



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

---

In the Matter of

**Durham Beauty Academy**

**Docket No. 21-05-SP**

Federal Student Aid Proceeding

PRCN 2018-2-04-29810

Respondent.

---

Appearances:

Ronald L. Holt and Megan R. Banks, Rouse Frets White Goss Gentile Rhodes,  
P.C. for Durham Beauty Academy

Samuel R. Bissel, 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**

Durham Beauty Academy (Durham) is a private proprietary postsecondary institution.<sup>1</sup> The school 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 November 30, 2020. Until it closed in 2019,<sup>2</sup> Durham participated in student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV).<sup>3</sup> Within the

---

<sup>1</sup> Final Program Review Determination (Nov. 30, 2020) (hereafter FPRD) at 3.

<sup>2</sup> FPRD at 3.

<sup>3</sup> 20 U.S.C. § 1070 *et seq.*

U.S. Department of Education (the Department), the office providing oversight over these programs is the Office of Federal Student Aid (FSA). In the FPRD, FSA assessed a liability against Durham in the amount of \$2,380,365, which represents the total amount of Title IV program funds Durham received for the 2016/17 and 2017/2018 award years.<sup>4</sup>

### **Facts and Procedural History**

FSA conducted a program review of Durham's administration of Title IV programs.<sup>5</sup> FSA reviewed a sample of 30 student files that were randomly selected from the population of students receiving Title IV program funds during the 2016/2017 and 2017/2018 award years.<sup>6</sup>

After completing its initial review, FSA issued a Program Review Report (PRR). In the PRR, FSA makes 11 findings. Durham was provided an opportunity to respond to the PRR. Durham did not respond to the PRR in a timely matter<sup>7</sup> and, thereafter, FSA issued a final program review determination (FPRD). In the FPRD, FSA made five findings resulting in liabilities owed by Durham, Findings 1, 2, 3, 5 and 8.<sup>8</sup>

After receiving the FPRD, Durham filed a timely request for review of the FPRD. In its request, Durham explained that, because it was placed on heightened cash monitoring and did not receive funding from the Department, it did not have the resources to respond to the PRR.<sup>9</sup> Durham stated that it was closed, and it now had the time and resources to respond to the PRR and FPRD. Durham additionally wrote that it had retained an Independent Public Accountant (IPA) to audit its file review following the procedures agreed to by the school and the Department.

After I issued an Order Governing Proceedings (OGP), the parties agreed to an extension

---

<sup>4</sup> FPRD at 7, 16; Respondent's Request for Review of Final Program Review Determination (hereafter Request for Review) at 2.

<sup>5</sup> Program Review Report (hereafter PRR) at 4.

<sup>6</sup> PRR at 4.

<sup>7</sup> Request for Review at 1.

<sup>8</sup> FPRD at 16.

<sup>9</sup> Request for Review at 2.

of the briefing schedule to allow for the IPA retained by Durham to complete its test of the file review conducted by Durham for Findings 1, 2 and 3 of the PRR. The IPA prepared an audit report<sup>10</sup> in conformance with some of Agreed Upon Procedures (AUP) between the Department and Durham. The AUP required the IPA to 1) perform completeness testing, 2) test 100% of the students, and 3) obtain all required supporting documentation and review for accuracy. The IPA submitted its report, which reviewed information related to Findings 1, 2, and 3. For each finding, however, the auditor noted exceptions to its conclusions and that the IPA had to deviate from the AUP because Durham failed to provide all required data and supporting documentation. As a result, the auditor was unable to fully test the accuracy and completeness of Durham's file review, student accounts, and return to Title IV (R2T4) calculations. The IPA, therefore, calculated liabilities with exclusions because of missing information not provided by Durham.

After the IPA issued its report to the parties, Durham filed its initial brief, the Department filed a responsive brief, and the school filed a reply brief.

