



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF HEARINGS AND APPEALS  
OFFICE OF ADMINISTRATIVE LAW JUDGES

400 MARYLAND AVENUE, S.W.  
WASHINGTON, D.C. 20202  
TELEPHONE (202) 245-8300

---

In the Matter of

**Bank Street College of Education,**

**Docket No. 18-39-SP**

Federal Student Aid Proceeding  
PRCN: 201620229270

Respondent.

---

Appearances: Monica Barrett and Mallory Campbell, Bond, Schoeneck & King PLLC,  
for Bank Street College of Education

Hannah Hodel, Office of the General Counsel, for Office of Federal  
Student Aid, U.S. Department of Education

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

**DECISION**<sup>1</sup>

Bank Street College of Education (BSC) is a private nonprofit institution offering advanced degrees in education.<sup>2</sup> The institution is appealing liability assessed in the U.S. Department of Education’s (“Department”) Final Program Review Determination (“FPRD”) dated May 22, 2018. On June 6, 2023, the U.S. Department of Education’s Chief Administrative Law Judge reassigned this matter to me.<sup>3</sup>

BSC has participated in student financial assistance programs authorized by Title IV of the

---

<sup>1</sup> This decision is an initial decision pursuant to 34 C.F.R. § 668.118.

<sup>2</sup> See Final Program Review Determination (May 22, 2018) (FPRD) at 3.

<sup>3</sup> See Order Reassigning Case (June 6, 2023).

Higher Education Act of 1965, as amended (Title IV)<sup>4</sup> since at least 2014. Within the Department, the office providing oversight over these programs is the Office of Federal Student Aid (FSA). In the FPRD, FSA assesses a liability against BSC in the amount of \$174,620, which represents Title IV work-study program funds and interest on those funds.<sup>5</sup> This liability is based on one finding, Finding 5. In Finding 5, the Department assesses liabilities for BSC’s alleged failure to properly certify work-study timesheets. Regarding this finding, the Department’s conclusion is supportable in part and unsupported in part.

### **Facts and Procedural History**

In February 2016, FSA conducted an off-site program review of BSC and examined a sample of student files.<sup>6</sup> At the conclusion of the review, FSA issued a program review report (PRR). FSA, in the PRR, made six findings.<sup>7</sup> On November 6, 2017, BSC submitted its response to the PRR.<sup>8</sup> After reviewing BSC’s response, the Department concluded that BSC had “taken the corrective actions necessary” to resolve five of the six findings and closed those findings without imposing any liabilities.<sup>9</sup> For Finding 5, however, FSA determined that BSC owed liabilities for Title IV work-study program funds disbursed to students.

In Finding 5 of the PRR, FSA noted that, pursuant to 34 C.F.R. § 675.19(b)(2), BSC had certain responsibilities, including an obligation to retain certain records. Among the records that the school was required to retain were certifications by the students’ supervisors, or other identified persons, that the students had worked and earned the amount paid.<sup>10</sup> The Department concluded that BSC did not comply with this requirement because it found two students files from the sample

---

<sup>4</sup> 20 U.S.C. § 1070 *et seq.*

<sup>5</sup> *See* FPRD at 4, 6-7.

<sup>6</sup> *See* FPRD at 4.

<sup>7</sup> *See* Program Review Report (Aug. 21, 2017) (PRR) at 2.

<sup>8</sup> *See* FPRD at 4; Letter from Emmett Cooper to Tony Sydney (Nov. 6, 2017) (PRR Response).

<sup>9</sup> *See* FPRD at 4.

<sup>10</sup> *See* PRR at 8.

of student records with timecards that were not properly certified.<sup>11</sup> Specifically, for one student, Student 38, the timesheet was not certified and for the other student, Student 39, BSC did not submit timesheets.<sup>12</sup> Additionally, for both students, the Department stated that BSC failed to meet its obligation by not providing job descriptions detailing the duties, responsibilities, and rate of pay for the students' positions.<sup>13</sup>

Due to the “systemic nature of this finding,” FSA, in the PRR, ordered BSC to “determine the exact amount of institutional liability associated with this finding” by doing a full file review to identify all federal work-study recipients with incomplete or uncertified timesheets in award years 2014-2015 and 2015-2016.<sup>14</sup> The Department also directed BSC to provide the procedures the school would implement to “ensure no reoccurrence of their finding.”<sup>15</sup>

In response to Finding 5, BSC notified the Department that it had “changed [its] Federal Work-Study orientation process,” by providing all federal work-study students, during their first meeting, with job descriptions that include pay rates.<sup>16</sup> Additionally, BSC submitted supporting documentation for the two students at issue in Finding 5.<sup>17</sup> For Student 38, BSC submitted a paper timesheet signed by both the student and the supervisor. For Student 39, BSC submitted reports from a system the school used where the student put in their hours and the supervisor approved the hours. BSC asked, “[b]ased on the supporting documentation,” that “this portion” of Finding 5 “be removed” from the FPRD.<sup>18</sup>

After reviewing the documentation submitted by BSC, the Department concluded that:

The timesheets provided for review do not contain a line for supervisors to certify

---

<sup>11</sup> See PRR at 8.

