and 2016, ABBA participated in student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV).² Within the U.S. Department of Education (the Department), the office

¹ Final Program Review Determination (Aug. 2, 2017) (hereafter FPRD) at 2.

² 20 U.S.C. § 1070 *et seq.*

having jurisdiction over and oversight of these programs is the Office of Federal Student Aid (FSA). Before the FPRD was issued, ABBA's application for recertification to participate in Title IV programs was denied and its participation ended effective July 2016.³ In the FPRD, FSA assessed a liability on ABBA in the amount of \$3,074,724⁴. Specifically, FSA made five findings resulting in liabilities owed by ABBA.⁵ ABBA only contests the liability asserted by the Department in Finding 3 of the FPRD.⁶

Facts and Procedural History

I. FSA Program Review

In February 2014, FSA conducted a program review of ABBA.⁷ Prior to that review, the Department's Office of Inspector General (OIG) had received an anonymous complaint about attendance violations at ABBA.⁸ Initially, FSA reviewed a sample of 32 randomly selected student files, examining ABBA's administration of Title IV program funds during the 2011/2012 and 2012/2013 award years.⁹ FSA then reviewed an additional 23 student files from 2011/2012 award year based on the OIG complaint. Finally, FSA looked at seven additional files to examine ABBA's administration of the programs during the 2012/2013 award year.¹⁰

On July 15, 2015, FSA issued a program review report (PRR) making 21 findings and directing ABBA to respond to those findings. After multiple extensions, ABBA filed its responses on August 23, 2016.¹¹ While ABBA was preparing its response, it lost its eligibility to participate in

³ FPRD at 2.

⁴ FPRD at 31.

⁵ FPRD at 19, 24, 26, 28, 29, and 30

⁶ Respondent's Initial Brief at 3, Respondent's Reply Brief at 3.

⁷ Program Review Report (July 15, 2015) (hereafter PRR) at 4.

⁸ PRR at 13.

⁹ PRR at 4.

¹⁰ PRR at 4.

¹¹ Letter from Chris Miller to Thuy Ai Lam (Aug. 2, 2017) at 1; Respondent's Initial Brief at 3.

the Title IV programs effective on July 29, 2016.¹² On August 2, 2017, FSA issued a final program review determination (FPRD). In the FPRD, FSA determined that ABBA was able to resolve 13 of the 21 findings. FSA also determined that because ABBA was not eligible to actively participate in Title IV programs at that time, the school did not need to take any action related to three other findings until and unless ABBA attempted to become eligible for Title IV programs again. For five findings, Findings 2-6, FSA concluded in the FPRD that ABBA owed a liability. Findings, 2, 4, 5, and 6, which are not currently being challenged, address liabilities that are duplicated among the liabilities in Finding 3, which is being challenged in this case.

A. Program Review Report

In Finding 3 of the PRR, FSA noted that 34 C.F.R. § 668.32(d) requires an institution that is participating in Title IV programs to establish and maintain records necessary for determining student eligibility to participate in those programs. FSA asserts in the PRR that this requirement includes tracking attendance at a clock or credit hour school.¹³

FSA, in the PRR, additionally addressed the requirements under 34 C.F.R. § 668.22. FSA asserts that the regulation requires that when a student withdraws from the institution during the payment period or period of enrollment in which the student began attendance, the school must determine the amount of Title IV program funds the student has earned as of the student's withdrawal date.¹⁴

Finally, FSA, in the PRR, notes that when a school begins to participate with a Title IV program, it agrees to a program participation agreement under 34 C.F.R. § 668.14(b). This agreement requires the school to, among other requirements, establish and maintain administrative

¹² FPRD at 2.

¹³ PRR at 11.

¹⁴ PRR at 11.

fiscal records and procedures to ensure proper administration of Title IV program funds. The regulation further requires that the institution provide information to the Department, upon request, about the school's administrative capability and financial responsibility.¹⁵

When the reviewers examined ABBA's operations, they found multiple issues, especially with ABBA's attendance records. FSA indicated that this evidenced a failure to comply with regulations.

ABBA had multiple different attendance policies that could lead to a student being dismissed from ABBA including two different written policies in ABBA's catalog and on its school enrollment forms.¹⁶ ABBA's officials told reviewers that its own written policies were invalid, and that the actual implemented attendance policy was that a student was dismissed from ABBA after 14 consecutive days of absences. ABBA officials said that a student was contacted by phone after missing one week of school and then terminated from enrollment if the student did not return by the 14th missed day.¹⁷

FSA found in the PRR that ABBA's claimed policy of dismissal after 14 days of absence was not being consistently followed. FSA reviewers also found conflicting attendance records that undermined ABBA's administration of its attendance policies and the reliability of the records showing adherence to the policies.

ABBA's officials insisted that the school monitored attendance daily.¹⁸ ABBA had been using written attendance logs where students and instructors had to initial-in every day that they were in attendance. Then ABBA switched to using the Premier attendance system, where students clocked

¹⁵ PRR at 11.

¹⁶ PRR at 12.

¹⁷ PRR at 12.

¹⁸ PRR at 12.

in and out using a thumbprint.¹⁹

In the written attendance logs used by ABBA before the school changed to the Premier computer system, reviewers noticed the students' initials were very similar for the entire month's attendance entries.²⁰ ABBA officials explained that sometimes a student would initial at the end of the month rather than daily.²¹ Reviewers were also given another set of attendance records that appeared to be from a computerized system. These records conflicted with the records from the attendance log.²²

Several students who were interviewed by reviewers complained about inaccuracies in the attendance logs.²³ For example, one student noticed that records from the Premier computerized system were often inaccurate, including records that showed she attended class on February 24, 2014 when she was absent that entire day.²⁴ When reviewers informed ABBA officials of the error, the officials deleted the student's hours for that day and told reviewers that sometimes the Premier system did not work correctly and officials were required to enter clock hours manually. When reviewers looked more closely at the student's records, they noted that the student had been absent since February 11, 2014, and if the student had not returned on February 24, 2014, she would have been absent 14 days and should have been dismissed under the attendance policy that ABBA officials claimed to have adopted.

As noted, prior to the program review, an anonymous complaint had been filed with OIG alleging that students enrolled in the Nail Technician and Esthetician programs attended class only once a week or not at all. The complaint asserted the attendance records for these students were

¹⁹ PRR at 12.

²⁰ PRR at 12.

²¹ PRR at 12.

²² PRR at 12.

²³ PRR at 12.

²⁴ PRR at 12.

modified each month to make it appear as though students were attending class every day.²⁵

Finally, in the PRR, FSA identified 12 students who missed 14 or more consecutive days of attendance. FSA asserted that based on the attendance policy, these students should have been dismissed and a return to Title IV (R2T4) calculation should have been conducted to determine the amount of money that ABBA needed to return to the Department. Contrary to ABBA's claimed policy, FSA found that these students' files did not contain documentation of ABBA calling the students or issuing them warnings; documentation relating to attendance violations; eligible leave of absence (LOA) forms; or R2T4 worksheets.²⁶

FSA concluded that, "[d]ue to the high error rate of attendance violations" ABBA was ordered to "conduct a full 100% file review of all of its Title IV recipients in the 2011/2012, 2012/2013, 2013/2014, and 2014/2015 award years" and to review the attendance sheets for "each student."²⁷

In conducting this review, FSA ordered ABBA to:

1. Explain:

- "which attendance records were chosen to conduct the file review (attendance log with initials, computerized attendance records, Premier attendance records);"
- "why these records conflicted;" and
- "why the records that were chosen for the file review were more accurate."²⁸

2. Identify "each student that violated ABBA's attendance policy," perform an R2T4 calculation for each of those students, and submit the calculation, along with supporting information to FSA in a series of spreadsheets.²⁹

3. Hire an independent public accountant (IPA) to review the spreadsheets and test the review completed by ABBA. The IPA was required to develop a set of procedures designed to test the "accuracy and completeness" of the file review. Additionally, the procedures had to be sent to FSA within 30 days of receiving the PRR for FSA's approval. Applying those procedures, the IPA needed to prepare a report identifying and detailing any exceptions.³⁰

²⁵ PRR at 13.

²⁶ PRR at 13-14.

²⁷ PRR at 14.

²⁸ PRR at 14.

²⁹ PRR at 14-15.

³⁰ PRR at 15.

4. Perform a R2T4 calculation for any student who violated ABBA's attendance policy, or the 70% rate of attendance for satisfactory academic progress, or if the leave of absence is not valid the student was considered dropped. ABBA was also directed to return remaining Title IV program funds.³¹
5. Apply the revised attendance policy in the 2015 school catalog from the date the new policy was approved and put into practice.