A. Durham's Initial Brief

In its initial brief, Durham argues that, although it is liable to return some funds, the Department erred by assessing liabilities of 100% Title IV funds disbursed in the 2016/17 and 2017/18 award years. Specifically, Durham argues that it should be held liable only for the actual harm that it caused.

Durham first asserts that the liabilities in Findings 1, 2, and 3 should be reduced based upon the IPA's report. Durham contends that the IPA's audit conformed with the approved procedures but also acknowledges that, because the school did not provide all necessary records, the IPA was not able to test all student records. Durham argues that the IPA report still provides a "reliable

---

<sup>10</sup> Resp. Ex. 4.

(and equitable) alternative to 100% liability.”<sup>11</sup> Durham further contends that the IPA report addresses the missing records by projecting liabilities for the missing records and so the IPA report should “be given due consideration.”<sup>12</sup>

Reviewing the findings from the IPA report, Durham noted that the auditors concluded that Durham should return \$342,482. The school acknowledged, however, that because the IPA was unable to test all the student files, over \$21,000 of those liabilities were projected.<sup>13</sup>

Durham additionally argues that even that total should be reduced by a review of evidence completed by Durham’s counsel and by outstanding heightened cash monitoring reimbursements not yet paid to the school. The IPA was unable to give the school credit for credit balances returned to students when it tested liabilities because the school did not submit copies of checks for 2018. Durham’s attorneys, therefore, conducted their own review and analysis of the 2018 bank statements and argue that based on that analysis, the liabilities in Findings 1 and 2 should be reduced an additional \$78,955.48. Durham asserts that this is the amount that it properly refunded to students for 2018 credit balances. Durham argues that this reduction would more accurately reflect “Durham’s actual damages and, thus, Durham’s actual liability for Findings 1, 2, and 3.”<sup>14</sup>

Durham contends that the liabilities should be further reduced based on outstanding heightened cash monitoring payments it asserts are due to the school. Durham was placed on heightened cash monitoring (HC2M) in January 2019. Under this program, schools are paid Title IV funds as reimbursements. Durham maintains that when it closed in May 2019, it had outstanding HC2M payment requests which have not been paid. Durham asserts that it is owed \$78,401.25 in HC2M payments and so its liabilities should be reduced by that amount.

---

<sup>11</sup> Respondent’s Initial Brief at 7.

<sup>12</sup> Id.

<sup>13</sup> Resp.’s Initial Brief at 8.

<sup>14</sup> Resp.’s Initial Brief at 10.

Durham contends that if the IPA's report is not used to reduce its liabilities, "a more equitable and fair approach to determining Durham's liabilities" is to apply an error rate projection calculated based on the original student file sample used in the PRR.<sup>15</sup> Durham notes that this is what the Secretary referenced in *In re Galiano*.<sup>16</sup> Durham argues that from the initial sample, FSA identified 6, 7, and 6 errors in Findings 1, 2, and 3 respectively. Because the liabilities in Findings 1, 2, and 3 are duplicative of each other, Durham argues that the error rates should be averaged to achieve "a more equitable representation of the Department's actual harm."<sup>17</sup> Durham calculates that this would result in an error rate of 21% or a liability of \$499,855.65.

#### B. Department's Response Brief

The Department responded that Durham acts as a fiduciary in the administration of Title IV programs at the school and in this rule, it has an obligation to properly maintain all records and account for its disbursement of Title IV funds.<sup>18</sup> The Department argues that caselaw is clear that the failure to account for the disbursement of Title IV program funds is "grounds for the Department to demand repayment of all funds disbursed to the students in question" and fails to meet its burden in this matter.<sup>19</sup> The Department additionally contends that I should "reject all the arguments raised in Durham's brief and affirm full liabilities in the FPRD."<sup>20</sup>

First, the Department maintains that the IPA's report is not reliable, and, therefore, should

---

<sup>15</sup> Resp.'s Initial Brief at 11.

