

In the Matter of DRAUGHON BUSINESS COLLEGE,
Respondent.

Docket No. 92-94-ST
Student Financial Assistance Proceeding

Appearances:

Paul Compton, of Houston, Texas, for the Respondent.

Edmund J. Trepacz, II, Esq., of the Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

Draughon Business College (Draughon) of Little Rock, Arkansas, is a proprietary institution of higher education. It participated in the Pell Grant Program (Pell); the Guaranteed Student Loan Program (GSL); the Supplemental Education Opportunity Grant Program (SEOG); and the Perkins Loan Program (Perkins), authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). These programs are administered by the Office of Student Financial Assistance Programs (SFAP), United States Department of Education (ED).

A program review to examine the administration of the Title IV programs was conducted at Draughon by reviewers from ED's Regional Office in Dallas, Texas, between February 18-21, 1992. Based upon their review of student files and other pertinent information, the reviewers concluded in a program review report, dated June 5, 1992, that Draughon had committed a number of regulatory violations. As a result, on July 27, 1992, SFAP issued a notice of intent to terminate Draughon's participation in the Title IV programs. The basis for such action was: Draughon's failure to timely refund tuition and fees of students who withdrew; failure to implement the pro rata refund policy; failure to provide consumer information; failure to conduct entrance and exit counselling; and various other violations including failure to meet the standard of administrative capability and fiduciary standard of conduct. A fine of \$141,000 was also proposed. Draughon filed a timely appeal and requested a hearing. A briefing schedule was established and complied with by the parties. Briefs and evidentiary matters were filed and witness lists were exchanged.

In November 1991, Draughon filed for protection from creditors under Chapter 11 of the Bankruptcy Act before the U.S. Bankruptcy Court for the Eastern District of Arkansas. Despite

the fact that Draughon's Plan for Reorganization was confirmed by the Bankruptcy Court, on July 7, 1993, Draughon closed its operations in Little Rock and notified SFAP. On March 4, 1994, I issued an Order dismissing the proceedings as moot following the Decision of the Secretary in In re Bliss College, Docket No. 93-15-ST, U.S. Dept of Educ. (February 23, 1994). After an appeal of my dismissal by SFAP, the Secretary vacated my order and the case was remanded to me on March 15, 1995. On April 3, 1995, I advised the parties that I would conduct an evidentiary hearing in this matter if either party so requested and, if no such request was forthcoming, I would take the case under advisement and issue a decision based on the parties' submissions in the record. Neither party requested such a hearing.

TERMINATION ISSUE

The procedures for initiating the termination of eligibility of an institution to participate in the Title IV, HEA programs are set forth in Subpart G, 34 C.F.R. § 668.81 et seq. During any such proceeding, ED has the burden of proof. See, 34 C.F.R. § 668.88(c)(2). 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 or any regulation or agreement implementing it. 34 C.F.R. § 668.86(a).

In this proceeding, ED seeks termination of eligibility for Draughon's various failures, as enumerated above. Draughon, in its brief, admitted that it violated the statutory and regulatory measures and did not dispute the liabilities for tuition refunds. However, it argued that the termination and fine of \$141,000 is excessive. As a consequence of Draughon's concessions, I find that termination of Draughon's eligibility to participate in the Title IV programs is warranted. 34 C.F.R. § 668.90. I find that SFAP has met its burden of establishing, by the totality of the evidence, that Draughon failed to comply with the standards of administrative capability and, further, by its various actions and inactions, failed to uphold its required fiduciary standard.

FINE CONSIDERATIONS

In addition to the proposed termination of eligibility, SFAP seeks a fine of \$141,000. Although given the opportunity to request a hearing on the matter, SFAP chose to present no evidence addressing the issue of the fines sought from Draughon. It is clear that SFAP has the burden of persuasion in this regard. 34 C.F.R. § 668.88(c)(2). No doubt, Draughon erred in not meeting its obligations to properly administer the Title IV programs. However, I find no evidence of fraud. Based on SFAP's failure to meet its burden of proof on the issue of a fine, coupled with the fact that I have contemporaneously ordered the most serious sanction available, loss of eligibility to participate in the Title IV Programs, I find that no fine is appropriate. See generally, In re Fischer Technical Institute, Docket No. 92-141-ST, U.S. Dept. of Educ. (March 16, 1995), and the cases cited therein.

FINDINGS

(1) ED has met its burden of proving that Draughon's participation in federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, should be terminated.

(2) Draughon should not be fined.

ORDER

On the basis of the foregoing it is hereby ORDERED that the eligibility of Draughon Business College to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, be terminated.

Judge Ernest C. Canellos

Issued: June 1, 1995
Washington, D.C.