<sup>12</sup> See PRR at 8.

<sup>13</sup> See PRR at 8.

<sup>14</sup> PRR at 8.

<sup>15</sup> PRR at 9.

<sup>16</sup> Response to PRR at 3.

<sup>17</sup> See Response to PRR at 3.

<sup>18</sup> Response to PRR at 3.

hours worked, or a statement of certification of the hours worked. The timesheets lack proper certification and do not meet the regulatory requirements. A signature without the accompanying certification statement does not meet the regulatory requirements.<sup>19</sup>

In its response to FSA, BSC also identified thirty-nine student files for which federal work-study payments were disbursed.<sup>20</sup> FSA concluded in Finding 5 that BSC was liable to return all funds disbursed for those student files.<sup>21</sup>

BSC filed an Appeal, challenging the findings and liabilities assessed in the FPRD (Appeal).<sup>22</sup> In response to an order, BSC filed an initial brief, the Department submitted a responsive brief, and BSC filed a reply brief. With their briefs, both parties filed multiple exhibits. Included among the exhibits was BSC's Exhibit 1, which is a collection of work-study timesheets and supporting documentation for each of the student files at issue in Finding 5.<sup>23</sup>

#### A. BSC's Arguments

BSC asserts that it complied with the regulations and the program participation agreement it entered into with the Department regarding proper certification of student work-study timesheets. Specifically, BSC contends that after each student reported their time to BSC, a supervisor reviewed and confirmed that the student worked the time reported and the pay reported was earned.<sup>24</sup> BSC states that individualized timesheet review is evidenced by the hand-written signatures of supervisors, handwritten calculations confirming the hours reported, and documentation showing coordination among the BSC departments to confirm that recordkeeping

---

<sup>19</sup> FPRD at 6.

<sup>20</sup> See ED Ex. 5, Sydney Declaration at ¶ 24.

<sup>21</sup> See FPRD at 6, Sydney Declaration at ¶¶ 16, 26.

<sup>22</sup> Letter from Emmett Cooper to Susan Crim (June 23, 2018).

<sup>23</sup> Counsel for BSC represented during a June 26, 2023 status conference that BSC Exhibit 1 contains the documentation for all of the students at issue in Finding 5. Included among the thirty-nine student files are, for two students, separate files for the 2014-2015 and for the 2015-2016 award years. See Exh. R1 at 318-357, 402-411, 708-730, 813-841. That these four files are for the same two students does not change the analysis.

<sup>24</sup> See Bank Street College of Education's Initial Brief (Jan. 25, 2019) (Initial Brief) at 4.

was “accurate.”<sup>25</sup> The school argues that in other contexts, a signature has been used to demonstrate certification.<sup>26</sup>

BSC additionally argues that it did not receive prior notice of the requirement to use a specific or particular format to meet the certification requirements under 34 C.F.R. § 675.19, and so a failure to comply with that format cannot give rise to liability.<sup>27</sup> The school asserts that a “fundamental principle of administrative law is the requirement for notice,” and FSA may not “create new rules without notice and then seek to enforce them.”<sup>28</sup> BSC asserts that the language of the regulation does not indicate what form the certification should take or justify the requirement that the certification include a “scripted recitation.”<sup>29</sup> BSC argues that, similarly, the FSA Handbooks, and all other guidance, do not give notice of this specific requirement to include a certification statement and do not give notice that a signature cannot serve as a certification.<sup>30</sup>

BSC also contends that in the absence of such clear guidance, it engaged in “good-faith record-keeping” which was recognized as acceptable for work-study related record-keeping in a previous OHA decision, *In re Temple University*.<sup>31</sup> BSC contends that in that case, OHA interpreted the exact provision at issue in this case as allowing some latitude in record-keeping. Specifically, BSA asserts that OHA accepted records with the wrong clock time period entered, as long as the actual hours worked were correct, and that OHA rejected imposing a liability “based on an overly technical, strict construction of Section 675.19(b)(2)(i).”<sup>32</sup> BSC asserts that, like the school in the *Temple University* matter, it should not be held liable “because the actual supervisory

---

<sup>25</sup> See Initial Brief at 4-5.