B. ABBA's Response

ABBA filed its responses on August 23, 2016 after being granted multiple extensions.³² In its written response to the PRR, ABBA addressed Finding 3 by stating that it understands "the requirements for proper documentation regarding the reporting and handling of attendance."³³ The school additionally, represented that it was submitting the "complete file review and evaluation of all students who received FSA Title IV funds [or were awarded funds not approved through HCM2] and provid[ing] all documentation as evidence of attendance with filing."³⁴ ABBA further stated that it had "identified all students of concern and has appropriately determined the students['] last date of attendance and any subsequent Return to Title IV policy requirements."³⁵

ABBA also submitted a report from an IPA addressing the IPA's review of the spreadsheets created by ABBA. In its report, the IPA indicated that it used the procedures agreed to by ABBA, that ABBA's management was responsible for the preparation of the spreadsheets, and that the review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.³⁶ The IPA further noted that because the "sufficiency of the procedures is solely the responsibility of these parties specified in the report," the IPA made

³¹ PRR at 15.

³² Letter from Chris Miller to Thuy Ai Lam (Aug. 2, 2017) at 1; Respondent's Initial Brief at 3, 4.

³³ FPRD Appendix K: Institution's Written Response at 9.

³⁴ FPRD Appendix K: Institution's Written Response at 9.

³⁵ FPRD Appendix K: Institution's Written Response at 9.

³⁶ McClintock & Associates, P.C., INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES (Aug. 26, 2016) (Hereafter IPA Report).

“no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.”³⁷

The IPA report then addressed Finding #3 and concluded that they had “verified the Attendance Violations Report Excel Spreadsheets were complete and accurate based upon our testing and review of individual student attendance records.”³⁸ The IPA reported that the firm selected a sample from the master list of all Title IV program recipient for the four years and looked at “detailed attendance records” to find violations where a student missed at least 14 consecutive days. The IPA looked at R2T4 calculations that were incomplete and that when they were not originally completed and where they were done as a correction for an erroneous prior calculation. The IPA report indicated that “[a]ll students” in the sample were “found to be accurately reported on the Excel Spreadsheets, without exception.”

FSA asserts that the auditor from the IPA “confirmed with the Department that he was only given one set of attendance records for testing and could not confirm the accuracy of those attendance records versus the other attendance records that were not given to him.”³⁹ ABBA asserts that it used all attendance records from all sources it possessed to reconstruct the records and “as a result, ABBA did provide all relevant support documentation copies to the [IPA] for the attestation as required.”⁴⁰ ABBA argues that whether the auditor confirmed with FSA that he was given only one set of records is disputed and should be given no weight but offers no evidence to dispute FSA’s statement.⁴¹

Although ABBA responded to the PRR and submitted the spreadsheets and IPA report, there

³⁷ IPA Report.

³⁸ FPRD Appendix K: Institution’s Written Response at 9.

³⁹ FPRD at 23.

⁴⁰ Respondent’s Initial Brief at 4.

⁴¹ Respondent’s Initial Brief at 10-11.

is no evidence that ABBA ever submitted a narrative explaining: which records were used in the program review; why the records used in the program review were more accurate than other conflicting records; or why the records used conflicted with other records.

C. Final Program Review Determination

In Finding 3 of the August 2, 2017 FPRD, FSA noted that ABBA acknowledged that it had previously failed to identify students who unofficially withdrew by withdrawing without providing formal notice, and did not perform R2T4 calculations for those students. FSA indicated in the FPRD that ABBA had stated that it identified students “of concern,” their last date of attendance and any subsequent return to Title IV that is required.⁴² FSA, however, determined that ABBA’s response was insufficient, and that FSA could not “reasonably rely on [the response] to establish liabilities.”⁴³

The Department noted that, during the review, FSA reviewers “found conflicting attendance records for students,” and the file review was intended to respond to this finding. FSA asserted that, therefore, as part of the file review, ABBA was required to determine which of the attendance records were accurate, and submit an explanation as to which attendance records were chosen for the review, why these records conflicted with other records, and why these records were more accurate. ABBA never submitted this narrative.⁴⁴

FSA then notes that, although ABBA engaged an IPA, as required, the Department confirmed that the IPA was only given one set of attendance records for testing and could not compare these records against another set that were not given to him.⁴⁵ The Department also alleged in the FPRD that ABBA did not timely submit the procedures used by the IPA to the Department for prior

⁴² FPRD at 23.

⁴³ FPRD at 24.

⁴⁴ FPRD at 23.

⁴⁵ FPRD at 23.

approval. However, the Department no longer maintains this assertion as a basis for liability.⁴⁶

Finally, in the FPRD, FSA stated that the attendance records submitted by ABBA still conflict with the original attendance records in the student files that were previously given to program reviewers.⁴⁷ For example, for Student #43's attendance on January 7, 2012, the attendance logs show 9.58 hours, the computerized attendance records show 6.58 hours and the attendance records submitted by ABBA in response to the PRR show 9.60 hours.⁴⁸ FSA asserts that it has no way of accurately determining which records are correct in instances like this.⁴⁹

FSA found that ABBA's response to the PRR was "inadequate" and the Department could not "reasonably rely" on the response to establish the correct liabilities. Therefore, FSA ordered ABBA to return all Title IV program funds distributed to students at issue for the 2011/2012 and 2012/2013 award years. The Department, however, did not assess liabilities for the 2013/2014 and 2014/2015 award years, because ABBA was on heightened cash monitoring during those years.

II. Process Before OHA

In a request dated September 14, 2017, ABBA challenged the liabilities asserted in the FPRD. Multiple extensions and significant time were granted for the parties to explore settlement and narrow the issues in the case. On February 6, 2018, the parties submitted a Joint Report on Procedural Issues. In that document, FSA acknowledged that the procedures used by the IPA were agreed upon by the parties, and that FSA "will not object to the Auditor's attestation reports on this basis."⁵⁰ FSA, however, indicated that it

[M]aintains its position on Finding No. 3, as set forth in the [FPRD], i.e., that there were conflicting attendance records for students, that Respondent was required to determine which of the attendance records were accurate and to submit

⁴⁶ FPRD at 23; Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 2.

⁴⁷ FPRD at 23.

⁴⁸ FPRD at 23.

⁴⁹ FPRD at 23-24.

⁵⁰ Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 2.

an explanation, and that the Auditor was only given one set of attendance records for testing and could not confirm the accuracy of those attendance records verses the other attendance records that were not given to him.”⁵¹

ABBA, in that same Report, noted that it disagreed with FSA’s position that the IPA was not “given access to sufficient records or information to address and resolve any reported discrepancies identified by the program reviewers.”⁵² The school additionally noted that the student sign-in sheets that were submitted with the appeal were not submitted to the review team or the IPA due to a language barrier that resulted in ABBA’s president not understanding that these sheets were source material that was responsive to the reviewers.

A. ABBA’s Initial Brief

On August 2, 2019, ABBA filed its initial brief. In its brief, ABBA indicates that it was only appealing Findings 2 and 3.⁵³ In ABBA’s reply brief, the school further limits its appeal to only challenge Finding 3.⁵⁴ ABBA contends that FSA improperly assessed overly harsh “penalties” in Finding 3⁵⁵ and that the school has shown that it has met its record keeping obligations under the regulations.

ABBA first asserts that that the regulations only require that the school have established and reliable records, and ABBA’s attendance records are reliable, “adequate, appropriate, and independently substantiated.”⁵⁶ ABBA notes that the regulations do not require a specific method of record keeping, only that the school “establish and maintain” records “necessary to ensure proper and efficient administration of funds” and that the records be kept in a “systematically organized manner.”⁵⁷ ABBA asserts that the fact that the school was able to easily produce records

⁵¹ Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 2.

⁵² Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 3.

⁵³ Respondent’s Initial Brief at 3.

⁵⁴ Respondent’s Reply Brief at 3.

⁵⁵ Respondent’s Initial Brief at 4.

⁵⁶ Respondent’s Initial Brief at 8.

⁵⁷ Respondent’s Initial Brief at 9.

from computer attendance records, attendance logs with initials, and the Premier attendance records system during the on-site program review and in response to the PRR is evidence that they had establish and maintained records in an organized manner.

ABBA next argues that its records were “adequate, appropriate, and independently substantiated.”⁵⁸ The school first attempts to respond to the statement in the FPRD that the IPA confirmed with the Department that it was only given one set of attendance records by saying that this “confirmation” is a “disputed fact” and should be given “little weight.”⁵⁹ ABBA highlights that, rather, the IPA report indicates that it reviewed detailed attendance records and concluded all of the students in the detailed sample were accurately reported. The school notes that the IPA report did not mention any other attendance records.⁶⁰ ABBA argues that this evidences that ABBA’s records were available and accessible, as required by 34 CFR § 668.24(d), and were adequate for the IPA to review a detailed sample without any inaccuracies.⁶¹

Finally, ABBA argues that whether ABBA had inconsistencies with its attendance policies or how the policies were applied have no bearing on whether ABBA kept adequate records.⁶² ABBA additionally argues that the fact that it is a small school and the faculty have knowledge of the students’ attendance undercuts that inconsistent attendance records would cause problems.⁶³ ABBA gave the example that when ABBA was switching from a manual record keeping to electronic record keeping, the initial electronic system was not keeping accurate records so ABBA reviewed the records monthly and made corrections.⁶⁴

⁵⁸ Respondent’s Initial Brief at 10.

⁵⁹ Respondent’s Initial Brief at 10-11.

