



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

In the Matter of

Docket No. 04-44-SF

**TEACHERS COLLEGE,
COLUMBIA UNIVERSITY,**

Federal Student
Aid Proceeding

Respondent.

Appearances: George A. Davidson, Esq., and Christine M. Fitzgerald, Esq., Hughes Hubbard & Reed LLP, New York, NY, for Respondent.

Brian P. Siegel, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

Teachers College, Columbia University (Teachers College) operates as an institution of higher education. Teachers College participates in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2752 *et seq.* On July 28, 2004, the U.S. Department of Education's (Department), Office of Federal Student Aid (FSA), issued a Notice of Intent to Fine (Notice). In the July 28, 2004 Notice, FSA proposed a fine of \$15,000 for the school's alleged failure to complete, in a timely manner, two surveys conducted as part of the Integrated Postsecondary Education Data System (IPEDS).

As an initial procedural matter, in its brief, Teachers College requested an evidentiary hearing. FSA, the party that bears the burden of proof in this proceeding, argued that an evidentiary hearing was unnecessary because there were no significant factual issues in dispute nor was there a need for the tribunal to evaluate the credibility of witnesses. In accordance with the tribunal's authority to regulate the course of the proceedings pursuant to 34 C.F.R. § 668.89,

the tribunal finds that a full evidentiary hearing is not necessary to illuminate the factual and/or legal issues in this case. Therefore, Respondent's request is denied.

Under the National Education Statistics Act of 1994 (NSEA), the Department is charged with collecting, analyzing, and disseminating statistics and other information related to education in the United States.¹ To comply with the NESA, the Department implemented IPEDS, which is a single comprehensive system that includes information about postsecondary education. It is designed to collect information about enrollment, completions, faculty, staff, and finances from each school that is subject to the IPEDS survey requirements. The Department's stated goal is to amass the information and other data it needs to provide reports and information to public officials and to the public. In 1992, Congress added the requirement that a school must commit to completing the IPEDS surveys as part of its Program Participation Agreement (PPA) to participate in the Title IV, HEA programs.² IPEDS surveys are utilized to provide students and parents up-to-date information about schools, advise Congress on education issues, and its data is used in compiling reports on a host of topics including federal support for education, Historically Black Colleges and Universities.³

According to the IPEDS Procedures Manual, IPEDS includes nine surveys. The surveys are conducted yearly during three different collection periods designated Fall, Winter, and Spring. For the Fall collection period, a school must complete two surveys identified as Institutional Characteristics and Completions. For the Winter collection period, a school must complete three surveys on Employees by Assigned Position, Salaries, and Fall Staff. For the Spring collection period, a school must complete four surveys on Student Financial Aid, Enrollment, Financial Statistics, and Graduation Rates. Not all schools must complete all nine surveys each year. Each year, the Department's National Center for Educational Statistics (NCES) establishes a schedule for submission of survey data including the dates when each survey opens for data input and when each survey must be completed.⁴ Schools are given six to eight weeks to complete the surveys in each collection period, and are informed more than once of the timelines for completing the surveys.⁵

¹ See 20 U.S.C. § 9001, *et seq.*

² See § 487(a)(17) of the HEA. See also 34 C.F.R. § 668.14(b)(19).

³ See ED Brief at 11, citing IPEDS website at <http://nces.ed.gov>.

⁴ See ED Ex. 4.

⁵ See ED Ex. 2, *Integrated Postsecondary Education System Web Data Collection, Frequently Asked Questions*.

On its website, NCES offers assistance to a school that needs to complete the surveys.⁶ This help includes on-line assistance and a Help Desk that is available during regular business hours. In July, each school is asked to designate a “keyholder” who will be responsible for ensuring that all data is entered accurately, and the school is also informed of the schedule for the data collection periods for the year. NCES also sends schools written reminders of the survey deadlines, operates a Help Desk during business hours, and lists instructions and contact information on its website. Survey data may be entered all at once or piecemeal. Once all the data is entered, the survey is locked by the keyholder. Once locked, the survey cannot be reopened without special arrangements with NCES. Additionally, once the data collection period closes, no further changes may be made to the data. IPEDS will not let a school lock its survey unless the data it enters meets certain automated edits.⁷ These edits compare the data provided by the school for the period at issue to ensure that it is internally consistent. The edits also compare the data reported by the school with data reported for prior years. If new data is significantly different from the prior year’s data, the school must confirm that the new data is accurate and may be required to provide an explanation for the change(s).⁸ NCES establishes a closing date for submitting data so that the data may be finalized before it is made available to policy makers and the public.⁹

According to FSA, Teachers College failed to complete and lock the Fall Staff and Salaries surveys. FSA states that the school failed to correct two fatal survey errors and failed to provide explanations for four entries that were inconsistent with previous submissions on the Fall Staff survey, and failed to provide explanations for seven entries that were inconsistent with other information contained in the Salaries survey. FSA asserts that Teachers College was contacted several times via email during December 2003 and January 2004 to remind them of the requirement to complete and submit the IPEDS surveys. As the January 28, 2004 deadline approached, FSA states that NCES also contacted the school by telephone and again via email.¹⁰ FSA asserts that even after the IPEDS deadline, NCES specifically contacted the school on two occasions, and left messages for the keyholder, to resolve edit issues with Teachers College. According to FSA, these calls were not returned.

