



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

PARIS BEAUTY COLLEGE

Docket No. 17-30-SP

Federal Student Aid Proceeding

Respondent.

DECISION OF THE SECRETARY

The office of Federal Student Aid (FSA) has appealed the August 14, 2018, Decision issued by the Office of Hearings and Appeals' (OHA) Administrative Judge Robert G. Layton (AJ) in the matter of Paris Beauty College (PBC). The Decision affirmed in part a Final Program Review Determination (FPRD). The AJ upheld \$64,102.59 of FSA's liability demand and additional interest. FSA has appealed.

Based on the following analysis, I will affirm the AJ's Decision.

Background

PBC is a private, for-profit institution offering non-degree programs and training via partnerships with community colleges.¹ During the time-frame relevant to this appeal, PBC participated in federal student aid programs under Title IV of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1070, *et seq.* (Title IV). PBC operated under a provisional Program Participation Agreement from 2013 until its certification was revoked on January 20, 2016. On March 10, 2017, FSA issued the FPRD, which included multiple findings. PBC only appealed Finding 2, in which FSA imposed \$167,832.71 of liability for improper use of Title IV funds.

In Finding 2, FSA cited Instructional Services Agreements (ISAs) between PBC and two community colleges. Under the ISAs, the community colleges were responsible for administrative functions such as financial aid, "and PBC was only allowed to charge an enrollment fee and a textbook or materials fee."² However, "some students applied for financial aid directly through PBC. PBC then drew down the Title IV funds, and disbursed the funds to the students' accounts to pay tuition charged by PBC in violation of the ISAs."³ Based on a

¹ Decision at 1.

² *Id.*; FPRD at 8.

³ FPRD at 9.

spreadsheet submitted by PBC, FSA determined that 32 students improperly received Title IV aid through PBC in award years 2009–2010 and 2010–2011.

Through the FPRD, FSA imposed a total liability of \$167,832.71; owing to agreements made between FSA and PBC during the pendency of the appeal, only \$114,571.79 remained at issue before the AJ. In the appeal before OHA, PBC asserted that the remaining sum was properly awarded under Title IV based on documentary evidence submitted during the appeal. FSA argued that the records submitted by PBC failed to satisfy the Title IV record-keeping requirements and should not be accepted into evidence by the AJ.⁴

During FSA’s program review, a PBC staff member “manually copied the content from . . . contemporaneously created student files . . . to a format she believed would be easier to read.”⁵ The PBC staff member affirmed that she did not change any of the information during this process.⁶ Subsequently, she copied the information into an electronic format and color-coded it, again affirming she did not change any information.⁷ Counsel for PBC submitted each set of records as exhibits in the appeal before OHA. The AJ found “some inconsistencies and additions” and “generally small discrepancies” between the three versions of the records.⁸ The AJ cites eight particular student records, mostly finding that they vary by a few hours completed by each student.⁹ Nevertheless, the AJ found that “[t]he student records are consistent enough to be relied on.”¹⁰

Having found that the submitted records had probative value, the AJ considered them as evidence, holding that “the hearing regulations allow submission of additional documents when an institution is requesting review.”¹¹ In this case, the AJ found that “PBC complied with record-keeping requirements by maintaining organized records of Title IV disbursements, and other financial and student-related documentation as shown through Exhibits R-50.”¹² The AJ separately weighed the probative value of each record submitted, recognizing that some exhibits contained discrepancies with the earlier-produced documents.¹³

The AJ then considered PBC’s liability considering its disbursements to each student at issue. The AJ found PBC liable for Title IV funds directly disbursed to students when those students were concurrently enrolled at PBC and the partner community colleges, but not for funds disbursed to students at times when the students were enrolled solely at PBC. Accordingly, the AJ parsed out the liability for each student who had both concurrent and non-

⁴ Both parties made additional arguments before the AJ, but FSA’s appeal before me rests solely on this issue. Because FSA does not assert any error in the AJ’s other holdings, I summarily affirm them.

⁵ Decision at 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ The chief exception is student #5, for whom there is a 248.5 hour discrepancy for one period of enrollment. Decision at 4.

¹⁰ *Id.*

¹¹ *Id.* at 13.

¹² *Id.*

¹³ *Id.*

concurrent enrollment periods.¹⁴ Using this method, the AJ found PBC liable only for \$64,102.59, plus any additional interest.¹⁵

FSA has filed this appeal, asserting that I should reverse the AJ's Decision and uphold the original liability figure. PBC has responded, supporting the AJ's liability determination and arguing that I should affirm the Decision in full. I now turn to my analysis of FSA's appeal.

Analysis

I must consider two issues in this appeal. First, I must determine whether the AJ erred as a matter of law by accepting additional versions of PBC's records during the pendency of the appeal before OHA. As described below, I find that the AJ correctly accepted the additional evidence. Second, I must determine what PBC's liability should be based on all properly submitted evidence in this case. Based on my evaluation of the records, I will affirm the AJ's calculation.

