ADMINISTRATIVE PROCEEDING
IN THE
UNITED STATES DEPARTMENT 0F EDUCATION

**IN THE MATTER OF THE
FINE AND TERMINATION OF
LOUISIANA SCHOOL OF PROFESSIONS**

**DECISION
BY PAUL S. CROSS, ADMINISTRATIVE LAW JUDGE**

STATEMENT OF THE CASE

This case arises before the United States Department of Education (DE) for administrative review pursuant to a DE, Office of Student Financial Assistance (OSFA), decision to terminate the eligibility 0f the Louisiana School of Professions (LSP or the School) to participate in Federal programs authorized by Title IV of the Higher Education Act ("HEA") of 1965, as amended.

The proposed termination is based in part on the School's failure to submit timely audits of its administration 0f Federal student financial assistance programs for award years 1980-81, 1984-85, 1985-86, 1986-87, and 1987-88. However, audits were late-filed on the following dates:

1980-81 October 24, 1989*
1984-85 June 7, 1989
1985-86 July 1, 1989
1986-87 November 13, 1989**

* This was offered to OSFA at the hearing

* According to Respondent's post-hearing brief.

LSP previously submitted audits for the award year 1981-82, 1982- 83 and 1983-84. It also requested an extension for the 87-88 year. It is not entirely clear whether this last audit (87-88) is filed with DE.

The proposed termination is based further on the LSP's failure (1) to meet financial responsibility requirements; (2) to repay lenders and (3) to provide a $150,000 irrevocable letter of credit. This letter of credit or other sufficient security is required by DE as a last resort to demonstrate the financial responsibility of the School.

LSP previously initiated litigation against DE for withdrawing the School's eligibility to receive Title IV HEA funds for a period of ten months during 1985. That litigation resulted in a negotiated consent order entered on March 2, 1987, in United States District Court for the Western District of Louisiana. A portion of the consent order allowed LSP to maintain a $75,000 irrevocable letter of credit in favor of DE. In January, 1988, DE's Institution and Lender

Certification Branch (ILCB) instructed the School to increase the amount of the letter of credit from $75,000 to $100,000. After some negotiation, ILCB allowed the School to renew the existing $75,000 letter 0f credit based upon the School's asserted improved financial condition for the year ending February 29, 1988.

In February, 1989, the ILCB instructed the School to double the amount of the letter of credit supplied within thirty days to $150,000. Because the School could not comply with this instruction, it engaged in various negotiations with ILCB concerning the supplying of a combination of security consisting of a letter of credit for $75,000 and a performance bond for the balance of $75,000 This was not acceptable to ILCB according to LSP. However, ILCB accepts either a letter of credit or a performance bond. It is possible that the combination as proposed by the School was the cause of the ILCB rejection, but as to this the record is not clear.

The proposed termination is further based on the School's failure to make payments on a timely basis of the amounts payable to the Department under the consent order. Under the consent order, the School is obligated to pay $5,775.97 quarterly through June, 1991. The School was late in making two quarterly payments due the first and second quarters of 1989. These payments were deducted by DE from funds otherwise payable to LSP by DE. Along with an over-payment of $21,000 in August 1989. Therefore, while initially tardy, LSP is now prepaid through the first two quarters of 1990.

Finally, DE proposes to terminate the School for failing to make timely refunds to lenders on behalf 0f students with guaranteed student loans who withdrew from the School. In connection with the termination proceeding, OSFA also seeks its intent to fine the School $200,000. Thus, generally the issues in this proceeding are:

(1) Should Louisiana School of Professions, Inc. be terminated from participation in Title IV Higher Education Act Programs.

(2)Should a fine of $200,000.00 be imposed against Louisiana School of Professions, Inc.

PROCEDURAL BACKGROUND

LSP or the School is the only trade institute located on the west side of Shreveport, LA. It participates in the Pell Grant, Guaranteed Student Loan (GSL), Supplemental Educational Opportunity Grant (SEOG), College Work Study (CWS), and Perkins Loan Programs. These programs are known collectively as the Title IV, HEA Programs.