⁶⁰ Respondent’s Initial Brief at 11.

⁶¹ Respondent’s Initial Brief at 11.

⁶² Respondent’s Initial Brief at 11.

⁶³ Respondent’s Initial Brief at 11-12.

⁶⁴ Respondent’s Initial Brief at 12. ABBA indicates that this explains why the initials for the entire month of attendance are very similar.

ABBA first contends that it was not until the school received the FPRD that ABBA “became aware that the Department disagreed with the [IPA] procedures, as the Department felt that a 10% sample review size was not adequate.” ABBA notes that the process used by the IPA was reviewed and revised and the revision was approved by the Department.⁶⁵

ABBA further asserts that “all material attendance documentation, from all sources it possessed, were used in the reconstruction of the records.”⁶⁶ ABBA asserts that it, therefore, provided “all relevant support documentation copies to [the IPA] for the attestation as required.”⁶⁷ ABBA contends that it had disclosed to FSA that all sources were used in the reconstruction because “students contained in the audit had multiple attendance documents from multiple sources.”⁶⁸ ABBA notes that until it was placed in heightened cash monitoring, and converted to the Genesis software system provided by a third-party financial aid servicer, the school did not have a single source of attendance.⁶⁹ ABBA also claims that during a remodel of its faculty instructional area, it discovered hard copies of student sign-in sheets that had been used as source documents in recording the original instructor summary of attendance which was the subject of the PRR.⁷⁰ ABBA acknowledges that it does not have the original sign-in sheets, because those were destroyed or damaged prior to the program review, but feels that the copies are proper evidence.⁷¹ It further argues that, although ABBA did not understand that it needed to submit the student sign-in sheets rather than just the summaries to the IPA and the Department, these sign-in sheets support the reconstruction of the records.⁷²

⁶⁵ Respondent’s Initial Brief at 4.

⁶⁶ Respondent’s Initial Brief at 4.

⁶⁷ Respondent’s Initial Brief at 4.

⁶⁸ Respondent’s Initial Brief at 4.

⁶⁹ Respondent’s Initial Brief at 4.

⁷⁰ Respondent’s Initial Brief at 4-5.

⁷¹ Respondent’s Initial Brief at 5.

⁷² Respondent’s Initial Brief at 5.

ABBA further contends that it used the same record-keeping procedures during the two years that it was under heightened cash monitoring as it did during the two award years giving rise to the liabilities at issue. ABBA argues that it is “illogical” that FSA would argue that ABBA did not maintain adequate records and was assessed liabilities for two award years when ABBA was not assessed liabilities for the time when it was under heightened cash monitoring and using the same methodologies and record-keeping systems.⁷³

ABBA further asserts that, even if this tribunal determines that FSA was correct in assessing liabilities in Finding 3, these liabilities should be reduced to eliminate funds disbursed for students who graduated and sat for state licensing examinations.⁷⁴ ABBA asserts that because they attended sufficient hours to graduate, students attended enough hours to “earn” the Title IV funds used to pay for the classes. ABBA argues that the Secretary of Education’s decision in *In re Galiano*,⁷⁵ stands for the holding that the Department cannot impose a liability for 100% of Title IV funds for record-keeping violations when some of the students who attended the school during the time of violations graduated.⁷⁶ ABBA asserts that on average 82% of the students during the two award years at issue graduated and sat for licensing exams.⁷⁷ These numbers are based on the examination tables showing the ABBA graduates who took licensing exams and the annual reports that ABBA filed with its accrediting agency.⁷⁸ ABBA further notes that under state law, a student

⁷³ Respondent’s Initial Brief at 10.

⁷⁴ Respondent’s Initial Brief at 12-15. Respondent also made assertions addressing specific instances where it corrected errors in R2T4 calculations that did not change the amount of money owed to the Department, and where the Department allegedly misconstrued the effect of closure dates around the December holiday school vacation period. Respondent’s Initial Brief at 5-7. These arguments, however, do not change the analysis of whether ABBA has met its burden of showing that its attendance records are sufficiently reliable to substantiate the disbursement of Title IV program funds.

⁷⁵ Dkt. No. 11-71-SP, U.S. Dep’t of Educ. (July 10, 2015) (Dec. of Sec.). Respondent cites to the Secretary’s initial decision. The case was remanded and then later a second decision was issued from the Secretary on Nov. 28, 2017.

⁷⁶ Respondent’s Initial Brief at 12-13. ABBA also cites to *In re DeMarge College*, Dkt. No. 04-39-SP, U.S. Dep’t of Educ. (July 31, 2009), for the idea that the school should not be liable for funds disbursed for student who graduated because those students received the benefit of the education provided.

⁷⁷ Respondent’s Initial Brief at 13.

⁷⁸ Respondent’s Initial Brief at 13, Respondent’s Exhibits R-6 and R-7.

taking a cosmetology exam is required to submit a transcript showing the number of hours and courses completed and the state will only license barbers who have completed a course of study of at least 1,500 hours.⁷⁹

B. Department's Response Brief

After ABBA filed its initial brief, the parties requested, and were granted extensions to explore settlement. On October 22, 2019, however, FSA submitted a status report indicating that the parties were unable to reach settlement. Thereafter, on November 15, 2019, FSA filed a responsive brief.

FSA maintains that ABBA has not satisfied its burden to show that Title IV funds were properly disbursed. Citing to 34 C.F.R. §§ 668.116(d) and 668.14, FSA states that as a participant in Title IV programs, ABBA bears the burden of proving that funds were properly disbursed.⁸⁰ FSA asserts that this includes demonstrating that ABBA was administratively capable of administering the Title IV programs under the standards established by the Department.⁸¹ FSA notes that this tribunal's decision in *In re Maurice Charles Academy of Hair Styling*,⁸² determined that participants in the Title IV programs must establish and maintain student and financial records, and that the records "must be accurate, complete, and reliable."⁸³

FSA argues that ABBA fell "woefully short" in meeting its burden of showing that liabilities were improper.⁸⁴ More specifically, FSA notes that Finding 3 is based on inconsistent attendance records and argues that ABBA's brief and exhibits do not resolve the inconsistencies.⁸⁵

FSA argues that a Title IV participant is required to maintain records demonstrating that a

⁷⁹ Respondent's Initial Brief at 14.

⁸⁰ FSA Response Brief at 3.

⁸¹ FSA Response Brief at 3.

⁸² Dkt. No. 91-18-ST, U.S. Dep't of Educ. (May 17, 1993)

⁸³ FSA Response Brief at 3-4.

⁸⁴ FSA Response Brief at 4.

⁸⁵ FSA Response Brief at 4, 9.

student receiving Title IV aid is eligible for such aid, which includes tracking attendance.⁸⁶ The Department further notes that past cases found that a school participating in Title IV programs must establish that a student began taking classes for which the funds were disbursed or risk permitting students and the school to improperly retain Title IV funds.⁸⁷

FSA then directly responds to ABBA's other argument. FSA asserts that ABBA is missing the link between the records and the administration of Title IV program funds, arguing it is insufficient that ABBA maintains its records in an organized manner. Citing to 34 C.F.R. § 668.14(b)(4), FSA asserts that ABBA's argument misses that the "records must demonstrate that the administration of the funds was *proper*."⁸⁸ FSA argues that ABBA's records do not demonstrate that funds were properly administered.

FSA notes that, as reported in the FPRD, ABBA submitted three different types of attendance records during the program review that conflicted with each other.⁸⁹ Referencing the examples of missing documentation of students being called or warned about excessive absences and of missing leave of absence forms, FSA further asserts that some of ABBA's attendance records were missing.⁹⁰

FSA then notes that the liability in Finding 3 is based on ABBA's failure to demonstrate the attendance of the students listed in two appendices of the FPRD, and argues that ABBA's exhibits to its brief do not include actual attendance records to address this.⁹¹ FSA asserts that, rather, ABBA raises three arguments that the Department feels are "unavailing."⁹²

⁸⁶ FSA Response Brief at 9.

⁸⁷ FSA Response Brief at 9 (quoting *In re Housatonic Community College*, Dkt. No. 15-36-SP, U.S. Dep't of Educ. (July 26, 2016).

⁸⁸ FSA Response Brief at 9 (emphasis in original).

⁸⁹ FSA Response Brief at 10.

⁹⁰ FSA Response Brief at 10.

⁹¹ FSA Response Brief at 10.

⁹² FSA Response Brief at 10-11.