<sup>26</sup> See Bank Street College of Education’s Reply Brief (March 1, 2019) (Reply Brief) at 2.

<sup>27</sup> See Initial Brief at 5, Reply Brief at 3-4.

<sup>28</sup> Reply Brief at 1.

<sup>29</sup> See Initial Brief at 5.

<sup>30</sup> See Initial Brief at 5-6.

<sup>31</sup> Dkt. No. 89-26-S, U.S. Dep’t of Educ. (Feb. 22, 1990).

<sup>32</sup> Initial Brief at 7.

review was allegedly incorrectly indicated,” which would be a “hyper-technical approach [that] fails to acknowledge that [BSC’s] records, by and large, reflect the number of hours worked and the review of those hours by supervisors”<sup>33</sup>

BSC additionally argues that the liability assessed is disproportionate to the alleged recorded keeping error. Specifically, BSC notes that it has submitted signed, stamped, dated, and initialed timesheets, timesheets with signatures of supervisors, and electronically reviewed timesheets. BSC asserts that the liability assessed, repayment of the entire amount of federal work-study awarded to all thirty-nine students, is “overly harsh,” especially when compared to the circumstances in *In re Phillips College*, where the school provided no contemporaneous documentation to support the work-study payments.<sup>34</sup> The school challenges the Department’s decision to collect all work-study funds for “alleged record-keeping errors.”<sup>35</sup>

BSC further contends that the Department has not found any situations where students did not work the hours reported nor any instances of improperly disbursed funds.<sup>36</sup> Finally, BSC argues that even if its record keeping was not proper before, it has cured any problems and no liability should be assessed.<sup>37</sup>

#### B. FSA’s Arguments

In its initial brief, FSA argues that this decision should agree with the proposed findings in the FPRD,<sup>38</sup> including imposing liability assessed in Finding 5 for “lack of certification deficiencies in [BSC’s] Federal Work-Study (FWS) program.”<sup>39</sup> FSA argues that BSC has failed

---

<sup>33</sup> Initial Brief at 7.

<sup>34</sup> See Initial Brief at 8.

<sup>35</sup> See Reply Brief at 1.

<sup>36</sup> See Initial Brief at 9.

<sup>37</sup> See Initial Brief at 10.

<sup>38</sup> The Responsive Brief was filed by the attorney who represented FSA before Ms. Hodel was reassigned to the case. In the brief, prior counsel requests that the “liabilities of \$391,680.85” be upheld. This amount, however, is not what is assessed by the FPRD, which directs that the “total liability owed to the Department is \$174,620.72.” FPRD at 8.

<sup>39</sup> Office of Federal Student Aid’s Response Brief (Feb. 15, 2019) (Response Brief) at 1.

to provide evidence that satisfies the school's burden to prove that it complied with all Title IV program requirements and that the school made proper expenditures.<sup>40</sup>

The Department's primary contention is that BSC has not proven that it complied with all Title IV program requirements because the timesheets submitted by BSC lacked proper certification. Specifically, FSA argues that the timesheets sent in response to the PRR were deficient due to lack of signatures, illegible signatures, and lack of certification, and the "employee punch report" submitted for one student was unsigned by both the student and the supervisor and lacked certification or identification of the supervisor.<sup>41</sup> The Department asserts that this shows that the timecards lacked proper certification and the disbursements were improper.

The Department contends that the thirty-nine student files are examples of noncompliance because there is "no factual dispute as to the lack of certification on these 39 specific timesheets."<sup>42</sup> It also argues that BSC received proper notice of the requirements at three times either during the program review or after the PRR was issued.<sup>43</sup> FSA further asserts that the file review conducted by BSC "self-reported" thirty-nine student files that lacked proper certification and that BSC must return funds associated with these student files. Finally, FSA argues that BSC's curing of its deficiencies moving forward does not relieve it of its obligation to return misspent Title IV program funds.

### C. Supplemental Status Conference

On June 26, 2023, I met with the parties using Microsoft Teams to discuss the status of the case. During that conference, counsel for FSA confirmed that the years at issue were the 2014-2015 and 2015-2016 award years and any reference to other years in the FPRD are a typographical

---

<sup>40</sup> See Response Brief at 2.

<sup>41</sup> See Response Brief at 6.

<sup>42</sup> Response Brief at 8.

<sup>43</sup> See Response Brief at 8-9.

error. Counsel for BSC also confirmed that Exhibit 1 contains the files for all the students at issue in Finding 5 of the FPRD. Finally, because both BSC and the Department changed counsel since the briefs were filed, the parties were offered the opportunity to file a request for additional briefing, but no such request was filed.