<sup>16</sup> *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (Nov. 28, 2017) (Final Decision of the Secretary); *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (July 10, 2015) (Remand Decision of the Secretary).

<sup>17</sup> Resp.'s Initial Brief at 11-12.

<sup>18</sup> The Department cites to 34 C.F.R. § 668.82. That regulation is applicable to a Subpart G proceeding, addressing fines, limitations, suspensions, and terminations of eligibility in Title IV programs. This proceeding is a Subpart H proceeding, reviewing an appeal of a program review or audit. A more applicable citation for the fiduciary duty of an institution participating in Title IV programs is 34 C.F.R. § 668.14(b)(2), which addresses program participation agreements that are required by nearly all Title IV program fund recipients and is applicable in both Subpart G and H proceedings.

<sup>19</sup> Dept. Response Brief at 6.

<sup>20</sup> *Id.* at 6.

not serve as a basis for reducing Durham’s liability. The Department notes that because Durham did not submit all necessary documents for completion of the IPA’s testing, the IPA had to deviate from the procedures that were agreed upon by the parties (agreed-upon procedures or AUP). The Department, therefore, asserts that the IPA’s report does not provide an adequate basis for reducing Durham’s liability. The Department notes that there were several documents that the AUP required to test the accuracy and completeness of Durham’s file review that were never submitted. Citing to this tribunal’s decision in *In re Atlanta Beauty and Barber Academy*,<sup>21</sup> the Department asserts that the “IPA’s report is only as reliable as the information provided to the IPA.” The Department argues that because IPA was forced to provide an attestation about the accuracy of its findings based on incomplete files and deviations from the AUP, that attestation is insufficient to reduce Durham’s liabilities.

Second, the Department argues that this tribunal should not grant the offsets Durham seeks. Addressing first Durham’s request that its liability be reduced based upon the conclusions of its own review of credit balances that were returned to students, the Department argues that the parties agreed to have an IPA attest to the accuracy of the reviews and the schools own review outside the IPA’s audit is not an appropriate substitute. Addressing the outstanding HC2M payments, the Department argues that whether that money is owed to the school is outside the scope a Subpart H review of a FPRD like this, and this tribunal does not have the authority to approve requests for such offsets.

Third, the Department argues that because Durham failed to submit a file review in response to the PRR, 100% liability should be assessed and the error rates from the student samples used in the PPP should not be used to limit Durham’s liability. The Department notes that in a

---

<sup>21</sup> Dkt. No. 17-55-SP, U.S. Dep’t of Educ. (April 12, 2021).

2020 decision from the Secretary in *In re Hair Fashions by Kaye Beauty College*, Dkt. No. 17-45-SP, U.S. Dep't of Educ. (October 16, 2020) (*Kaye*), the Secretary affirmed that “[w]here no file review is provided . . . the FSA properly set the liability at 100 percent of the Title IV funds at issue.”<sup>22</sup> The Department argues that a proper file review in response to the PRR would be one that complies with “all relevant directives” in the PRR, including a proper auditor attestation and application of the AUP.<sup>23</sup> The Department contends that, because Durham did not comply with all of these directives in the PRR, it has not submitted a sufficient file review and 100% liability should be imposed.

### C. Durham’s Reply Brief

In its reply, Durham answers many of the Department’s arguments and reasserts many of the arguments it previously raised, including that the information prepared by Durham’s attorney justifies reducing Durham’s liability. Durham notes that the decision in *Atlanta Beauty & Barber Academy* is currently on appeal and argues that it should be given “little precedential value.” Durham additionally argues that the *Kaye* decision is not applicable in this matter because that case involved an institution that did not submit any file review. Durham argues that the fact that the Department believes that the IPA's report did not strictly conform to the AUP does not mean it should be treated the same as an institution which has done no file review at all. Durham contends that, quoting our decision in *In re Empire Technical Schools*,<sup>24</sup> the Department may only recover all Title IV program funds disbursed during the relevant time period if “the school has not provided relevant data with which to measure actual loss to [the Department]”<sup>25</sup>

Durham additionally asserts that the IPA report is inherently reliable, is not undermined by

---

<sup>22</sup> Dept.’s Response Brief at 13.