FSA argues that Teachers College failed to meet its obligation under the HEA, the Department’s regulations and its own PPA by failing to satisfactorily complete two of the IPEDS Winter surveys. FSA disputes the school’s characterization of its efforts as a good faith attempt

⁶ *See id.*

⁷ *See* ED Ex. 7.

⁸ *See id.*

⁹ *See* ED Ex. 2.

¹⁰ The deadline was later extended to February 2, 2004, ostensibly due to inclement weather. According to FSA, the IPEDS system was set to close early that morning.

to complete the surveys. FSA argues that Teachers College delayed entering its data on the two surveys at issue until January 30, 2004 although it had much earlier completed and locked the Employees by Assigned Position survey due for that same period. Additionally, FSA asserts that NCEES gave the school two more opportunities to provide the missing data in February 2005.¹¹ FSA argues that the discrepancies were obvious and could have been easily corrected if Teachers College's keyholder had responded to NCEES' reminders and telephone calls.

In response to the Department's Office of Inspector General's August 2002 report that there was a significant non-response rate to some of the IPEDS surveys, FSA asserts that the Department began stepping up its efforts to enforce the requirement that schools submit their IPEDS reports, including initiating fine actions for schools who allegedly failed to complete their IPEDS surveys.¹² FSA argues that the proposed \$15,000 fine is justified given the importance of the IPEDS surveys to policy makers and to the public, and that the tribunal has upheld fines for other schools' failures to submit data for IPEDS and other surveys. FSA also states that Teachers College qualifies as a large institution for the purpose of calculating a fine.

According to Teachers College, it assembled a team to oversee the collection and input of the IPEDS surveys for the period at issue, and designated one team member as keyholder. During preparation of its surveys, the school asserts that it discovered that the previous year's data collection method could not be replicated. According to Teachers College, it then decided to invest in a data collection system using the school's computer system. Teachers College states that the process to convert its data collection was problematic and it was unable to run the reports it needed until the last week in January 2004. The school states that it was notified of the extension until February 2, 2004 to submit the IPEDS data and it utilized that additional time to complete the surveys. The school argues that it attempted to enter the data prior to 8:30 a.m. on February 2, 2004, but was unable to complete and lock the survey. The school asserts that it contacted the IPEDS Help Desk that morning and was informed that the school was no longer able to access the system because the deadline had passed. Although FSA states that it contacted Teachers College just before and after the deadline passed, the school argues that those contacts, along with contacts initiated by the school, resulted in conflicting information over whether the school could still complete the surveys including statements from an IPEDS Help Desk employee that the school could not complete the surveys until next year. The school also argues that the Department's own guidance states that data for a survey year missed in the previous year may be re-entered during the same data collection period in the following year.¹³

Teachers College argues that the imposition of a fine is not mandatory for a failure to complete an IPEDS survey. Teachers College argues that the purpose of a fine is to punish a school for misconduct and to deter that school, as well as similarly situated schools, from

¹¹ See ED Exs. 21 and 22.

¹² See ED Ex. 8

¹³ See ED Ex. 2 at 8.

committing similar violations in the future. Teachers College asserts that it appreciates the importance of the IPEDS surveys, and that the system's failure to lock its data prior to the deadline is not the school's fault.

At a minimum, the school argues that the proposed fine of \$15,000 is excessive due to a number of mitigating factors. First, the gravity of the offense as well as the school's cooperation and remedial actions should be considered. Second, the tribunal's own cases indicate that a \$15,000 fine is unreasonable as evidenced by the Secretary's halving a proposed fine for a school who misunderstood and failed to submit survey data to the Department and by the reduction of a fine where a school did not intentionally refuse to comply with the regulatory requirements.¹⁴

Section 487(c)(2)(B) of the HEA, 20 U.S.C. § 1094(c)(2)(B) gives the Department the authority to fine an institution up to a maximum of \$27,500 for each violation of an applicable statute or regulation.¹⁵ The purpose of a fine is to punish the school for its misconduct and to deter that school, as well as other schools similarly situated, from committing similar violations in the future. In determining the size of the fine, the tribunal is required to consider the gravity of the violations and the size of the institution subject to the fine. *See In re Puerto Rico Technology and Beauty College, and Lamec, Inc.*, Docket No. 90-34-ST, 90-38-ST, U.S. Dep't of Educ. (Decision of the Secretary on Remand) (June 11, 1993) and *In re Bnai Arugath Habosem*, Docket No. 92-131-ST, U.S. Dep't of Educ. (Decision of the Secretary) (August 24, 1993). (Bnai) The amount of loss suffered by the Department as a result of the school's violations has also been used to guide this tribunal's assessment of a fine. *See In re Hollywood School of Beauty Culture & Advanced Hair Design*, Docket No. 98-37-SF, U.S. Dep't of Educ. (June 10, 1998).

