



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

In the Matter of

Avant Gard the School,

Docket No. 19-26-SA

Federal Student Aid Proceeding
ACN: 05-2018-81868
OPE ID: 04171700

Respondent.

Appearances: Joseph B. Settle, self-represented Respondent
Hannah Hodel, Office of the General Counsel, for Federal Student Aid

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

A undated request for review, in the above captioned proceeding was timely filed with the Administrative Actions and Appeals Service Group (AAASG), U.S. Department of Education (Department) on April 12, 2019. The request challenged a Final Audit Determination (FAD) dated March 1, 2019, issued by the U.S. Department of Education, Federal Student Aid (FSA), Chicago/Denver School Participation Division. Respondent, Avant Gard The School (Avant Gard) appealed \$175,164.91, which is only a portion of the liability assessed in the FAD.¹

On June 4, 2019, I issued an Order Governing Proceeding (OGP). The OGP established specific procedures for this proceeding, which included, among other things, a briefing schedule for this hearing. Respondent was given an opportunity to supplement its request for review by filing a brief, which it chose not to do. FSA timely filed its responding brief, and the Respondent timely filed a reply to FSA's brief. This record is closed and ready for decision.

¹ This amount reflects only the principal amount due for each of the findings in the FAD and does not include the cost of funds for the non-loan liabilities or the closed school loan discharges. Assuming that the self-represented Respondent intended to appeal the full amount of the assessed liability, this decision will address the principal amounts for the loan funds, non-loan funds, and for the closed school loan discharges as well as the liability established for the cost of funds included in the FAD.

II. Federal Student Aid's Final Audit Determination (OES Document 10, pp. 5-19)²

The FAD determined that Avant Gard was required to submit a close-out audit for the period July 1, 2016, the first day after Avant Gard's last audit was filed, to January 30, 2018, the date Avant Gard ceased to participate in Federal student financial assistance programs pursuant to Title IV of the Higher Education Act (HEA) of 1965, as amended, and Avant Gard's date of closure. The FAD found that as of March 1, 2019, the date of the FAD, Avant Gard failed to submit the required auditor engagement letter and failed to submit the required close-out audit.

Due to this failure, the FAD determined Avant Gard was required to return to the Department \$176,626.00 (rounded from (\$176,625.60), which included non-loan liabilities (Federal Pell Grants) for the unaudited period, loan liabilities (Direct Loan funds, based on estimated loss (EL)) for the unaudited period, and closed school loan discharges granted to students who were enrolled at the time of Avant Gard's closure or withdrew within 120 days prior to its closure.³

Specifically, FSA determined Avant Gard's liability included:

PROGRAM	PRINCIPAL AMOUNT DUE	COST OF FUNDS	TOTAL DUE
2016-2017 Pell	\$100,959.00	\$1,034.59	\$101,993.59
2017-2018 Pell	\$30,944.00	\$317.10	\$31,261.10
2016-2017 Direct Loan	\$6,108.94		\$6,108.94
2017-2018 Direct Loan	\$26,505.97		\$26,505.97
Closed School Loan Discharges	\$10,647.00	\$109.00	\$10,756.00
TOTAL	\$175,164.91	\$1,460.69	\$176,626.00

The FAD reminded Avant Gard that as a participant in Title IV HEA programs, it had signed a Program Participant Agreement (PPA) with the Department, wherein Avant Gard agreed to comply with all statutory and regulatory program requirements.

III. Issue

Whether the liability of \$176,626.00 assessed against Avant Gard The School in the Final Audit Determination dated March 1, 2019, is supported in whole or in part.

IV. Legal Framework

A. Applicable Statutes

Higher Education Act of 1965, Program Participation Agreements, and Audit Requirements

The Higher Education Act of 1965 (HEA), as amended, provides assistance to make the

² Respondent filed a portion of the FAD that is found at OES Document 1. Counsel for FSA filed a full copy of the FAD, with all appendices. The page numbers referenced in this decision are the page number designation to the PDF document as filed in OES.