### **Issue**

The issue to be addressed is:

- 1. Whether the liability assessed against BSC in Finding 5 of the Final Program Review Determination is supportable in whole or in part.**

### **Summary of Decision**

The evidence submitted demonstrates that the FPRD is supportable in part and not supportable in part.

### **Statement of Law**

As the institution requesting a review of the FPRD, BSC has the burden of proving that its disallowed expenses were proper and that it complied with the program requirements.<sup>44</sup> My review is limited to determining whether, based upon the record, FSA’s determination in the FPRD “was supportable, in whole or in part.”<sup>45</sup>

In order to participate in a Title IV program, such as the federal work-study program at issue in this matter, BSC was required to enter into a program participation agreement with the Department.<sup>46</sup> That agreement was required to condition BSC’s participation in the Title IV work-study program on the school’s compliance with a number of obligations, including that it would “establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students

---

<sup>44</sup> See 34 C.F.R. §§ 668.116(d)(1)-(2).

<sup>45</sup> 34 C.F.R. § 669.118.

<sup>46</sup> See 20 U.S.C. 1094(a), 34 C.F.R. § 668.14(a)(1).



under . . . [the statutes governing Title IV programs and the statues that specifically governing federal work-study programs], together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to . . . . the Secretary [of Education].”<sup>47</sup> In summary, BSC was required to comply with record establishment and retention rules as a condition of disbursing Title IV federal work-study program funds.

Part 675 of the Title 34 of the Code of Federal Regulations contains the regulations promulgated by the Department to govern federal work-study programs. More specifically, 34 C.F.R. § 675.19 provides the regulations addressing, along with fiscal procedures, the establishment and maintenance of program and fiscal records. As fully discussed below, the certification requirement at issue in this matter, is section 675.19(b)(2).

### **Analysis**

The basis for liability in Finding 5 is the failure to certify the students’ timecards. FSA’s stated reason for this conclusion is that the timesheets did not contain a “a statement of certification of the hours worked . . . [and a] signature without the accompanying certification statement does not meet the regulatory requirement.”<sup>48</sup> With its appeal and its initial brief, BSC submitted additional documents, including signed timesheets, to support that it properly disbursed federal work-study funds to students. The Department, in its brief, argues that although many of the timesheets submitted with the appeal were signed, “each timesheet lacked the required ‘certification’ and contained illegible signatures.”<sup>49</sup> Similarly, in response to the documentation that BSC submitted with its initial brief, FSA asserts that the signatures on the timesheets were

---

<sup>47</sup> 20 U.S.C. § 1094(a)(3); *see also* 34 C.F.R. §668.14(b)(4).

<sup>48</sup> FPRD at 6.

<sup>49</sup> Response Brief at 4.

“not dated, illegible, and[/]or lacked any identification of the person certifying the timesheets . . . ,” which the Department argues is “noncompliant.”<sup>50</sup>

There is no indication how the Department concluded that the signatures are illegible, what constitutes a legible signature, or what basis there is to hold a school liable for signatures that a reviewer or Department attorney determine, without any proffered standard, are “illegible.”

The Department contends that the thirty-nine student files are examples of noncompliance because there is “no factual dispute as to the lack of certification on these 39 specific timesheets.”<sup>51</sup> Contrary to the Department’s assertion, the timesheets and documentation that BSC submitted show that for many of the thirty-nine student files there was compliance with the requirements of the regulations and published policy in place at the relevant time.

34 C.F.R. § 675.19(b)(2), which governs BSC’s obligation to provide certification regarding federal work-study funds, states:

The institution must also establish and maintain program and fiscal records that . . . [i]nclude a certification by the student's supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid. The certification must include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day.

The FSA Handbooks that the Department issued to provide guidance similarly stated that work-study “timesheets must be certified by the student’s supervisor. Students working for your school must have their timesheet certified by either their supervisor or an official at the school. Students working in off-campus jobs must have their timesheets certified by an official at the off-campus site.”<sup>52</sup> As noted, the Department, in the FPRD held BSC liable for failing to meet its obligation to provide certification because the timesheets did not contain “a statement of

---

<sup>50</sup> *Id.*

<sup>51</sup> Response Brief at 8.

<sup>52</sup> FSA Handbook 2014-2015 at 6-46; FSA Handbook 2015-2016 at 6-46.

certification of the hours worked . . . [and a] signature without the accompanying certification statement does not meet the regulatory requirement.”<sup>53</sup> In neither the language of the regulation nor the FSA Handbook is there any explicit direction to provide a certifying statement. Although 34 C.F.R. § 675.2 provides definitions for multiple terms at issue in federal work-study program regulations, it does not provide a definition of “certification.”