In a letter dated May 19, 1989, OSFA notified the School that it intended to terminate its eligibility to participate in the Title IV, HEA Programs and to fine LSP $200,000. OSFA states that (1) LSP is not a financially responsible institution; (2) LSP did not submit timely audits for the 1980-81, 1984-85, 1985- 86, 1986-87 and 1987-88 award years; (3) LSP did not make necessary refunds to lenders under the GSL Program; and (4) LSP did not make timely payments under a consent order it entered into with ED in settlement of an action brought in the United States District Court for the Western District of Louisiana.

LSP requested a hearing to contest OSFA's intended termination and fine.

Hearing was held in Shreveport on October 24, 1989. Post-hearing brief subsequently were filed.

When participating in the Title IV, HEA Programs, an institution acts as co-administrator with DE. In this capacity, the institution is subject to high standards. An institution participating in any Title IV, HEA Program must perform a financial and compliance audit of its administration of that program. The audit must be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits of the General Accounting Office.

The institution must submit an audit at least once every two years with each audit covering the institution's activities in administering the Title IV, HEA Programs for the entire period of time since the preceding audit.

Under the Pell Grant Program, financially needy students attending eligible institutions of higher education receive grants to help them pay for their postsecondary educational costs. The size of a student's Pell Grant is based upon strict statutory and regulatory formulae established by Congress and administered by DE with the help of the institution.

The participating institution as co-administrator of DE programs is responsible for determining whether students are eligible to receive Pell Grants, and the amount of those grants. The institution as the local administrator of the Pell program also disburses Pell Grant funds received from DE to students. Thus, Ed transmits Pell Grant Program funds to the institution to enable the institution to make disbursements to students based on the students' need and qualification for funds. In this regard, DE has continuing oversight responsibility to insure that Federal funds are expended as required by Congress. Also, the institution must exercise a high degree of care in using those funds.

Under the GSL Program, a student applies to a private lender for a loan. If the lender decides to make a loan, a "guarantee agency" guarantees the lender against default on the part of the borrower. If the "guarantee agency" satisfies certain Federal requirements, ED reimburses the "guarantee agency" for all or part of the default claims it pays. ED pays the interest that is due on the loan to the lender until the loan reaches the repayment stage. ED also pays a "special allowance" to the lender until the loan is repaid or goes into default.

If a lender makes a loan to a student, the lender sends the check to the institution the student is attending or scheduled to attend. The institution, after the observance of stringent safeguards, may pay the loan proceeds to the student, either directly or by crediting the student's institutional account, only if the student is enrolled in the institution. If the student is not enrolled in the institution, the institution must return the loan check to the lender after determining that the student is not enrolled.

Under the SEOG Program, an institution of higher education awards grants to its eligible, financially needy undergraduate students. Under the CWS Program the institution provides

financial assistance to its students through compensation for part-time employment. CWS Program funds make up a percent of the compensation for that employment.

Under the Perkins Loan Program, a participating institution establishes a revolving Perkins Loan Program Loan Fund and makes loans from the revolving Loan Fund to its eligible, financially needy students. Ninety percent of the Loan Fund consists of Federal funds.

FACTS

As noted, Louisiana School of Professions (LSP) is a trade school located in Shreveport. It provides vocational training predominantly to black students. Approximately 25 to 33 percent of its enrollees graduate and approximately 82 to 87 percent of those graduates obtained jobs in the past five years. About 180 students graduate each year, and between 1979 and 1989 LSP had a total of 1,079 graduates with placement in employment positions of 876.

LSP, again as noted, participates in the Pell Grant, GSL, and other DE funded Programs. For the period of July 1, 1979 through the present, LSP received approximately $1.7 million in Pell Grant funds. Audits concerning these funds are essential and it is clear that LSP failed to submit timely audits for 1980- 81, 1984-85, 1985-86, 1986-87 and 1987-88. Pell Grant funds received by the School during these years were about $600,000.

After October 1, 1983, LSP received over $3 million in GSL loan proceeds for its students. Of that amount, over $2 million 13 in "default." For fiscal year 1987, the default rate of students who attended LSP was 99 percent; for fiscal year 1988, the default rate was almost 34 percent. In fact, of the 943 loans guaranteed by the Higher Education Assistance Foundation (HEAF), only one has been paid in full. Of course the default rate of respondent was not noticed as an issue in this proceeding. In Roman I, II, III and IV, which follow, the relevant circumstances are further developed.

