THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

WILLOUGHBY-EASTLAKE SCHOOL OF PRACTICAL NURSING,

Docket No. 09-02-SP
Federal Student Aid Proceeding

Respondent.

ORDER DENYING RECONSIDERATION

This matter comes before me on motion by the office of Federal Student Aid (FSA), dated December 7, 2010, seeking my reconsideration of the decision I issued in this case on November 12, 2010.[1] For the reasons that follow, FSA's motion for reconsideration is denied.

This case first came before me as a result of Respondent's filing a request seeking review by the Secretary of an administrative law judge's (ALJ/AJ) decision requiring Respondent to pay the Department $765,403.93. The ALJ upheld FSA's finding that Respondent failed to obtain proper postsecondary accreditation, and, as a result, was ineligible for Federal funds for the 2000-01 through 2004-05 student aid award years. I agreed with the ALJ's ruling, but reversed the ALJ's calculation of liability by ruling that equity may be invoked to reduce Respondent's liability from $765,403.93 to $50,000.00.

Although I agreed with the ALJ's determination that Respondent lacked proper accreditation during the period at issue, I found Respondent's arguments persuasive that the circumstances of liability justified a significant reduction in the amount FSA should be allowed to recover. The narrow circumstances that I found sufficient to warrant a reduction in the amount of recovery included: (1) that the institution relied upon both its accrediting agency and the Department when concluding that its accreditation status was proper; (2) that the institution maintained secondary and postsecondary nursing programs properly accredited until 2000; (3) that when the institution's accrediting agency developed distinct accrediting processes in 2000 for secondary and postsecondary programs, Respondent was not informed of this change; (4) that Respondent continued to believe that its accreditation applied to its secondary and postsecondary nursing programs until FSA informed Respondent in 2006 that the institution was ineligible to

[1] On December 20, 2010, Respondent filed a Memorandum in Partial Support of the office of Federal Student Aid's Motion for Reconsideration.

participate in Federal student aid programs; and (5) that upon receiving FSA's notice, Respondent promptly applied for and obtained proper accreditation.[2]

With regard to its motion for reconsideration, FSA makes 4 arguments: (1) the Department is not authorized "to write off or waive the compensatory liabilities at issue in this proceeding on grounds of equity or mitigating circumstances," (2) my decision misconceives Respondent's liability as "penal in nature" rather than a contract-type debt and, therefore, violates Title IV by imposing a penalty of $50,000, (3) my decision will "frustrate [FSA's] duty to administer the Title IV programs responsibly," and (4) the reasoning in my decision compels a finding that Respondent's liability should be entirely eliminated. I do not find any of these arguments persuasive.[3]

First and foremost, on the issue of reconsideration, the November 1994 opinion of Secretary Richard W. Riley, in *In the Matter of Edmondson Junior College*, *infra*, is instructive: in response to a motion for reconsideration pending before him, Secretary Riley issued an order denying reconsideration and cautioning against expanding the administrative appeal process in Title IV cases to allow the Department to seek reconsideration of Secretarial decisions "with which [FSA] simply does not agree." In other words, Secretary Riley counseled against disrupting the finality of the administrative appeal process by offering FSA an open invitation to question the Secretary's rulings. I fully agree with this instructive admonishment, and find that it is particularly relevant in this matter.

Since Decisions of the Secretary constitute final agency decisions, the timely finality of the Department's administrative review process is not only a hallmark of decisiveness for the Department's administrative review, but the finality of the process follows from the Department's regulations governing the function of the Secretary's review of appeals under Subpart H, which do not provide for an opportunity to seek reconsideration of a Decision of the Secretary. In my view, reconsideration may only take place in a rare occurrence exercised as a matter of my discretion rather than a party's right or entitlement. The past practice of the Department is in accord with the exceptional and extraordinary nature of granting a request for reconsideration. The Secretary has received approximately eight requests for reconsideration

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[2] I find no reason to believe that this case opens the door for Department officials to displace determinations of liability with considerations of equity in Subpart H proceedings as FSA suggests. This case concerns the discretion of the Secretary. To the extent that it is FSA's position that in practice FSA never compromises or reduces liability in Subpart H proceedings, this case provides no independent authority for FSA's officials or administrative judges to alter that steadfast practice.

[3] In FSA's view, reconsideration is appropriate in this case because the decision will "seriously frustrate accountability in Title IV administration." I disagree. In fact, FSA's arguments in support of its motion are essentially reassertions and recasts of arguments that I have considered and rejected in my decision, and I see no reason to rehash my determination that the provisions of 31 U.S.C. § 3711(a)(2) do not restrict my authority to reduce Respondent's liability. FSA does not dispute that when Respondent requests an administrative review of a final audit or review determination, the Department may not collect the contested claim until the administrative appeals process ends or terminates.

since the early 1990s, and it appears that none were accepted for reconsideration of the substance of a ruling.[4]

As noted, FSA argues that my decision improperly imposed a penalty or fine against Respondent.[5] Of course, FSA is correct that there is little or no legal basis to fine Respondent in a recovery of funds proceeding. But, my decision explicitly refers to my determination to "invok[e] equitable consideration in establishing the appropriate amount of recovery in [this] Subpart H proceeding[]." I also make plain my awareness that what is at issue concerns my "authority to waive or compromise Respondent's liability" and "reduce the liability sought in the final audit or program review determination." These observations affirmatively undermine FSA's view that I have confused the distinctions between Subpart H and Subpart G proceedings. More directly, this order also clarifies that I was under no such confusion, and that the $50,000 Respondent must pay the Department is the amount of liability that I have determined should be recovered from Respondent in accord with principles of equity and fairness; this amount of financial liability does not represent a fine or penalty.[6]