34 CFR § 675.19 has been amended multiple times.<sup>54</sup> Previous versions of the regulations specifically provided that the school must retain a certification “that each student has worked and earned the amount being paid,” and that “[t]he student's supervisor, an official of the institution or off-campus agency, shall sign the certification.”<sup>55</sup>

On August 10, 2000, the Department proposed changing that language to no longer require a certification with the handwritten signature of the supervisor. Specifically, the proposed regulations stated that it was the Department’s intention to “amend § 675.19(b)(2)(i) by removing the requirement that the certification must have the handwritten signature of the [federal work-study] student's supervisor,” and “provide[d] flexibility to institutions by allowing the use of an electronic certification or a certification through other appropriate means.”<sup>56</sup> The proposed regulation change further added that schools continued to have the option of having supervisors

---

<sup>53</sup> FPRD at 6.

<sup>54</sup> See *College Work-Study and Job Location and Development Programs*, 53 Fed Reg. 30182-01 (Aug. 10, 1988); *Student Assistance General Provisions; Federal Perkins Loan Program; Federal Supplemental Educational Opportunity Grant Program; Federal Work-Study Program; Federal Family Educational Loan Programs; Federal Pell Grant Program*, 59 FR 61716, 61722 (Dec. 1, 1994); *Student Assistance General Provisions; Federal Perkins Loan Program; Federal Supplemental Educational Opportunity Grant Program; Federal Work-Study Program; Federal Family Educational Loan Programs; Federal Pell Grant Program*, 60 FR 61796, 61805, 61815 (Dec. 1, 1995); *Student Assistance General Provisions*, 61 FR 60490, 60492 (Nov. 27, 1996); *Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program*, 62 FR 50846, 50847, 50848 (Sept 26, 1997); *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; and the Federal Pell Grant Program*, 65 FR 65662 (Nov. 1, 2000).

<sup>55</sup> See *Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program*, 52 FR 45738, 45774 (Dec. 1, 1987).

<sup>56</sup> *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program*, 65 FR 49134, 49145 (Aug. 10, 2000).

sign their “name on a paper certification.”<sup>57</sup>

The proposed regulatory change stated that it did “not remove the certification requirement,” which is intended to help “ensure that the supervisor is reviewing the time record prior to paying an FWS student.” The Department expressed that “[t]his is an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.”<sup>58</sup>

In November 2000, the proposed regulatory changes were adopted and, instead of requiring a certification and requiring that the certification be signed by a listed party, the new language requires that the school maintain records that include a certification by the student's supervisor, an official of the institution or off-campus agency.<sup>59</sup>

In the absence of a definition provided by the Department’s regulations and the FSA Handbook, the plain meaning of the term certification provides guidance. The tenth edition of Black’s Law Dictionary, which was in place between 2014 and 2019, provides a plain legal meaning of the obligation to “establish and maintain program and fiscal records that . . . [i]nclude a certification by the student’s supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid.” Black’s Dictionary includes in its definition of “certification:” (1) “[t]he act of attesting;” (2) “[t]he state of having been attested;” (3) “[a]n attested statement;” “and (4) “[t]he writing on the face of a check by which it is certified.”<sup>60</sup> The definition of “certify” includes (1) “to authenticate or verify in writing;” and (2) “to attest as being true or as meeting certain criteria.”<sup>61</sup> Finally, it then further defines “attest” as

---

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See *Student Assistance General Provisions; Federal Work-Study Programs; and the Federal Pell Grant Program*, 65 FR 65662 (Nov. 1, 2000).

<sup>60</sup> Black’s Law Dictionary 197 (10th ed. 2014).

<sup>61</sup> *Id.*

“[t]o bear witness [or] testify,” “[t]o affirm to be true or genuine;” or “to authenticate by signing as a witness.”<sup>62</sup> Applying the plain legal meaning of the requirement to retain a certification of the supervisor does not require a specific statement. Rather, if there is a document that has been attested to, for example by signing it and, thereby attesting to and witnessing the authenticity of the document, or by electronically inputting a verification that the information is accurate it would satisfy the plain meaning of the obligation to retain a certification.<sup>63</sup>

This is in line with the Department’s stated goal of the certification requirement. Specifically, the Department expressed that the purpose of the certification requirement in the regulation was to help “ensure that the supervisor is reviewing the time record prior to paying an FWS student” as “an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.”<sup>64</sup> A contemporaneous signature or electronic affirmation by the supervisor is indication that the supervisor is attesting or affirming that the information on the timesheet is “true.”

BSC has submitted, as Exhibit 1, documentation for all thirty-nine student files at issue in Finding 5. For some of those thirty-nine student files, BSC has demonstrated that it met the requirement to retain certification from the student’s supervisor, an official of the institution or off-campus agency. For others, however, BSC did not meet its obligation for at least part of the disbursement covered by the student file.