<sup>23</sup> Dept.’s Response Brief at 13.

<sup>24</sup> Dkt. No. 92-11-SP, U.S. Dep’t of Educ. (Aug. 15, 1995).

<sup>25</sup> Respondent’s Reply Brief at 2.

any allegations of fraud, and should be used to reduce Durham’s liabilities. The school argues that the Secretary’s decision in *In re Demarge College*<sup>26</sup> recognized that reports prepared by an independent certified public accountant are viewed with “inherent credibility.” Acknowledging that the IPA’s report “may not be perfect,” Durham argues it is still the most accurate representation of the actual harm to the Department, and that 100% liability is unjustified for each FPRD finding.

Finally, Durham argues that if this tribunal does not accept its other arguments, then an error rate projection should be applied to reduce Durham’s liabilities. The school contends that in *In re Avanti Hair Tech*<sup>27</sup> this tribunal directed that if the statistics calculated from the original file review sample were sufficient to justify ordering a full file review, then those same statistics should be sufficient to calculate an error rate projection.

### **Issues**

The issues to be addressed are:

- 1. Should the liabilities assessed be limited to those established in the IPA report?**
- 2. Should liabilities be further reduced by the information provided by Durham’s counsel?**
- 3. If the IPA report is not reliable to use to establish liabilities, should liabilities be calculated using an error rate established from the original sample?**
- 4. Should Durham’s liability be further reduced to account for the money Durham asserts that the Department owes the school under the heightened cash monitoring system?**

### **Summary of Decision**

Because Durham did not submit sufficient information to the independent public

---

<sup>26</sup> Dkt. No. 06-01-SP, U.S. Dep’t of Educ. (Sept. 15, 2011)

<sup>27</sup> Dkt. Nos. 03-68-SP, 03-69-SP, 03-70-SP, U.S. Dep’t of Educ. (Nov. 10, 2004).

accountant for it to produce a reliable report, the findings in the audit report do not provide a reliable basis to apply an error rate and project Durham's liabilities. Applying the mandatory precedent from the Secretary's decisions in *In re Galiano*,<sup>28</sup> however, the error rate from the original sample must be used and an error rate projections must be applied to calculate Durham's liabilities. The question of whether any money is owed by the Department for heightened cash monitoring payments that were not disbursed to Durham is not before this tribunal in this matter and, therefore, neither is the question of whether Durham's liabilities should be offset by such funds.

### **Statement of Law**

As the institution requesting a review of the FPRD, Durham has the burden of proving that its disallowed expenses were proper and that it complied with the program requirements.<sup>29</sup> This tribunal's review is then limited to determining whether the FPRD "was supportable, in whole or in part."<sup>30</sup>

In general, if there is a reliable basis for establishing an error rate projection, then that rate should be applied and 100% liabilities should not be assessed.<sup>31</sup> If, however, the record does not provide a basis for reliably identifying properly disbursed Title IV program funds, then the Department should assess 100% liabilities.<sup>32</sup>

---

<sup>28</sup> *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (Nov. 28, 2017) (Final Decision of the Secretary); *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (July 10, 2015) (Remand Decision of the Secretary).

<sup>29</sup> 34 C.F.R. §§ 668.116(d)(1)-(2).

<sup>30</sup> 34 CFR § 669.118(b).

<sup>31</sup> See *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (July 10, 2015) (Remand Decision of the Secretary) (hereafter *Galiano I*); *In re Atlanta Beauty and Barber Academy*, Dkt. No. 17-55-SP, U.S. Dep't of Educ. (April 12, 2021), *appeal docketed*, (May 12, 2021); see also *In re Empire Technical Schools*, Dkt. No. 92-11-SP, U.S. Dep't of Educ. (Aug. 15, 1995) (noting that if "the evidence is available to determine the extent of [the Department's loss directly attributed to the institution's failure to comply with its regulations or to account for Title IV program funds], that amount will constitute the extent of [the Department's] recovery").

