

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

IN THE MATTER OF

DELOUX SCHOOLS OF COSMETOLOGY,

Respondent.

Docket No. 89-59-S

Student Financial
Assistance Proceeding

DECISION

Appearances:

Laura DeLoux for the Respondent, DeLoux Schools of Cosmetology.

Carol S. Benge, Esq. and Nan Shepard, Esq. for the Office of Student Financial Assistance, the U.S. Department of Education.

Before:

Judge John F. Cook

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I. PROCEDURAL BACKGROUND

On October 30, 1989, a notice of intent to terminate the eligibility of the DeLoux Schools of Cosmetology (DeLoux) to participate in programs authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1070 et. seq. (Title IV programs) as well as a notice of intent to fine DeLoux based on certain alleged violations of law was issued by the Deputy Assistant Secretary for Student Financial Assistance. Thereafter DeLoux filed a request for hearing dated November 6, 1989.

A notice of receipt of the request for hearing was issued on November 16, 1989 and a prehearing telephone conference with counsel for the parties was conducted on November 29, 1989. As a result of that conference a schedule was arranged which was set forth in an order issued on December 12, 1989.

On December 21, 1989, DeLoux filed an unopposed motion to delay the exchange of exhibits. On the same date, OSFA filed its preliminary witness and document lists while DeLoux filed its prehearing statement, inclusive of an exhibit and witness list and a hearing site request. An Order granting the delay of exhibit exchange was issued on December 29, 1989. The exhibits were then filed on January 11, 1990.

On February 14, 1990, the Director of the Division of Audit and Program Review of OSFA, filed a memorandum outlining her delegation from the Secretary of Education whereupon she designated San Francisco, CA, as the hearing location for this proceeding. In conjunction therewith counsel for OSFA filed a motion for establishment of hearing site specifying San Francisco and the Region IX office or another Federal facility as the proper place for any hearing. Opposition was forthcoming by DeLoux. On February 15, 1990, OSFA filed a supplemental statement regarding hearing site based on DeLoux's continuing opposition. DeLoux stated its preference for a San Diego, CA hearing site based on the convenience and necessity of all its witnesses and to minimize related hearing and lodging costs. On February 23, 1990, OSFA filed a statement in which it agreed to dual hearing locations with the first part of the hearing set in San Francisco and the second part in San Diego. On that same day DeLoux filed a motion to add an additional witness to its witness list.

On February 27, 1990 DeLoux filed a motion to limit proposed stipulations. On that same day a joint motion was filed requesting an extension of time to file prehearing submissions and to set a hearing date of April 2, 1990.

On February 28, 1990, an order was issued granting the extension of time for prehearing submissions and rescheduling the hearing to begin on April 2, 1990 in San Francisco, CA. On March 6, 1990, DeLoux filed a supplemental memo in support of its motion to limit OSFA's

proposed stipulations and to conclude that certain allegations, were outside the scope of the original notice and thereby reflect due process violations. Also, on March 6, 1990, DeLoux filed its memorandum of contentions of fact and law with exhibits. Similarly, on March 6, 1990, OSFA filed its prehearing memorandum, its proposed findings of fact, and its joint exhibit list. DeLoux's proposed issues of fact and law were filed on March 7, 1990. Joint stipulations were filed March 7, 1990.

On March 15, 1990, DeLoux filed a motion to dismiss based on the premise that it was no longer an eligible institution against which OSFA could take adverse action since it had at that time voluntarily withdrawn from further participation in federal student financial assistance programs. OSFA filed its opposition to DeLoux's motion to dismiss on March 19, 1990, whereupon, on March 23, 1990, DeLoux filed a reply to OSFA's opposition to its motion to dismiss.

DeLoux's initial and supplemental efforts in support of its motion to limit OSFA's proposed stipulations, exhibits, and grounds for termination and fine were met with OSFA's opposition. An order denying DeLoux's motion was issued on March 23, 1990. The order was based on the finding that OSFA's proposed stipulations and evidence were relevant and material to the proceeding. On March 23, 1990 an additional order was issued granting DeLoux's motion to supplement its witness list.

On March 26, 1990 DeLoux filed a motion for a continuance of the hearing date from April 2, 1990, to May 7, 1990. On March 29, 1990 the motion was granted in view of the timing of OSFA's exchange of witness lists and documents and the need by DeLoux for time to properly respond to certain allegations. Further there was no real need for any hearing sooner than May 7, 1990 since DeLoux had caused itself to become ineligible to continue further with any student financial assistance programs.

An order was issued on April 3, 1990 denying the motion to dismiss. The ruling rested upon the fact that no authority had been cited which specifically provided that an institution could escape the possible consequences of a termination and fine proceeding by unilaterally relinquishing its eligibility status.

On April 24, 1990 an additional notice of hearing was issued specifying the sites for the hearing in San Francisco, CA and San Diego, CA.

On May 2, 1990, DeLoux's counsel Richard A. Fulton and Peter S. Leyton, filed their notice of withdrawal from representation effective immediately upon the basis that it was necessitated by DeLoux's inability to pay attorney fees and expenses. The notice stated further that DeLoux intended to represent itself through Donald E. DeLoux and Laura DeLoux at the time of the hearing.

The hearing on the record in this case commenced on May 7, 1990 and concluded on May 16, 1990. Laura DeLoux served as DeLoux's representative. The hearing began in San Francisco, CA, where the Office of Student Financial Assistance (OSFA), produced part of its witnesses. The second part of the hearing was conducted in San Diego, during the period of May 10 through May 16, 1990. At that time the remainder of OSFA's witnesses as well as DeLoux's witnesses

testified. At the time of the hearing both parties moved additional exhibits into evidence and a time frame was outlined for the filing of the parties' post-hearing briefs.

OSFA's post-hearing brief was filed on July 10, 1990. At the same time, OSFA filed its proposed findings of fact and conclusions of law as well as its motion to extend time for submitting post-hearing filings. Subsequently, DeLoux filed a motion to extend time for submitting its post-hearing brief. OSFA filed an objection to the requested extension on August 27, 1990. An order was issued granting the extension.

On September 5, 1990, DeLoux's post-hearing brief was filed OSFA then sought and was granted a one-week extension for submitting its post-hearing and reply brief. OSFA submitted its reply brief on September 26 and 27, 1990. [1/](#)

II. APPLICABLE LAW

DeLoux has participated in several programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 et seq. Those programs include as follows: the Stafford Loan Program, authorized under 20 U.S.C. § 1071, the Parent Loans for Undergraduate Students (PLUS) Program, authorized under 20 U.S.C. § 1078-2, the Supplemental Loans for Students (SLS) Programs, authorized under 20 U.S.C. § 1078-1, the Pell Grant Program, authorized under 20 U.S.C. § 1070-a, the Perkins Loan Program, authorized under 20 U.S.C. § 1087-aa, the Supplemental Educational opportunity Grant (SEOG) Program, authorized under 20 U.S.C. § 1070-b, and the College Work Study (CWS) Program, authorized under 42 U.S.C. § 2751. (The CWS Program was originally enacted as part of the Economic Opportunity Act of 1964, 78 Stat. 513, and was subsequently transferred and inserted as Part C of Title IV of the HEA in 1968, and is separately codified at 42 U.S.C. § 2751 et seq.) The instant proceeding began on October 30, 1989 when OSFA served on DeLoux a notice of intent to terminate its eligibility to participate in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. and to fine DeLoux \$950,000. Under 20 U.S.C. § 1094, and 34 C.F.R. § 668.86, the Secretary (ED) may terminate or limit the eligibility of an institution that violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. Under 20 U.S.C. § 1094 and 34 C.F.R. § 668.84, the Secretary may impose a fine for violations of the aforementioned provisions.

While DeLoux originally challenged both actions, they withdrew their challenge to the termination action and stipulated to the termination of their eligibility to participate in the Title IV programs at the outset of the hearing. EX. A-2. [2/](#)

Accordingly, the scope of the proceeding is now limited to a determination concerning the action by which OSFA seeks to impose a fine of \$950,000.

The action to impose a fine against DeLoux was initiated under the authority of 20 U.S.C. § 1094 (C) (2) (B) (i) [3/](#), and the implementing regulations published at 34 C.F.R. Part 668, Subpart G, which permit a fine of up to \$25,000 per violation. DeLoux was charged with massive violations of regulations applicable to the Title IV programs. The proceeding began by OSFA's issuance of

a notice of intent to terminate under 34 C.F.R. § 668.86 and a notice of intent to fine under 34 C.F.R. § 668.84. The scope and consequences of both provisions appear at subsection (a) and are described more fully as follows:

34 C.F.R. § 668.86(a):

Scope and consequences. The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in § § 668.93 and 668.94, respectively.

34 C.F.R. § 668.84(a):

Scope and consequences. The Secretary may impose a fine of up to \$25,000 per violation on an institution that-

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

Upon receipt of the intent to terminate and fine notices, the institution may then request a hearing under the provision at § 668.88. The term hearing on the record is explained in § 668.88(a) as follows:

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

34 C.F.R. § 668.88 (c) (2) sets forth the rules as to the burden of persuasion. In proceedings of this nature that burden is placed on the designated department official (here OSFA) . The language of that sections reads as follows:

. . . (2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

In the event a finding is made as to a violation of any laws, consideration is given to the regulations concerning a penalty. Under 34 C.F.R. § 668.92, the decision maker is required to consider two factors in determining the amount of a fine: the gravity of the institution's violation of, or failure to carry out the particular requirement imposed by statute, regulation or agreement or the gravity of any misrepresentation, and the size of the institution.

a. In any assessment of a fine the severity of the institution's conduct must be considered including the volume, repetition and continuing nature of violations. In doing so inquiry would be made as to the following factors:

1. An institution must abide by refund regulations applicable to Title IV programs. Provisions governing payment of refunds for Stafford loans are found at 34 C.F.R. § 682.605, 34 C.F.R. § 682.607. § 682.607, prior to the change which was effective on July 20, 1989, provided that refunds were to be paid within 30 days of a student's withdrawal from school or failure to return from a leave of absence. ^{4/} Provisions governing Pell Grant and campus-based programs (SEOG and Perkins loans) are found at 34 C.F.R. § 668.22. Refunds are to be made to the appropriate accounts within 30 days of the date a student officially withdraws, or is expelled, or the institution determines that a student has unofficially withdrawn.

2. An institution must comply with Departmental record-keeping requirements. The provision at 34 C.F.R. § 668.23(f) (1) (iv) requires an institution to establish and maintain on a current basis, for each recipient of Title IV funds, records regarding any refunds due or paid to the student, a Title IV program account, or a lender. Stafford loans have a more restrictive requirement, under 34 C.F.R. § 682.610(a)(1)(i) and (ii), that the institution establish and maintain all necessary records to protect the rights of student and parent borrowers and to protect the United States from unreasonable risk of loss.

3. An institution is required to demonstrate that it is capable of adequately administering Title IV programs under the standards set forth in 34 C.F.R. § 668.14. An adequate number of qualified persons to administer the Title IV programs must be used. 4. Pursuant to 34 C.F.R. § 668.82, Standard of Conduct, an institution must act as a fiduciary using the highest standard of care and diligence in administering the Title IV programs and in accounting to the Secretary for the funds received under those programs.

5. An institution must demonstrate financial responsibility to be a participant in Title IV programs. Under 34 C.F.R. § 668.13(b)(3) an institution is required to:

Meet all of its financial obligations, including, but not limited to ---

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

b. The final factor to be considered as relates to a penalty is the size of the institution. Indicators of size can be the amount of corporate earnings, the number of students, the number of branch schools, and amount of student loan funds which the institution handles.

III. ISSUES

A. Termination Proceeding

Originally, DeLoux contested both the proposed termination of eligibility action and the proposed imposition of a \$950,000 fine. However, at the outset of the hearing which took place on May 7, 1990, DeLoux withdrew its challenge and stipulated to having its eligibility to participate in Title IV programs terminated. Therefore, it appears there is one issue to be resolved, whether a fine should be imposed and, if so, the extent of such fine.