First, FSA responds to ABBA's argument that the decision not to impose liabilities for the two award years when ABBA was under heightened cash monitoring shows that the Department should not impose liabilities for the two previous years when ABBA used the same record keeping practices. FSA cites the Secretary's decision in *In re Helma Institute of Massage Therapy*.⁹³ There, the Secretary stated the review conducted before funds are released when a school is under heightened cash monitoring is less thorough and not a suitable substitute for a full file review during a program review.⁹⁴ The Department contends that in a heightened cash monitoring situation, FSA only looks at a sample of students, not a full file review. FSA asserted that, because a heightened cash monitoring decision must be made quickly, FSA does not have the time to do a full review and must rely on a sample. Moreover, FSA contends that ABBA is arguing that the acceptance of HCM2 during two years retrospectively proves that the award of aid to different students during a different time is valid, which should be rejected. Finally, FSA notes that ABBA has acknowledged that the record keeping systems were different during the 2013/2014 award years when ABBA was placed on heightened cash monitoring. Specifically, FSA highlights that in its brief, ABBA stated that it had a single source for attendance once it was placed on heightened cash monitoring and was placed on the Genesis system.⁹⁵

Next, FSA addresses ABBA's assertion that the IPA report proves that ABBA's records sufficiently support the disbursement of Title IV program funds at issue in Finding 3. FSA asserts that, while the auditor concluded that the sample was accurately reported by ABBA on the spreadsheet, the audit is "unacceptable" because the IPA was only given one set of attendance records for testing and was not able to address inconsistencies among the three sets of records.

⁹³ Dkt. No. 11-83-SP, U.S. Dep't of Educ. (Oct. 1, 2014) (Dec. of Sec.)

⁹⁴ FSA Response Brief at 11-12.

⁹⁵ FSA Response Brief at 12-13.

FSA points out that, because the auditor was not able to determine which records were accurate, the file review results are “not fully reliable.”⁹⁶

FSA additionally responds to ABBA’s argument disputing that the auditor was only given one set of records. FSA contends that as the party with the burden of proof in this matter, ABBA must prove that it provided the IPA with all records. FSA asserts that ABBA has failed to do this.⁹⁷

Then, FSA answers the school’s argument that FSA has conflated the attendance policy with ABBA’s record maintenance obligations. FSA asserts that, in the FPRD, the Department “simply points out” that during the program review, ABBA staff told reviewers that the school does not follow the written attendance policy of dismissing a student after 30 consecutive days of absence but rather dismisses a student after 14 days.⁹⁸ FSA argues that the Department, in the FPRD, does not approve or disapprove of the policy, but just sets out the terms and then reviews the records against the 14-day consecutive absence policy that was in place.⁹⁹ FSA asserts that from this review it found instances where students missed 14 consecutive days and should have been considered withdrawn, but there was no R2T4 calculation because other records showed the student was not absent.¹⁰⁰ These inconsistencies show the inaccuracy of the attendance records.¹⁰¹

Finally, FSA responds to ABBA’s alternative argument that the liabilities in Finding 3 should be reduced by 80% for students who graduated and took licensing exams. FSA notes that, citing *In re Galiano Career Academy* and *In re DeMarge College*, ABBA argues that the Secretary rejected the argument that the Department can impose a liability for 100% of Title IV program funds for record keeping violations over a period of time when some of the students graduated and

⁹⁶ FSA Response Brief at 13 (quoting FPRD at 18).

⁹⁷ FSA Response Brief at 13.

⁹⁸ FSA Response Brief at 14.

⁹⁹ FSA Response Brief at 14.

¹⁰⁰ FSA Response Brief at 14.

¹⁰¹ FSA Response Brief at 14.

sat for licensing exams. In response, FSA notes that in *Galiano* the Secretary noted that in *DeMarge*, 100% liability was not imposed because the students who graduated presumably received the benefit of the education. FSA responds, however, that while in *DeMarge*, FSA accepted as accurate the school's records regarding which students graduated, in this matter FSA disputes the accuracy of ABBA's records.¹⁰² Additionally, FSA notes that in a later case involving a different award year disbursement at DeMarge College, this tribunal rejected the argument that FSA could not impose a 100% liability. Specifically, the second decision¹⁰³ concluded that when the school fails to demonstrate with specificity what evidence supports a reduction in liability, the school cannot rely on "broad, unsubstantiated assertions alone" to refute allegations and reduce the liability imposed.¹⁰⁴

FSA contends that the documentation in ABBA's program review was "so inconsistent and unreliable" that it was required to impose 100% liability.¹⁰⁵ The Department notes that, rather than rely on attendance records, ABBA is using licensing information from the state of Georgia, the Annual Cohort Grid from ABBA's accrediting agency, and "an unidentified chart."¹⁰⁶ FSA argues that these exhibits do not support an 80% reduction in liabilities. The Department further asserts that ABBA has not provided a substantive explanation of its charts or mathematical analysis of how it calculated 80% of students graduated.¹⁰⁷

FSA then argues that the two exhibits that ABBA filed in support of its 80% calculation are unreliable. First, the Department addressed ABBA's exhibit R-6, the list of ABBA students who sat for Georgia licensing exams. FSA notes that it agrees that Georgia law requires students to

¹⁰² FSA Response Brief at 16.

¹⁰³ Dkt. No. 06-01-SP (Sept. 15, 2011)

¹⁰⁴ FSA Response Brief at 16.

¹⁰⁵ FSA Response Brief at 16.

¹⁰⁶ FSA Response Brief at 16.

¹⁰⁷ FSA Response Brief at 17.

have completed a requisite number of school hours in an approved program to sit for the exam. FSA asserts, however, that examining the actual process used to confirm completion of the required hours undermines the exhibit's reliability in this matter. FSA notes that ABBA did not include any documentation submitted by any students who sat for an exam, and so the Department submitted a version of the required form¹⁰⁸ found on the website of the company that has contracted with the state to administer the cosmetology examinations. FSA notes that ABBA did not submit evidence that ABBA had completed this form for any student listed in R-6, opening the possibility that students complete the forms themselves or another institution completed the form. FSA argues that, even if ABBA did complete this form for students listed in R-6, there is no evidence as to the attendance records relied upon or the process used by ABBA to complete the form. FSA asserts that if ABBA used the same attendance records that were too unreliable to establish attendance for Title IV eligibility purposes, using the same records for a second purpose does not cure them of their "inadequacies and inconsistencies."¹⁰⁹ Additionally, FSA notes that there is no proof that the students listed in R-6 make up 80% of the students at issue in this matter. FSA notes that only 68 students from R-6 are included among those in Appendix E and F to the FPRD, the students whose disbursements are at issue in Finding 3.¹¹⁰ FSA states that because the two exhibits identify 661 different students, the students listed in R-6 account for only 10.29% of the students at issue.¹¹¹ Finally, FSA highlights that several of the students listed in R-6, who allegedly graduated and took licensing exams, are not listed in R-7, which identifies students who completed the program, and ABBA does not explain this inconsistency between the exhibits.¹¹²

¹⁰⁸ FSA Exhibit 5.

¹⁰⁹ FSA Response Brief at 18.

¹¹⁰ FSA Response Brief at 18-19

¹¹¹ FSA Response Brief at 19.

¹¹² FSA Response Brief at 19.

FSA then argues that ABBA’s exhibit R-7, which ABBA identified as “ABBA Annual Reports with NACCAS,” does not sufficiently corroborate ABBA’s argument for an 80% reduction in liabilities in Finding 3. FSA notes that ABBA does not discuss the exhibit, explain how it used the exhibit to calculate the percentages, or explain the relationship between the two sets of documents in the exhibit.¹¹³

The Department further directly challenges the first two pages of exhibit R-7 that allegedly identifies the completion rates, placement rates, and licensure rates for 2011. FSA asserts that these pages include numbers only, but ABBA has not explained how the numbers are compiled or the source of the information or identification of the students listed.¹¹⁴ FSA further asserts that there is an error in these pages. Specifically, the completion rate table indicates that 136 students completed studies in 2011, yet the placement rate table states that 142 students who completed their studies in 2011 are eligible for employment.¹¹⁵ FSA further raises two challenges whether the information is relevant. First, FSA argues that there is no indication how many of the students listed received Title IV funds.¹¹⁶ Second, FSA contends that because the information is for calendar year 2011, not for an award year or academic year, it is not clear which of the students listed were enrolled for the 2010/2011 award year that is not at issue, rather than the 2011/2012 award year that is at issue in this matter.

FSA finally attacks the data in ABBA’s exhibit R-7 for 2012 and 2013 by noting that they include students who are not included in Appendices E and F to the FPRD, which are the lists of students whose disbursements are the basis for liabilities in Finding 3.¹¹⁷ The Department further

¹¹³ FSA Response Brief at 20.

¹¹⁴ FSA Response Brief at 20.

¹¹⁵ FSA Response Brief at 20-21

¹¹⁶ FSA Response Brief at 21.

¹¹⁷ FSA Response Brief at 21, 22.

contends that the lists of students in ABBA’s exhibit R-7 for 2012 and 2013 also fail to include some students who are listed in Appendices E and F to the FPRD. FSA argues that these inconsistencies make ABBA’s exhibit R-7 “wholly unreliable.”¹¹⁸

C. ABBA’s Reply Brief

After missing the deadline to file an optional reply brief, in December 2019, ABBA filed a motion to file its untimely reply brief. After this matter was reassigned to the undersigned on February 1, 2021, an order was issued on February 2, 2021, granting ABBA’s motion and taking the reply brief under consideration.

