In re: MICHIGAN PARAPROFESSIONAL TRAINING INSTITUTE
Docket No. 90-7-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Daniel Levit, Esq. of Highland Park, Michigan, for Michigan Paraprofessional Training Institute

Russell B. Wolff, Esq. of Washington, D.C., Office of General Counsel, United States Department of Education

Before: Judge Daniel R. Shell

Background

On February 15, 1990, the United States Department of Education (Education) through its Division of Audit and Program Review issued a letter to the Michigan Paraprofessional Training Institute (MPTI) notifying the school of Education's intention to review two actions:

1.) The February 2, 1990, termination of eligibility to participate in Higher Education Assistance Foundation (HEAF) loan guarantee programs; 2.) The action by Education to disqualify the school from further participation in the student loan insurance program of each of the guarantee agencies, ie. the Stafford Loan Program, Supplemental Loans to Students Program, and the PLUS Program...See footnote 1 *1*

HEAF, on May 27, 1988, suspended the school from participation in its Guaranteed Student Loan Program, the Supplemental Loans to Students Program, and the Parent Loan Program. It also informed the school of its intent to convert the suspension to a permanent termination of MPTI from these programs. HEAF also notified MPTI that the termination was to be effective on June 16, 1988, unless the school requested a hearing.

The essence of HEAF's termination action as follows is found in Ed. Ex. 6:

improper disbursement of loans to students who failed to attend the school, ... failed to obtain student endorsement on loan checks, ... not ... paying refunds to students when students withdraw from school.See footnote 2 *2*

On June 9, 1988, the school admitted the violations but asserted the following comment: "The problems found during the audit last March at MPTI are hereby acknowledged but certainly not on-going." The school further said that the internal problems were created by one employee who had been dismissed. They concluded by stating "we feel we are being unjustly penalized."See footnote 3 *3*

On July 25, 1988, HEAF responded:

As a result of the schools' inadequate response, in particular to the most critical issues cited in HEAF's report (ie.[sic] refunds, improper disbursements, no student endorsements on loan checks), it appears the school has not taken the steps necessary to not only improve its loan administration, but to make appropriate corrections for the problems which have already occurred.

However, the school was not terminated immediately; it was given another opportunity to request a hearing.See footnote 4 *4* On August 1, 1988, MPTI gave written notice of its request for hearing.See footnote 5 *5*

A hearing was scheduled for October 12, 1988.See footnote 6 *6* Based on the June 21, 1988, HEAF suspension, Education transferred MPTI from an advance payment system to a reimbursement system of payments.See footnote 7 *7*

MPTI requested a delay of the October HEAF hearing to December 1988 or January 1989. The hearing eventually was set for December 15, 1988.See footnote 8 *8* But on December 2, 1988, a meeting was held in St. Paul, Minnesota, at HEAF headquarters, according to a HEAF official, to negotiate a settlement.See footnote 9 *9* As a result of this meeting, the parties, on December 14, 1988, entered into a limitation agreement.See footnote 10 *10*

The school waived its rights outlined in the HEAF Lender and School Administrative Guide and HEAF Bulletins on the topic of termination actions.See footnote 11 *11* Further, the school agreed to any future HEAF termination action to be exclusively governed by the terms of the limitation agreement. Upon the discovery of a violation, the agreement permits HEAF to terminate the School - if the school is unable to adequately explain to HEAF the apparent violation.See footnote 12 *12* In return for the school's waiver of rights, HEAF agreed to withdraw the May 27, 1988, notice to MPTI which suspended MPTI from participation in the Guaranteed Student Loan Program, the Supplemental Loan Program, and the Parent Loan Program. HEAF, in addition, withdrew its notice of intent to terminate MPTI from the above programs.See footnote 13 *13*

MPTI began to comply with the limitation agreement requirements by accumulating the audit information. It continued the process of gathering the audit information through the time of the Education hearing for review. However, on February 2, 1990, after HEAF determined that MPTI had not adequately explained the violations outlined in the limitation agreement, it terminated the school from all further participation in HEAF's guarantee programs. Upon HEAF's final act of termination on February 2, l990, Education took the action set forth in the opening paragraph of this decision.