I

For fiscal year ending June 30, 1985, LSP had current assets of only $117,134 while it had current liabilities of $301,270. LSP also had a deficit net worth of $309.762.

For fiscal year ending June 30, 1986, LSP had current assets of only $4,992 while it had current liabilities of $324,451. LSP also had a deficit net worth of $395,674 and a net operating loss of $85,912.

As a result of receiving these two financial statements, OSFA noted that LSP failed to qualify as financially responsible, and required LSP to obtain a bond or letter of credit in the amount of $75,000

For its fiscal year ending June 30, 1987, LSP had current assets of only $68,854 while it had current liabilities of $395,429, and a net operating loss of $10,349.

For its fiscal year ending June 30, 1988, LSP had current assets of only $21 ,600 while it had current liabilities of $299,218. LSP also had a deficit net worth of $315,674, and a net operating loss of $70,340.

On the basis of LSP's June 30, 1988 financial statement, which indicated a deteriorating financial condition when compared to previous financial statements, OSFA raised the amount of LSP's performance bond or letter of credit to $150,000 In a letter dated February 1, 1989, OSFA notified LSP of the $150,000 letter of credit requirement.

LSP has not obtained a letter of credit or a performance bond in that amount. Further, LSP allowed its $75,000 performance bond to lapse on March 31, 1989.

LSP failed to submit timely audits as required for award years 1980-81, 1984-85, 1985-86, 1986-87 and 1987-88 of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs. For those award years, LSP received approximately $600,000 of Pell Grant funds and an undetermined but much larger amount of GSL Program funds. During 10 months of 1985, the School was not allowed to participate in Federal Programs, but apparently continued to seek GSL funds with some success. The record is not clear but there is some evidence of a "no-fault" communication breakdown between the School and DE during 1985.

II

The Higher Education Assistance Foundation (HEAF) is a guarantee agency participating in the GSL Program. It guarantees approximately 2,200 lenders against default on loans made to students attending approximately 6,000 institutions. As part of HEAF's functions, it reviews the performance of institutions that participate in its programs to insure that those institutions are administering the GSL Program in accordance with applicable statutes and regulations.

As part of that compliance function, HEAF sends its employees to conduct on-site reviews at these institutions. In September, 1986, HEAF sent such a group of employees to LSP to conduct a review of its administration of the GSL Program. The reviewers found that the School was not making required refunds to GSL lenders on behalf of students who dropped their enrollment at LSP. As a result of that finding, HEAF and the School entered into a Limitation Agreement on December 8, 1987 under which LSP agreed to make the required refund payments and agreed to abide by all the GSL Program requirements, including in the payment of refunds.

In May, 1989, two HEAF reviewers again went to LSP to perform a follow-up review. The follow-up review found that LSP still had not and was not making refunds to GSL lenders. As a result of numerous oral and written communications, HEAF identified $86,079 of unpaid refunds that LSP failed to make on behalf of 94 students. LSP admits it owes $86,000 of refunds to GSL lenders on behalf of these 94 students but there was some confusion which made preparation of audits difficult as explained in Roman III and IV following.

III

On March 2, 1987, ED and LSP entered into a consent order in the case of Louisiana School of Professions v. William Bennett, Secretary of Education, Civil No. 86-0328, which LSP filed in the United States District Court for the Western District of Louisiana. Under that consent order, until otherwise instructed by ED, LSP agreed to maintain an irrevocable letter of credit, payable to ED, in the amount of $75,000, for the purpose of providing student refunds or "teach-out" arrangements if LSP closed or terminated its educational services. This is essentially the same letter of credit referred to in Roman I of this statement of facts On February 1, 1989, as mentioned in Roman I, ED notified LSP that it must increase its letter of credit to $150,000. As a result of that unmet increase, LSP's $75,000 letter of credit was allowed to expire on March 31, 1989. From that point to the present, LSP has not maintained an irrevocable letter of credit, payable to ED

