



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

UNITED STATES OF AMERICA  
DEPARTMENT OF EDUCATION

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In the Matter of      )
United States Department )
of Education, Office of )
Student Financial Assistance )
v.                    )
Bowling Green Junior )
College                )
Termination and Fine )
Proceedings Under    )
20 U.S.C. §1094      )
and 34 C.F.R. §668   )
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FINAL DECISION OF THE SECRETARY

This case arises out of a proceeding brought by the Department of Education to terminate the eligibility of Respondent Bowling Green Junior College for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, and to impose a fine of \$500,000. In a decision issued on April 20, 1988, Administrative Law Judge Walter J. Alprin determined that (i) the Respondent had continuously, regularly and intentionally failed to make required refunds of Title IV funds with respect to students who failed to attend or withdrew from Respondent's programs; (ii) Respondent willfully continued to provide Title IV funds to students not maintaining satisfactory academic progress, (iii) Respondent failed to implement an adequate system of internal audit and accounting controls as required by an agreement entered into between the Department and Respondent, following an audit conducted by the Department in 1983, and (iv) Respondent showed a complete lack of fiduciary capacity in failing to correct the above violations following a 1983 audit which raised the same issues. Judge Alprin held that termination of Respondent's eligibility to participate in Title IV student financial assistance programs was proper, and that the gravity of the continuing and repeated violations by the Respondent following an earlier audit and subsequent fine with respect to the same issues warranted imposition of a \$300,000 fine. Pursuant to 34 C.F.R. §668.81(c), Respondent now appeals the termination and fine imposed by the Administrative Law Judge.

On the basis of the official record in its entirety, the Secretary issues this Order of Final Decision and AFFIRMS the decision of the Administrative Law Judge. The Secretary finds that in assessing the penalty, the Administrative Law Judge properly considered mitigating factors such as (but not exclusively) the efforts by the Respondent to comply with the settlement agreement following the 1983 audit, the efforts made by the Respondent to satisfy a portion of the delinquencies before it received notice of the second audit, the subsequent efforts by the Respondent to pay all overdue refunds, and the relatively small percentage of students provided financial aid who were not making adequate academic progress. The Secretary further finds that the Administrative Law Judge properly considered aggravating factors such as, but not exclusively, the continuing and serious nature of the violations, and the fact that such violations had been the subject of an earlier audit, fine and settlement agreement.

On appeal, the Respondent argues that sanctions less serious than termination could be embodied in a new settlement agreement, and that such an agreement would adequately protect the Department's interests. In view of the fact that the Administrative Law Judge based his decision, in part, on the failure of the Respondent to adhere to an earlier settlement agreement designed to address the same violations, the Secretary cannot agree that a new settlement agreement would in fact prevent a repetition of the problems here at issue.

The Secretary further finds that the Administrative Law Judge's findings of fact, including those findings based on his personal observation of the credibility of the witnesses, are supported by the record. The Secretary concludes that the Administrative Law Judge's weighting of the mitigating and aggravating factors was not arbitrary and capricious or an abuse of discretion, and further determines that the sanction imposed was not disproportionate to the offense.

The Secretary therefore adopts and AFFIRMS the decision of the Administrative Law Judge.

This Order of Final Decision dated this 14 of July, 1988.



William J. Bennett  
Secretary of Education