³ The FAD specified the loan amounts discharged were removed from the calculated estimated loss for the Direct loan liability.

benefits of postsecondary education available to eligible students through a variety of grants and programs (20 U.S.C. § 1070 *et seq.*). Consistent with the HEA, as amended, an institution of higher education is deemed an eligible institution for participation in Title IV programs only upon approval by the Secretary of a PPA (20 U.S.C. § 1094(a)). Initial and continuing eligibility requires submission of required audits, financial responsibility, and enforcement standards (20 U.S.C. § 1094(a)(4)). The Secretary has the authority to prescribe regulations as necessary and consistent with the statutory authority and has the specific authority to require a variety of financial audits while an institution participates in Title IV programs (20 U.S.C. § 1094(c)(1)(A)(i)). The required financial audits must be conducted by a qualified independent auditor (*Id.*). An institution that has received written notice of a final audit or program review may request a hearing in review of that determination (20 U.S.C. § 1094(b)).

Closed School Loan Discharges

The primary federal statute that controls discharge of student loans when a school closes is found at 20 U.S.C. § 1087(c). The HEA was amended by Public Law 102-325, Title IV, 428, 106 Stat. 448 (July 23, 1992), under which a borrower is eligible for discharge of a loan made under the Federal Family Education Loan (FFEL) Program if the borrower received the loan on or after January 1, 1986, and the student was unable to complete the program in which the student was enrolled due to the closure of the institution (20 U.S.C. § 1087(c)(1)). Upon an application by a borrower when a school closes, the Secretary discharges the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan (*Id.*). The Secretary pursues any claim available to the borrower against the institution (*Id.*). A borrower whose loan has been discharged must agree to assign to the United States the right to a loan refund up to the amount discharged against the institution (20 U.S.C. § 1087(c)(2)).⁴ While 20 U.S.C. § 1087(c) addresses discharge of loans under the FFEL Program, those provisions are also applicable to the discharge of loans made under the Direct Loan Program (20 U.S.C. § 1087e(a)).

B. Applicable Regulations

Program Participation Agreements and Audit Requirements⁵

The Secretary's regulations follow the HEA and specify standards of conduct that must be met by participating institutions (34 C.F.R. § 668.82). Participation in the Title IV Programs, requires the eligible institution to act at all times with the competency and integrity necessary to qualify as a fiduciary and subjects the institution to the highest standard of care and diligence in administering the programs and in accounting for the Title IV funds received (34 C.F.R. § 668.82(a) and (b)).

Consistent with the statutory requirement of a PPA, the Secretary's regulations condition an institution's initial and continued participation upon compliance with the HEA, the Department's regulations, and the institution's PPA (34 C.F.R. § 668.14(a)). Upon acceptance of a PPA by the

⁴ There have been multiple versions of this statute since its inception. The language in 20 U.S.C. § 1087(c) referenced in this decision is the version that was in effect from July 1, 2014 to March 18, 2019, the period relevant to this proceeding.

⁵ The language in the regulations cited in this decision reflect the language at 34 C.F.R. §§ 668.14, 668.23, 668.26, and 668.82 during the years 2016 and 2017, the years relevant to this proceeding.

Secretary, the institution agrees it will use Title IV funds solely for the purposes specified in and in accordance with that program participation agreement (34 C.F.R. § 668.14(b)).

Consistent with the statutory requirement for submission of financial audits, the Department's regulations address compliance audits and audits required at the end of an institution's participation (34 C.F.R. §§ 668.23 and 668.26). Audits must be completed by an independent auditor who meets the Government Auditing Standards qualification and independence standards (34 C.F.R. § 668.23(a)(1)). An institution must submit compliance audits annually, no later than six months after the institution's fiscal year (34 C.F.R. § 668.23(a)(4)).

In addition to annual audits, an institution is required to submit an audit upon the end of the institution's participation (34 C.F.R. § 668.26). The regulations require that within 45 days of the date an institution ends its participation, the institution is required to submit all financial, performance, other reports required by the appropriate HEA program regulations, a letter of engagement for an independent audit of all funds that the institution received under that program, and to inform the Secretary of the arrangements made by the institution for proper retention and storage of all records concerning the administration of that program (34 C.F.R. §§ 668.26(b)(2) and (3)). The institution then has an additional 45 days to submit the independent auditor's report (34 C.F.R. § 668.26(b)(2)(ii)).