ABBA acknowledges that it has the burden of proving the sufficiency of its records, but argues that it has maintained sufficient records under the regulations to meet this burden.¹¹⁹ First, ABBA argues that it is inequitable and would encourage abuse by FSA to allow the Department to allege a “fact” in the FPRD and then require the school to disprove the fact.¹²⁰ The school further argues that FSA approved the procedures used by the IPA and should not be permitted to “retroactively change its position regarding the IPA and the procedures used to conduct the file review.”¹²¹ Citing to a past case,¹²² ABBA further elaborates that FSA has used the process of “extrapol[ating] from a sample of students to impose liabilities for mismanagement of Title IV funds across the entire universe of students.”¹²³ Finally, ABBA further argues that when the IPA performed the file review, it had attendance records for every student involved in the full file review and that it believes that the IPA’s review exonerates ABBA as to Finding 3¹²⁴

ABBA further argues that the Department misconstrues the school’s argument about the

¹¹⁸ FSA Response Brief at 22.

¹¹⁹ Respondent’s Reply Brief at 3-4.

¹²⁰ Respondent’s Reply Brief at 4.

¹²¹ Respondent’s Reply Brief at 5.

¹²² *Chauffer’s Training Sch. Inc. v. Riley*, 967 F. Supp. 719, 728 (N.D.N.Y. 1997).

¹²³ Respondent’s Reply Brief at 5.

¹²⁴ Respondent’s Reply Brief at 5.

Department not holding ABBA liable for the time the school was under heightened cash monitoring. Specifically, ABBA asserts that it is not arguing that the acceptance of documentation for different students during the 2013/2014 and 2014/2015 award years proves that the award to different students during earlier years is valid. Rather, ABBA argues that the liabilities should be reduced because there is a period of overlap in how attendance was tracked.¹²⁵ ABBA further contends that its argument is that the acceptance of “the same kind of attendance records during [the heightened cash monitoring submission period] is a factor in the universe of evidence that supports at least a reduction in the liability ordered under Finding 3.”¹²⁶

Finally, ABBA reiterates its argument that FSA cannot impose liabilities for all Title IV program funds disbursed during the two award years when there is evidence that some of the funds were properly disbursed. ABBA argues that in the final decision in *Galiano*,¹²⁷ the Secretary of Education concluded that the judge in that matter erred in affirming 100% liability where there was fraud that undermined the reliability of the records. Specifically, the Secretary wrote that FSA did not establish the presence of rampant fraud “in a way that distinguishes it from previous similar cases considered by the Department,” and so an error rate projection was the proper way to assess liabilities “when an audit exists, but evidence of fraud or tampering makes the full file review unreliable.”¹²⁸ In *Galiano*, because FSA did not submit an error rate, the Secretary relied on the error rate provided by the school. ABBA appears to argue that because FSA does not submit an error rate, the 80% reduction in liabilities advanced by ABBA should be used.¹²⁹

ABBA, however, also changed its argument in its Reply Brief to argue that the reduction

¹²⁵ Respondent’s Reply Brief at 6.

¹²⁶ Respondent’s Reply Brief at 6.

¹²⁷ Dkt. No. 11-71-SP, U.S. Dep’t of Educ. (Nov. 28, 2017) (Dec. of Sec.).

¹²⁸ Respondent’s Reply Brief at 8.

¹²⁹ Respondent’s Reply Brief at 8.

should be 83%, not 80%, by submitting new evidence consisting of a “Master List of ABBA students who graduated during the years applicable to this appeal.”¹³⁰ ABBA took the list of the 700 students who graduated, withdrew, or whose departure from the school is unknown and argues that 581 students who graduated in Title IV program eligible programs. Dividing 581 by 700, ABBA argues for a graduation rate of 83%.¹³¹

Issues

The issues to be addressed are:

- 1. Has ABBA sufficiently met its burden of proving the sufficiency of its attendance records such that it should not be liable for all Title IV program funds disbursed during the two award years in question?**
- 2. Is the inclusion of liabilities for students who graduated and/or sat for Georgia state licensing examinations overbroad and erroneous?**

Summary of Decision

Atlanta Beauty and Barber Academy fails to prove that its attendance records are reliable enough to adequately show that it properly disbursed Title IV program funds during the 2011/2012 and 2012/2013 award years. Additionally, FSA properly includes funds disbursed to students who graduated and/or sat for state licensing exams in the liabilities assessed. The liabilities assessed in Finding 3 of the Final Program Review Determination are affirmed.

¹³⁰ Respondent’s Reply Brief at 9. It is worth noting that by filing this exhibit with its response brief, ABBA does not provide FSA an opportunity to respond.

¹³¹ Respondent’s Reply Brief at 10.

Principles of Law

When challenging a finding in an FPRD in a Subpart H proceeding, ABBA has the burden of proving by the preponderance of the evidence that the Title IV funds received were disbursed properly and that the institution complied with program requirements.¹³² Before participating in Title IV programs, institutions are required to sign program participation agreements.¹³³ When an institution enters into this agreement, it agrees to comply with the statutory and regulatory provisions applicable to the Title IV programs it administers, establish and maintain administrative and fiscal procedures and records “as may be necessary to ensure proper and efficient administration” of Title IV funds, and that it is liable for all improperly spent or unspent Title IV funds.¹³⁴ The regulations further direct that the records that a school must maintain include “[d]ocumentation of each student’s . . . eligibility for [Title IV program] funds,”¹³⁵ and that the institution must keep the records in a “systematically organized manner.”¹³⁶

Institutions are permitted to disburse Title IV program funds only to eligible students.¹³⁷ An eligible student is one who, among other conditions, is “enrolled, or accepted for enrollment, in an eligible program at an eligible institution.”¹³⁸ It follows, then, that a school may not disburse funds to a student who has withdrawn from the school. When a student begins to attend a school but then withdraws from the school within the same payment period or period of enrollment, the institution must determine the amount of Title IV funds the student earned as of the student’s withdrawal date.¹³⁹ The institution must then conduct a return to Title IV (R2T4) calculation and

¹³² 34 C.F.R. § 668.116(d).

¹³³ 20 U.S.C. § 1094(a); 34 C.F.R. § 668.14(a).

¹³⁴ 20 U.S.C. § 1094(a)(3); 34 C.F.R. §§ 668.14(b)(1), (4), and (25); 34 C.F.R. § 668.116(a) and (d).

¹³⁵ 34 C.F.R. § 668.24(c)(1)(iii).

¹³⁶ 34 C.F.R. § 668.24(d)(1).

¹³⁷ See 20 U.S.C. § 1091; 34 C.F.R. § 668.32.

¹³⁸ 34 C.F.R. § 668.32(a)(1)(i).

¹³⁹ 34 C.F.R. § 668.22(a)(1).

return to the Department any unearned Title IV funds.¹⁴⁰

A school is not necessarily required to track attendance if it has alternative means to corroborate that a student was properly disbursed Title IV program funds.¹⁴¹ When a school has a policy that attendance be taken,¹⁴² however, it must maintain attendance records and use those records to determine whether a student has withdrawn and, if so, the student's last date of attendance for R2T4 calculations.¹⁴³ In that situation, reliable attendance records are essential for determining whether a student remains eligible for Title IV program funds and whether those funds that were used for the student's education were properly disbursed.

A program review, under Subpart H, is used to recover loss by the Department, not to punish a school.¹⁴⁴ As noted, a recipient of Title IV program funds has the burden of showing both that it complied with program requirements **and** that the disbursements at issue were "proper."¹⁴⁵ It follows, then, where the school has failed to provide sufficient evidence that reliably shows that any portion of disbursements at issue were properly made, the Department has an obligation to recover all Title IV program funds at issue.

Analysis

I. **ABBA has failed to show that its attendance records are sufficiently reliable to substantiate the disbursement of Title IV program funds.**

ABBA has the burden of showing that it properly disbursed Title IV program funds. ABBA argues that its ability to produce records is evidence that it met its burden to keep records in a

¹⁴⁰ 34 C.F.R. § 668.22(g).

¹⁴¹ See 34 C.F.R. § 668.22(c); *In Re CUNY Lehman*, Dkt. No. 18-38-SP, U.S. Dep't of Educ. (Apr. 22, 2020) at 15.

¹⁴² 34 C.F.R. § 668.22(b)(3)(i)(B).

¹⁴³ 34 C.F.R. § 668.22(b).

¹⁴⁴ See *Chattahoochee Tech. Inst.*, Dkt. No. 97-46-SP, U.S. Dep't of Educ. (June 23, 1999) (Dec. of Sec.) at 2.

¹⁴⁵ 34 C.F.R. § 668.116(d).