B. Penalty Proceeding

In determining the question of whether a fine should be imposed, determinations need to be made as to whether there has been any violation of the applicable regulations. The following questions are relevant to the alleged violations in this case.

1. Whether DeLoux failed to pay Stafford Loan refunds or has failed to make timely payment of Stafford Loan refunds under the relevant regulations set forth in 34 C.F.R. § 682.607 (c).
2. Whether DeLoux failed to maintain required records as to the date refunds were made in violation of the regulations in 34 C.F.R. 668.23(f) (1) (iv) and 682.610.
3. Whether DeLoux failed to make refunds due to Pell and SEOG program accounts for the period of March 1989 through August 1989 under the regulation at 34 C.F.R. § 668.22. OSFA has alleged an amount of \$175,000 in overdue refunds attributed to that time period.
4. Whether DeLoux failed to make refunds due to the Perkins Loan Fund for the period May 1989 through August 1989 under the regulation at 34 C.F.R. § 668.22. OSFA has alleged an amount of \$45,731 in overdue refunds for that period.
5. Whether DeLoux failed to meet its financial obligation by failing to make refunds or made untimely refunds in contravention of the regulation at 34 C.F.R. § 668.13 (b) (3).
6. Whether DeLoux violated its fiduciary duty under the regulation at 34 C.F.R. § 668.82 and 34 C.F.R. § 682.610(e). Specific acts in question relate to DeLoux's refund and recordkeeping practices, and failure to provide records for program reviews.
7. Whether DeLoux failed to demonstrate administrative capability under the regulations at 34 C.F.R. § 668.14. Specific acts in question are DeLoux's alleged refund violations and its errors in records as to actual dates of refunds.

IV. Witnesses and Exhibits

A. Witnesses

OSFA called a total of 8 witnesses during the hearing May 7 - May 16th. The witnesses are as follows:

1. Dale Fagan, Auditor, ED Office of Inspector General (OIG).
2. Stan Karpinski, Auditor, ED OIG.
3. Ronald Lipton, Chief, ED Program Compliance Branch.
4. Elizabeth Callahan, former DeLoux Financial Aid Director .

5. Ron Selge, former California Student Aid Commission (CSAC) program reviewer.
6. Lynda Folwick, Manager, GSL program reviews, HEAF.
7. Kimberly (Daniels) Romanoski, a former DeLoux employee.
8. Bob Whitecraft, ED program reviewer.

DeLoux presented the testimony of 8 witnesses, including that of Laura DeLoux, the representative for DeLoux at the hearing. Patricia Mayhue, another DeLoux witness assisted by questioning Ms. DeLoux at the time she testified. The names of DeLoux's witnesses are as follows:

1. Kathy Hoersch, Financial Aid supervisor at DeLoux.
2. Laura DeLoux, President of DeLoux, formerly she was a vice-president and the Director of operations.
3. Patricia Mayhue, Director of Education since February 1988.
4. Michelle Benito, Financial aid supervisor for DeLoux from 1985 to 1988 in the financial aid department.
5. Brad Smith, Director of Advertising & Marketing & Public Relations at DeLoux
6. Nancy Spieczny, an attorney in California.
7. Nadine Jarvis, Executive Secretary at DeLoux Schools.
8. Donna Willis, Administrative Assistant to Directors of Education at DeLoux Mario Montalvo and Patricia Mayhue.

B. Exhibits

1. Joint Exhibits

A-1 Joint Stipulations of Fact.

A-2 Joint Stipulation to Terminate the Respondent's Eligibility to Participate in Student Financial Assistance Programs.

A. Termination Notice addressed to Eugene D. (aka Donald E.) DeLoux dated October 30, 1989 and enclosures 1, 2, 4-6.

B. Letter to Ron Lipton from Laura DeLoux dated September 28, 1989.

- C. Letter to Senator Pete Wilson from Donald DeLoux dated December 4, 1989.
- D. Letter to Donald E. DeLoux from Rosemary Phillips dated October 23, 1989.
- E. Letter to Ron Lipton from Donald DeLoux dated October 19, 1989 and enclosures.
- F. Letter to Eugene DeLoux from Robert Chin dated January 12, 1988.
- G. DeLoux Catalogues dated January 1987 and April 1989.
- H. Representative SFA Application for Institutional Eligibility and Certification for the DeLoux schools.
- I. Representative SFA Program Participation Agreement for the DeLoux Schools.
- J. Letter to Lynda Folwick from Laura DeLoux dated October 13, 1989.
- K. Letter to Ron Cole from Ron Selge dated October 7, 1987.
- L. Letter to Eugene DeLoux from Lynda Folwick dated November 4, 1987.
- M. Letter to HEAF from Ron Cole dated December 1, 1987.
- N. Letter to Eugene DeLoux from Cindy M. Betterman dated March 24, 1988.
- O. Letter to Cindy Betterman from Katherine Zimov dated April 20, 1988.
- P. Letter to Eugene DeLoux from Lynda Folwick dated January 4, 1989.
- Q. Letter to Eugene DeLoux from Robert Chin dated May 1, 1987.
- R. Letter to Nan Shepard from Michele Vinolla dated August 22, 1989.
- S. Letter to Laura DeLoux from Lynda Folwick dated November 1, 1989.
- T. Letter to Elizabeth Callahan from Lynda Folwick dated July 25, 1989.
- U. Letter to Lynda Folwick from Elizabeth Callahan dated June 27, 1989.
- V. Letter to Elizabeth Callahan from Lynda Folwick dated April 10, 1989.
- W. Letter to Elizabeth Callahan from Lynda Folwick dated May 16, 1989.
- X. Letter to Eugene DeLoux from Lynda Folwick dated February 24, 1989.
- Y. Letter to Lynda Folwick from Elizabeth Callahan dated February 17, 1989.

Z. Letter to Cindy Betterman from Katherine Zimov dated June 17, 1988.

AA. Letter to Lynda Folwick from Sheli Benito dated October 16, 1987.

CC. Letter to Ron Lipton from Laura DeLoux dated November 27, 1989.

DD. Letter to Elizabeth Callahan from Lynda Folwick dated June 16, 1989.

EE. Letter to Lynda Folwick from Laura DeLoux dated September 5, 1989.

FF. Letter to Lynda Folwick from Laura DeLoux dated September 5, 1989.

GG. Letter to Laura DeLoux from Lynda Folwick dated September 19, 1989.

HH. Letter to Katharine Zimov from Rosemary Phillips dated February 14, 1989.

II. DeLoux Schools Managerial Manual, updated December 4, 1989.

JJ. DeLoux Schools Managerial Manual, time cards updated December 4, 1989.

KK. DeLoux Schools Managerial Manual, updated December 4, 1989.

LL. Promissory note, principal \$300,000, loan dated October 18, 1989; commercial security agreement, principal \$300,000, loan date October 18, 1989; disbursement request and authorization, principal \$300,000, loan date October 18, 1989.

LL-l Business Loan Agreement relating to Exhibit LL dated October 18, 1990.

MM. Resume of Donald E. DeLoux

NN. Resume of Laura DeLoux

OO. DeLoux Schools statement of revenues and expenses, July 1, 1986 to June 30, 1987; July 1, 1987 to June 30, 1988; July 1, 1988 to June 30, 1989.

PP. Annual report form to National Association of Trade and Technical Schools, from DeLoux Schools at San Diego (Clairemont Mesa Blvd.). El Cajon, El Centro, Escondido, Hemet, La Mesa, Merced, San Diego (Mira Mesa Blvd.), National City, Palm Desert, Redlands, San Leandro, San Diego (Beyer Blvd.), Stockton, Sunnymead, Vista, dated October 12, 1989.

2. OSFA (ED) Exhibits:

1. Enclosure 3 of Termination Notice addressed to Eugene D.(aka Donald E.) DeLoux dated October 30, 1989.
2. DeLoux catalogue for the current program year (no publication date) .

3. Notice to DeLoux School of Cosmetology from John Murphy dated November 30, 1989.
4. Package of documents from files of DeLoux students reviewed during September 1969 follow-up by ED auditors.
5. Auditors' summary entitled "DeLoux Schools of Cosmetology Review of Student Files," from September 1989 follow-up work done by ED auditors.
6. May 13, 1987 DeLoux meeting minutes.
7. Auditors' workpaper entitled "DeLoux Schools Refund Aging as of September 5, 1989" from September follow-up work done by ED auditors.
8. Copies of documents from DeLoux student files reviewed by BD auditors during Preliminary survey.
9. [student name]'s student file.
10. [student name]'s student file.
11. [student name]'s student file.
12. [student name]'s student file.
13. [student name]'s student file.
14. [student name]'s ledger card.
15. Refund checks for [student name] and [student name].
16. Refund checks for [student name] and [student name].
17. Refund checks for [student name] and [student name].
18. DeLoux Departmental meeting minutes, September 6, 1989.
19. DeLoux Departmental Head meeting minutes, August 21, 1989. (Attachments omitted).
20. DeLoux Departmental meeting minutes, July 31, 1989.
21. DeLoux Executive Staff meeting minutes, July 25, 1989.
22. DeLoux Executive Staff meeting minutes, June 1-6, 1989.
23. DeLoux Executive Staff meeting minutes, April 21, 1989.

24. DeLoux Executive Staff meeting minutes, August 8, 1988.
25. DeLoux Executive Staff Meeting minutes, June 6, 1988.
26. DeLoux Executive Staff Meeting minutes, February 1, 1988.
27. DeLoux Executive Staff Meeting Minutes, January 4, 1989.
28. DeLoux Executive Staff Meeting minutes, January 21, 1988.
29. Financial Aid Meeting Minutes, January 9, 1987.
30. Financial Aid Meeting Minutes, January 19, 1987.
31. Package of DeLoux refund lists.
32. Documents filed with California Secretary of State re: DeLoux Schools of Cosmetology, Inc.
33. DeLoux 1989 Business Plan.
34. Limitation Agreement between ED and DeLoux, 1979.
35. DeLoux Schools of Cosmetology - Purpose: To trace students from weekly summary, Source: Selected 10 student files from DeLoux.
36. DeLoux Schools of Cosmetology Student Printout 1-35.
37. Ron Selge Resume.
38. Letter from Molly Hockman to Mr. Eugene DeLoux dated August 15, 1989.
39. Letter from Alan Toms to Laura DeLoux dated December 21, 1989.
40. Letter from Laura DeLoux to Molly Hockman dated January 5, 1990.
41. Letter and Attachments from Donald E. DeLoux to Judith Brantley, Chief, IRB, OSFA dated October 24, 1989.
42. Letter from Laura DeLoux to Benito Botello OSFA, Region ix dated November 21, 1989.
43. Letter from Laura DeLoux to Ben Botello dated December 8, 1989.
44. Letter and Attachments from Laura DeLoux to Ben Botello (A-C) dated December 26, 1989.

3. DeLoux Exhibits (R-1 through R-12):

R-1. DeLoux employee's notes of exit conference with California Student Aid Commission (CSAC) reviewers in May of 1987.

R-2. Respondent's biannual audit for the period ending June 30, 1985.

R-3. Respondent's organizational and staffing chart.

R-4. NATTS Exit interview from July 1987 prepared by DeLoux personnel.

R-5. Minutes from DeLoux Schools Executive Staff Meeting from January 21, 1988.

R-6. Minutes from DeLoux Executive Staff Meeting from April 21, 1989.

R-7. DeLoux Interoffice memo from July 31, 1989.

R-8. DeLoux Interoffice memo from August 21, 1989.

R-9. DeLoux Executive Staff Meeting of July 25, 1989.

R-10. Monthly Recap of Tracking. (pages R-10-1 through R-10- 11).

R-11. National Accrediting Commission 1988 Annual Report (Due March 10, 1989).