<sup>32</sup> See *Galiano I* at 7; *In re Galiano Career Academy*, Dkt. No. 11-71-SP, U.S. Dep't of Educ. (Nov. 28, 2017) (Final Decision of the Secretary) (hereafter *Galiano II*) at 3; *In re Atlanta Beauty and Barber Academy* at 42.

An error rate projection involves determining the percentage of students reviewed who received federal student aid funds in violation of Title IV requirements. The error rate is then applied to the total universe of Title IV recipients for each award year.

### Analysis

In its request for review, Durham indicates that it is challenging all of the liabilities assessed in the FPRD. Durham, however, has not made any arguments addressing why it believes that it is not liable for the liabilities in Findings 5 and 8 other than to say that those liabilities are subsumed in the liabilities in Findings 1, 2, and 3 and that the Estimated Actual Loss formula, or Estimated Loss Formula, should be applied to Finding 5. Durham has the burden of proving that it complied with program requirements and that the disbursements at issue were properly made.<sup>33</sup> Because the school does not advance any arguments, beyond conclusory statements, directly related to the two findings, it effectively concedes that the Department's conclusions for these two findings are correct.<sup>34</sup> As indicated below, for Findings 1, 2, and 3, an error rate projection is applied to more accurately calculate which percentage of all Title IV funds should be returned. But this error rate projection estimates the percentage of the total population of student files that has a deficiency without specifically looking at each and every student file. It does not address the specific instances where specific student files were found to suffer from a different deficiency. Therefore, in addition to any liabilities calculated for Findings 1 through 3, Durham is liable for all liabilities assessed in Findings 5 and 8.

---

<sup>33</sup> See 34 C.F.R. § 668.116(d).

<sup>34</sup> Moreover, as indicated in a 1996 memorandum promulgated by the Department, the estimated loss formula is generally used when the liability is calculated from a projection using a statistical sample but not when there are ten or less loans at issue. See *In re Elite Academy of Beauty Arts*, Dkt. No. 15-60-SP, U.S. Dep't of Educ. (Nov. 17, 2021) (citing Memorandum from Shirley Brown, Acting Chief of Institutional Review Branch (IRB) and Institutional Monitoring Division (IMD) to All Regional Directors and IRB Chiefs (July 17, 1996)). The liability in Finding 5 was not a projected liability associated with eleven or more students. It is the liability for the exact amount of Title IV program funds provided to one student. See FPRD at 13. Therefore, the application of the formula is inappropriate for Finding 5.

This tribunal is bound by the decisions of the Secretary. The Secretary's *Galiano* decisions collectively controls the outcome of this matter. That decision dictates that when there is a reliable basis to calculate an error rate, that error rate must be applied.<sup>35</sup>

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."<sup>36</sup> FSA found that seventeen out of a sample of thirty students came from a diploma mill and eleven out of thirty 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.<sup>37</sup> The school argued that FSA did not have a valid basis for ordering the file review and 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.<sup>38</sup> In that case, the IPA provided an error rate in its attestation which FSA challenged as "unreliable." Noting that the auditor's error rate

---

<sup>35</sup> Compare *Galiano II* at 3 (determining that the original sample that was audited by FSA provided a reliable basis for calculating a sufficiently accurate error rate) with *Atlanta Beauty and Barber Academy*, Dkt. No. 17-55-SP, U.S. Dep't of Educ. (April 12, 2021), *appeal docketed*, (May 12, 2021) (concluding that because inconsistent attendance records affected every student file in both the original sample and the full file review, there was no reliable basis for calculating an error rate).

<sup>36</sup> *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.

<sup>37</sup> *Galiano I* at 2.