For the thirteen student files in Appendix A of this decision,<sup>65</sup> BSC provided printouts of

---

<sup>62</sup> Black’s Law Dictionary 107 (10th ed. 2014).

<sup>63</sup> The Department looks to a 1971 version of a dictionary for the definition of certification, which, although anachronistic, defines the act of certifying as “attesting, [especially] authoritatively or formally” and the act of attesting to be “affirm[ing] to be true or genuine.” Response Brief at 9-10. Electronically certifying a timesheet or signing a time sheet would meet the definition of affirming that the timesheet is true or genuine.

<sup>64</sup> *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program*, 65 FR 49134, 49145 (Aug. 10, 2000).

<sup>65</sup> See Exh. R1 at 39-81, 93-119, 133-185, 186-216, 217-257, 281-317, 318-357, 412-455, 485-500, 514-530, 531-

spreadsheets from the electronic system, Dayforce, that include an explicit indication that the manager affirmed that all the time entered by the work-study students was correct. Specifically, there is a column on the spreadsheets for “Manager Authorization” that either has an entry of true or false and another column, entitled “Modified By,” that indicates the name of the person who made that entry.<sup>66</sup> As explained above, the plain meaning of certify includes “to authenticate or verify in writing.”<sup>67</sup> Identifying a manager and marking that it is true that the manager has authorized the time entered into the system would, therefore, be an electronic certification. When 34 C.F.R. § 675.19 was amended in 2000 the Department explicitly stated that the reason for the change was to “provide flexibility to institutions by allowing the use of an electronic certification or a certification through other appropriate means.”<sup>68</sup> Additionally, the entries indicating that the manager authorized that the time was correct were consistently entered within approximately a week of the time worked. This would satisfy the intention of the certification requirement, to help “ensure that the supervisor is reviewing the time record prior to paying an FWS student” as “an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.”<sup>69</sup> In short, for the thirteen student files that contain electronic certifications for the entirety of the work at issue, BSC has demonstrated compliance with the obligations of the regulation.

For five other student files listed in Appendix B of this decision, BSC included Dayforce reports with indications that some, but not all payments were electronically authorized.

---

543, 544-576, 645-673.

<sup>66</sup> See Exh. R1 at 57-66, 93-98, 155-161, 186-192, 235-239, 299-303, 336-340, 433-436, 485-488, 514-519, 531-532, 544-549, 645-652.

<sup>67</sup> Black’s Law Dictionary 197 (10th ed. 2014).

<sup>68</sup> *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program*, 65 FR 49134, 49145 (Aug. 10, 2000).

<sup>69</sup> *Id.*

Specifically, one student file<sup>70</sup> contains electronic certifications.<sup>71</sup> The entries for October 5 through 22, 2015<sup>72</sup> and June 28, 2016,<sup>73</sup> however, indicate that there was no manager authorization. A second student file<sup>74</sup> similarly contains electronic certifications,<sup>75</sup> but the entry for October 19, 2015 indicates that there was not a manager authorization for the time worked.<sup>76</sup> A third student file<sup>77</sup> similarly contains electronic certifications,<sup>78</sup> but the entries for October 5 – 12, and October 15 – 30, 2015 indicate that there was not a manager authorization of the time worked.<sup>79</sup> A fourth student file<sup>80</sup> similarly contains electronic certifications,<sup>81</sup> but the entries for October 5 – 9, 2015 indicate that there was not a manager authorization for the time worked.<sup>82</sup> A fifth student file<sup>83</sup> similarly contains electronic certifications,<sup>84</sup> but the entry for January 24, 2016 indicates that there was not a manager authorization of the time worked.<sup>85</sup> For those students, the Title IV work-study payments that are marked as having manager authorization are properly certified and the payments without that indication are not properly certified.

For the twenty-one student files in Appendix C of this decision, BSC did not provide these printouts demonstrating that the work time was electronically certified. The school did, however, provided timesheets signed by someone other than the student for these files. BSC has represented

---

<sup>70</sup> Exh. R1 at 591-632.

<sup>71</sup> Exh. R1 at 607-612.

<sup>72</sup> Exh. R1 at 607-608.

<sup>73</sup> Exh. R1 at 612.

<sup>74</sup> Exh. R1 at 687-694.

<sup>75</sup> Exh. R1 at 687-688.

<sup>76</sup> Exh. R1 at 687.

<sup>77</sup> Exh. R1 at 760-798.

<sup>78</sup> Exh. R1 at 760-768.

<sup>79</sup> Exh. R1 at 761-762.

<sup>80</sup> Exh. R1 at 708-730.

<sup>81</sup> Exh. R1 at 708-712.