R-12. Checking deposit receipt dated 11/9/89 in the amount of \$23 ,451.60.

V. FINDINGS OF FACT

A. Joint Stipulations of Fact 5/

The parties filed initial Joint Stipulations of Fact, numbering from 1 - 106, on April 18, 1990. At the hearing, additional Joint Stipulations were offered, most notably Joint Exhibit A-2 wherein the parties stipulated to DeLoux's termination. OSFA and DeLoux's initial Joint Stipulations are set forth as follows:

1. Donald E. DeLoux and Eugene D. DeLoux are the same person.
2. Donald E. DeLoux is the sole owner of DeLoux Schools of Cosmetology, Inc.
3. Donald E. DeLoux is a director of DeLoux Schools of Cosmetology Inc.
4. The eighteen schools named as respondents in this proceeding are owned and operated by DeLoux Schools of Cosmetology, Inc.
5. Laura DeLoux is the daughter of Donald E. DeLoux.
6. Laura DeLoux is Director of Operations of DeLoux Schools of Cosmetology, Inc.

7. The fifteen DeLoux Schools at the locations listed below, each named as a respondent in this proceeding, were free standing institutions for accreditation purposes:

La Mesa, California
Beyer Blvd., San Diego, California
El Cajon, California
Escondido, California
Stockton, California
Hemet, California
Vista, California
Mira Mesa Blvd., San Diego, California
Sunnymead, California
El Centro, California
Pleasanton, California (formerly located in San Francisco)
Redlands, California
Clairemont Mesa Blvd., San Diego, California
Merced, California
Leandro, California

8. The DeLoux School in Palm Desert, named as a respondent in this proceeding, is a branch campus of the DeLoux School in Hemet.

9. The DeLoux School in National City, named as a respondent in this proceeding, is a branch campus of the DeLoux School in La Mesa.

10. The DeLoux School in San Mateo, named as a respondent in this proceeding, is a branch campus of the DeLoux School in Pleasanton.

13. On September 18, 1989, Donald E. DeLoux stated to Dale Fagan and Stan Karpinski that the DeLoux Schools had not paid all refunds then due to student financial assistance program accounts, students and lenders.

14. On September 18, 1989, Donald E. DeLoux stated to Dale Fagan and Stan Karpinski that DeLoux Schools did not have sufficient cash to cover the refund checks payable to then current and former students which were on the premises at DeLoux.

15. In June 1989, DeLoux Schools of Cosmetology was pursuing the purchase of an existing chain of cosmetology schools in operation in the Hawaiian Islands.

16. Donald E. DeLoux has been principal owner of the DeLoux Schools of Cosmetology since 1973.

17. Donald E. DeLoux has been the Chief Executive Officer of DeLoux Schools of Cosmetology since 1973.

18. In a Business Plan dated June 1989, DeLoux stated its intention to expand its operations beginning the summer/fall of 1989, including the acquisition of three schools and four retail centers in Hawaii, distribution of the DeLoux line of skin care products on a retail basis throughout Hawaii, increased utilization of existing locations, and relocation of four locations to upgraded facilities during the year ended June 20, 1990 at a cost of approximately \$140,000 each.

19. It was DeLoux's general practice to post refunds to account cards on the date the checks were written.

21. Personnel at DeLoux Schools prepared refund checks dated November 3, 1989, for the individuals listed Below:

[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name]
[student name] (GLS, \$495.50)

22. Personnel at DeLoux Schools prepared refund checks dated November 28, 1989 for the individuals listed below:

[student name]
[student name]
[student name]
[student name]

23. Deposits covering the refund checks referenced in Stip. 22 were not made until December 27, 1989.

24. On November 28, 1989 refund list prepared by DeLoux personnel, [student name]'s drop date is listed as July 30, 1989.

25. On the same refund list referenced in Stip. 24, [student name]' drop date is listed as October 13, 1989.

26. In October 1989, DeLoux was depositing funds in its accounts to cover checks dated July 1989.

27. Laura DeLoux submitted to ED on November 27, 1989 a deposit slip dated November 9, 1989 with the deposit amount recorded as \$23,451.60.

28. Laura DeLoux submitted with the deposit slip referenced in Stip. 27, four unsigned checks, ail dated November 3, 1989: Check no. 29147, payable to DeLoux Schools NIH account, in the amount of \$2690.00, for refunds due to [student name] (SEOG) and [student name] (SEOG) ; check no. 29148, payable to DeLoux Schools NIH account, in the amount of \$12,433.37, for refunds due to [student name], [student name] (Pell), [student name], [student name] (Pell), [student name] (Pell), [student name], [student name], [student name], and [student name] (Pell) ; check no. 29220, payable to DeLoux Schools NIH account, in the amount of \$7398.00, for refunds due to [student name], [student name], [student name], and [student name] (Pell); and check no. 29219, payable to DeLoux Schools NIH account, in the amount of \$930.23, for refunds due to [student name] (Perkins), [student name] (Perkins), and [student name] (Perkins).

29. In a cover letter to Ron Lipton of ED dated November 27, which accompanied, inter alia, the documentation referenced in Stips. 27 and 28, Laura DeLoux stated that the latest batch of refunds totalled \$61,508.10 and that copies of deposit slips were enclosed.

30. [student name]'s drop date was March 26, 1989.

31. DeLoux issued check no. 028893, dated December 26, 1989, in the amount of \$1914.51, payable to Great Western Bank, for the GSL refund due to [student name].

32. DeLoux prepared refund check no. 028750, dated November 24, 1989, payable to the DeLoux Schools EDPMS account, in the amount of \$22.98 for a SEOG refund due to [student name].

33. A refund request list prepared by DeLoux indicates that a deposit was made on December 20, 1989 to cover the check referenced in Stip. 32.

34. DeLoux prepared refund check no. 028778, dated November 27, 1989, payable to Mutual Sayings, in the amount of \$495.50, for a GSL refund due to [student name].

35. DeLoux records reflect a drop date of October 31, 1989 for [student name].

36. The check referenced in Stip. 21 on behalf of [student name] and the check referenced in Stip. 34 are for the same refund.

37. DeLoux personnel prepared refund check no. 028773, dated November 27, 1989, payable to DeLoux Schools Federal Perkins account, in the amount of \$1,225.00, for a refund due to [student name].

38. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 37 on December 27, 1989.

40. DeLoux personnel prepared check no. 028772, dated November 27, 1989, payable to the DeLoux School EDPMS account, in the amount of \$3,542.20, for Pell Grant refunds due to [student name], [student name], [student name], [student name], [student name], [student name], and [student name].

41. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 40 on December 27, 1989.

42. [student name]'s drop date was September 14, 1989.

43. [student name]'s drop date was June 28, 1989.

44. DeLoux personnel prepared check no. 028785, dated November 30, 1989, payable to DeLoux Schools EDPMS account, in the amount of \$1,565.49 for a Pell Grant refund due to [student name].

45. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 44 on December 27, 1989.

46. DeLoux records reflect [student name]' drop date as October 3, 1989.

47. DeLoux personnel prepared check no. 028786 dated November 30, 1989, payable to Great Western Bank, in the amount of \$1,207.49 for a GSL refund due to [student name].

48. DeLoux personnel prepared check no. 028788, dated December 6, 1989, payable to DeLoux Schools EDPMS account, in the amount of \$2,091.20 for Pell Grant refunds due to [student name], [student name], and [student name] and a SEOG refund due to [student name].

49. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 48 on December 27, 1989.

50. DeLoux records reflect a drop date of November 4, 1989 for [student name].

51. DeLoux personnel prepared check no. 028795, dated December 8, 1989, payable to the DeLoux School EDPMS account, in the amount of \$2,271.00 for Pell Grant refunds due to [student name], [student name] and [student name].

52. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 51 on December 27, 1989.

53 DeLoux records reflect a drop date of July 29, 1989 for [student name].

54. DeLoux records reflect a drop date of November 10, 1989 for [student name].

55. DeLoux personnel prepared check no. 028796, dated December 8, 1989, payable to the DeLoux Schools Perkins Account, In the amount of \$281.98 for a Perkins Loan refund due to [student name].

56. A refund request list prepared by DeLoux personnel indicates that a deposit was made to cover the check referenced in Stip. 55 on December 27, 1989.

57. DeLoux personnel prepared check no. 028800, dated December 8, 1989, payable to Great Western Bank, in the amount of \$43.75 for a GSL refund due to [student name].

58. DeLoux records reflect a drop date of September 13, 1989 for [student name].

59. [student name]'s name appeared on a refund list dated October 18, 1989 and on a refund list dated December 6, 1989.

60. DeLoux personnel prepared refund check no. 028789, dated December 6, 1989, payable to Great Western Bank, in the amount of \$45.65 for a GSL refund due to [student name].

61. [student name]'s name appeared on a refund list dated October 18, 1989.

63. During 1989, DeLoux Schools of Cosmetology, Inc. made payments on a Mercedes automobile for the use of Laura DeLoux.

64. Donald E. DeLoux signed each of the program participation agreements between the free-standing DeLoux Schools named as respondents in this proceeding and ED.

66. HEAF issued a program review report on September 17, 1987 concerning DeLoux Schools administration of the GSL program.

67. In the HEAF program review report referenced in Stip. 66, HEAF, HEAF cited a serious concern about the late payment of tuition refunds.

68. In late September and early October 1989, DeLoux prepared refund checks payable to or on behalf of the following 16 former students in response to the HEAF 1987 program review report:

Name	Amount
[student name]	\$668.57, \$652.68
[student name]	\$962.65, \$309.62
[student name]	\$1300.00
[student name]	\$968.51, \$252.68
[student name]	\$951.32
[student name]	\$926.89
[student name]	\$1189.50
[student name]	\$966.00
[student name]	\$1249.02
[student name]	\$2500.00
[student name]	\$1536.75
[student name]	\$225.45
[student name]	\$1187.50
[student name]	\$1181.25
[student name]	\$1181.25
[student name]	\$883.21

71 .In an audit of the DeLoux Schools administration of the student financial assistance programs for the two years ended June 30, 1987, Peat Marwick, certified public accountants, stated that DeLoux generally did not prepare or deposit refunds on a timely basis.

72. Peat Marwick issued a written audit report of the audit referenced in Stip. 71, dated January 22, 1988, in which it recommended that DeLoux establish procedures whereby refunds are prepared timely and the related deposit is made promptly.

73. DeLoux concurred in the audit finding referenced in Stip. 71 and stated that it would implement procedures to comply.

74. In May 1987, Donald E. DeLoux told personnel in attendance at an executive staff meeting that he was looking into opening schools in Carlsbad, CA, Encinitis, CA, Bakersfield, CA, Fresno, CA, San Jose, CA, Santa Rosa, CA, Salt Lake City, UT, El Paso, TX, Phoenix, AZ, Flagstaff, AZ, Reno, NV, Las Vegas, NV, Guam, Figi Islands, and Japan.

75. In an executive staff meeting in January 1988, Donald E. DeLoux stated that DeLoux Schools of Cosmetology Inc.'s goal was to double the number of its schools.

76. In the CSAC program review report, CSAC noted that in 11 of 12 files reviewed refunds were either made late or not made as of the date of the review.

77. In the CSAC 1987 program review report, CSAC required DeLoux to inform it of procedures that would be used in the future to ensure timely payment of refunds. 78. HEAF addressed its 1987 program review of the DeLoux Schools to Eugene D. DeLoux

78. HEAF addressed its 1987 program review of the DeLoux Schools to Eugene D. DeLoux.

79. On October 19, 1989, Donald E. DeLoux wrote in a letter to Ron Lipton of ED that DeLoux had cleared ail refunds due in March, April, May and most of June on its NIH account.

80. Michele Vinolla was Vice President and Director of Operation of DeLoux Schools prior to Laura DeLoux assuming that position.