Closed School Loan Discharges for loans made under the William D. Ford Federal Direct Loan Program

The regulation at 34 C.F.R. 685.214 addresses closed school loan discharges under the Direct Loan Program.⁶ This regulation was initially modeled on the provisions of 34 C.F.R. § 682.402, the regulations on discharge of loans made under the FFEL Program (59 Fed. Reg. 42646, 42651 (August 18, 1994)).

The Secretary discharges the borrower's obligation to repay a Direct Loan if the student did not complete the program of study for which the loan was made because the school closed (34 C.F.R. § 685.214(a)(1)). A discharge of a Direct Loan relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs (34 C.F.R. § 685.214(b)(1)). A discharge qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection (34 C.F.R. § 685.214(b)(2)).

During the period at issue in this case, a borrower was qualified for a discharge if the borrower submitted a written sworn statement under penalty of perjury: (1) that the borrower received the proceeds of a loan in whole or in part, on or after January 1986 to attend school; (2) that the student did not complete the program because the school closed while the student was enrolled or withdrew from the school not more than 120 days prior to the school's closure; (3) that the student did not complete the program of study through a teach-out at another school or by transferring academic credit earned at the closed school to another school; and (4) whether the borrower made a claim with respect to the school's closing with any third party (34 C.F.R. §§ 685.214(c)(i) and (ii)). The

⁶ There have been multiple versions of this regulation since its inception. The language in 34 C.F.R. § 685.214 referenced in this decision is the version that was in effect from July 1, 2014 until March 18, 2019, the period relevant to this proceeding.

borrower is required to agree, upon request, to provide documentation that is reasonably available to the borrower showing that the qualifications for discharge are met, to cooperate with the Secretary in enforcement actions, and to transfer any right to recovery against a third party to the Secretary (34 C.F.R. § 685.214(c)(iii)).

V. Findings of Fact

1. Prior to its closure, Avant Gard was eligible to participate in Title IV Programs pursuant to a PPA accepted by the Secretary on August 16, 2013 (OES document 10, pp. 35-53).
2. Avant Gard ceased to participate in Title IV Federal Student Aid Programs effective January 30, 2018 (OES Document 10, pp. 6 and 27)
3. Upon confirmation from the President of Avant Gard that the school intended to close, an email notification from a Department employee, dated January 30, 2018, was sent to the President that informed him of the requirements that must be followed when an institution ends its participation in the Title IV HEA programs. In a subsequent email, the President of Avant Gard notified a Department employee that due to financial hardship none of the required tasks would be completed (OES Document 10, pp. 23-22).
4. On February 13, 2018, FSA issued a close-out letter, formally notifying Avant Gard of the requirement to submit a close-out audit and of other regulatory obligations related to the close out of student financial aid programs (OES Document 27-28).
5. On March 1, 2019, FSA's Chicago/Denver School Participation Division issued the FAD establishing liabilities resulting from Avant Gard's failure to submit a close-out audit for the period July 1, 2016 to January 30, 2018, and an additional liability in an amount equal to FSA's granting closed school loan applications to two (2) students who were unable to complete their educational program due to Avant Gard's closure. The FAD included an additional liability for the cost of funds for the non-loan liability and the liability assessed for the closed school loan discharges (OES Document 10, p. 6-8).
6. Findings of fact related to the failure of Avant Gard to file a close-out audit that accounts for Title IV for the unaudited period:
 - a. On December 22, 2016, Avant Gard submitted a compliance audit for the fiscal year ending June 30, 2016 (OES Document 10, p. 31).
 - b. Department records show there were no findings that identified any deficiency in compliance with the regulatory requirements or requirements of Avant Gard's PPA (*Id.*).
 - c. Department records show that the audit was completed by a Certified Public Accountant (*Id.*).
 - d. Department records establish that Avant Gard did not file compliance audits after the audit for the fiscal year ending June 30, 2016 (*Id.*).
7. Findings of fact related to the discharge of the closed school loans to students who were unable to complete their educational program at Avant Gard:

- a. FSA identified two (2) student borrowers who did not complete their program of study at Avant Gard and whose Direct Student loans were discharged (OES Document 10, p. 21).
- b. On March 14, 2018, Student 1 certified attendance at Avant Gard from August 1, 2017 to October 12, 2017, having withdrawn within 120 days of Avant Gard's closure. Student 1 also certified attendance at the same or comparable program of study at another school, however, attendance at the other school was not through a teach-out plan and the other school did accept transfer credit for courses completed at Avant Gard (OES Document 10, pp. 56-57).
- c. FSA granted a discharge to Student 1 on May 9, 2018 (OES Document 10, p. 21).
- d. On January 10, 2018, Student 2 certified attendance at Avant Gard from September 5, 2017 to November 11, 2017, having withdrawn within 120 days of Avant Gard's closure. Student 2 also certified attendance at the same or comparable program of study at another school, however attendance at the other school was not through a teach-out agreement and the other school did not accept transfer credit for courses completed at Avant Gard (OES Document 10, pp. 61-62).
- e. FSA granted a discharge to Student 2 on February 21, 2018 (OES Document 10, p. 21).
- f. FSA discharged \$10,647.00 based on three (3) loans to these two (2) students, an amount not supported by the evidence in this record (OES Document 10, p. 21). The discharged amount is \$246.00 more than \$10,401.00, the total amount of loans disbursed to these students (*Id.* and OES Document 10, pp. 65-66 and 69-70).
- g. FSA's calculation of cost of funds in the amount of \$109.00 on the school loans discharged is not supported because this amount is based on the discharges assessed by FSA in the amount of \$10,647.00, an amount that is \$246.00 greater than the amount of loans disbursed (OES Document 10, p. 8).
- h. The correct amount of liability assessed to Avant Gard for closed school loan discharges is \$10,401.00 (\$4,750.00 to Student 1 (OES Document 10, pp. 65-66) plus 5,651.00 to Student 2 (OES Document 10, pp. 69-70)).

VI. Arguments

A. Respondent's Request for Hearing (OES Document 1)

In the request for hearing, the President of Avant Gard, challenged the imposition of a liability following the closure of the school. He asserted that Avant Gard remained open for six (6) months to allow all its students to graduate, that Avant Gard pulled no money down after it was decided the school would close, and all students achieved licensure through the State of Indiana. He further asserted the school remained open without collecting money from the remaining students and he paid the operating expenses out of his personal pocket so all enrolled students would graduate.

B. Federal Student Aid's Responsive Brief (OES Document 9)

FSA asserted the liability established by the FAD arose from Avant Gard's failure to file a close-out audit upon its closing in January 2018, and from the granting of closed school loan discharge

applications filed by two (2) students who were unable to complete their education due to Avant Gard's closing. FSA asserted that Avant Guard has the burden of establishing it complied with all Title IV requirements while it participated in the Federal student aid programs under the Higher Education Act of 1965, as amended, and, consistent with its fiduciary duty in the administration of the Federal student aid programs, to show that all Title IV funds were properly spent.

FSA asserted that Avant Gard failed to properly account for Title IV funds that were expended in the unaudited period July 1, 2016 through January 30, 2018. FSA argued, based on that failure, that Avant Gard is responsible for repaying all Title IV funds received during the unaudited period. FSA asserted Avant Gard disbursed non-loan Title IV funds (Federal Pell Grants) and Title IV loan funds (Direct Loan Program) to students during the unaudited period for which it did not provide an accounting. FSA argued the liability to Avant Gard is equal to the amount of funds disbursed under the Pell Grant Program, plus cost of funds incurred to the Department. In relation to the funds disbursed to students under the Direct Loan Program, the Department assessed a liability based on the estimated loss (EL) that the government may incur with respect to the Direct Loans that were disbursed, rather than assessing a liability for the entire loan amount.

FSA asserted that two (2) students applied for closed school loan discharges, having certified they were unable to complete their educational program due to Avant Gard's closure. FSA argued these students' loans were properly discharged and therefore the liability equal to the amount discharged, plus cost of funds incurred to the Department, was properly assessed against Avant Gard.