<sup>38</sup> *Galiano I* at 6.

was unsupported by the record, the Secretary agreed with FSA and determined that the error rate should not be applied.<sup>39</sup> 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.”<sup>40</sup> The Secretary, however, concluded that the circumstance in *Galiano* did not “present[ed] such a scenario.”<sup>41</sup> 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 provided to them.”<sup>42</sup> 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.<sup>43</sup>

On remand, FSA argued that there were issues of fraud that the school “engaged in such extensive fraud that all of its records are unusable.” The administrative judge agreed and upheld FSA’s demand for the school to return all Title IV funds for the relevant time period. On appeal again, the Secretary overruled the administrative judge’s decision, concluding that “departmental precedent and past FSA practice supported assessing an institution's liability based on an error rate projection even when a school's system of records showed limited, non-systematic evidence of fraud and tampering that was not likely to have impacted all of the data.”<sup>44</sup> Elaborating, the Secretary noted that the president of the school “pled guilty to tampering with only a handful of student records,” but there was not evidence that showed “that he falsified any other records.”<sup>45</sup> The Secretary stated that “[a]s the Department held previously, an error rate projection is the proper

---

<sup>39</sup> *Galiano I* at 7.

<sup>40</sup> *Galiano I* at 7.

<sup>41</sup> *Galiano I* at 7.

<sup>42</sup> *Galiano I* at 8.

<sup>43</sup> *Galiano I* at 8.

<sup>44</sup> *Galiano II* at 2.

<sup>45</sup> *Galiano II* at 3.

way to assess liability when an audit exists, but evidence of fraud or tampering makes a full file review unreliable.”<sup>46</sup> The Secretary first looked to using the auditor’s report as a basis for establishing an error rate, but concluded that because the auditor’s report matter contained discrepancies it did not provide a reliable basis for calculating liabilities. The Secretary concluded, however, that the original FSA audit sample provided a reliable error rate, and directed that the error rate calculated from the original sample should be used to determine liabilities.

The IPA report does not provide a reliable basis for calculating a sufficiently reliable error rate. The IPA tested the file review completed by Durham regarding Findings 1, 2, and 3. The parties agreed that, for each of these findings, the IPA would test the spreadsheet that Durham prepared from the file review of each finding for (1) Completeness, by comparing the information in the spread sheet with certain lists; and (2) Accuracy, by testing “100% of the students.”<sup>47</sup> Because Durham failed to provide necessary information, the IPA was unable to complete any of this testing.

For all three findings, IPA compared the information they received with the thirty students that were used as the initial sample for the PRR and concluded that for all three findings at issue, the IPA did not have information for all students who received Title IV program funds during the relevant time. Specifically, the file review spreadsheets created by Durham did not include 6 of the students from the initial sample and the supposed complete list of students provided to the IPA from Durham’s third-party server did not include five of the students who were part of the initial sample.<sup>48</sup> Additionally, for each finding, significant information was not provided for those student files that were included, preventing the IPA from completing a reliably accurate

---

<sup>46</sup> *Galiano II* at 3.

<sup>47</sup> Resp.’s Exhibit 3 at R-89-92.

<sup>48</sup> Resp.’s Exhibit 4 at R-94-95, 98, 101.

assessment of Durham's file review.