Also, under the consent order, LSP agreed to repay ED $80,000 plus interest at an annual rate of 7 percent, payable in 16 equal quarterly installments of $5,775.97. The $80,000 related solely or almost entirely to Pell Grant funds, and pursuant to compromise was reduced down from an initial DE claim of $170,000. The first payment was due on September 1, 1987, and quarterly installments were subsequently due on December 1, March 1, and June 1. The last payment is due on June 1, 1991. LSP failed to make its March 1, 1989 payment; but, as noted previously, LSP is paid up through the first two quarters of 1990 as a result of DE deductions of Federal funds otherwise payable by DE to the School. LSP agrees that the loan refunds to lenders discussed in Roman II above essentially are not involved in the $80,000 refund agreement the School made with DE under the consent order. However, the School does argue in Roman IV next following that the $80,O00 debt, which was not allocated to individual students, made performance of audits problematical.

IV

LSP offers certain exculpatory evidence. Dr. Ernest Lampkins, the president of LSP and Mr. Van Enloe, the School's accountant, testify that all of the required audits are underway and will be completed and submitted soon. After the October 24, 1989 hearing, the audits (except possibly 87-88) for which the Department seeks to terminate the School are said to have been completed and submitted. I have no reason to doubt the filings, including the 87-88 audit. Despite the fact that these submissions occurred after the hearing, the late submissions are matters which are relevant and should be noticed. DE asserts that there also is no 80-81 audit but such was physically offered to DE at the hearing.

In testifying about the audits for 1980-81, 1984-85, 1985- 86, 1986-87 and 1987-68, Dr. Lampoons and Mr. Enlace describe the reasons for the School's truancy. The consent order entered on March 2, 1987 between the parties required the School to repay benefits to the Department totalling $80,000. The $80,000 amount, pursuant to compromise had been reduced from $170,000. The agreed settlement amount is not attributable to specific students, making audits for particular students difficult for ail years up to 86-87.

Mr. Enloe testifies that concerning the audit for 198--81, that Dr. Lampkins was apparently under the impression that this audit was submitted by a former financial consultant. When Dr. Lampkins became aware that the 1980-81 audit was not submitted, he instructed Mr. Enloe to

conduct a second audit, which the latter conducted. Mr. Enloe testifies that it was necessary to obtain some information from the DE. When it became apparent that information about attribution of the consent order payments to particular students was unavailable, Mr. Enloe concluded the 1980-81 audit and it was offered to DE at the hearing. DE takes the position that the 80-81 audit is not filed, but at least the audit is available to DE.

As noted, none of the audits, excepts perhaps 87-88, for which the DE seeks to terminate the School's participation in Title IV programs remains outstanding, although they were filed or offered substantially late and are not verified by DE.

In a post-hearing letter dated November 6, 1989 to me from Counsel Kraut for DE attaches a October 31, 1989 letter from Frank Wasson of DE. Mr. Wasson notes that LSP audits for 84-85 and 85-86 were late-filed on August 31, 1989. A preliminary examination shows that LSP failed to make refunds of loans to lenders during those years. This is, of course, a topic confirmed by the evidence of HEAF already discussed herein under Roman II establishing the existence of $86,079 in unpaid refunds to lenders.

As to LSP's failure to supply a letter of credit for $150,000 in the place of a $75,000 letter of credit required under the consent order, Dr. Lampkins testifies that he was able to obtain a letter of credit for $75,000 and a performance bond for the balance. He was informed, according to his testimony, that such a combination of letter of credit and a performance bond was unacceptable to DE and that the only security acceptable to DE was a letter of credit for the full $150,000

The School was Up for sale at the time of the hearing and has been sold according to the post-hearing brief of LSP. The new owners do not supply a letter of credit but are said to be awaiting the outcome of this proceeding. According to counsel for LSP, the new principals are willing to put Up a letter of credit for $150,000. Under the sale, Lampkins says he seeks no payment; only the assumption of LSP obligations. Lampkins also says he has put his own funds into the School which he has lost.