Jurisdiction

Education's action is based upon a review of the sanctions on eligible institutions. 20 U.S.C. § h 1082(h)(3) states:

(A) The Secretary shall, in accordance with sections 556 and 557 of Title 5, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section

1078(b)(1)(T) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification-

(I) if such review is waived; or
(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section ....

Section 1082(h)(3)(A) refers to 1078(b)(1)(T) in its text; therefore, it must be read in conjunction with 1082(h)(3)(A):

(1) Requirements of insurance program: Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) of this section if the Secretary determines that the student loan insurance program- ...

(T) provides no restrictions with respect to eligible institutions (other than nonresidential correspondence schools) which are more onerous than eligibility requirements for institutions under the Federal student loan insurance program as in effect on January 1, 1985, unless

(I) that institution is ineligible under regulations for the emergency action, limitation, suspension, or termination of eligible institutions (other than nonresidential correspondence schools) under the Federal student loan insurance program or is ineligible pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program; ...

Arguments of Counsel

Education counsel contends that "the Secretary of Education is required to review each limitation, suspension, and termination action imposed by the guaranty agency against a school to determine if the agency's procedures were consistent with certain due process requirements under 20 U.S.C. § 1082(h)(3). If the requisite procedural requirements were satisfied, then the limitation, suspension, or termination action is given national effect through the disqualification of the school from participation in the GSLP (Guaranteed Student Loans Programs)."See footnote 14 *14* Education counsel argues that the appeal provisions set forth above is very limited. Counsel states:

As long as the guarantee agency's action involves procedures and standards substantially the same as those established in 34 C.F.R. Part 668, Subpart G for termination of eligibility under the Federal student loan insurance program and the action is not based on clearly erroneous factual conclusion or an incorrect application of the law, the disqualification is appropriate and must be upheld by the Administrative Law Judge.See footnote 15 *15*

Education counsel states:

When a guarantee agency does so terminate a school from participation, that the Department's [sic] through the statutory authority proceeds with a disqualification action. The objective being to determine whether or not one of these other guarantee agencies should be allowed to take the place of the initial guarantee agency and guarantee further student loans, or because the nature of the school's conduct should they be disallowed or disqualified from participating in any guaranteed student loan program ... As the Department sees it, within this procedure, is if, in fact, HEAF followed the proper procedure in taking their termination action so that it then resolves the national [sic] disqualification.See footnote 16 *16*

The Michigan Paraprofessional Training Institute argues that it was not afforded due process of law. It argues that the review process with the HEAF organization is not sufficiently independent of management so as to receive fair treatment. The school further claims that the limitation agreement executed by the parties is invalid because it is more onerous than eligibility requirements for institutions under the Federal student loan issuance program.See footnote 17 *17* Last, it asserts that the limitation agreement is null and void because HEAF exercised undue influence by using its dominant psychological position in an unfair manner.See footnote 18 *18*

Review of the Testimony

Howard Fenton Testimony

While the testimony of Education witness Howard Fenton admits no regulations govern the disqualification proceedings, he states that the law governing the disqualification is statutory.See footnote 19 *19* Fenton stated that Education instructed guarantee agencies, by letter dated November 1987, on the procedures which the guarantor must follow in disqualification cases.See footnote 20 *20*

The letter referenced by Mr. Fenton states:

The statute requires the Secretary to disqualify a lender or school even if a guarantee agency limits or suspends, rather than terminates, the lender or school.See footnote 21 *21*

Fenton further commented that the action taken by this letter is "the Departments' effort to establish policy to comply with the statutory regulation."See footnote 22 *22* Later, he said "the Congress has said when the guarantee agency has limited, suspended, or terminated an institution, the Secretary shall disqualify it nationwide."See footnote 23 *23*

He also testified that Education began using limitation agreements due to staff shortages and an inability to prosecute every case they wanted to prosecute. "The idea was to give schools another chance."See footnote 24 *24* He admits that the limitation agreement is a simple contract which he characterizes as an agreement saying that Education drops the termination proceeding when Education receives satisfaction that the school will take corrective action.