I. Admissibility of Revised Records

An institution that distributes Title IV funds must maintain records and, upon request, provide them to the Department to demonstrate the eligibility of the students who received those funds.¹⁶ In this case, the ISAs made the community colleges responsible for charging tuition, distributing Title IV funds, and maintaining appropriate records. PBC violated the ISAs by charging tuition and drawing down Title IV funds.¹⁷ Even though PBC was not assigned the role of maintaining Title IV records under the ISAs, PBC's records of these unauthorized charges are the best available evidence for FSA to determine PBC's liability. Therefore, FSA required PBC to conduct a file review and submit "a spreadsheet to the Department" containing student record information from which FSA based PBC's liability.¹⁸

During the appeal, the AJ accepted and considered revised versions of student loan records to calculate PBC's liability. FSA argues that the AJ erred by allowing PBC to submit recopied versions of records that were not "current," that is to say, not the original copies of records created and maintained during its ordinary course of business.¹⁹ FSA asserts that records which are "not current within any ordinary meaning of the word" cannot be assigned any probative weight by a hearing official.²⁰ FSA further claims the AJ found the records admissible "simply based on a declaration submitted by PBC's General Manager Doreen Birney."²¹

I disagree with FSA's arguments on this issue. First, the regulations governing Subpart H hearings specifically allow submission of "institutional audit work papers, records, and other

¹⁴ *Id.* at 14–16.

¹⁵ This amount includes \$61,915.03 of principle and an approximate figure of \$2,187.56 for interest. Decision at 17.

¹⁶ *E.g.*, 34 C.F.R. § 668.24(d).

¹⁷ FPRD at 10.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 9–10.

²⁰ *Id.* at 10.

²¹ *Id.* at 12.

materials” as evidence.²² Exhibits showing student financial information, purporting to be a faithful reproduction of contemporaneous records in a more readable format, fall squarely within the admissible categories of “records, and other evidence.”

Second, the regulations give a Subpart H hearing official the authority and responsibility to rule on whether any given piece of evidence is “admissible and timely.”²³ In this case, the AJ did not rule on the records’ probative value “simply based on a declaration.” Rather, the AJ conducted a detailed review that compared original and copied records and described the nature of the materials submitted, including potential flaws in the reproduction of the records, but determined that they had probative value. Such a determination is squarely within the AJ’s purview. FSA’s argument that the AJ was categorically barred from considering the probative value of the materials, because they were not “current” records, is unpersuasive.

Third, I note that FSA did not even request the original records for review. FSA requested that PBC reproduce the data from its records in a spreadsheet. FSA based the liability in Finding 2 solely on the reproduction of the records’ data in this spreadsheet.²⁴ FSA’s argument that PBC cannot submit actual reproductions of contemporaneous records to mitigate its liability, when FSA based its initial liability finding on data entered into a spreadsheet at its request, is inconsistent. In fact, FSA commonly accepts additional evidence, including student loan records and audits, both during program reviews and subsequently during appeals, to reduce an institution’s liability under the findings of an FPRD.²⁵

Based on the foregoing analysis, I reject FSA’s argument that I should reverse the AJ’s decision to accept the documents in question as evidence.

II. Calculation of Liability

Two or more Title IV eligible institutions may enter into a written agreement to each provide parts of an educational program.²⁶ In such circumstances, the responsible party for calculating and disbursing Title IV funds, and maintaining the required records, will be the institution at which the student is enrolled as a regular student, unless another eligible institution is assigned that responsibility in the written agreement.²⁷ An institution “is subject to the highest standard of care and diligence” in administering Title IV programs and accounting for funds it receives.²⁸ An institution has a fiduciary duty to the Department to ensure that Title IV funds are only disbursed to eligible students.²⁹ The institution bears the burden of demonstrating that expenditures were proper and that the institution complied with program requirements.³⁰

²² 34 C.F.R. § 668.116(e)(1)(ii).

²³ *Id.* § 668.116(f).

²⁴ FPRD at 8–10.

²⁵ *E.g. Barber-Scotia Coll.*, Dkt. No. 12-44-SA, U.S. Dep’t of Educ. (Order of the Secretary dated Oct. 16, 2015) (noting that an Administrative Judge accepted an audit submitted after commencement of an appeal to reduce an institution’s liability, and that FSA did not oppose submission of an additional audit during an appeal to the Secretary for the purpose of remanding and again recalculating the institution’s liability).

²⁶ 34 C.F.R. § 668.5(a).

²⁷ *Id.* § 668.5(d).

²⁸ *Id.* § 668.82(b)(1).

²⁹ *Id.* § 668.82(a); *In re Hope Career Inst.*, Dkt. No. 06-45-SP, U.S. Dep’t of Educ. (Jan. 15, 2008) at 3.