<sup>82</sup> Exh. R1 at 708-709.

<sup>83</sup> Exh. R1 at 813-841.

<sup>84</sup> Exh. R1 at 813-820.

<sup>85</sup> Exh. R1 at 817.

that these signatures are from the supervisor or other proper official<sup>86</sup> and FSA has not challenged that the signer was a proper person. As noted above, the FSA Handbook for the academic period at issue directs only that “timesheets [for work-study students] must be certified by the student’s supervisor.”<sup>87</sup> Signing a timesheet would meet the plain meaning of the obligation to certify the timesheet. Additionally, cases have indicated that a signature is a suitable form of certification. In *In re Cambrian Holding Company*,<sup>88</sup> the court addressed an issue concerning timesheet and concluded that a signature on a timesheet can act as proof that a company approved work performed by an employee of another company.<sup>89</sup> In other contexts, courts have concluded that a signature acts as a certification for the purposes of Rule 11 and Rule 26(g)(1) of the Federal Rules of Civil Procedure.<sup>90</sup> In short, a signature on a document can satisfy the regulatory requirements of a “certification” and follow the stated goal of the Department to “provide flexibility to institutions by allowing the use of . . . a certification through other appropriate means.”<sup>91</sup>

In the FPRD, the Department asserts that a signature “without the accompanying certification statement does not meet the regulatory requirement.”<sup>92</sup> In its brief, FSA asserts that it gave BSC proper notice of the requirements at three times either during the program review or

---

<sup>86</sup> See Initial Brief at 4; Reply Brief at 3, 6.

<sup>87</sup> FSA Handbook 2014-2015 at 6-46; FSA Handbook 2015-2-6 6-46.

<sup>88</sup> 2022 WL 850050 (Bankr. E.D. Ky., 2022) at \*3.

<sup>89</sup> See also *Robinson v. On-Call Staffing of Tennessee, Inc.*, 2016 WL 4544545, at \*3 (W.D. Tenn. 2016) (noting that a client representative’s signature was used to verify employee nurses’ work hours); *Seifert v. Commonwealth of PA Human Relations Com’n*, 515 F.Supp.2d 601, 606 (W.D. Penn. 2007) (noting that a supervisor’s signature on a time sheet was used to verify that the information on the timesheet was correct and that leave slips for leave indicated on the timesheet had been approved).

<sup>90</sup> See *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 542 (1991); *High Point SARL v. Spirt Nextel Corp.*, 2011 WL 4008009 (D. Kan. 2011); *Lipson v. Johnson & Wales Univ.*, 1997 WL 576398 at \*2 (D.R.I. 1997); *Advance Intern., Inc. v. China National Arts & Crafts Import & Export Corp.*, 1990 WL 106825 (S.D.N.Y. 1990); *Logan v. City of Chicago*, 1985 WL 1270 (N.D. Ill. 1985).

<sup>91</sup> *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program*, 65 FR 49134, 49145 (Aug. 10, 2000).

<sup>92</sup> FPRD at 6.



after the PRR was issued.<sup>93</sup> The Department does not even argue that it gave this information to BSC during or before the award years in question. Notifying a school of an obligation during a program review, after the award years in question have already passed is not proper notice.

In short, the failure to include a specific statement does not render the certification invalid. The signed timesheets, however, do not demonstrate that BSC has met its obligations under the regulations because there is no indication when the timesheets were signed. The Department of Education published in the Federal Register long before the time period at issue that the purpose of the certification requirement was to “ensure that the supervisor is reviewing the time record prior to paying an FWS student” as “an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.”<sup>94</sup> The evidence submitted by BSC does not demonstrate that the supervisor reviewed the timesheets prior to paying the students for their work-study. Without any indication when the timesheets were signed, the evidence cannot sufficiently demonstrate that BSC satisfied its obligation to certify the timesheets.<sup>95</sup>

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

1. BSC participated in Title IV programs, including federal work-study programs.
2. No liability has been assessed for any finding except Finding 5.

---

<sup>93</sup> See Response Brief at 8-9.

<sup>94</sup> *Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program*, 65 FR 49134, 49145 (Aug. 10, 2000).

<sup>95</sup> For multiple student files, BSC included a statement signed by a manager on January 12, 2018 attesting to the accuracy of the work records. See Exh. R1 at 39, 217, 281, 318, 412. For other student files, BSC included printouts from Dayforce that have an indication that a manager authorized payments but do not indicate when the manager authorized the payments. See Exh. R1 at 67-74, 99-109, 163-177, 195-207, 240-250, 304-312, 341-350, 437-445, 489-495, 520-525, 539-541, 550-562, 614-626, 653-666, 689-691, 713-722, 769-790, 821-834. These documents, like the undated signatures on the timesheets, do not meet BSC’s obligations. A statement made years after the federal work-study funds were disbursed in 2014, 2015, and 2016, and documents with indications that a manager authorized the payments but no indication when that authorization was made do not “ensure that the supervisor is reviewing the time record prior to paying an FWS student.” 65 FR at 49145.