Ellen Raue Testimony

Ellen Raue, a Compliance Specialist for HEAF, testified that HEAF determined from MPTI records that $307,000 in unmade refunds existed. She defined an unmade refund by stating that it occurs when a student withdraws before the end of their program. She also testified that one sample of checks indicated that 272 of 530 checks were negotiated without a borrowers signature. The school is required to calculate whether it should give a refund to the student. However, she stated the school calculated refunds but did not send the refund to the lender.See footnote 25 *25*

Raue testified that her responsibility was to determine if MPTI had a CPA to audit the books. She ascertained that Steven Klausner was designated MPTI's CPA; she first contacted him in February 1989. The required deadline for receipt of the audit information was within 60 days after the execution of the limitation agreement. But by the time that Raue and Klausner talked that time period had virtually lapsed.See footnote 26 *26* She testified that HEAF did not enforce the agreement at any early date because "we typically give schools every opportunity we can to see if they complete the audit for the correction of the problem." The next contact with Klausner was in May of 1989.See footnote 27 *27* Raue stated, by the end of May 1989, a portion of the audit had been mailed to HEAF. She explained that an A through L student list was submitted by that time. However, the complete and verified audit was not finished nor did the list claim to be. The cover letter from Klausner stated that "he had not reviewed all of the material and was not certify2ing the material and there would be additions or changes later."See footnote 28 *28*

In an effort to work with the school, Raue testified that a meeting was held October 2, 1989 with Klausner. On the following three days, she visited the school to check on its progress in compiling the necessary information. The HEAF survey team found no calculation or actual refunds were being done at that time.See footnote 29 *29*

At the hearing Raue was asked "what did you rely upon in making your decision" - meaning the HEAF decision to terminate the school -

She replied:

The fact from all indications that I could see at my visit, the conditions had not improved. They were not calculating the refunds ... and I did not believe that we would ever see a completion of the audit.

She further acknowledged that through the date of the evidentiary hearing there is no complete audit.See footnote 30 *30*

Specifically, she stated:

I mean that we expected the school to be timely with the refunds. You don't expect to a year and a half later to go into a school and still see them not calculating refunds and not paying refunds . . . .See footnote 31 *31*

Raue testified, based on Ed. Ex. 23, the total amount of liability for unpaid refunds is in the neighborhood of $300,000.See footnote 32 *32* She further stated: "We arrived at a listing using

the figures that [the] CPA for the school had submitted to us. So we're saying it is to the best of our knowledge ... owed as a liability."See footnote 33 *33*

Shirley Prendes Testimony

Shirley Prendes, Administrator for the School and wife of the school President, testified at length on the operation of the school and the school's efforts to comply with the terms of the limitation agreement. As administrator, she supervises the Financial Aid Office.See footnote 34 *34* She detailed the problem as beginning with an employee who had a cocaine problem.See footnote 35 *35* She explained the operation of the school became more difficult when Education placed the school on a reimbursement basis for the Pell money.

Prendes explained the purpose of the meeting in St. Paul, Minnesota, December 2, 1988, was to negotiate an agreement in order to stop the termination proceeding scheduled for hearing December 16, 1988.See footnote 36 *36* HEAF had the limitation agreement prepared, according to Prendes, at that meeting of December 2, 1988. Prendes complained that the meeting was not a negotiating session.

She said:

I don't think we were really asked about what we thought it should contain. We were more or less told what it should contain. It wasn't really a bargaining discussion on our behalf. It was more like this is what we do ... In my estimation, it was a take it or leave it. You take it and you do it or leave it and you're terminated. That's' how I felt about it.See footnote 37 *37*

Prendes said she was confused by the limitation agreement but felt as if the school was in a non-negotiable position because "this is the way HEAF wants it."See footnote 38 *38* Mrs. Prendes admitted that she understood that the only options available to discuss in the December 1988 meeting were: 1.) either to sign the agreement 2.) or to have a hearing on December 16, 1988.See footnote 39 *39* The execution of the limitation agreement is the embodiment of the parties agreement.