81. April 15, 1988, the then-Manager of Financial Aid for DeLoux, Katherine Zimov, stated in a written response to the Peat Marwick audit for the two-year period ending June 30, 1987 that DeLoux had procedures in place to ensure that refund deposits were timely made.

82. DeLoux filed a record of completion for [student name] with the State Board of Cosmetology on or about November 15, 1989 indicating that she completed the course in which she was enrolled on August 24, 1989.

83. DeLoux filed a record of completion for [student name] with the State Board of Cosmetology on or about November 9, 1989 indicating that she completed the course in which she was enrolled on October 31, 1989.

84. Refund checks dated November 8, 1989 were prepared for [student name], [student name] and [student name].

85. Check no. 29407, dated December 4, 1989, payable to DeLoux Schools NIH Account, in the amount of \$12,231.54, was prepared to cover Pell and SEOG refunds due to [student name], [student name], [student name], [student name], [student name], and [student name].

86. DeLoux deposited \$8943.97 with Imperial Bank on September 15, 1989 to cover check no. 25115, dated April 1, 1989, payable to DeLoux's NIH account, for Pell and SEOG refunds due to the following individuals, in the following amounts: [student name], \$180.00; , \$1100.00; [student name], \$285.00 (SEOG), \$1100.00 (Pell); [student name], \$1705.97; [student name], \$725.00; [student name], \$1100.00; [student name], \$448.00; [student name], \$1200.00; and [student name], \$1100 .00.

87. On May 71 1987, Robert Chin wrote to Eugene D. DeLoux to inform him of interest and special allowance due to ED on \$336,126.50 in late refunds made during 1984 through 1986.

89. DeLoux Schools of Cosmetology was first established by Donald E. DeLoux in 1973.

90. By letter dated October 30, 1989, DeLoux was advised by Deputy Assistant Secretary Roberta Dunn that the Department intended to terminate its eligibility to participate in the Title IV programs and to fine the schools \$950,000, subject to the Schools' right to a hearing on the record.
91. By letter dated November 6, 1989, Laura DeLoux advised Mr. Ronald Lipton of the Schools' intent to challenge the proposed actions.
92. On May 19 - 21, 1987, the California Student Aid Commission conducted a program review at DeLoux.
93. On August 5 and 6, 1967, HEAF conducted a program review at DeLoux.
94. DeLoux offers training to its students in the fields of cosmetology, cosmetician, manicuring, barbering and as teacher trainees.
95. DeLoux records reflect a drop date of November 10, 1989 for [student name].
96. The DeLoux Schools participated in the Pell Grant, Stafford Loan (Guaranteed Student Loans, Parent Loans for Students, and Supplemental Loans for Students), and campus-based (Supplemental Educational Opportunity Grant, Perkins Loan and College Work Study) programs.
97. OIG auditors Dale Fagan and Stan Karpinski visited the DeLoux La Mesa facility on September 18, 1989.
98. OIG auditor Stan Karpinski visited the DeLoux LaMesa facility on September 19, 1989.
99. The \$336,126.50 figure referenced in Stip. 87 was derived from DeLoux's reconstruction of its records for those years.
100. In its 1987 program review, CSAC reviewed files from each of the DeLoux Schools in operation.
101. During the months May through August 1969, refund checks were not signed and released by DeLoux until funds became available to make payment on them.
102. Both Donald DeLoux and Laura DeLoux attended the January 4, 1989 executive staff meeting.
103. Michele Vinolla became Director of Operations at DeLoux on or about January 19, 1987.
104. Prior to becoming Director of Operations at DeLoux, Michele Vinolla served as Assistant Director of Operations, a position she shared with Patricia Mayhue.

105. Donald DeLoux attended executive staff meetings at which financial aid matters were discussed.

106. Laura DeLoux attended executive staff and financial aid department meetings at which financial aid matters were discussed.

B. Continuation of Findings of Pact

I. General

DeLoux Schools of Cosmetology was established in 1973 and incorporated to do business in California. Donald E. DeLoux is the sole owner and has been the Chief Executive Officer of DeLoux since its establishment. As of the time of the hearing, May 1990, DeLoux operated 18 schools, 15 of which are freestanding and 3 branch campuses. The schools were at the following locations: La Mesa, CA; Beyer Blvd., San Diego, CA; El Cajon, CA; Escondido, CA; Stockton, CA; Hemet, CA; Vista, CA; Mira Mesa Blvd., San Diego, CA; Sunnymead, CA; El Centro, CA; Pleasanton, CA; Redlands, CA; Clairemont Mesa Blvd., San Diego, CA; Merced, CA; San Leandro, CA; and branches of the Hemet School at Palm Desert, CA; the La Mesa School at National City, CA; and the Pleasanton School at San Mateo, CA.

2. DeLoux Officers and Employees

Laura DeLoux assumed the office of President of DeLoux in January 1990 and served in that office through the May 1990 hearing. (T 7 at 1347 lines 2-5). It is unknown if there has been any further change since the hearing period. Prior to that position, Laura DeLoux held a variety of other posts within DeLoux Schools. She was a Vice President of the corporation from April 1989 to January 1990 and the Director of Operations from April 1989 to at least the date of the hearing. (Stip. 6, ED EX. at 0384) She assumed the Director's position from Michele Vinolla. Before April 1989, she occupied other receptionist and trainee positions with DeLoux.

Michele Vinolla was Laura DeLoux's predecessor as Director of Operations from January 1987 to April 1989. (Stip. 103, see also Stip. 80). As Director, she had oversight over the Financial Aid Department and supervised in succession, Ron Cole, Katherine Zimov, and Elizabeth Callahan. Also as Controller over both the financial aid department and the accounting department, in addition to being Director of Operations, her dual functions beginning in March 1988, Ms. Vinolla had authority to write corporate checks but only when Donald DeLoux was absent from the office or authorized her to sign on his behalf. (T4 at 610-611). The checks were written on a general account and only Mr. DeLoux had authority to sign them. (T4 at 611.) Prior to being Director, she was the Assistant Director of Operations, a position she shared with Patricia Mayhue. (Stips. 103,104). Ms. Vinolla was the Controller of DeLoux from March 1988 to September 1989 at which time she resigned. (T7 at 1359-1361). Vinolla was a Vice President of DeLoux from April 1989 until September 1989. (EX. G-2 at 0146 and 0135). Her resignation date in mid- September 1989 can be measured from the return date of Michele (Shell) Benito to DeLoux's Financial Aid Department. (T6 at 1081, T6 at 1047 and T4 at 809).

Michele (Shell) Benito served as a Financial Aid Supervisor at DeLoux from 1985 until July 1988, and from September 12, 1989 until November 1989. In approx. November 1989, Sheil Benito became Finance Manager (the successor position to Financial Aid Manager), a position she retained through May 1990. (T6 at 1042, 1045-1046, 1047, and 1222-1223 and T4 at 596).

Katherine Zimov served as Financial Aid Manager from January 1988-July 1988. She replaced Ron Cole in that position. (T7 at 1435-1436, T4 at 733).

Elizabeth Callahan served as Financial Aid Manager from June 1988 until August 1989. (T4 at 634). She testified that some of her duties included the processing of refunds due in connection with a student withdrawal. When this occurred a determination had to be made as to whether a student was entitled to a refund. This was a joint effort between the accounting department and financial aid and accounting would post that to the student's card. (T4 at 604). The financial aid department prepared the weekly refund list of students which would encompass their withdrawal date, their name and the amount of money which was to go back into which program. (T4 at 604).

Kathy Hoersch was a Finance Manager (successor position to Financial Aid Manager) from September 1989 - November 1989.

Kimberly Daniels Romanoski was an accounts receivable clerk from the end of July 1988 until October 1989. She then worked in the Financial Aid Department from October 1989-November 28, 1989. (T4 at 806 and 816).

Ron Cole had been the preceding Controller for DeLoux serving in that capacity from January 1987-January 1988. He oversaw the activities of the Financial Aid Department as part of that position. (EX. G-1 at 0124, 0114, ED EX. 28, ED EX. 30).

3. Participation Agreements

The signatory of any participation agreement by which DeLoux Schools received any Title IV funds was Donald E. DeLoux. He signed each of the agreements between the free-standing DeLoux Schools discussed above. (Stip. 64). By signing the participation agreements, Donald DeLoux agreed that the DeLoux schools would administer the Title IV programs in accordance with the applicable statutes and regulations. (EX. I at 0168, 0172).

4. Limitation Agreement

DeLoux Schools and Donald (Eugene) DeLoux entered into a limitation agreement for the 1979-80 award year which limited the DeLoux Schools' participation in Title IV programs due to their violation of statutes and regulations governing the Title IV programs. (ED EX. 34 at 0665-0667). DeLoux Schools has had a history of making untimely student loan refunds. Proof of this practice is evidenced by the fact that DeLoux made no less than \$336,126.50 in untimely refunds during the years 1984 through 1986. (Stips. 87,89). DeLoux also paid an informal fine of \$10,000 to ED for its 1984-1986 late refund violations. (EX. F at 0012).

Guarantee agencies are required by Federal law to conduct program reviews at schools whose loans constitute a specified percentage of their portfolios to ensure that the schools are meeting Federal regulatory requirements.

5. California Student Aid Commission

Various program reviews have been conducted by the California Student Aid Commission (CSAC) and the Higher Education Assistance Foundation (HEAF). The CSAC conducted a program review at DeLoux on May 19-21, 1987, during which it reviewed files from each school in operation. CSAC reviewed 12 files where refunds were required to be made, and found that, in eleven of the twelve cases, refunds were overdue and unpaid (seven cases) or were untimely paid (four cases). (Stips. 92,100,76, T.2 at 304-305, EX. A at 0065-0077). CSAC employed a procedure for contacting school officials whereby schools identify, and periodically update, the names and phone numbers of individuals at the school for CSAC to contact for different issues. The information provided is keyed into CSAC's database and this information is used to determine who to contact at a particular school (T.2 at 294-297). CSAC contacted the individual(s) identified by DeLoux as the individual(s) responsible for handling program reviews when scheduling, conducting, and doing follow up on the CSAC review. (T.2 at 304). CSAC reported its findings to Ron Cole, the controller at DeLoux, and Sheli Bonito and Susan Jones, both Financial Aid Supervisors. (T.2 at 304, 318-320, 294, 321). During its program review of DeLoux, CSAC found that the school had no system in place to ensure the timely payment of refunds. (Stip. 77). On August 5, 1987, CSAC reported to DeLoux in writing the results of the program review it conducted on May 19- 21, 1987. (EX. A at 0065-0077). DeLoux did not provide all information requested by CSAC, and the CSAC program review remained open and unresolved for one and one-half years. (EX. HH at 0964, T. 2 at 320-323). CSAC "administratively" closed its review on or about February 14, 1989, when it was able to ascertain through its own database that DeLoux had made the final refund it was required to make in response to the CSAC review. (EX. HH at 0964, T.2 at 320-322).

6. Higher Education Assistance Foundation

On a separate basis, HEAF conducted a program review at DeLoux on August 5 and 6, 1987. (Stip. 93). HEAF then issued a program review report on September 17, 1987, concerning DeLoux's administration of the GSL program, in which it cited a serious concern about the late payment of tuition refunds. (Stips. 66 and 67.). HEAF addressed its 1987 program review report to Eugene D. DeLoux (EX. 00 at 0272). On April 20, 1988, DeLoux acknowledged it had a problem with untimely refunds and informed HEAF that it had been making changes to relieve the late refund problem. DeLoux offered an assurance that under the new database system all refunds were processed within 30 days. (EX. 0 at 0272).

7. Peat Marwick

In an audit conducted by DeLoux's own auditors, Peat Marwick, certified public accountants, for the 2-year period which ended on June 30, 1987, the auditors stated that DeLoux generally did not prepare or deposit refunds on a timely basis. Peat Marwick issued a written report dated January 22, 1988, which recommended that DeLoux establish procedures whereby refunds are

prepared timely and the related deposit is made promptly. (Stips. 71 and 72). DeLoux concurred in the audit finding that it did not prepare deposit refunds on a timely basis and informed its auditors that it would implement procedures to comply. (Stip. 73). On April 15, 1988, Katherine Zimov, DeLoux's then-manager of Financial Aid, supplied a written response to the Peat Marwick audit and represented that DeLoux had procedures in place to ensure that refund deposits were timely made. (Stip. 81).