For Finding 1, the IPA tested information related to Durham's file review for ineligible fees for overtime charges and missed hours. For Finding 2, the IPA tested information related to Durham's file review of credit balance deficiencies. To complete the testing for each of these findings, the IPA required, for each student who received Title IV award funds: (1) award letters; (2) student ledger cards; (3) student enrollment agreements; and (4) bank statements.<sup>49</sup> For the 290 students whose information should have been supplied, nine award letters, twelve student ledger cards, and 243 of the student enrollment agreements were missing.<sup>50</sup> To do a proper review for each of the findings, the IPA was supposed to compare the institutional charges listed on the ledger cards with the amounts on the enrollment agreements.<sup>51</sup> For 243 of the 290 students, or approximately 84% of the students, the IPA could not complete this testing because it did not have the enrollment agreements. For the small number of students for whom the IPA did receive enrollment agreements, the IPA could not do a comparison because the enrollment agreements showed only the tuition and fees for the entire program while the ledger cards showed the costs prorated for each pay period.<sup>52</sup> Additionally, because Durham did not provide copies of checks from 2018 to confirm that money was returned to students, the IPA could not include any moneys posted as returned to students or returned to Title IV on the ledger cards for that year. In short, the IPA could not properly test Durham's file review for any of the students for Findings 1 and 2 and could not accurately include moneys that were returned to students or the Title IV programs, rendering the results substantially less reliable.

For Finding 3, the IPA tested information related to the accuracy of Durham's calculations

---

<sup>49</sup> Resp.'s Exhibit 4 at R-96, 99.

<sup>50</sup> Id. at R-95, 98-99.

<sup>51</sup> Resp. Exhibit 4 at R-96-97, 99.

<sup>52</sup> Resp. Exhibit 4 at R-97.

of what money should be returned to the Department for students who did not complete an award period (R2T4 calculations). In addition to the missing award letters, enrollment agreements, student ledger cards, and copies of checks, Durham failed to produce one attendance record, 10 R2T4 calculation worksheets and any of the official withdrawal forms. The IPA found discrepancies between the R2T4 worksheets and the attendance records for the students it was able to test. Because Durham did not, as required by the agreed procedures, provide the IPA with the lists it had given to the state boards of barbers of students who had withdrawn from the school, the IPA did not have sufficient information to verify whether the date on the R2T4 worksheet was correct.<sup>53</sup> Durham failed to produce required information, and as a result, the IPA did calculations based upon unverified withdrawal dates, significantly undermining the reliability of those calculations.

The deficiencies in the original sample used for the PPP, however, provide more accurate and reliable error rates for Findings 1, 2, and 3. The Secretary's series of decisions in *Galiano*, therefore, compels that the error rate from the original sample be applied in this matter.<sup>54</sup>

The initial program review sample size was thirty student files for AY 2016/2017 and 2017/2018. For Finding 1 of the PRR, the review team found six files with Title IV errors. These errors calculate into a projection that a total 20% of all Title IV recipients will have an error for ineligible fees for overtime charges. For Finding 2 of the PRR, the review team found seven files with errors. These errors calculate into a projection that a total of 23.333% of all Title IV recipients will have credit account deficiency errors. For Finding 3 of the PRR, the review team found eight files with errors. Durham asserted that there were six student files with errors, but the Department

---

<sup>53</sup> Resp. Exhibit 4 at R-104.

<sup>54</sup> Durham's counsel conducted its own audit of the 2018 bank state to "Fill in the gaps of the IPA's report." Resp.'s Reply Br. at 4. However, because the IPA report is not being used to calculate an error rater projection, it follows that the Resp.'s Ex. 5 will not be used to calculate liabilities.

found errors with student files 6, 8, 11, 15, 19, 21, 25 and 30. Durham had returned funds to students 6, 8, and 30, but the error rate projection is based off of the total number of errors in the sample, and FSA found errors in the R2T4 calculation related to eight student files. These errors calculate into a projection that a total of 26.6667% of all Title IV recipient student files will have a R2T4 calculation error.

Although there were lower error rates in Findings 1 and 2, we apply the higher error rate of 26.6667% from Finding 3. If the only finding with liability had been Finding 3, that would have been the reliable error rate that was applied. The fact that the Department found other areas of concern, but found fewer examples of those deficiencies does not change that the original sample projects that 26.6667% of the files suffered from a failure to address credit balance deficiencies. Therefore, that error rate is applied to the total Title IV program funds disbursed during the relevant award years to calculate the liabilities that are projected. Applying that error rate to the \$2,380,365 of Title IV program funds disbursed, Durham owes a projected liability of \$634,764. As noted above, this total does not include the additional specifically identified liabilities in Findings 5 and 8 of \$7,789 and \$9,625 respectively.