Finally, the new owners of the School are said to have retained the firm of Hammacker & Associates of Dallas to conduct, control and account for the distribution of all government grant-in-aid funds, including guaranteed student loans and Pell grants. This asserted fact, coupled with an asserted re-capitalization by the new owners, is said to afford better control plus sufficient working capital to materially improve the financial condition of the School.

DISCUSSION AND CONCLUSION

LSP agreed to pay DE, under the consent order dated March 2, 1987, a total of $80,000. However, this amount has been reduced to a balance of not more than approximately $15,000. The School must pay $5,775.97 per quarter and as noted failed to make the payments due for the first and second quarters of 1989. Nonetheless, on August 14, 1989, DE withheld a total of $32,000 from Federal payments otherwise due to the School with subsequent similar withholdings. The withheld amounts reduce the balance owed by LSP to DE to $15,000 and effectively repay the amounts due through the first quarter of 1990. Further, audit reports finally are filed by LSP. Thus, the reasons for a fine are somewhat reduced.

In determining the amount of a fine consideration should be given to the gravity of the institution's violation and its ability to pay. Also, each proceeding involving a proposed fine must be determined on its own merits.

Given the fact that all of the audits cited by DE, except perhaps 87-88, although not verified by DE have now been submitted, the gravity of the violation must be viewed as to the effect of the truancy of the filing. Certainly the gravity of the violation is diminished, but is nonetheless substantial. Without timely audits, the Federal student aid program is impossible to administer.

As to the existence of wrongdoing or misrepresentation by the School, there is no showing that such has occurred. There also is no evidence of wrongdoing or financial gain on the part of Dr. Lampkins or other employees of LSP. In fact, Lampkins appears to have lost more than DE, relatively speaking. Moreover, the failure to make refunds to lenders appears to be covered by the ability of HEAF to take independent action against the School.

Finally, it is clear that the imposition of a heavy fine on LSP will terminate its existence given its poor financial condition.

In my opinion, the imposition of punitive measures against the School already is largely accomplished. The sale of the School and repayments to DE of $80,000 are underway. Most importantly, LSP can bear no further substantial punishment. At the same time, on this record, LSP is not financially fit. For this reason LSP should be terminated from Federal programs. Also, there should be a fine of a token amount to uphold the integrity of DE processes.

FINDINGS

(1) LSP submits all outstanding' audits, but filed late for 80-81, 84-85, 85-86, 86,87 and 87-88; and fails to maintain a letter of credit of $150,000 as required by DE.

(2) Unrefunded loans amounting to $86,079 are owned to HEAF; which itself may seek to collect that amount independently of DE.

(3) The ownership of LSP apparently has changed and the new owners may be willing to capitalize the School sufficiently to obtain a letter of credit for $150,000 if required to do so by DE.

(4) The new owners apparently have retained the firm of Hammacker & Associates to be responsible for all grants-in-aid.

(5) All amounts due under the consent order are currently paid through deductions from Federal funds due to the School.

(6) The imposition of a $200,0O0 fine or any similar large amount is unwarranted because such imposition would require the closing of LSP.

(7) LSP is not financially responsible.

(8) LSP, although lacking financial means, nonetheless should pay a fine of $5,000 for the serious violations described in findings (1)and (2) above.

(9) LSP should be terminated from participation in Title IV Higher Education Pro grams .

(10) Reinstatement of LSP should be allowed upon satisfaction of a $150,000 letter of credit or other proof that LSP is financially responsible.

ORDER

A fine of $5,000 is imposed on LSP payable to DE. LSP is terminated from DE Title IV programs, but may apply for reinstatement. In the absence of a timely appeal, this decision will become effective as the decision of DE.

NOTICE: 34 C.F.R. § 668.81(c) governs appeals of this Decision to the Secretary and provides, in part, that any appeal must be mad? within 20 days of receipt of this Decision. The mailing address of such appeal is the United States Secretary of Education, 400 Maryland Avenue S.W., Washington, D.C., 20202, ATTN: Attorney Advisor to the Secretary.

By Paul S. Cross, Administrative Law Judge, on January 17, 1990.

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 1990, I served a true copy of the foregoing by certified mail, with return receipt requested, on the following:

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