8. Education Auditors

Education (ED) Auditors became actively involved at DeLoux during the week of February 13, 1989. Auditors Dale Fagan and Gloria Pilotti from the Office of Inspector General (OIG) conducted a preliminary survey of the DeLoux's Schools' operation of the Student Financial Aid program for the calendar year 1988. (EX. A at 0045-46, T.1 at 72-73,83). ED auditors reviewed the complete files of 34 students in the preliminary survey. (T.1 at 84). Sefton Boyars, ED Regional Inspector General for Audits on Region IX, reported the outcome of the preliminary survey to Donald E. DeLoux by letter dated May 25, 1989. ED auditors determined that 83% of the 34 student files reviewed had late or unpaid refunds. (T.1 at 81-82).

OIG auditors Dale Fagan and Stan Karpinski visited the DeLoux La Mesa Facility on September 18, 1989, for the purpose of checking if DeLoux was improperly paying refunds. Stan Karpinski returned to DeLoux on September 19, 1989. On September 18, 1989, Donald E. DeLoux stated to Dale Fagan and Stan Karpinski that the DeLoux Schools had not paid all refunds then due to student financial assistance program accounts, students and lenders. He also stated that DeLoux Schools did not have sufficient cash to cover the refund checks payable to then current and former students which were on the premises at DeLoux. (Stips. 13, 14). DeLoux personnel provided to Stan Karpinski and Dale Fagan the document that is now ED EX. 7 on September 18, 1989, in response to their request for documentation of the amount of refunds outstanding. (T.2 at 246). When asked by Stan Karpinski if any of the amount on ED EX.7, which was dated September 5, 1989, had been paid since the document was prepared, Kathy Hoersch produced a check in the approximate amount of \$8,900.00 and stated that amount had been paid. (T.2 at 246). Stan Karpinski and Dale Fagan verified that the total amount of unpaid refunds documented on ED EX. 7 was accurately recorded by DeLoux, by reviewing monthly totals and confirming that they added up to the grand total, reviewing weekly totals for a one month period and confirming that they added up to the monthly total and then reviewing actual student records for the students for whom refund checks were prepared in a one week period, to ensure that the reported weekly total was correct. (ED. Ex. 35). At the time of the ED auditors visit on September 18-19, 1989, refund checks dated March through July were on the premises at DeLoux, and refund checks for refunds identified by DeLoux as owing in the month of August had not yet been prepared. (T. 1 at 107). March, April, May and June refund checks were on the premises at DeLoux on September 19-18, 1989, and were cut, signed and placed with the ledger cards and other documents pertaining to the student due the refund on a desk in Kathy Hoersch's office while refund checks for the month of July were contained in an uncut computer run and were on a desk in Kathy Hoersch's office. (T. 1 at 105 106).

Following ED auditors review and adverse conclusions, the U.S. Department of Education, by its Office of Student Financial Assistance (OSFA) and its Deputy Assistant Secretary Roberta

Dunn, advised DeLoux in a letter dated October 30, 1989, that the Department intended to terminate its eligibility to participate in the Title IV programs and to fine it \$950,000 subject to its right to a hearing on the record. (Stip. 90). DeLoux exercised its option of requesting a hearing. The hearing request was contained in Ms. Laura DeLoux's letter to Ronald Lipton, Chief of the Program Compliance Branch (OSFA), dated November 6, 1989, which stated DeLoux's intent to challenge the proposed termination and fine actions. (Stip. 91).

9. Business Expansion Plan

In June 1969, DeLoux was pursuing a course of expansion through the purchase of an existing chain of cosmetology schools in operation in the Hawaiian Islands. DeLoux was already "set Up with reps and retail outlets and warehouses" at four Hawaiian locations. (ED. EX. 22 at 0381-0382). As part of its Business Plan DeLoux completed significant work toward the development and distribution of its own brand of skin care products, projecting a fall launch date for the skin care line throughout the summer of 1989. (ED. EX. 18 at 0364, R-7-2, R-8-2).

10. Use of Ledger Cards

DeLoux used a ledger card (see, for example, ED EX. 4 at 0062) to record financial transactions affecting individual student accounts. (T. 4 at 603). The number in the "date" column on the student ledger card is the date that the entry was recorded, not the date of the underlying event. (T. 6 at 1274, T. 4 at 817, T. 7 at 1373). A numerical entry in brackets in the "balance" column on the student ledger card indicates that the account has fallen into "refund status" and that a refund is therefore due to the student as of the occurrence of the event that prompted the entry. (T. 4 at 812). An entry at the bottom of the ledger card, above the double line, that contains the notation "W/D" and a date is the student's withdrawal date. (T. 6 at 1277, T. 4 at 718). The notations "UET" and "IA" on a ledger card mean "unearned tuition" and "inactive." (T. 6 at 1272). An entry below the double line at the bottom edge of the ledger card that contains a date, the notation "ck. #, " and amount, and initials is an entry reflecting that a refund check was prepared on the date indicated on the check number indicated in the amount indicated and made payable to a party indicated by the initials, either a lender, the student ("stu"), or a Title IV program trust account.

11. Posting Refunds

Refund checks were posted to student ledger cards at DeLoux after the checks were prepared and before the checks were signed. (T. 4 at 813 - 819). Prior to posting a refund to a student's ledger card, DeLoux Accounting Department staff write a notation at the bottom of the ledger card, indicating that the check has been prepared (on the date indicated on the check number indicated in the amount indicated and made payable to a party indicated by initials.) (T.4 at 813). The posting entry for a refund is made subsequent to the notation made at the bottom of the card concerning the prepared check and contains the date that the entry is made in the "date" column; the notation "REF" for "refund," a check number and the account, lender or student to whom the refund is paid in the "description" column; and the amount of the refund in the "charges" column. (T. 6 at 1272, ED. EX. 4, T. 5 at 851, ED. EX. 11 and 12, T. 4 at 810, ED. EX. 10). Once a refund is posted to a student's account, the prepared check, the ledger card, a letter to the bank in

the case of GSLs, the notice of termination, and in the case of Guaranteed Student Loans, a cover letter to the lender are brought to the DeLoux executive office for review and signature by the Chief Executive Officer (or, in his absence, another individual authorized by him to sign refund checks, usually the Director of Operations). (T. 4 at 610 - 611)

12. Late Refunds

DeLoux has been untimely as to a vast number of refunds which were due under Title IV, HEA programs. In its proposed findings of fact OSFA has set forth a listing of the number of days that a refund was late, or the least number of days that a refund was late, as to specifically listed persons. Some of the due dates as proposed by OSFA have been adopted while others have had to be revised in these findings in view of errors in the application of regulations. 6/ However, despite the revision of the dates, the refunds in ail but two cases were still overdue. Nineteen Pell, SEOG, and Perkins alleged overdue refund violations have been deleted from the proposed findings since the alleged violations occurred fully outside the periods of March, 1989 to August, 1989 and May, 1989 to August, 1989. These are the respective periods during which Pell and Perkins refund violations have been alleged in the notice of intent to terminate eligibility and to fine. Two other alleged refund violations have been deleted because they were processed before January 1, 1987. The following are lists of the names of the persons and least number of days that a refund was late. The lists of names are broken down into convenient groupings. A name is repeated when more than one type of refund was due as relates to that person.

a.

<u>Name</u>	<u>Number of Days</u>	<u>Late Name</u>	<u>Number of Days</u>	<u>Late</u>
[student name]	120 days	[student name]	25days	
[student name]	90 days	[student name]	68 days	
[student name]	245 days	[student name]	123 days	
[student name]	177 days	[student name]	76 days	
[student name]	177 days	[student name]	76 days	
[student name]	3 days	[student name]	109 days	
[student name]	128 days	[student name]	121 days	
[student name]	153 days	[student name]	62 days	
[student name]	95 days	[student name]	49 days	
[student name]	84 days	[student name]	95 days	
[student name]	69 days	[student name]	95 days	
[student name]	57 days	[student name]	40 days	
[student name]	57 days	[student name]	10 days	
[student name]	121 days	[student name]	87 days	
[student name]	26 days	[student name]	68 days	
[student name]	106 days	[student name]	49 days	

[student name]	88 days [student name]	19 days
[student name]	93 days [student name]	646 days
[student name]	93 days [student name]	97 days
[student name]	106 days [student name]	60 days
[student name]	106 days [student name]	255 days
[student name]	127 days [student name]	104 days
[student name]	127 days [student name]	33 days
[student name]	68 days [student name]	96 days
[student name]	69 days	

References: Stips. 22-25, 30-31, 37-38, 40-54, 57-58, 85; ED EX. 31 at 0480-0481, 0488-0490, 0501-0503, and 0505-0507; EX CC at 0913-0918.

b.

<u>Name</u>	<u>Number of Days</u> <u>Late</u>	<u>Number of Days</u> <u>Late</u>
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	156 days [student name]	116 days
[student name]	152 days [student name]	116 days
[student name]	109 days [student name]	168 days
[student name]	109 days [student name]	204 days
[student name]	109 days [student name]	145 days
[student name]	156 days [student name]	145 days
[student name]	152 days [student name]	145 days
[student name]	289 days [student name]	145 days
[student name]	289 days [student name]	145 days
[student name]	269 days [student name]	145 days
[student name]	109 days [student name]	194 days
[student name]	109 days [student name]	158 days
[student name]	109 days [student name]	145 days
[student name]	109 days [student name]	145 days
[student name]	109 days [student name]	145 days

[student name]	109 days [student name]	145 days
[student name]	109 days [student name]	145 days
[student name]	109 days [student name]	145 days
[student name]	145 days [student name]	115 days
[student name]	145 days [student name]	115 days
[student name]	145 days [student name]	109 days
[student name]	116 days [student name]	109 days
[student name]	116 days [student name]	116 days
[student name]	116 days [student name]	116 days
[student name]	109 days [student name]	190 days
[student name]	109 days [student name]	190 days
[student name]	109 days [student name]	190 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	109 days [student name]	109 days
[student name]	120 days [student name]	109 days
[student name]	120 days [student name]	109 days

References: ED Ex. 4 at 0059, 0062-0063, 0068, 0077-0080, 0084, 0086, 0087, 0090, 0092, 0097, 0098, 0098A, 0103, 0105-0107, 0113, 0114, 0116, 0119, 0120, 0123, 0127, 0129, 0130, 0131, EX. CC at 0956-0958, ED EX. 5 at 0124, ED Ex. 9 at 0310, 0314, ED EX. 31 at 0489, T.1 at 105 line 17-110 line 4, T.2 at 252 line 18-255 line 6.

c.

<u>Name</u>	<u>Number of Days</u> <u>Late Name</u>	<u>Number of Days</u> <u>Late</u>
[student name]	94 days [student name]	22 days
[student name]	61 days [student name]	23 days
[student name]	46 days [student name]	13 days
[student name]	9 days [student name]	14 days
[student name]	41 days [student name]	81 days
[student name]	96 days [student name]	44 days
[student name]	34 days [student name]	36 days
[student name]	62 days [student name]	105 days
[student name]	44 days [student name]	22 days
[student name]	44 days [student name]	77 days

[student name]	37 days [student name]	88 days
[student name]	2 days	
[student name]	106 days	
[student name]	89 days	

References: ED EX.2 at 0005, 0010; ED EX. 8 at 0149-0162, 0170- 0177, 0192-0213, 0217-0226, 0230-0249C, 0253-0268, 0270-0277, 0284-0304; ED EX. 10; ED EX. 12; ED EX. 15; ED EX. 17; ED EX. 36 at 0670; EX. G-i at 0014, 0018; T.1 at 155 line 6 - 161 line 6; T.2at 168 line 6-177 line 11, 230 line 20 - 231 line 5 (Dale Fagan); T.4 at 640 line 11-641 line 17 (Elizabeth Callahan).

d.