Durham also argues that its liabilities should be further reduced based on the funds it believes it is owed from the time the school was on heightened cash monitoring. This matter is limited to a review of the FPRD is supportable in whole or in part.<sup>55</sup> Durham's burden in this matter is to show that the questioned expenditures were proper and that it followed applicable laws and requirements.<sup>56</sup> Only evidence related to the program review is relevant and material and admissible in this matter.<sup>57</sup> Therefore, only the subject matter of the program review are at issue

---

<sup>55</sup> See 34 C.F.R. § 668.118(b).

<sup>56</sup> See 34 C.F.R. § 668.116(d).

<sup>57</sup> See 34 C.F.R. §§ 668.116(e) and (f).

in this proceeding. Whether any other money is owed by the Department to Durham or by Durham to the Department is not part of this proceeding.

### **Findings of Fact and Conclusions of Law**

1. For AY 2016/2017 and 2017/2018, Durham participated in Title IV programs.
2. Durham had a duty to disburse and administer Title IV funds in accordance with the program requirements.
3. Durham failed to provide an adequate and reliable file review of 2016/2017 and 2017/2018 Title IV funds.
4. Durham has not met its burden of proving that, for Findings 1, 2, 3, 5 and 8 of the FPRD, it properly disbursed and administered Title IV funds in accordance with program requirements.
5. The record and facts of this case do not adequately support an assessment of liabilities at 100% of disbursed Title IV funds for Finding 1, 2, and 3 of the FPRD. Instead assessed liabilities should be based upon an error rate projection.
6. The IPA report is deficient and not a reliable basis for determining an error rate projection.
7. The error rate projection in the initial sample of the PRR is a reliable basis to calculate assessed liabilities. The highest error rate in the initial sample was from Finding 3 at 26.6667% and this rate is to be used to calculate Durham's liabilities for Finding 1, 2, and 3 of the FPRD. The liabilities assessed in the FPRD are duplicative for Finding 1, 2 and 3 of the FPRD.
8. Durham has not shown that the liabilities assessed in Findings 5 and 8 should be reduced.

### **Order**

Based on the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED:**

1. Finding 5 and 8 are **AFFIRMED** with liabilities being \$7,789 for Finding 5 and \$9,625 Finding 8.
2. Finding 1, 2 and 3 are **AFFIRMED** in part and **DENIED** in part. The finding of improper administration and disbursement of Title IV funds is affirmed. The calculation of liabilities at 100% of Title IV funds disbursed is denied. Durham's

liabilities in Finding 1, 2 and 3 of the FPRD are to be determined upon 26.6667% of the \$2,380,365 in total Title IV funds disbursed in AY 2016/2017 and 2017/2018. Since the liabilities are duplicated in Finding 1, 2 and 3, the unduplicated amount of liabilities assessed against Durham for Findings 1, 2, and 3 is \$634,764.

3. In total, Durham must return \$652,178 to the Department.

---

Daniel J. McGinn-Shapiro  
Administrative Law Judge

**Dated: September 14, 2022**

SERVICE

This decision has been sent by email attachment, delivery receipt confirmation requested, to:

Megan R. Banks  
Rouse Frets White Goss Gentile Rhodes, P.C.  
4510 Belleview Avenue, Suite 300  
Kansas City, MO 64111  
rholt@rousepc.com  
mbanks@rousepc.com

And by email attachment, delivery receipt confirmation requested and by OES automatic electronic service, to:

Ronald L. Holt  
Rouse Frets White Goss Gentile Rhodes, P.C.  
4510 Belleview Avenue, Suite 300  
Kansas City, MO 64111  
rholt@rousepc.com

And to:

Samuel R. Bissel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-2110  
samuel.bissell@ed.gov