After signing the limitation agreement on the 15th of December 1988, Prendes acknowledged difficulty in finding a CPA. Further, she admitted it took a considerable amount of time to gather the audit information required by the limitation agreement. Because of these difficulties, the witness testified that the school attempted to modify the terms of the limitation agreement. The school wanted to pay lO to 15 thousand dollars per month with a total balance due in the June to September 1989, school enrollment period.See footnote 40 *40* She felt as if the meeting that they had in October 1989 would result in a modification of the agreement.

But the exhibits and her testimony indicate the next Education response was a notice of termination.See footnote 41 *41*

The following testimony reflects:

Judge Shell: Is it safe then to assume that their response was that they were not modifying the terms of the limitation agreement?
Witness: Evidently not. Judge Shell: Is that what you thought at that point in time?
Witness: That's the only conclusion I could have.

Prendes explained that a major problem in getting the materials for the CPA was an inability to obtain copies of the checks. But HEAF did cooperate and assist in getting the records from the banks. Prendes was unable to specifically state how many of the unpaid refunds listed had been remedied. She admitted that MPTI had not resolved all of the issues on all of the accounts.See footnote 42 *42* She could not provide a definitive statement that each refund account had been tracked and the information delivered to HEAF.See footnote 43 *43* Prendes agreed with the findings of the program review set out in Ed. Ex. 8, also the school's Ex. 2.See footnote 44 *44* She further admitted that the evidentiary hearing was being held because "we did not comply with all of the limitation agreement[s] sic."See footnote 45 *45*

Steven M. Klausner Testimony

Steven W. Klausner, MPTI's Certified Public Accountant testified that he had been associated with MPTI since 1977 and had performed other Department of Education audits. He stated that to comply with the limitation agreement he had to review approximately 2,000 documents. He was chartered to review the loans and prepare a list to determine if all refunds had been paid to either the students or the bank. In order to properly verify the system, he reviewed work papers, spread sheets, and individual loans.See footnote 46 *46* By looking at these records, the CPA could determine the correct repayment to the bank on any refund. This, according to Klausner, took an enormous amount of time. He said he was asked by Michael Prendes, President of MPTI, to halt his review in May 1989, "because it was costing too much money."See footnote 47 *47* Later in October through December the tracking of the accounts started up again.See footnote 48 *48*

Klausner admitted that he filed no certified accounts to HEAF. Ed. Ex. 18 and 26, the lists submitted to HEAF, are lists prepared by the school with the names of students, social security numbers, last date of attendance, the date of refund, the bank and the amount of refunds still unpaid.See footnote 49 *49* The school employees prepared the lists but Klausner did not verify the truth of the information. He signed cover letters that were submitted to HEAF with the information. He specifically disclaimed the veracity of the figures. He testified that he had done other reviews of the MPTI's refund policy in the past and had spotted difficulties in the refund program. He explained that the school had a system for tracking refunds but the refunds were just not being made.See footnote 50 *50* He opined that the problem was at the President's level.See footnote 51 *51* The witness testified: "Getting the checks actually issued was the problem."See footnote 52 *52*

Type of Review Required

Education counsel emphasizes the limited nature of the review permitted by the Administrative Law Judge. He contends the limitation issue both in his opening argument and in his brief of June 8, 1990. Education maintains that an Administrative Law Judge review must disqualify a

school nationally if these two elements are met: 1.) if the guaranty agency termination rules are not substantially different from the Federal student loan program rules and 2.) if the guaranty agency's factual conclusion is not clearly erroneous. The impression - provoked by this argument - projects something less than a complete hearing on the record. Does Education suggest that the Administrative Law Judge automatically approve whatever action taken by the guaranty agency? Who should determine what is clearly erroneous? Is the review by the Administrative Law Judge limited to only a review of the procedures that the guaranty has issued? I think not. A review of the guaranty agency procedures could be done without a hearing and without reviewing any facts. All that would be required would be a paper review of the Guides or Bulletins prepared by the guaranty agencies, (e.g. HEAF's Bulletin L/S No. 61). Such a procedure may appear on its face to be acceptable. It may even mirror the Federal procedure. However, that review alone would not satisfy the intent of the law.