“systematically organized manner.”¹⁴⁶ As ABBA also notes, however, it must maintain records necessary to ensure the proper administration of funds and its financial responsibility.¹⁴⁷

Because ABBA is a school that requires that attendance be taken, maintaining reliable attendance records is necessary for determining whether a student has withdrawn and is no longer eligible for Title IV program funds. It is also essential for calculating the last dates of attendance for R2T4 calculations of students who have withdrawn from the school. It follows then that ABBA must show that it has reliable attendance records to substantiate the disbursement of Title IV program funds. The program review uncovered multiple issues calling into question the reliability of ABBA’s attendance records, including that attendance records conflicted and that attendance records were amended after the fact with no clear basis for the new information other than the school is small and faculty have knowledge of the students’ attendance.¹⁴⁸ FSA instructed ABBA what information would be necessary to resolve the issues raised by the multiple, and inconsistent, attendance records provided by ABBA. ABBA’s failure to provide the information requested, or otherwise adequately address the issues raised by FSA, leaves the attendance records unreliable. With no reliable attendance records to use to determine whether students attended class and remained eligible for the funds, which students should have been dismissed for attendance violations, and when students unofficially withdrew for failing to attend class, there is no way to properly conduct R2T4 calculations. It is, therefore, not possible to determine which of the Title IV funds that were disbursed during the two award years in question were properly disbursed and which should be returned. In this situation, the Secretary’s obligation to ensure administrative capabilities and financial responsibility in the administration of Title IV program funds requires

¹⁴⁶ Respondent’s Initial Brief at 9.

¹⁴⁷ See 20 U.S.C. § 1094(a)(3); 34 C.F.R. §§ 668.14(b)(4), 668.24(a)(3), and 668.24(a)(4).

¹⁴⁸ Respondent’s Initial Brief at 11-12

the Department to demand the return of all Title IV program funds for the period in question.

A. Program review revealed unreliable records

ABBA's officials told FSA reviewers that the attendance policy in place was that a student was contacted by phone after missing one week of school and then the student's enrollment was terminated if the student did not return by the 14th missed day.¹⁴⁹ During the program review, FSA reviewers found evidence that attendance records were unreliable. As a result, FSA reviewers found multiple students were not dismissed when they should have been, R2T4 calculations were not completed, and Title IV program funds were improperly retained by ABBA.

After ABBA's officials insisted that the school monitors attendance on a daily basis,¹⁵⁰ reviewers noticed in attendance logs that students' initials were very similar for the entire month of attendance,¹⁵¹ which ABBA officials explained was a result of students waiting until the end of the month to initial rather than on a daily basis.¹⁵² Later, ABBA offered an alternative explanation, that the initial electronic record keeping system was not keeping accurate records and ABBA was making monthly corrections.¹⁵³ Both of ABBA's explanations ring hollow and only serve to indicate that the time sheets were not maintained on a daily basis, as the policy required, but were instead edited after the fact, undermining their reliability.

Reviewers also noticed that the record from the computerized system conflicted with the attendance from the attendance log.¹⁵⁴ During interviews, several students complained about inaccuracies in the attendance logs.¹⁵⁵ Students would have no incentive to lie about this, especially when the inaccuracies prevented the students from being dismissed from ABBA. When

¹⁴⁹ PRR at 12.

¹⁵⁰ PRR at 12.

¹⁵¹ PRR at 12.

¹⁵² PRR at 12.

¹⁵³ Respondent's Initial Brief at 12 n. 2.

¹⁵⁴ PRR at 12.

¹⁵⁵ PRR at 12.

one student noticed that records from the Premier attendance system erroneously showed that she had attended class on February 24, 2014 when she was absent that entire day,¹⁵⁶ ABBA officials responded to this error by deleting the student's hours for that day and told reviewers that sometimes the Premier system did not work correctly and officials were required to enter clock hours manually. Additionally, the reviewers found that February 24 was the student's 14th consecutive day of absence and the student should have been dismissed under ABBA's policy. Finally, reviewers, in the PRR, identified 12 students who missed 14 or more consecutive days of attendance, and based on the attendance policy, these students should have been dismissed and R2T4 calculations should have been conducted to determine the amount of money that ABBA needed to return to the Department. FSA however, found that these students' files do not contain documentation of ABBA calling the students or issuing them warnings, documentation related to attendance violations, eligible leave of absence (LOA) forms, or R2T4 worksheets for these students.¹⁵⁷

FSA directed ABBA to address these problems with the attendance records with a full file review. The file review was to include an explanation of which attendance records were chosen to conduct the file review, why the records conflicted, and why the records that were chosen for the file review were more accurate."¹⁵⁸ ABBA was also directed to create a spreadsheet of all students who violated ABBA's attendance policy that included an R2T4 calculation and have an IPA review the spreadsheet and test the review.¹⁵⁹

B. ABBA has not adequately addressed the unreliability of the records

ABBA did create a spreadsheet and the IPA did issue a report stating that "[a]ll students" in

¹⁵⁶ PRR at 12.

¹⁵⁷ PRR at 13-14.

¹⁵⁸ PRR at 14.

¹⁵⁹ PRR at 15.

the sample were “found to be accurately reported on the Excel Spreadsheets, without exception.” The report also stated, however, that the IPA was “not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the required spreadsheets,” and that the IPA did “not express such an opinion.” The IPA further noted that had it “performed additional procedures, other matters might have come to our attention that would have been reported. . . .”¹⁶⁰

ABBA argues that the school only became aware that the Department disagreed with the IPA procedures when ABBA received the FPRD and the process being used by the IPA had been approved by the Department.¹⁶¹ The school continuously argues that the Department approved of procedures used by the IPA and contends that FSA should not be permitted to “retroactively change its position regarding the IPA and the procedures used to conduct the file review.”¹⁶² ABBA further explains its point, however, by arguing that in past cases, FSA used the process of “extrapol[at]ing] from a sample of students to impose liabilities for mismanagement of Title IV funds across the entire universe of students.”¹⁶³

In the FPRD, FSA asserts that the IPA’s procedures were not sent to FSA for prior approval, and that if they had been, they would not have been approved of because the 10% sample was an insufficient sample size and because the auditor was not able to first determine that the records were accurate. As the February 6, 2018 Report on Procedural Issues states, however, FSA conceded that the parties had agreed on the procedures used by the IPA.¹⁶⁴ And, FSA does not appear to be attacking the IPA report based upon the 10% sample size. So, the fact that FSA has

¹⁶⁰ IPA Report.

¹⁶¹ Respondent’s Initial Brief at 4.

¹⁶² Respondent’s Reply Brief at 5.

¹⁶³ Respondent’s Reply Brief at 5.

¹⁶⁴ Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 2.

extrapolated from a sample in past cases does not answer FSA's attack on the IPA's report. FSA's argument is that ABBA failed to adequately support the disbursement of Title IV program funds because after reviewers found conflicting attendance records for students: (1) ABBA failed to submit the required explanation of which attendance records were accurate; and (2) the IPA was only given one set of attendance records for testing and could not confirm the accuracy of those attendance records versus the other attendance records that were not provided to the IPA.¹⁶⁵

ABBA does not assert that it ever submitted the required narrative to FSA to explain which records were used or why those records are more accurate and why they conflicted with other records. Instead, ABBA only offered that it had difficulty finding a reliable electronic attendance recording program and that ABBA officials had to make corrections as a result of errors. Even after fully briefing the matter, ABBA has not provided a reasonable explanation which records, if any, established a reliable attendance record that supports a finding that all Title IV funds were appropriately disbursed. ABBA has only asserted it used the various attendance records to compile the spreadsheet for review by the IPA. In short, ABBA has not provided an explanation to answer the question - When there were attendance records from multiple sources with conflicting information, which, if any, of the attendance records used in the file review were accurate and reliable?

In the FPRD, FSA asserted that although ABBA hired an IPA as required, "the auditor confirmed with the Department that he was only given one set of attendance records for testing and could not confirm the accuracy of those attendance records versus the other attendance records that were not given to him."¹⁶⁶ ABBA argues that whether the auditor confirmed with FSA that he was given only one set of records is disputed and should be given no weight but fails to provide

¹⁶⁵ Parties Report on Procedural Issues (Feb. 6, 2018) at paragraph 2.

¹⁶⁶ FPRD at 23.

evidence supporting the argument.¹⁶⁷ ABBA further argues that it is inequitable and would encourage abuse by FSA to allow the Department to allege a “fact” in the FPRD and then require the school to disprove the fact.¹⁶⁸

It is not necessary to address the universe of facts that FSA could allege in a FPRD and determine whether FSA is inequitably placing a burden on a school under different circumstances. In this matter, the IPA was examining attendance records and using the information in those records to determine whether the information ABBA reported on the spreadsheet was accurate. In the same PRR where FSA instructed ABBA to compile the spreadsheet and employ an IPA to review the information in the spreadsheet, FSA informed ABBA that there was an issue with conflicting records that needed to be addressed. The IPA report does not indicate whether the auditor was given multiple records to compare and determine whether the information was accurate. ABBA argues in its initial brief that the IPA report did not mention any other attendance records.¹⁶⁹ This would be consistent with only being given one set of records. The IPA report only indicates that the auditor examined the detailed attendance records that ABBA provided and that the information on the spreadsheet was accurate based on those records. The fact that FSA asserts in the FPRD goes to the reliability of the attendance records provided to the IPA, which is the central question at issue in this matter. As the party with the burden to prove the proper disbursement of funds, ABBA has the burden of addressing this fact and proving that the IPA’s report is not tainted by unreliable records.

ABBA does offer an argument why the IPA report should be trusted. The school argues that when the IPA performed the file review, it had attendance records for every student involved in

¹⁶⁷ Respondent’s Initial Brief at 10-11.