<u>Name</u>	<u>Number of Days</u> <u>Late Name</u>	<u>Number of Days</u> <u>Late</u>
[student name]	38 days [student name]	31 days
[student name]	42 days [student name]	167 days
[student name]	62 days [student name]	167 days
[student name]	27 days [student name])	167 days
[student name]	51 days [student name]	167 days
[student name]	24 days [student name]	167 days
[student name]	167 days [student name]	167 days
[student name]	167 days [student name]	167 days
[student name]	194 days [student name]	167 days
[student name]	174 days [student name]	75 days
[student name]	547 days [student name]	477 days
[student name]	243 days [student name]	105 days
[student name]	599 days [student name]	29 days
[student name]	45 days [student name]	29 days
[student name]	180 days [student name]	34 days
[student name]	13 days [student name]	338 days
[student name]	29 days [student name]	57 days
[student name]	6 days [student name]	278 days

References: ED EX. 8 at 0163, 0178, 0181, 0185-0190, 0227, 0249D, 0263, 0278-0283A; EX. A at 0050-0052, 0065, 0071-0074; EX. L at 0251; EX. M at 0254, 0255, 0257; EX. O at 0271, 0274-0276, 0323- 0324; Stip. 86; T.2 at 304, line 12-305, line 24 (Ron Selge) , at 360 line 3-364

[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]
[student name]	[student name]

Check List

Check No.	Amount	Check Date
25787	\$ 8771.56	June 1, 1989
25502	\$ 7776.98	June 1, 1989
25788	\$ 8767.64	June 1, 1989
25779	\$ 8312.01	June 1, 1989
25790	\$11104.94	June 1, 1989
25791	\$ 8644.01	June 1, 1989
25792	\$ 8488.41	June 1, 1989
25793	\$ 6288.00	June 1, 1989

References: ED Ex 4 at 0059, 0062-0066 ([student name]'s file), 0068-0077([student name]'s file) , 0075-0081 ([student name]'s file) , 0082-0088([student name]'s file> , 0109-0117 ([student name]'s file), 0114, 0126-0133 ([student name]'s file>, 00890094 ([student name]'s file), 0095-0100 ([student name]'s file), 0101-0108([student name]'s file) , 0119-0125 ([student name]'s file) , 0130, ED Ex. 35 at 0668-0669, ED Ex. 10, T. 4 at 817 lines 12-22(Kimberly Romanoski) , T. 1 at 105 line 17-110 line 4 (Dale Fagan) , T. 2 at 252 line 18-255 line 6 (Stan Karpinski) .

b. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of March 16, 1989, and a GSL refund in the amount of \$405.49 due. [student name]'s GSL refund check, check number 25533, was written in the amount of \$405.49, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989, or June 30, 1989, (the posting entry). The testimony of the auditors shows that check 25533 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September

18-19, 1989, visit to the school The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid.

References: ED EX. 4 at 0062-0063 withdrawal date of March 16, 1989, and refund amount ED EX. 4 at 0062, 0064-0065, ED EX. 35 at 0668-0669, ED EX. 10 T. 4 at 817 lines 12 - 22 (Kimberly Romanoski) , T. 1 at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 at 252 line 18 - 255 line 6 (Stan Karpinski).

c. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of March 20, 1989, and a GSL refund in the amount of \$589.49 due. [student name]'s GSL refund check, check number 25534, was written in the amount of \$589.49, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989 or June 30, 1989, (the posting entry). The testimony of the auditors shows that check 25534 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September 18-19, 1989 visit to the school. The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid, and thus did not reflect when or if the refund was paid.

References: ED EX. 4 at 0067-0072 withdrawal date of March 20, 1989, and refund amount ED EX. 4 at 0068 student ledger card, ED EX. 35 at 0668-0669, ED EX. 10 T. 4 at 817 lines 12-22 (Kimberly Romanoski) , T. 1 at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 at 252 line 18 -255 line 6 (Stan Karpinski) .

d. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of March 14, 1989, and a GSL refund in the amount of \$1207.49 due. [student name]'s GSL refund check, check number 25591, was written in the amount of 1207.49, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989, or June 30, 1989, (the posting entry). The testimony of the auditors shows that check 25591 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September 18-19, 1989, visit to the school The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid, and thus did not reflect when or if the refund was made.

References: ED EX. 4 at 0095-0097 withdrawal date of March 16, 1989, and refund amount ED EX. 4 at 0097, 0098A-0099 shows check number 25591, student ledger card with June i and June 30, 1989, entries, ED EX. 35 at 0668-0669, ED EX. 10, T. 4 at 817 lines 12-22 (Kimberly Romanoski) , T. 1 at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 at 252 line 18 - 255 line 6 (Stan Karpinski).

e. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of April 26, 1989, and a GSL refund in the amount of \$1207.49 due. [student name]'s GSL refund check, check number 25603, was written

in the amount of \$1207.49, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989, or June 30, 1989, (the posting entry). The testimony of the auditors shows that check 25603 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September 18-19, 1989, visit to the school. The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid, and thus did not reflect when or if the refund was made.

References: ED EX. 4 at 0101 shows withdrawal date of April 26, 1989, and refund amount ED EX. at 0103, 0106 shows check number 25603, student ledger card with June 1 and June 30, 1989 entries, ED EX. 35 at 0668-0669, ED EX. 10 T. 4 at 817 lines 12-22 (Kimberly Romanoski) , T. i at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 at 252 line 18 - 255 line 6 (Stan Karpinski).

f. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of April 25, 1989, and a GSL refund in the amount of \$1136.20 due. [student name]'s GSL refund check, check number 25629, was written in the amount of \$1136.20, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989, or June 30, 1989, (the posting entry). The testimony of the auditors shows that check 25629 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September 18-19, 1989, visit to the school. The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid, and thus did not reflect when or if the refund was made.

References: ED EX. 4 at 0119-0124 shows withdrawal date of April 25, 1989, and GSL refund amount, check number 25629, student ledger card with June i and June 30, 1969, entries, ED EX. 35 at 0668-0669, ED EX. 10, T. 4 at 817 lines 12-22 (Kimberly Romanoski) , T. 1 at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 at 252 line 18 -255 line 6 (Stan Karpinski) .

g. DeLoux kept inaccurate records concerning a GSL refund due to [student name]. [student name]'s student ledger card shows a withdrawal date of February 10, 1989, and GSL refund in the amount of \$461.49. [student name]'s GSL refund check, check number 25641, was written in the amount of \$461.49, and was dated June 1, 1989, but was still on the premises of the DeLoux Schools on September 18-19, 1989. [student name]'s student ledger card gives the impression that the GSL refund was paid on either June 1, 1989, or June 30, 1989 (the posting entry). The testimony of the auditors shows that check 25629 was not written on June 1, 1989, but rather was written during the month of June, 1989, and had not been mailed as of the auditors' September 18-19, 1989, visit to the school. The date of the check, therefore, and the ledger card entries were meaningless to show when the check was written, mailed, and/or paid, and thus did not reflect when or if the refund was made.

References: ED EX. 4 at 0127-0128, 0131-0132 shows withdrawal date of February 10, 1989, and GSL refund amount, check number 25641, student ledger card with June 1 and June 30,

1989, entries, ED EX. 35 at 0668-0669, ED EX. 10, 817 lines 12-22 (Kimberly Romanoski) , T. 1 at 105 line 17 - 110 line 4 (Dale Fagan) , T. 2 252 line 18 -255 line 6 (Stan Karpinski).

h. As relates to the persons listed below, DeLoux kept inaccurate records concerning Title IV HEA program refunds. Checks for refunds were dated on the dates set forth in the column entitled "Check Date." The check was not received by the lender until the date set forth in the column entitled "Lender Received." The date DeLoux wrote on the check did not reflect the date DeLoux mailed the check, and thus did not reflect when DeLoux paid the student's refund.

<u>Name</u>	<u>Check Date</u>	<u>Lender Received</u>
[student name]	12/1/86	4/24/87
[student name]	5/8/86	10/22/86
[student name]	12/31/86	4/24/87
[student name]	12/31/86	4/24/87
[student name]	3/27/87	4/15/87
[student name]	3/27/87	4/15/87
[student name]	4/13/87	4/30/87
[student name]	5/31/87	7/2/87
[student name]	6/16/87	7/6/87
[student name]	6/16/87	7/6/87
[student name]	5/27/87	7/2/87
[student name]	5/27/87	7/2/87
[student name]	5/27/87	7/2/87
[student name]	6/16/87	7/6/87
[student name]	5/27/87	7/2/87
[student name]	3/27/87	4/15/87
[student name]	3/27/87	4/15/87
[student name]	4/13/87	4/30/87
[student name]	3/27/87	4/15/87
[student name]	6/16/87	7/8/87
[student name]	3/27/87	4/15/87

References: Ex. A at 0050-0052; Ex. M at 0254-0255; Ex. O at 0270, 0278, 0280, 0285, 0303-0305, 0312-0314, 0340-0341, 0345- 0346, 0400-0401, 0406-0407; Ex. Z at 0549, 0559-0560, 0565-0571A, 0576-0579, 0582-0586, 0589-0593, 0599-0604. T.2 at 360 line 3364 line 14, 373 line 14-374 line 21, T.3 at 430 line 10-431 line 18, T.2 at 379 lines 7-21, at 383 lines 6-10, 381 lline 21 - 383 line 5, T.3 at 539 line 7 - 541 line 22 (Lynda Folwick)

i. As relates to the persons listed below, DeLoux created and maintained inaccurate and misleading records concerning Title IV HEA program refunds. Checks for refunds were dated on

the dates set forth in the column entitled "Check Date." Funds were later deposited to cover such checks on the dates set forth in the column entitled "Funds Deposited."

<u>Name</u>	<u>Check No.</u>	<u>Check Date</u>	<u>Funds Deposited</u>
[student name]	028750	11/24/89	12/20/89
[student name]	028773	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]	028772	11/27/89	12/27/89
[student name]		11/28/89	12/27/89
[student name]		11/28/89	12/27/89
[student name]		11/28/89	12/27/89
[student name]		11/28/89	12/27/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]		11/3/89	11/9/89
[student name]	028785	11/30/89	12/27/89
[student name]	028788	12/6/89	12/27/89
[student name]	028788	12/6/89	12/27/89
[student name]	028788	12/6/89	12/27/89

[student name]	028788	12/6/89	12/27/89
[student name]	028795	12/8/89	12/27/89
[student name]	028795	12/8/89	12/27/89
[student name]	028795	12/8/89	12/27/89
[student name]	028796	12/8/89	12/27/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89
[student name]	25115	4/1/89	9/15/89

References: Stips. 22, 23, 27, 28, 32, 33, 37, 38, 40, 41, 44, 45, 48, 49, 51, 52, 55, 56, 86.

VI. Discussion and Additional Findings of Fact

The above findings of fact clearly establish numerous violations off various regulations, particularly as to untimely refunds and failure to maintain proper records. The notice of intent to terminate the eligibility of DeLoux to participate in Title IV, HEA programs and intent to fine DeLoux (Notice) is based on specific alleged violations of regulations as described in seven paragraphs starting on page one of the Notice.

The determinations herein will then be confined to the specific issues described in those seven paragraphs. The first paragraph alleges a failure to pay Stafford Loan refunds and untimely payment of such refunds. This is an allegation which is not confined to a specific time period. However, paragraphs three and four confine the allegations of violations to specific time periods. As to Pell and SEOG program accounts the period alleged is March, 1989 to August, 1989. As to Perkins Loan funds the allegations relate to the period of May, 1989 to August, 1989. Consequently alleged violations outside of those periods will not be considered as the direct subject of a fine proceeding. However, they may be a part of a history of prior violations.