Mitigating factors in assessing the amount of a fine include the school's motive in committing the violations, and/or its good faith efforts to take corrective action. *See Bnai; In re Neosho County Community College*, Docket No. 97-158-SF, U.S. Dep't of Educ. (January 12, 1999). A school's small size is also a mitigating factor. *See* 34 C.F.R. § 668.92 and *In re Pedigree Career Institute*, Docket No. 96-95-SF, U.S. Dep't of Educ. (Decision of the Secretary) (September 30, 1997).

It is based on the aforementioned standards that the tribunal will evaluate whether the proposed \$15,000 fine requested by FSA is warranted. The procedures for fining an institution are enumerated in 34 C.F.R. § 668, Subpart G. In any such proceeding, FSA bears the burden of

¹⁴ *See In re Pedigree Career Institute*, Docket. No. 96-95-SF, U.S. Dep't of Educ. (Decision of the Secretary) (September 30, 1997) and *In re Hollywood School of Beauty Culture and Advanced Hair Design*, Docket No. 98-37-SF, U.S. Dep't of Educ. (June 10, 1998).

¹⁵ *See* 34 C.F.R. § 668.84(a) (2003) and Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. 20 U.S.C. § 2461 note.

persuasion.¹⁶

The tribunal finds that a fine is appropriate in the instant proceeding. Teachers College is required by federal law and by its contractual agreement to participate in the Title IV programs to submit IPEDS surveys. The Secretary and this tribunal have held that a fine is appropriate when a school does not complete mandated surveys. Teachers College also explicitly agreed to complete these surveys as part of its Title IV participation agreement, and it failed to complete its IPEDS surveys.

The tribunal is, however, persuaded that although the school failed to complete all of its surveys, it made a good faith attempt to comply with its obligation. The evidence in the record demonstrates that due to a number of factors including the hiring of new personnel and the switch in its data compilation procedures, the school made a sincere attempt to complete the IPEDS surveys, only to be locked out, admittedly contemporaneously with the deadline, due to some inconsistencies in the data it previously submitted to the Department. FSA argues that Teachers College's waiting until the deadline approached to input its data demonstrates the school's lack of good faith. The tribunal disagrees. Much of the rationale for the school's delay can and has been explained by Teachers College to the tribunal's satisfaction. Moreover, procrastination in completing the surveys until near the deadline, but still attempting it within the time allotted, is too flimsy a basis on which to infer ill intent. The tribunal also notes that the school successfully completed and locked all of their Winter IPEDS surveys for the following survey period.¹⁷

Although not completing the IPEDS surveys constitutes a violation of Title IV participation requirements and the importance of these surveys is undisputed, it cannot be pointed to as a failure that leads directly to the loss of Title IV funds.¹⁸ Although FSA is correct in arguing that a directly attributable loss of funds from a violation of Title IV requirements is not a prerequisite for imposing a fine, the tribunal has considered the loss of funds as a factor in assessing the amount of a fine. Moreover, the school cannot be characterized as having acted in bad faith or in willful disregard of the IPEDS survey requirements.

For purposes of calculating a fine, the parties do not dispute that Teachers College is considered a large institution. In two other cases involving violations of the IPEDS survey requirement, FSA requested a fine of \$3,500 per violation and \$2,000 per violation, respectively.¹⁹ Here, taking into account the fact that Teachers College is a large institution, FSA

¹⁶ See 34 C.F.R. § 668.88(c)(2).

¹⁷ See Resp. Ex. 2.

¹⁸ See *In re Powder Springs Beauty College*, Docket No. 04-41-SF, U.S. Dep't of Educ. (April 20, 2005).

¹⁹ See *In re Instituto Irma Valentin-Manati*, Docket No. 04-42-SF, U.S. Dep't of Educ. (August 15, 2005) (The fine amount proposed by FSA was upheld by the tribunal.) and *In re Powder Spring Beauty College*, Docket No. 04-41-SF, U.S. Dep't of Educ. (April 20, 2005) (The tribunal

has proposed a fine of \$15,000 for two violations, or \$7,500 per violation. This constitutes a fine that is at least double the amount proposed for a small school that has committed a similar violation. Given Teachers College's good faith efforts to complete the IPEDS surveys and its subsequent remedial efforts in successfully completing the surveys for the following IPEDS survey period, the amount proposed by FSA seems excessive. Therefore, upon consideration of the violation found, the significant amount of Title IV funds received by Teachers College, and the aforementioned mitigating factors, the tribunal finds that a fine of \$10,000, or \$5000 per violation, is appropriate.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Teachers College, Columbia University pay to U.S. Department of Education the sum of \$10,000.

Judge Richard I. Slippen

Dated: September 16, 2005

reduced the fine to \$500 per violation.) Importantly, these cases involved schools that were considered small based on their level of Title IV funding. The tribunal also notes that in these cases the schools completed some of the IPEDS surveys for the periods at issue, and that subsequently, the schools successfully completed all of their IPEDS surveys.

SERVICE

A copy of the attached document was sent to the following:

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