¹⁶⁸ Respondent’s Reply Brief at 4.

¹⁶⁹ Respondent’s Initial Brief at 11.

the full file review.¹⁷⁰ ABBA asserts that it used all attendance records from all sources it possessed to reconstruct the records and “as a result, ABBA did provide all relevant support documentation copies to the [IPA] for the attestation as required.”¹⁷¹

This appears to answer that there were multiple sources that the attendance records came from when the set of attendance records were given to the IPA. It does not address whether the IPA was given more than one set of attendance records to determine whether there were conflicting attendance records. It also fails to establish that the information in the records purporting to corroborate the information in the spreadsheet is accurate. The IPA’s report is only as reliable as the information provided to the IPA, and ABBA has not addressed the underlying questions about the reliability of the attendance records provided to the IPA.

C. It is reasonable to treat the years that ABBA was under heightened cash monitoring differently.

ABBA notes that until it was placed in heightened cash monitoring, and converted to the Genesis software system provided by a third part financial aid servicer, the school did not have a single source of attendance.¹⁷² As noted, the liability at issue in Finding 3 arises from the unreliability of attendance records contradictory records. The issue of records from multiple sources conflicting with each other would logically not be an issue with records from a single source. It is reasonable that the Department would feel that without this conflict, and with a third-party financial servicer assisting and providing the attendance software, attendance records are more reliable and can be trusted to accurately determine how much Title IV program funds were properly disbursed.

¹⁷⁰ Respondent’s Reply Brief at 5.

¹⁷¹ Respondent’s Initial Brief at 4.

¹⁷² Respondent’s Initial Brief at 4.

II. ABBA has failed to prove that liabilities in Finding 3 should be reduced for students who graduated and/or took licensing examinations.

ABBA further asserts that liabilities assessed in Finding 3 be reduced to eliminated funds disbursed for students who graduated and sat for Georgia state licensing examinations. ABBA asserts by necessarily attending sufficient hours to graduate, students attended enough hours to “earn” the Title IV funds used to pay for the classes. ABBA initially contends this constitutes approximately 80% of the students and later contends the correct percentage should be 83%.¹⁷³ The school’s conclusion is based on the examination tables showing the ABBA graduates who took licensing exams and the annual reports that ABBA filed with its accrediting agency.¹⁷⁴ ABBA further notes that under state law, a student taking a cosmetology exam must submit a transcript showing the number of hours and courses completed and a student seeking to become licensed as a barber must complete a course of study of at least 1,500 hours.¹⁷⁵ ABBA, however, has not indicated that the student is required to submit significant proof to the state of proper attendance, beyond a transcript from ABBA, to meet these requirements.

As noted above, ABBA fails to meet its burden of showing that its attendance records are reliable enough to justify the disbursement of Title IV program funds. ABBA fails to prove that it kept reliable records that allow for an accurate determination whether students were consistently dismissed when they should have been under ABBA’s attendance policy. It follows, then, that sitting for a licensing exam in these circumstances could not cure this deficiency. The prerequisite to sitting for the exam and becoming certified is ABBA submitting information that indicates that the students completed the number of hours needed and that ABBA determined that the student

¹⁷³ Respondent’s Initial Brief at 15.

¹⁷⁴ Respondent’s Initial Brief at 13, Respondent’s Exhibits R-6 and R-7

¹⁷⁵ Respondent’s Initial Brief at 14.

had met the requirements to graduate based on attending sufficient classes.¹⁷⁶ ABBA's argument requires circular reasoning. Specifically, the school's argument is that because sitting for an exam requires that ABBA graduate the student, the fact that a student took an exam proves that ABBA properly monitored that student's attendance and could accurately confirm that the student met attendance requirements necessary to graduate. This argument ignores the fact that ABBA has failed to explain conflicting attendance records that bring the student's attendance into question.

ABBA argued that the Secretary of Education's decisions in *In re Galiano*,¹⁷⁷ stand for the holding that the Department cannot impose a liability for 100% of Title IV funds for record keeping violations when some of the students who attended the school during the time of violations graduated.¹⁷⁸

In *L'grke v. Burke*, 966 F.2d 1346, 1348 (10th Cir. 1992), the Court stated that "Title IV gives extensive enforcement authority to the Secretary indicating that Congress intended this mechanism to be the exclusive means for ensuring compliance with the statutes and regulations." The governing statute states that "[i]n order to strengthen the administrative capability and financial responsibility provisions of this subchapter, the Secretary . . . shall provide for the conduct of program reviews on a systematic basis designed to include all institutions of higher education participating in [Title IV programs]."¹⁷⁹ Title IV places all authority and responsibility to ensure ABBA's compliance with the Higher Education Act with the Secretary and requires the Secretary to provide for program reviews to ensure the financial responsibility and administrative capabilities of a school disbursing of Title IV funds. The Department has promulgated regulations

¹⁷⁶ ABBA submitted Exhibit R-10 and R-11 with its reply brief. These exhibits appear to be collections of monthly enrollment forms that were sent to the state licensing body. These documents appear to be signed by either the instructors or the owner of ABBA.

¹⁷⁷ Dkt. No. 11-71-SP, U.S. Dep't of Educ. (July 10, 2015) (Dec. of Sec.).

¹⁷⁸ Respondent's Initial Brief at 12-13; Respondent's Reply Brief at 8.

¹⁷⁹ 20 USC 1099c-1(a)(1).

that indicate that administrative capability includes the administration of Title IV program funds with adequate checks and balances and the maintenance of records required by the regulations.¹⁸⁰ These regulations include the requirement to maintain reliable attendance records when a school requires its instructors to take attendance,¹⁸¹ and the liability for misspent funds or return of Title IV program funds.¹⁸² ABBA appears to argue that the Secretary's *Galiano* decisions hold that a school can escape liability to return Title IV program funds when it fails to keep attendance records necessary to corroborate its disbursement of funds if it graduates the students whose records are insufficient. This interpretation would undermine the Secretary's enforcement obligations. A more reasonable reading of the *Galiano* decisions, and other similar cases, is that where there is a reliable basis for determining that some of the Title IV program funds at issue were properly disbursed, those disbursements should not be returned to the Department.

In *Galiano*, FSA found that many students were ineligible for Title IV funds because the school fraudulently enrolled students who came from a "diploma mill."¹⁸³ FSA found that 17 out of a sample of 30 students came from a diploma mill and 11 out of 30 student ledgers contained errors in fund amounts and disbursement dates. In response, the Department directed the school to conduct a full file review of two award years and hire an IPA to test the file review for accuracy and completeness. FSA determined that the school submitted an incomplete response and that the file review submitted did not provide a basis to estimate the liabilities for the time-period in question. Therefore, FSA directed the school to return all Title IV disbursements for the two award years.¹⁸⁴ The school argued that FSA did not have a valid basis for ordering the file review and

¹⁸⁰ See 34 C.F.R. §§ 668.16(c) and (d).

¹⁸¹ See 34 C.F.R. § 668.22(b).

¹⁸² See 34 C.F.R. § 668.14(b)(25).

¹⁸³ *In re Galiano*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (July 10, 2015) (Dec. of Sec.) (hereafter *Galiano I*) at 1. The Secretary described a diploma mill as "an unaccredited entity that issues credentials purporting to be high school diplomas for a fee, with little to no coursework or attendance." *Galiano I* at 1 n.5.

¹⁸⁴ *Galiano I* at 2.

that the imposition of 100% liability was unwarranted. The Secretary concluded that FSA appropriately ordered the file review. The Secretary, however, found that FSA erred in imposing 100% liability.

The Secretary noted that in general, 100% liability has been assessed where the school did not submit a file review or a close out audit, but where there was some system of records, FSA has generally applied the percentage of errors in the record.¹⁸⁵ In that case, the IPA provided an error rate in its attestation which FSA challenged as “unreliable.” Noting that the auditor’s error rate was unsupported by the record, the Secretary agreed with FSA and determined that the error rate should not be applied.¹⁸⁶ The Secretary additionally noted that he did not agree with calculating an error rate from the sample of records used in the initial program review to be “the appropriate method of calculation where an initial sample cannot be trusted because of rampant fraud in an institution's record keeping.”¹⁸⁷ The Secretary, however, concluded that the circumstance in *Galiano* did not “present[ed] such a scenario.”¹⁸⁸ The Secretary noted that, although FSA asserted that the school conducted bad record keeping, the Department did not assert that the IPA was incompetent, fraudulent, or otherwise failed to create an accurate data set using the files provide to them.¹⁸⁹ The Secretary remanded the case and ordered that FSA calculate liability either using an error rate from the initial sample or from the data provided by the IPA.¹⁹⁰

On remand, FSA argued, and the tribunal agreed, that a new calculation of liability could not be made because the record was “tainted by fraud.”¹⁹¹ The Secretary characterized the “crux” of his prior decision remanding the case as following “departmental precedent and past FSA practice [that] supported

¹⁸⁵ *Galiano I* at 6.

¹⁸⁶ *Galiano I* at 7.