C. Respondent's Reply to FSA's Brief (OES Document 11)

Avant Gard, through its President, asserted he is currently "a self-employed hair stylist barely making rent because of starting over in [his] career so late in life." He asserted he had no money to do an audit when Avant Gard closed, and that condition has not changed. He asserted in the last months when the school was open, he "passed Gainful Employment guidelines" and planned to stay open but his plan changed when he contacted an auditor, was told the cost for the required audit would be \$20,000.00, and the auditor told him Avant Gard was not likely to pass the audit.

The President asserted that about 20 students were enrolled when he decided to close the school. He asserted he told the students he would be closing in six (6) months, giving enough time for all but 3 of the students to graduate. He asserted he offered to facilitate immediate transfer of those students, or they could stay enrolled for the remaining six (6) months, attend school for free as Avant Gard "would not take any draws" for courses, and then they were given their transfer papers. He asserts he made this offer because he made promises "to these kids" that he intended to keep. The President asserted "every dime he drew down" was for students who graduated, and all the students gained their state license as cosmetologists.

Again, he asserted he has no funds for an audit and has nothing to hide. He further asserted he would "work with the Department to show proof that he is not financially able to obtain an audit or hire an attorney."

In response to the loan discharges that were granted, he asserted these students had plenty of draws left, he kept only \$1,300.00 for the kits required for their continued education and the students

received the balance. He challenged the decision of the transfer school for making these students start over when both had completed three-fourths of the program requirements.

VII. Analysis

A. Audit Requirements

At the time of its closure, Avant Gard was participating in Federal student aid programs pursuant to a PPA signed on behalf of the Secretary, dated August 16, 2013 (OES Document 10, pp. 35-53). The PPA was signed by the President of Avant Gard, thereby acknowledging his agreement to comply with all statutory and regulatory provisions that are applicable to Title IV programs. The requirements in the PPA are consistent with the statutes and regulations that require a participating institution to timely submit audits that include annual audits and an end of participation audit upon closure, commonly known as a close-out audit. A close-out audit must cover any unaudited period to the date of closure.

The evidence shows Avant Gard filed its initial audit, covering its fiscal year ending June 30, 2009, as a new participating institution in March 2010 (OES Document 10, p. 31). Avant Gard filed annual audits for each fiscal year thereafter, with the last one filed for the fiscal year ending June 30, 2016 (OES Document 10, p. 30).

There is no dispute that Avant Gard ceased its participation in Title IV programs effective January 30, 2018, and there is no dispute that Avant Gard failed to file a close-out audit that covered the unaudited period. While Avant Gard attests that no funds were improperly “drawn down,” that the school President made every attempt to remain open until all enrolled students completed their programs, and all students obtained the necessary licensing based on their educational program, he acknowledged all but three (3) were able to complete their program. Avant Gard asserted the sole reason for the failure to file the close-out audit was the lack of financial resources of the school as well as its President. While this tribunal is aware of the difficulties that may be presented by an institution’s closure and understands the financial hardship that may be encountered by an owner who loses a source of income with the closure of the institution, the regulations do not allow this tribunal to excuse the obligation of filing required audits under those circumstances, even when the institution or former owner asserts a compelling financial inability to secure a close-out audit.

Avant Gard, in response to FSA’s brief suggested he would work with the Department to show all funds were properly spent, but asserted the President is “in no position to have an audit completed” (OES Document 11). While the sincerity of that offer is not questioned, I have no authority to allow Avant Gard to be excused from the statutory and regulatory requirement to submit a close-out audit.

B. Closed School Loan Discharges

Avant Gard asserted its President discussed Avant Gard’s intent to close with the students and each student was informed the school would close in six (6) months, allowing all but three (3) students to complete their program. In relation to those students who would not complete their program in that time, they were offered immediate transfer, or the opportunity to continue at the

school until it closed and told the school would take no draws for class instruction, that they could continue to accumulate hours toward their program, and then transfer (OES Document 11). Avant Gard asserted each of these students accepted that option and were given “transfer papers” (*Id.*). Based on this assertion, it appears the school tried to facilitate the furtherance of those student education programs before closing. However, Avant Gard provided no evidence of a teach-out plan as required by Avant Gard’s PPA and the regulatory requirements found at 34 C.F.R. §§ 668.14(b)(31)(iv) and (v).