As to recordkeeping violations, paragraph two very specifically confines us to a consideration of records of the dates refunds are made and more specifically refers to DeLoux's entry in its ledger of the date a refund check is written, which does not constitute a proper record because of DeLoux's practice of holding these checks for months in the institution rather than delivering them to the lenders, students, or the Title IV, HEA program accounts.

As to the remaining allegations:

1. Failure to meet its financial obligations relates to a failure to refund institutional charges, as evidenced by its practice of holding refund checks in the institution, not making refunds or making untimely refunds;
2. Violations of its fiduciary duty is evidenced by its refund and recordkeeping practices described above and also by failure to provide requested records for program reviews; and
3. Failure to demonstrate the necessary administrative capability to administer the Title IV, HEA program is also evidenced by the repetition of its refund violations after notification that its practices violated the regulations and as evidenced by maintaining ledger entries of refund dates that are not consistent with the dates on which refunds are in fact made.

Consequently, all proposed findings which are not specifically encompassed within the above described limitations will not be considered in deciding this case.

Termination of Eligibility

Although DeLoux originally contested the termination proceeding, it entered into a stipulation with OSFA on the first day of the hearing in this case which resolves the termination issue. DeLoux stipulated that the eligibility of the eighteen DeLoux Schools of Cosmetology to participate in the student financial assistance programs (Title IV programs) would be terminated effective May 7, 1990 and that no request for reinstatement of eligibility may be made by DeLoux for a period of eighteen months from the effective date of the termination, May 7, 1990. Consequently an order to that effect will be issued hereinafter.

Penalty Proceeding

Donald E. DeLoux signed the participation agreements by which DeLoux received Title IV funds (Stip. 64). By signing these participation agreements he agreed that DeLoux Schools would administer the Title IV programs in accordance with the applicable statutes and regulations (Ex.I at 0168,0172).

It is clear from the findings of fact that DeLoux has violated the above mentioned regulations on a continuing basis.

Untimely Refunds

The regulations regarding the time within which refunds are to be made are set forth herein under Section II. - Applicable Law. For Stafford Loans, prior to the change which was effective on July 20, 1989, 34 C.F.R. § 682.607 provided that refunds were to be paid within 30 days of a student's withdrawal from school or failure to return from a leave of absence. This provision applies to almost all refund violations in this case. The regulation refers to 34 C.F.R. § 682.605. This provides that, except in cases involving leaves of absence, the withdrawal date is the earlier of : a.) the date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or b.) the date of withdrawal, as determined by the school Provisions for Pell Grant and campus-based programs (SEOG and Perkins loans) are in

34 C.F.R § 668.22. Refunds are to be made to the appropriate accounts within 30 days of the date a student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

By applying these regulations as well as other versions, as applicable for different time periods, findings of fact have been made which show a vast number of untimely refunds. These total approximately 190. This is a relatively large number in view of the restricted periods alleged in this case for violations as to Perkins loan, SEOG and Pell refunds. (May, 1989 to August, 1989 and March, 1989 to August, 1989, respectively.)

In computing the number of days that a refund was late the actual number of days listed is, in many cases, less than the actual number of days involved because in those instances it is the "least" number of days that a refund was late. This is because in many instances some benchmark had to be used which it was known would be on or before the actual date that the refund could be made (such as a date that a ledger card and unnegotiated refund check was observed by an auditor at the institution, which date was after the refund was due.)

For the purpose of determining the extend of an overdue refund, which involved a leave of absence, the record of the leave of absence has been examined from the standpoint of whether the leave of absence on its face, complies with the Education Department regulations (34 C.F.R. § 682.605(c)) and has been approved by the institution. To the extent that the time involved and the other aspects of the leave comply with federal regulations, the leaves of absence have been given credit despite certain additional reasons OSFA has asserted as to why a leave of absence should not be honored. This, of course, resulted in reducing the extent of the untimeliness of the refunds. Applying such procedure, however, resulted in only one instance where honoring the leave of absence resulted in a completely timely refund. [7/](#)

The vast number of untimely refunds is evident in the finding of fact, as well as the substantial number of days that they were late. Approximately 190 late refunds are listed. Of these approximately 118 are at least over 100 days late. It is evident that DeLoux prepared refund checks and posted them to ledger cards and held the checks for substantial periods of time. The ED department auditors observed this when they encountered checks dated March, April, May, June, and July 1989 on the premises at DeLoux in mid September 1989. T.1 at 107 lines 5-19. ED auditors determined that over \$500,000 in refunds, for which checks were prepared and entries posted on student ledger cards, during that time period, was unpaid as of September 19, 1989. Donald DeLoux told ED auditors on September 18, 1989 that DeLoux did not have funds available to pay these refunds. Stip. 14. On May 15, 1990 during the hearing in this case, Laura DeLoux estimated that \$200,000 of these refunds, identified by DeLoux as due to students by dates ranging from June to August 1989 were still unpaid. T.1 at 1449, line 11 - 1450 line 2. [8/](#)

Recordkeeping Violations

The regulations provide that an institution must comply with certain recordkeeping requirements. 34 C.F.R. § 668.23(f) (1) (iv) requires an institution to establish and maintain on a current basis, for each recipient of Title IV funds, records regarding any refunds due or paid to the student, or Title IV program account, or a lender. Under 34 C.F.R. § 682.610 an institution must establish

and maintain all necessary records to protect the rights of student and parent borrowers and to protect the United States from unreasonable risk of loss.

The findings of fact set forth a vast number of violations of these regulations in view of the fact that ledger card entries did not reflect dates of actual completed transactions and check dates did not reflect the actual payment of refunds. There are approximately 133 such violations shown in the findings of fact. It should be noted that the variation in the dates of checks and dates of deposit as to a number of these check transactions is not great. Consequently those, which are obvious in the findings of fact, are not of major significance. However, a large number of the transactions have wide discrepancies. These same discrepancies as well as ledger card inaccuracies also constitute the foundation for other violations of regulations.

Under 34 C.F.R. § 668.14 an institution must demonstrate that it is capable of adequately administering Title IV programs. The vast number of refund violations as well as recordkeeping inaccuracies demonstrate a failure of DeLoux to comply with such regulation. Under 34 C.F.R. § 668.82. an institution is required to act as a fiduciary using the highest standard of care and diligence in administering the Title IV programs and in accounting to the Secretary for funds received under those programs.

The discrepancies and inaccuracies in recordkeeping as well as the refund practices set forth in the findings of fact constitute a serious failure of DeLoux to carry out its fiduciary duties in violation of 34 C.F.R. § 668.82.

Under 34 C.R.R. § 668.13(b) (3) an institution is required to demonstrate financial responsibility to be a participant in Title IV programs. The practice of failing to refund institutional charges by holding refund checks and not making refunds when due also constitute a violation of this regulation.

Consideration of Penalties

Under 34 C.F.R. § 668.92 the decision maker is required to take into account the gravity of the institution's violations or failure to carry out the relevant statute, regulation or agreement, or the gravity of any misrepresentation and also the size of the institution.

Gravity

The nature of the violations relating to a failure to refund, for long periods of time, funds due under Title IV, HEA programs is extremely serious. There are approximately 190 such violations, most of which were for long periods of time.

The consequences flowing from the refund violations are many. For example the students are harmed because they will be paying on a balance that is higher than it should be, their payments may be higher and they may default as a result. The students in this case did voice their complaints. They had problems with obtaining other loans and problems with re-enrollment in school. DeLoux received 5 to 10 calls a day during November 1989 from students complaining about refunds. T. 5 827 - 831.

Nonpayment and late payment of refunds also causes the United States Department of Education to pay excess interest costs and excess special allowance costs; these costs can amount to hundreds of dollars per student. T. 3 at 517 lines 23-25; at 518 line 22 - 519 line 9. As the Department of Education re-insures guarantees paid to lenders by guarantee agencies, it loses substantial money for virtually every student default occasioned by a late refund. All losses to ED are ultimately paid for by the taxpayers of the United States. The lenders issuing the loans suffer the burdens and costs associated with re-doing paperwork concerning loan repayment, responding to student complaints and unnecessary collection work. T. 3 at 517 line 16 - 518 line 11.

The impact on guarantee agencies guaranteeing the loans is a great increase in costs; nonpayment of refunds increases the repayment default rate. And since guarantee agencies are re-insured for only a percentage of defaulted loans, a guarantee agency's costs increase when refunds are either not made or are untimely. The guarantee agencies also pay the administrative costs associated with handling complaints made to them by students. T. 3 at 518 lines 12-21.

DeLoux has taken the position that its two top officers, Donald DeLoux and Laura DeLoux did not know of the refund violations until August, 1989 when DeLoux received notice from OSFA that it was being placed on the reimbursement method of funding. Therefore it argues that the gravity of the offenses is less under those circumstances. Whether or not the two top officers did or did not know, DeLoux as an entity is responsible.

It is a basic legal premise that corporations are responsible for the acts of their employees, acting within the scope of their employment. If an act is done while a servant is acting in his master's business, although mistakenly or ill-advisedly, with a view to furthering the master's interests or from impulse or emotion that naturally grew out of or was incident to the attempt to perform the master's business, the act is within the scope of employment. Fletcher Cyclopedia, Corporations, § 4877 at 326.

Contrary to any assertion that the alleged misconduct of one employee can be raised as a defense to total corporate liability by superiors' claimed unawareness or non involvement, caselaw is clearly against such a proposition. Broad corporation liability is clearly recognized so long as the acts are done within the scope of employee duties and in furtherance of some corporate interests. As the precedent shows in Cooperacion de Seguro Multiples de Puerto Rico v. Manual San Juan, Jr. et al., 289 F. Supp. 983 (1968), a corporation may even be liable for the acts of its agents when done for the benefit of the principal, even if the principal did not authorize or know of the particular act of the agent, or even if he disapproved or forbade it.

Whether or not the top officers, specifically the Chief Executive Officer, of a corporation have personal knowledge of violations is not relevant to the corporation's liability for the violations. The lack of knowledge cannot absolve the corporation from liability.

This question must be evaluated on the basis of the familiarity Donald E. DeLoux had or should have had with prior Title IV refund violations which dated back to the 1984-86 time period.

As relates to DeLoux there are a number of procedures which are relevant to this case.

1. Once a refund is posted to a student's account, the prepared check, the ledger card, a letter to the bank in the case of GSLs, the notice of termination, and in the case of Guaranteed Student Loans, a cover letter to the lender are brought to the DeLoux executive office for review and signature by the Chief Executive Officer, (i.e. Donald E. DeLoux or, in his absence, another individual authorized by him to sign refund checks, usually the Director of Operations).

Reference: T. 4 at 610 line 22 - 611 line 22.

2. Laura DeLoux and Donald DeLoux were both in a position to know that DeLoux's cash flow was inadequate to accommodate its growth goals and its Title IV refund obligations, and that DeLoux was not paying refunds from April to October of 1989. **Reference:** T. 7 at 1364 line 3 - 1366 line 8, at 1359 lines 6 - 18, T. 4 at 698 line 14 - 699 line 13, at 627 line 13 - 630 line 18, at 617 lines 3 - 14, at 611 lines 2 - 18, T. 7 at 1425 line 12 - 1426 line 23. ED EX. 25 at 0389 (3rd ¶), at 0340 (2nd ¶), ED EX. 27 at 0403- 0403B, see generally ED EX. 21 at 0375-0380, ED EX. 28 at 0404- 0416, ED EX. 29 at 0450-0452, ED EX. 30 at 0453-0456, T. 6 at 1250 line 17 - 1252 line 19.