¹⁸⁷ *Galiano I* at 7.

¹⁸⁸ *Galiano I* at 7.

¹⁸⁹ *Galiano I* at 8.

¹⁹⁰ *Galiano I* at 8.

¹⁹¹ Dkt. No. 11-71-SP, U.S. Dep’t of Educ. (Nov. 28, 2017) (Dec. of Sec.) *Galiano II* at 2.

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.”¹⁹² FSA argued in the second appeal that the fact that the President of the school pled guilty of fraud showed that the school “engaged in such extensive fraud that all of its records are unusable.”¹⁹³ The Secretary rejected the argument providing the following reasoning:

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. [School President’s] s guilty plea does not establish **that acts of fraud permeated [the school’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.¹⁹⁴

Because FSA did not provide an error rate calculation, the Secretary concluded that his only option was to choose between the two error rate calculations provided by the school – based on the error rate found by the auditor or the error rate based on the original FSA sample. Noting that the auditor’s report contained discrepancies, the Secretary concluded that the “simpler choice for an error rate projection,” was to follow the example used in past cases and apply an error rate calculated from the original FSA sample.¹⁹⁵ In short, because FSA had not shown that the fraud was so widespread that the information gathered in FSA’s initial review was unreliable, an error rate should have been calculated using that information.

In *Galiano I*, the Secretary referenced this tribunal’s decision in *In re Demarge*¹⁹⁶ as the “only authority [he could] find for imposing blanket liability based on an inadequate file review

¹⁹² *Galiano II* at 2.

¹⁹³ *Galiano II* at 2.

¹⁹⁴ *Galliano II* at 2-3 (emphasis added).

¹⁹⁵ *Galiano II* at 3.

¹⁹⁶ Dkt. No. 04-39-SP, U.S. Dep’t of Educ. (July 31, 2009).

completed by an independent auditor.”¹⁹⁷ The Secretary noted that “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.”¹⁹⁸ In that case, FSA alleged that the school improperly retained Title IV program funds after the school failed to verify the enrollment status of students receiving funds, maintained inaccurate records, and incorrectly calculated refunds.¹⁹⁹ The tribunal concluded that the records that the school submitted were unreliable, including conflicting and inconsistent attendance records. The school was, therefore, held liable for “all Title IV funds disbursed to students [during the period in question], with the exception of those students who graduated.”²⁰⁰ FSA calculated liability in that case “by computing the amount of Title IV funds received by the percentage of nongraduates for each of the award years.” The tribunal concluded that FSA had “excluded funds disbursed to students who graduated based on its conclusion that these funds were not at risk.”²⁰¹ As FSA argues in this case, the Department in *DeMarge* apparently accepted that the information related to which students graduated was accurate and reliable.

In this matter, ABBA has not provided evidence that would provide a reliable basis for determining which, if any, of the Title IV disbursements at issue were properly disbursed. As FSA points out, the two exhibits that ABBA included with its initial brief to assert that the liabilities assessed in Finding 3 should be reduced 80%, R-6 and R-7, contain inconsistencies and are unreliable. ABBA’s exhibit R-6 is a list of ABBA student who sat for state licensing exams. The only documentation submitted in the matter that appears to be submitted to the state licensing boards are exhibits R-10 and R-11. These documents report the students’ enrollment and

¹⁹⁷ *Galiano I* at 7.

¹⁹⁸ *Galiano I* at 7.

¹⁹⁹ *In re DeMarge College* at 1.

²⁰⁰ *In re DeMarge College* at 11.

²⁰¹ *In re DeMarge College* at 6 n. 19.

completion date for their programs and the number of hours completed. They also appear to be signed by ABBA faculty. ABBA has not, however, submitted the attendance records or any other documentation to substantiate the numbers reported or indicate what information was used by ABBA to complete these forms. ABBA has failed to show that it had reliable attendance records to establish attendance for Title IV eligibility purposes. There is no basis for assuming that the school used reliable records to report this information to the state licensing bodies. Additionally, FSA notes that only 68 students from R-6 are included among the students whose disbursements are at issue in Finding 3.²⁰² FSA's calculations are that the students listed in R-6, therefore, account for only 10.29% of the 661 different students at issue.²⁰³ Finally, as FSA highlights, several of the students listed in R-6, who allegedly graduated and took licensing exams, are not listed in R-7, which identifies students who completed the program, and the school does not explain this inconsistency between the exhibits.

In addition to the inconsistencies with R-6, other issues that FSA has pointed out with ABBA's exhibit R-7 that undermine its reliability have not been addressed by ABBA. R-7 includes information about the number of students who completed the programs at ABBA in 2011, 2012, and 2013. ABBA has not submitted any information to show that these students met the attendance requirements to complete the programs, however. Additionally, the school fails to explain the inconsistency in the information for 2011 that was highlighted by FSA. On that page, it says that the "Item 2" total, which is stated to be the number of students who completed programs, is 136. The "Item 3" total, which is stated to be the number of completers who are eligible for employment, is 142. ABBA does not explain how six more students are "completers" who are

²⁰² FSA Response Brief at 18-19

²⁰³ FSA Response Brief at 19. Contrary to ABBA's assertion that the Department has not offered an alternative calculation, the Department has effectively offered that, if the information in ABBA's exhibit R-6 is accepted, the correct reduction of liability is 10.29%.

eligible for employment than the number of students who completed the programs. Finally, there is no indication in R-7 for any of the three years listed, who if any, of these students listed are Title IV recipients. For 2011, there are no individual names provided, and so it is not possible to identify if any of the reported students were Title IV recipients. And, for 2012 and 2013, R-7 include students who are not included in Appendices E and F to the FPRD, and provides no indication whether these students were Title IV recipients. Additionally, for those two years, ABBA has failed to include in its lists of students some students who are listed in Appendices E and F to the FPRD. These inconsistencies make exhibit R-7 unreliable.

In response to FSA's challenges to the information in R-6 and R-7, ABBA submitted R-9 with its reply brief. This exhibit is described as a "Master List of ABBA students who graduated during the years applicable to this appeal."²⁰⁴ There are two clear problems with this exhibit that make it unreliable. First, a list of students who ABBA determined met the requirements to graduate, including sufficient attendance, is not reliable when ABBA did not keep reliable attendance records. And second, even if this list is reliable, ABBA does not distinguish between students who received Title IV program funds and those who did not. So, even if 83% of all ABBA students who left ABBA during the two year in question graduated, there is no way of knowing what percentage of Title IV program fund recipients graduated.

Finally, the information and data collected during the initial program review does not appear to offer a basis to determine an accurate error rate. If the twelve examples of "egregious attendance violations" listed in the PRR were the only errors or issues, then an error rate would likely be calculable. There were other issues, however, that affected every record. These issues include that ABBA has admitted that records were amended after the fact to correct for errors in the

²⁰⁴ Respondent's Reply Brief at 9.

computer system, multiple students reported to both FSA and OIG that attendance records were modified or inaccurate, and there are multiple attendance records that conflict. And, despite the explicit opportunity to do so, ABBA has not explained which specific records are more reliable. Rather, ABBA submitted new attendance records that conflicted with the original attendance records submitted to the reviewers during the original review.²⁰⁵ It is not possible to identify any of the student records that are uncontaminated by these issues. As FSA asserts, “the documentation provided as part of the program review was so inconsistent and unreliable that FSA had no choice but to establish liabilities in the full amount of aid awarded.”²⁰⁶ ABBA has not provided a basis for reliably identifying properly disbursed Title IV program funds.

Conclusions of Law

1. The Atlanta Beauty & Barber Academy has failed to prove that its attendance records for the two award years at issue are sufficiently reliable to determine which students unofficially withdrew and when those students withdrew.
2. Federal Student Aid properly assessed liabilities for all Title IV program funds disbursed during the two award years at issue because the attendance records are insufficiently reliable, therefore, to conduct R2T4 calculations and determine which of any of the Title IV program funds the Atlanta Beauty & Barber Academy has properly disbursed and should retain.
3. Atlanta Beauty & Barber Academy’s liabilities in Finding 3 are not reduced for those students who graduated and/or took state licensing examinations.

²⁰⁵ FPRD at 23.

²⁰⁶ FSA Response Brief at 16.

Order

Federal Student Aid's determination is **AFFIRMED**. Atlanta Beauty & Barber Academy is liable for the liabilities assessed in the Final Program Review Determination.

Daniel J. McGinn-Shapiro
Administrative Law Judge

Date of Decision: April 12, 2021

NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 668.119.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. An appeal must be filed within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appealing party shall provide a copy of the appeal to the opposing party. The appeal shall clearly indicate the case name and docket number.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed in OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

Secretary of Education c/o Docket Clerk
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington DC 20202

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119. Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

Notice: Due to the consequences from the current COVID-19 event, OHA is unable to directly accept hand delivery or courier-delivered mail or parcels at the OHA's physical location and delivery by U.S. Mail to OHA will be delayed due to modifications to interoffice mail delivery.

Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

SERVICE

A copy of this decision was sent by OES automatic generated notice and by email scan, delivery receipt requested, to:

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