In its response to FSA’s brief, Avant Gard asserted these students were provided with “transfer papers.” However, this assertion is not supported by documentation that Avant Gard entered into a teach-out agreement with another school or that Avant Gard provided certified transcripts that would have allowed another school to credit any or all the course work completed at Avant Gard. Furthermore, Avant Gard did not provide copies of the referenced “transfer papers” and did not indicate that those papers included an official transcript upon which another school could rely to allow transfer of credits.

FSA provided evidence in support of granting the closed school loan discharge applications of two (2) students. FSA provided a “Discharged Borrowers – School Level Report (Report) as of December 2018, for the OPE ID affiliated with Avant Gard (OES Document 10, p. 21).⁷ The Report shows that loans to Student 1 in the amounts of \$3,093.00 and \$1,750.00 were discharged, even though loans in the amount of \$3,000.00 and \$1,750.00 were disbursed to Student 1 (*Id.*). FSA also filed Student 1’s loan history, which confirmed disbursement of loans in the amounts of \$3000.00 and \$1,750.00 (OES Document 10, pp. 65-66). The Report shows one loan to Student 2 in the amount of \$5,804.00 was discharged even though a loan in the amount of \$5,651.00 was disbursed to Student 2 (OES Document 10, p. 21). FSA also filed Student 2’s loan history, which confirmed the distribution of a loan in the amount of \$5,651.00 (OES Document 10, p.p. 69-70). FSA did not explain, in either the FAD or its brief, why it granted discharges that were greater than the amounts of loans disbursed to the students. Although the applicable statutes allow for an additional discharge of accrued charges and collection costs, and the applicable regulations allow an additional discharge of interest and collection fees, none of the exhibits filed by FSA identify the source of the additional discharged amount. The difference between the amounts discharged and the amounts disbursed to these two students is \$246.00 (\$93.00 (Student 1) and \$153.00 (Student 2)).

FSA filed the discharge applications from both students wherein the students attest they withdrew from Avant Gard not more than 120 days prior to its closing, that they enrolled in another school to pursue a cosmetology program, but their enrollment was not associated with a teach-out agreement and the other school did not give either of them credit for training that they received at Avant Gard (OES Documents 10, pp. 56-57 (Student 1) and pp. 61-62 (Student 2)). FSA filed enrollment forms for each student at PJ’s College of Cosmetology (PJCC) following their withdrawals from Avant Gard (OES Document 10, pp. 110-113 (Student 1) and pp. 114-117

⁷ FSA labeled this report as ED Exhibit 3 and described it as a “NLSDS Closed School Discharge Query Report” (OES Document 20). This report appears to have been run in a program identified as Enterprise Data Warehouse and Analytics (EDW&A) and not the National Student Loan Data System. Unlike other NLSDS reports filed by FSA that are clearly identified as having the NLSDS logo/markings, this report does not have the NSLDS logo (*See* OES Document 10, pp. 64 and 68)

(Student 2)). Transcripts from PJCC establish no credit hours were transferred from Avant Gard (OES Document 10, pp. 78-92 (Student 1) and pp. 94-108 (Student 2)). In 2019, long after FSA granted the students' discharge applications, FSA confirmed with PJCC that they did not have a teach-out agreement with Avant Gard and neither of the students received credit for transfer hours from Avant Gard because both students were unable to get an official transcript from Avant Gard (OES Document 10, p. 76).

VIII. Conclusion of Law and Order

My authority in this appeal is to determine if the FAD is supportable in whole or in part. FSA concluded Avant Gard was liable for \$176,623.00. In arriving at the conclusion, the FAD is flawed, in part, as it is inconsistent with the applicable statutes and regulations for closed school loan discharges, but it is supported in relation to Avant Gard's failure to submit the required close-out audit that covered the period from July 1, 2016 to January 30, 2018.