3. Donald DeLoux was in a position to know that DeLoux was routinely not making timely Title IV refund payments at least by 1987. **Reference:** T. 7 at 1364 line 3 - 1366 line 8, at 1359 lines 6 - 18, T. 4 at 698 line at 617 lines 3 - 14, 611 lines 2 - 18, T. 2 at 294 line 21 - 297 line 7 see at 296 lines 3 - 6, T. 4 at 610 line 22 - 611 line 24, at 614 line 25 - 616 line 22, T. 2 at 375 lines 4 - 11, EX. A at 0045, at 0047, EX. L at 0250, N at 0264, EX. P at 0426, EX. X at 0540, EX. Q at 0429, T. 2 at 314 lines 16 -21, T. 6 at 1250 line 17 - 1252 line 19.

4. Donald DeLoux regularly received memoranda containing information about the activities of the financial aid department at DeLoux.

Reference: ED EX. 29 at 0452, ED EX. 30 at 0453 (2nd and 3rd ¶s) and 0456 (cc: list).

5. Donald DeLoux regularly has had knowledge of the activities of the financial aid department during the time that the DeLoux Schools have been participating in Title IV programs. **Reference:** ED EX. 21 at 0380, ED EX. 25 at 0389, ED EX. 27 at 0403B, ED E EX. 28 at 0412, ED EX. 29 at 0452 ("Miscellaneous" heading and cc: list), ED EX. 30 at 0456, T. 4 at 628 line 21 - 629 line 15, T. 4 at 694 line 1 - 695 line 1, at 696 line 13 - 697 line 12, at 698 lines 1 - 17, EX. A-1 at 14 - 15, Stip. 105.

In any event, the cumulative evidence as to DeLoux's corporate structure, the executive officer meetings, check signing practices, and the like, give the foundation for reasonable inferences to be drawn that DeLoux's Chief Executive Officer, Donald DeLoux, had knowledge of the untimely refund practices going on. Either he knew or he certainly should have known in view of the substantial history of refund violations.

The history of prior problems with untimely refunds is set forth in the findings of fact. The nature of the long standing problem and the official actions which took place regarding the following list of events would lead one to believe that Mr. Donald DeLoux must have had knowledge as to the untimely refunds during those years. Those events are: 1) The informal fine of \$10,000 paid by the DeLoux to ED for its 1984-1986 late refund violations, which involved

\$336,126.50, 2) the California Student Aid Commission program review on May 19-21, 1987 with its attendant administrative follow up relating to the same problems, 3) The Higher Education Assistance Foundation program review of August 5-6, 1987, with its attendant administrative follow up relating to the same problem and 4). The Peat Marwick report of January 22, 1988 which also covered the same problem.

Consequently it can be reasonably inferred that Mr. Donald DeLoux did have knowledge of actions which showed a serious problem with untimely refunds. This factor does then increase the gravity of those violations.

Size

The final factor to consider is the size of the institution. The size must be evaluated as of the day of the hearing since no new evidence has been received. DeLoux has referred to certain actions which have occurred since then such as the closing of a number of the schools and the filing of certain proceedings in the Bankruptcy Court. However in order to consider any of these factors DeLoux would have to move to re-open the record. This has not been done. Accordingly the facts show that on the day of the hearing there were 15 freestanding schools and 3 branch campuses, making a total of 18 schools operated by DeLoux.

Another element of the size issue could involve the number of students enrolled. A review of the posthearing briefs submitted by both parties and the reply brief submitted by OSFA fails to identify any foundation to establish the number of students enrolled in the DeLoux Schools network of 18 campus facilities, although OSFA states in its opening brief the schools have cumulative yearly enrollment in excess of 3500 students. This number is not challenged by DeLoux in its brief. During the hearing the president of DeLoux, in making an opening statement, said that DeLoux had processed approximately thirty-five thousand students in its history which began in 1973. T.5 at 923. OSFA has stated that the size criterion has consistently been measured by the amount of financial aid funds administered by the school and/or by the number of students attending the schools subject to termination. OSFA Posthearing Reply Brief, p. 34.

As to the financial status and amount of financial aid funds, EX. OO at page 1006 contains a statement of revenues and expenses of DeLoux for the period July 1, 1988 to June 10, 1989. This shows that gross revenue for that period was \$8,845,291.55. However, that exhibit also shows that there was a net loss of \$218,836.72. DeLoux's president as of the date of the hearing testified that 80% of total Revenues are made up of Title IV funds. (T.7 at 1394 line 11-14). therefore, this would mean that approximately \$7,000,000 of the gross revenues was made up of Title IV funds that year.

Fine

It has been pointed out that there were 190 instances of untimely refunds of which 118 are more than 100 days late. Also there were 135 instances of recordkeeping violations. Additionally there are three other specific violations in that: 1) DeLoux failed to meet its financial obligations by failing to make refunds and/or failing to make timely refunds in violation of 34 C.F.R. § 668.22;

2) DeLoux failed to meet its fiduciary duties by reason of its refund and recordkeeping practices in violation of 34 C.F.R. § 682.610(e); and 3) DeLoux failed to demonstrate the necessary administrative capability by reason of its refund and recordkeeping practices in violation of 34 C.F.R. § 668.14.

In view of all of the circumstances in this case, a fine of \$1,000 for each untimely refund violation, totalling \$190,000, is appropriate. Since the recordkeeping violations relate to the refund violations it is considered appropriate that a fine of \$200 for each of the 135 violations, totalling \$27,000 is appropriate. It is recognized that the severity of each individual violation mentioned above varies considerably; however, this factor has been taken into consideration and the method of assessment set forth above is intended to be used to average out these elements of severity amongst the total number of violations involved. Additionally, it is considered that a fine of \$25,000 is appropriate for each of the three violations relating to fiduciary, financial, and administrative responsibilities. Consequently, a fine of \$292,000 for all violations will be ordered.

VII. Conclusions of Law

1. DeLoux Schools of Cosmetology is an otherwise eligible postsecondary educational institution authorized to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.

2. The action of the U. S. Department of Education seeking to terminate DeLoux's eligibility was resolved by the joint action of the parties and DeLoux's eligibility has been terminated.

3. DeLoux has violated the regulations implementing Title IV of the Higher Education Act as set forth below:

a. DeLoux failed to pay Stafford Loan refunds or has failed to make timely payment of Stafford Loan refunds in violation of regulations set forth in 34 C.F.R. § 682.607(c).

b. DeLoux failed to maintain required records as to the date refunds were made in violation of the regulations in 34 C.F.R. § 668.23(f)(1)(iv) and § 682.610.

c. DeLoux failed to make timely refunds due to Pell and SEOG program accounts for the period of March 1989 through August 1989 in violation of the regulation at 34 C.F.R. § 668.22.

d. DeLoux failed to make timely refunds due to the Perkins Loan Fund for the period May 1989 through August 1989 in violation of the regulation at 34 C.F.R. § 668.22.

e. DeLoux failed to meet its financial obligation by failing to make refunds or by making untimely refunds in violation of the regulation at 34 C.F.R. § 668.13 (b) (3).

f. DeLoux violated its fiduciary duty in violation of the regulation at 34 C.F.R. ? 668.82 and 34 C.F.R. § 682.610(e).

g. DeLoux failed to demonstrate administrative capability in violation of the regulation at 34 C.F.R. § 668.14.

4. A fine of \$292,000 against DeLoux for violations found or admitted herein is appropriate.

VIII. Determinations as to the Proposed Findings of Fact and Conclusions of Law

OSFA and DeLoux filed their proposed findings of fact in conjunction with their posthearing briefs. Additionally, OSFA filed a reply brief. Such proposed findings and briefs, insofar as they can be considered to have contained proposed findings and conclusions, have been considered fully, and except to the extent that such findings and conclusions have been expressly or impliedly affirmed in this decision, they are rejected on the grounds that they are, in whole or in part, contrary to the facts and law or because they are immaterial to the decision in this case. And in this connection, it is noted that certain proposed findings of DeLoux have been rejected in so far as they constitute conclusions of law.

IX. Order

On the bases of the foregoing findings of fact and conclusions of law, and all the proceedings had herein, it is hereby:

ORDERED, That the eligibility of DeLoux Schools of Cosmetology to participate in programs of student financial programs under Title IV of the Higher Education Act of 1965, as amended, be and is hereby terminated in accordance with the joint stipulation in EX. A-2, which termination was effective on May 7, 1990, and is to remain in effect for a period of eighteen months therefrom, and it is further

ORDERED, That DeLoux Schools of Cosmetology immediately and in the manner provided by law pay to the United States Department of Education a fine in the sum of \$292,000.

John F. Cook
Administrative Law Judge

Issued: October 30, 1990
Washington, D. C.

1/ The record in this case is extensive in that there are over 1800 pages of exhibits and a transcript of over 1600 pages. OSFA has proposed approximately 556 findings of fact and conclusions of law in a 223 page document accompanied by 144 pages of briefs. DeLoux has proposed 11 findings of fact and conclusions of law accompanied by a 31 page brief. In view of the extreme volume of detailed information involved in this case it has required an unprecedented amount of time to conduct the required analysis, consequently a succinctly organized presentation by counsel would be of great assistance in achieving the goal of prompt disposition.

2/ EX.A-2 is more fully described as follows:

Joint Stipulation to Terminate the Respondent's Eligibility to Participate in Student Financial Assistance Programs. This was executed by Laura DeLoux, President of DeLoux Schools and Carol S.Bengle, Attorney for OSFA.

Therein, the parties stipulated and agreed that the eligibility of the eighteen DeLoux Schools of Cosmetology to participate in the student financial assistance programs (Title IV Programs) would be terminated effective May 7, 1990. The parties acknowledged the consequences of such termination as set forth in 34 C.F.R. § 668.94 and further recognized under 34 C.F.R. § 668.96, an eighteen month bar as to reinstatement of the Title IV programs by DeLoux from the specified termination date.

In conclusion, the parties stipulated to dismiss the termination action and enter judgment of termination, with the qualification that judgment of termination was to be of no force and effect with respect to the pending fine action.

Prior to the execution of EX. A-2, DeLoux had previously ceased participating in Title IV programs in February 1990. However, students who were awarded Title IV assistance prior to that date are still in attendance at DeLoux, and DeLoux maintains the obligation to administer Title IV assistance to those students in accordance with applicable law and regulations.

3/ 20 U.S.C. § 1094 (c) (2) (B) (i) states as follows:

(B)(i) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution-

(I) has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of Title 42 or any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of Title 42; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates, the Secretary may impose a civil penalty upon such institution of not to exceed \$25,000 for each violation or misrepresentation.

4/ §682.607(c), as amended effective July 20, 1989, states:

(c)Timely payment. A school shall pay a refund that is due

(1) Within 60 days after the earliest of the-

(i) Student's withdrawal as determined under § 682.605 (b) (1) (i) or (b) (3);

(ii) Expiration of the academic term [e.g., semester, quarter, or trimester] in which the student withdrew, as determine under § 682.605 (b) (1) (ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605 (b) (1) (ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of the leave of absence.

The regulation in § 682.605 (b) (1) and (b) (2) , concerning the date of student withdrawal, read in conjunction with the preceding regulation, has remained unchanged, and states:

(b) The withdrawal date. (1) Except as provided in paragraphs (b) (2) and (b) (3) of this section, the student's withdrawal date is the earlier of-

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school .

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

5/ The parties have not identified documents which prove the facts to which they have stipulated herein, as they intend to rely on the stipulations as proof of those facts. The designation**** indicates an intentional gap in the numerical sequence of these stipulations, with each row of asterisks representing one missing number.

6/ As an example the determination of some refund due dates are subject to the provisions of 34 C.F.R. § 682.07, as amended, effective July 20, 1989. See footnote number 4.

[7/](#) It should be noted that the quality of exhibits presented by OSFA as to disputed leaves of absence was poor. Much of the documentation was illegible. Before the hearing the attorneys were warned more than once about the problems experienced with illegibility of proposed exhibits.

[8/](#) It should be noted that OSFA ceased making Title IV disbursements to DeLoux in November, 1989 (ED EX. 42,43,44, T. 7 at 1461).