



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

In the Matter of

Docket No. 08-49-SF

AIMS ACADEMY,

Federal Student Aid Proceeding

Respondent.

Appearances: Crystal Elliott, Owner, of Carrollton, Texas, for Aims Academy.

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

Before: Judge Ernest C. Canellos

DECISION

Aims Academy (Aims), located in Carrollton, Texas, was eligible to participate in the Federal student financial aid programs authorized by 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. § 2751 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that has cognizance over and administers these programs.

On September 19, 2008, FSA issued a notice of its intent to fine Aims \$14,000 for its failure to file four surveys which are part of the Integrated Postsecondary Education Data System (IPEDS), as required by 34 C.F.R. § 668.14(b)(19).¹ Aims' director, acting *pro se*, timely appealed that notice on September 25, 2008. The appeal contests the fact that the surveys in question had not been submitted. Aims asserts that, although late, it did send the surveys after coordination with the responsible office within FSA. In essence, Aims claims that after discussions with a member of the IPEDS help desk, Aims was given until April 30, 2008, to file

¹ On December 1, 2008, Aims' Provisional Program Participation Agreement was revoked, rendering Aims ineligible for further participation in Title IV programs.

the overdue reports by FAX and that it complied. Aims also claims it was never late in filing the required reports in the past, and the proposed fine is not appropriate.

Consistent with the Order Governing Proceedings (OGP) that I issued on November 20, 2008, FSA, as the party bearing the burden of proof and persuasion, timely filed its brief and evidentiary submission on December 19, 2008. The Respondent's submission, that was due on January 21, 2009, was not submitted. As a consequence, on February 2, 2009, FSA filed a Motion for Default Judgment. Prior to acting on said motion, I issued an Order to Show Cause why I should not enter judgment against Respondent. Respondent then filed an objection arguing that: it did not realize that any further filing beyond its appeal was necessary; it did not intend to disobey an order of the tribunal; and, it subsequently submitted its filing. Finally, on April 7, 2009, FSA reiterated its request by filing a Second Motion for Default Judgment.

Before proceeding to the merits of this case, I must act on the outstanding motions for default judgment. The granting of a default judgment at the behest of the party having the burden of proof raises obvious due process issues. *See, Bass v. Hoagland*, 172 F.2d 205 (5th Cir. 1949). Clearly, the designated department official, in this case FSA, has the burden of persuasion in this fine procedure. 34 C.F.R. § 668.88. Just as clearly, the Respondent has, even though belatedly, denied the violations it is alleged to have committed. As a consequence of the above, FSA's Motions for Default Judgment are, Denied. I will decide this case on its merits, applying the established burdens of proof and persuasion to the evidence before me.

As is common in most disputes, often, many of the facts are agreed to while others are contested. Such a situation is apparent here. As to the undisputed facts, I find that: (a) Aims was required to submit four surveys to IPEDS during the regular collection period between the dates of March 5, 2008, and April 16, 2008, which it failed to do, and (b) after a series of conversations between representatives of the parties, it was agreed that Aims could submit the surveys by FAX prior to April 30, 2008.²

The evidentiary dispute arises as to whether the later agreement was complied with. Aims asserts that it complied by sending the surveys by the revised due date of April 30, 2008, while FSA asserts that it never received the surveys. To bolster its argument regarding the events, Aims provided a statement from its director who claimed that she prepared the surveys and faxed them to FSA by the agreed date. The director also attached copies of the surveys she referred to. For its part, FSA claimed that on May 2, 2008, it called Aims' representative and reported that they had not received the surveys, yet Aims never took any follow-up action to assure the surveys were received. In not too subtle language, FSA implies that based on the circumstantial evidence, it doubts that the surveys were sent, as claimed.

The procedures for fining an institution are enumerated in 34 C.F.R. § 668, Subpart G. In accordance with 34 C.F.R. § 668.84 (a)(1), the Secretary is authorized to impose a fine of up to

² It is not at all clear whether this agreement, if complied with, was meant to excuse the lateness of the submission. Of interest, Aims does not make that claim.

\$27,500 for each violation of program regulations. In any such proceeding, FSA has the burden of persuasion. 34 C.F.R. § 668.88(c)(2). When considering the amount of the fine, the provisions of 34 C.F.R. § 668.92 are instructive. Generally, the fine should be set after due consideration is given to the gravity of the violation and the size of the institution -- an institution's small size is a mitigating factor in any fine action.

In the present case, I must consider that, although Aims admittedly violated its IPEDS reporting requirements, it is clear that no federal funds were placed in jeopardy. Further, it is equally clear that Ames is a small school and I must consider that as a mitigating factor. On the other hand, I must consider FSA's argument that it never received the surveys as claimed by Aims and the failure to file the required surveys is a serious violation for which the \$14,000 fine is appropriate. Based on the application of the appropriate burden of proof, and on my responsibility and authority to determine the credibility of evidence presented during the hearing process, I accept the unqualified statement of the director that Aims faxed the surveys prior to April 30, 2008. I must note, in addition, that it defies logic to believe that Aims, in possession of the required information and the requisite forms, would refuse to submit the surveys by means of a FAX, when it could do so easily. Also, because I have no reason to doubt that the surveys did not arrive at that time, I accept that proffer as well.

The only way I can resolve the conflicting evidence in this case is to find that, even though the surveys did not arrive by April 30, 2008, on the basis of the limited facts of this case, that Aims' attempt to transmit the surveys is at least a mitigating factor to be considered along with the mitigating factor of Aims' small size. In assessing the amount of a fine, I must be ever mindful of the purpose served by a fine in our society. A fine is a pecuniary punishment that is imposed by a lawful tribunal. It is generally accepted that punishment must be tailored to fit the violation and the perpetrator and should serve the purpose of retribution, rehabilitation or deterrence. Consistent therewith, it should not be lost that Aims is no longer eligible to participate in Title IV programs and, as such, cannot repeat the failing alleged here. Most important and without doubt, fines are subject to the principles of Constitutional Due Process.

Given the uncontroverted facts of this case that the surveys were not submitted by the prescribed original due date of April 16, 2008, and applying the principles enunciated above, I find appropriate only a mitigated fine of \$1,000 for the admitted failure to file the surveys on time. Based upon my determination that FSA has not met its prescribed burden of proof as to that issue, I specifically do not include any factor for the possibility that the surveys were not faxed as claimed by Aims.³

³ This case is eerily similar to *In re HDS Truck Driving School*, Docket No. 07-57-SF U.S. Dep't of Educ. (February 1, 2008). There, the salient facts were almost the same as the current case: the failure to file four surveys in the IPEDS system; a claim that the reports were sent by FAX, albeit outside the originally prescribed period; a claim that the FAX was not received; and, a proposed fine of \$16,000 against what was categorized as a small school.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that Aims Academy pay to the U. S. Department of Education a fine of \$1,000 for its admitted failure, under the circumstances, to complete and submit in a timely manner four required surveys in the Integrated Postsecondary Education Data System.

Ernest C. Canellos
Chief Judge

Dated: June 19, 2009

SERVICE

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

Crystal Elliott, Owner
Aims Academy
1711 South Interstate 35 East
Carrollton, Texas 75006

Brian P. Siegel, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110