3. BSC had a duty to disburse and administer Title IV funds in accordance with the program requirements.
4. One such requirement is that for federal work-study program recipients, the school was required to retain certifications from the student supervisor or an official of the institution or off-campus agency that the student worked and earned the Title IV work-study funds being paid.
5. BSC provided evidence of electronic authorizations from managers for thirteen student files, listed in Appendix A, that demonstrated that it met its obligation to establish and maintain certifications.
6. BSC provided evidence of electronic authorizations from managers for five other student files, listed in Appendix B, that demonstrated that it met its obligation to establish and maintain certifications for some but not all federal work-study disbursements.
7. For twenty-one student files listed in Appendix C, BSC did not demonstrate that it met its obligations to establish and maintain certifications.

### **Order**

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

1. The liabilities assessed in Finding 5 for thirteen student files enumerated in Appendix A are unsupported.
2. The liabilities assessed in Finding 5 for five student files enumerated in Appendix B are supported in part and unsupported in part.
3. The liabilities assessed in Finding 5 for twenty-one student files listed in Appendix C are supported.
4. FSA shall recalculate liabilities in accordance with this Order.

---

Daniel J. McGinn-Shapiro  
Administrative Law Judge

**Dated: August 24, 2023.**

Appendix A: Student Files with Unsupported Liabilities

1. Student File at R1 at 39-81.
2. Student File at R1 at 93-119.
3. Student File at R1 at 133-185.
4. Student File at R1 at 186-216.
5. Student File at R1 at 217-257.
6. Student File at R1 at 281-317.
7. Student File at R1 at 318-357.
8. Student File at R1 at 412-455.
9. Student File at R1 at 485-500.
10. Student File at R1 at 514-530.
11. Student File at R1 at 531-543.
12. Student File at R1 at 544-576.
13. Student File at R1 at 645-673.

Appendix B: Student Files with Unsupported Liabilities in Part and Supported Liabilities in Part

1. Student File R1 at 591-632 has supported liabilities only for the time entered for October 5 through 22, 2015 and June 28, 2016.
2. Student File R1 at 687-694 has supported liabilities only for the time entered for October 19, 2015.
3. Student File R1 at 708-730 has supported liabilities only for that time entered for October 5-9, 2015.
4. Student File R1 at 760-798 has supported liabilities only for the time entered for October 5-12, and October 15-30, 2015.
5. Student File R1 at 813-841 has supported liabilities only for the time entered for January 24, 2016.

Appendix C: Student Files with Supported Liabilities

1. Student File at R1 at 1-12.
2. Student File at R1 at 13-26.
3. Student File at R1 at 27-38.
4. Student File at R1 at 82-92.
5. Student File at R1 at 120-132
6. Student File at R1 at 258-269
7. Student File at R1 at 270-280.
8. Student File at R1 at 358-374.
9. Student File at R1 at 375-388.
10. Student File at R1 at 389-401.
11. Student File at R1 at 401-411.
12. Student File at R1 at 456-469.
13. Student File at R1 at 470-484.
14. Student File at R1 at 501-513.
15. Student File at R1 at 577-590.
16. Student File at R1 at 633-644.
17. Student File at R1 at 674-686.
18. Student File at R1 at 695-707.
19. Student File at R1 at 731-746.
20. Student File at R1 at 747-759.
21. Student File at R1 at 799-812.

## **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 and 668.121(b). These instructions are not intended to alter or interpret the applicable regulations or provide legal advice.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. A party appealing the decision may submit proposed findings of fact or conclusions of law to the Secretary. If a party submits proposed findings of fact, then the findings must be supported by admissible evidence that is already in the record, matters that may be given official notice, or stipulations of the parties. Neither party may introduce new evidence on appeal. 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 appeal shall clearly indicate the case name and docket number. The appealing party shall provide a copy of the appeal to the opposing party, simultaneously with its filing of the appeal. The opposing party will then have 30 days to file its response to the appeal to the Secretary and shall provide a copy of its response to the party who appealed the decision, simultaneously with its filing of the response.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed with 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:

Hand Delivery or Overnight Mail\*

Secretary of Education c/o Docket Clerk Office of  
Hearings and Appeals  
U.S. Department of Education  
550 12th Street, S.W., 10th Floor Washington,  
D.C. 20024

U.S. Postal Service\*

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