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[4] FSA cites seven instances in which requests for reconsideration have been "submitted[] and reviewed by different Secretaries...over the years." But, of the seven cited cases, four of these cases do not represent examples of cases where the Secretary granted the party's request for reconsideration. In another case, the Secretary reconsidered his ruling that Respondent had not filed a timely appeal brief, and the sixth case is cited erroneously. The *Baytown, infra*, case is also cited, but it is not apparent for what purpose. *See In the Matter of Trend Colleges*, Dkt. No. 90-56-ST, U.S. Dep't of Educ. (November 27,1991) (the Secretary reconsidered his ruling that Respondent had not filed a timely appeal brief); *In the Matter of ECCP*, Dkt. No. 91-7-ST, U.S. Dep't of Educ. (February 2, 1994) (the Secretary denied motion by Respondent for reconsideration except as to reducing the amount of fine from $250,000 to $240,000 in light of the terms of a settlement agreement); *In the Matter of Baytown Technical School*, Dkt. No. 91-40-SP, U.S. Dep't of Educ. (November 14, 1994); *In the Matter of Edmondson Junior College*, Dkt. No. 93-7-SP, U.S. Dep't of Educ. (November 15, 1994) (the Secretary denied the Department's request for reconsideration and expressed concern for expanding the appeal process to allow the Department to seek reconsideration of decisions issued by the Secretary "with which it simply does not agree."); *In the Matter of BMEH*, Dkt. No. 94-45-ST, U.S. Dep't of Educ. (August 1, 1997) (although the Secretary indicated that in "extraordinary circumstances" the Secretary may accept a motion for reconsideration, he denied Respondent's request); *In the Matter of IEU*, Dkt. No. 96-23-ST, U.S. Dep't of Educ. (January 9, 1998) (this case appears to be erroneously cited); and *In the Matter of Center for Advanced Studies on Puerto Rico and the Caribbean*, Dkt. No. 96-131-SP, U.S. Dep't of Educ. (July 22, 1998) (the Secretary denied Respondent's motion for reconsideration). In addition to the cases cited by FSA, the Secretary also received motions for reconsideration in the following cases, all of which were denied: *In the Matter of Massachusetts School of Barbering and Men's Hairstyling,* Dkt. No. 94-128-SP, U.S. Dep't of Educ. (April 2, 1996). *In the Matter of United Education Institute,* Dkt. No. 93-59-SP, U.S. Dep't of Educ. (September 11, 1993), *In the Matter of Garces Commercial College,* Dkt. No. 92-23-SP, U.S. Dep't of Educ. (March 26, 1993).

[5] For its part, Respondent notes that my decision does not explicitly "characterize the payment as a fine or penalty."

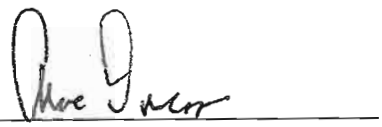
[6] It should go without saying that this amount is the quantum that I have determined is the appropriate measure based on the degree of harm, misuse, or damage caused by Respondent's violation of Title IV and in light of the mitigating circumstances noted. *See, e.g., Macomb Community College*, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (May 5, 1993) (holding that Subpart H proceedings are in the nature of contract actions, and the measure of recovery is calculated as harm caused to an identifiable Federal interest). Obviously, my ruling in this case does not invalidate the rulings in cases where the Secretary did not explicitly find mitigating factors, and, instead, held the institution liable to repay all Federal funds disbursed while operating as an ineligible institution because the institution failed to possess the requisite accreditation. *See, e.g., In the Matter of Academia La Danza Artes Del Hogar*, Dkt. No. 90-31-SP, U.S. Dep't of Educ. (Initial Decision, May 19, 1992) (Aff'd by the Secretary, August 20, 1992).

With regard to FSA's recommendation that I revise my holding concerning whether Respondent should be found liable at all, I find this recommendation misplaced. FSA argues that in light of my fact-finding regarding Respondent's lack of awareness of its accrediting agency's revised policy, I should hold that Respondent's liability is entirely eliminated.[7] In my decision, whether Respondent knew or should have known that its accrediting agency changed procedures rendering the scope of Respondent's accreditation invalid for purposes of Title IV was an issue I identified as a factor of mitigation or circumstance in the balance of equities used to determine whether to reduce the amount of Respondent's liability. An entirely different question concerns whether Respondent violated Title IV, *ab initio,* which is the question implicated by FSA's recommendation. To be clear, in my decision, I agreed with the ALJ's conclusions finding Respondent in violation of Title IV. As the evidence in the record shows, Respondent maintained fully accredited secondary and postsecondary nursing programs up to 2000, but, in 2000, Respondent's preexisting accreditation no longer applied to its postsecondary nursing program. This loss of proper accreditation renders it inappropriate to entirely eliminate Respondent's liability. Hence, the mitigating factors supported a reduction, but not elimination, of Respondent's liability.

ORDER

ACCORDINGLY, FSA's *Motion to Vacate Decision of November 12 and Issue a Reconsidered Decision* is DENIED; Respondent shall pay the U.S. Department of Education the sum of $50,000.

So ordered this 14 day of April 2011.



Arne Duncan

Washington, D.C.

[7] I do not understand FSA to be withdrawing its initial claim that Respondent lacked proper accreditation.

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