³⁰ 34 C.F.R. § 668.116(d).

In this case, the record shows that PBC incurred liability by distributing Title IV aid that did not conform to the ISAs governing its relationship with the two community colleges. However, the AJ reduced the total liability figure based on his evaluation of the evidence submitted. FSA argues that the AJ erred by relying on any form of record that was not “current” in evaluating PBC’s liability.³¹ FSA cites the AJ’s own analysis that the records contained “discrepancies” to assert that the AJ “should have ruled PBC’s later-produced exhibits . . . as inadmissible.”³² FSA also asserts that these discrepancies “make it impossible to determine [PBC’s] proper disbursement of Title IV funds,”³³ while at the same time admitting that the AJ “identified the inconsistent and added information . . . [and] identified missing and unclear dates and discrepancies in student hours.”³⁴

First, I note that the records in Exhibit R-50 are the original, contemporaneous records kept by PBC. The general manager of PBC avers that she created the documents in Exhibit R-51 by “manually” copying the data from the original records to a more readable presentation. In doing so, she asserts that she “did not change any of the dollar amounts from the original ledgers.”³⁵ This assertion is demonstrably false. In some cases, the form presented for a student in Exhibit R-51 is an identical photocopy of that student’s form in Exhibit R-50. However, in virtually every case where the form in Exhibit R-51 is a handwritten reproduction, the dollar amounts in the payment record differ. In many cases, the “amount” column apparently aggregates several figures that were separated out in the original record. In other cases, the balance due does not match during certain dates of enrollment. In many cases, the final balance due for a student agrees between the two sets of forms, but not in every case.

FSA ignores the AJ’s conclusion that the records were consistent enough to be relied on.³⁶ As is his obligation under the hearing regulations, the AJ weighed the probative value of evidence before accepting and considering it.³⁷ Although the information from the records was copied “information from the handwritten student records,” the AJ found that Exhibit R-50 demonstrated PBC’s compliance with its record-keeping requirements and was, itself, probative as to PBC’s liability for each student.³⁸ The AJ’s analysis demonstrates that, after consideration of all the submitted evidence, he was able to utilize Exhibit R-50 to evaluate PBC’s Title IV disbursements.

I have reviewed the records at issue in this appeal. I agree with the AJ’s analysis that the records contain discrepancies. The fact that PBC staff had to reconstruct the records twice is indicative of how inadequately it kept its system of records. Only after a thorough review and

³¹ Brief for the U.S. Department of Education’s Office of Federal Student Aid on Appeal to the Secretary (FSA Brief) at 9–10.

³² *Id.* at 12.

³³ *Id.*

³⁴ *Id.* at 13.

³⁵ Respondent’s Opening Brief on Appeal, Exhibit R-52 at 2.

³⁶ Decision at 4.

³⁷ See 34 C.F.R. § 668.116(f) (requiring the hearing official to accept only evidence that is both admissible and timely, including examples of materials that would not satisfy the requirements); 34 C.F.R. § 668.118(c) (requiring the hearing official to base findings of fact only on evidence properly presented, on matters given official notice, or on facts stipulated to by the parties).

³⁸ Decision at 13.

parsing of these records by the AJ are they rendered usable. I also agree with the AJ that the records, following his examination, have substantial probative value as to the Title IV disbursements made by PBC. In many instances, the payment record section of the student file groups amounts paid and balances due differently in the reconstructed versions compared to the originals submitted as exhibit R-50. However, the final balances due in each case agree with the original records in almost every case. For example, Student #9 shows a balance due that differs by \$3 and Student #38 shows a balance due that differs by less than \$2. Student #52 inexplicably shows no balances due in exhibit R-36, but otherwise appears to be a faithful recreation of the disbursement history of that student's account. Based on my analysis, I do not find a basis to reverse the AJ's decision for taking these records into consideration.

Alternatively, FSA argues that the AJ erred because he should have upheld full liability based on PBC's failure "to maintain records in a 'systematically organized manner' as required under 34 C.F.R. § 668.24(d)." ³⁹ I reject this argument by FSA, because it speaks to the FPRD's Finding 1- Lack of Administrative Capacity. ⁴⁰ That finding is not at issue in this appeal, and FSA did not base its assessment of financial liability on that finding. Only Finding 2 – Consortium Agreement Not Followed laid out PBC's financial liability. ⁴¹

Based on the foregoing analysis, I will affirm the AJ's Decision upholding the findings of liability.

ORDER

ACCORDINGLY, the Decision of Administrative Judge Layton is hereby AFFIRMED. PBC's financial liability of \$64,102.59 is upheld.

So ordered this 26th day of June 2021.


Miguel A. Cardona, Ed.D.

Washington, D.C.

³⁹ FSA Brief at 13.

⁴⁰ FPRD at 5–8.

⁴¹ *Id.* at 10, 13.

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