Consistent with the applicable statutes and regulations, the liability for the principal amounts due for the non-loan Title IV funds (Pell Grants) disbursed to students in the 2016-2017 and 2017-2018 award years, along with the cost of funds assessed for those years, is a correct liability to Avant Gard. Consistent with the applicable statutes and regulations the liability for the principal amounts due for the Title IV loan funds (Direct Loans based on the estimated loss) disbursed to the students in the 2016-2017 and 2017-2018 award years, is a correct liability to Avant Gard.

For the reasons stated herein, the non-loan liability and the loan liability assessed to Avant Gard in the FAD is supported based on Avant Gard's failure to file a close-out audit. As indicated in the table in the "Payment Instructions" section of the FAD, the liability for the non-loan and loan Title IV funds is \$164,870.00, when rounded to the nearest dollar ($100,959.00 + 1,034.59 + 30,944.00 + 317.10 + 6,108.94 + 25,505.97$) is supported (OES Document 10, p. 8).

Consistent with the applicable statutes and regulations, the liability for closed school loan discharges and cost of funds in the amount of \$10,756.00 is not fully supported. The filings by FSA establish loans discharged were granted in an amount greater than loans disbursed to these two students. FSA's Exhibit 3 (OES Document 10, p. 21) shows that FSA discharged \$3,093.00 for a Direct Stafford Unsubsidized loan to Student 1 on May 9, 2018. FSA's Exhibit 12 (OES Document 10, pp. 66-67) and Exhibit 3 show that a Direct Stafford Unsubsidized loan in the amount of \$3,000.00 was disbursed to Student 1 on August 29, 2017. FSA's Exhibit 3 (OES Document 10, pg. 21) shows that FSA discharged \$5,804.00 for a Direct PLUS loan to Student 2 on February 21, 2018. FSA's Exhibit 13 (OES Document 10, pp. 69-70) and Exhibit 3 show that a Direct PLUS loan in the amount of \$5,651.00 was distributed to Student 2 on October 3, 2017. The FAD and FSA's brief fail to explain why the additional amount of \$93.00 was discharged as related to Student 1 and the additional amount of \$153.00 was discharged as related to Student 2. Without an explanation of why FSA discharged loan amounts that were greater than the amount of loans disbursed to Students 1 and 2, FSA has failed to establish a liability in the amount of \$10,647.00 in closed school loan discharges. Nonetheless the evidence does establish a liability to Avant Gard in the amount of \$10,401.00 for discharge of Student 1's Direct Stafford Unsubsidized loan and Student 2's Direct PLUS loan.

Given that FSA determined the cost of funds for the closed school loan discharges based on the finding of loan discharges in the incorrect amount of \$10,647.00 to be \$109.00, FSA has not properly established the cost of funds to be assessed as a liability to Avant Gard. FSA may recalculate the cost of funds for the closed school loan discharges based on the liability for closed school loan discharges in the amount of \$10,401.00, but the cost of funds assessed in the FAD for closed school loan discharges in the amount of \$109.00 may not be assessed a liability to Avant Gard.

Considering the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that Avant Gard The School, pay to the U.S. Department of Education, in a manner as required by law, Title IV, HEA program funds in the amount of \$175,271.00, plus the amount of cost of funds that FSA may calculate based on closed school loan discharges in the amount of \$10,401.00.

Date: September 7, 2023

Angela J. Miranda
Administrative Law Judge

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).

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

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

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

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, DC 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 DC 20202

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

* Due to the consequences from the COVID-19 Pandemic and OHA's implementation of the Department's current operating directives, OHA's on-site support staffing does not provide coverage during all OHA's general office hours (Monday thru Friday, 8:00 am to 4:30 pm, Eastern Time). Hand delivery or courier-delivered mail or parcels at the OHA's physical location may be accepted by Education's mail delivery personnel. Alternatively, a party filing by hand delivery or courier-delivered mail or parcels, may contact the OHA main phone at 202-245-8300 to verify OHA staff is available to accept a filing. Hand delivery and delivery by U.S. Mail to OHA will likely be delayed. Extensions to the time to file will not be granted by OHA.