A review of the guaranty agency action requires facts and evidence to determine if the agency has, in fact, provided the due process anticipated by the statute. 20 U.S.C. § 1082(h)(3) requires the Secretary to review the termination action to be accomplished in accordance with sections 556 and 557 of Title 5. MPTI is entitled to a full hearing on the record contemplated by the Administrative Procedure Act.See footnote 53 *53*

The type of review required here, as Education's Howard Fenton points out, is set out in statute and codified in 20 U.S.C. § 1082(h)(3)(A).See footnote 54 *54* It requires a two-fold consideration. First, it is a review of the termination imposed by the specific guaranty agency. Second, it is a disqualification action by Education from participation in all other guaranty agency programs. This is an evidentiary hearing to consider the facts and circumstances considered by the initiating agency which preceded this disqualification action taken by Education.See footnote 55 *55*

However, the Administrative Law Judge is not limited to the record compiled in the guaranty agency proceeding. Such a limitation would deny, not only the school but Education, rights, such as the ability to cross examine a witness, afforded under the Administrative Procedure Act.See footnote 56 *56*

Application of the Facts to the Law

Before applying the facts and evidence to the two-fold consideration discussed above, attention must be directed to the arguments raised by MPTI. Counsel for the school argues that MPTI was not afforded due process of law for three reasons. First, they entered into the limitation agreement because the review process is not sufficiently independent of the management group. Next, they argue that the limitation agreement is more onerous than the Federal student loan program requirements. Last, they argue that the limitation agreement is null and void due to the undue influence caused by HEAF'S dominant psychological position. MPTI's arguments must fail.

The first argument assumes that the school's eligibility was terminated by the HEAF hearing review process. When HEAF notified MPTI of its intention to terminate MPTI, by the terms of the basic HEAF agreement, the school was afforded an opportunity to have a hearing before a

designated hearing official.See footnote 57 *57* Even though MPTI was given the opportunity to have a hearing as permitted by the basic agreement and spelled out in Ed. Ex. 7, it chose to waive its hearing scheduled for December 16, 1988. They cannot now complain that they were unjustly terminated because the HEAF hearing process was tainted when they did not use it.See footnote 58 *58* MPTI chose to waive its rights to a hearing before a HEAF designated official and instead they entered into the limitation agreement shown as Ed. Ex. 3.

Counsel for MPTI and Ms. Prendes state that the school was forced to enter the limitation agreement. However, there is no evidence of fraud, misrepresentation, or undue influence placed on the school or any of its officials. In fact, Ms. Prendes admitted that she, an official of the school and signatory on the limitation agreement, understood the options available to her in December 1988, prior to the execution of the agreement. She was represented by counsel at the time and understood that the only options available were to either have the hearing or enter into an agreement. She was well aware that the signing of the limitation agreement would provide extra time to get records together and hopefully resolve the difficulties. The school was fully advised of its!options. The school chose to forebear its right to a hearing. HEAF's position was very clear. HEAF employed no deceit.

Next, MPTI argues that the limitation agreement is more onerous than the Federal student loan program rules and regulations. MPTI was terminated because the school made improper disbursements of loans, failed to obtain student endorsements on checks, and failed to pay refunds to students who had withdrawn from school. To ascertain the status of a school's refund policy, it is necessary for Education to review the books, accounts, and ledgers of the school. MPTI's requirement of providing the audit raw materials is an elementary necessity. This requirement is no different than the requirements placed on other institutions participating in a Federal student loan program. MPTI has offered no evidence to support its argument that the limitation agreement has "more onerous" requirements than the requirements for participants in other Federal student loan programs. Last, MPTI argues that the limitation agreement is null and void due to the undue influence caused by the HEAF's dominant psychological position. There is absolutely no evidence to support this argument.

The HEAF decision was based on a simple set of facts. The school was making improper disbursements of loans to students who failed to attend the school; it failed to obtain endorsements on checks; it failed to pay refunds when students withdrew from school. The school, when confronted with the HEAF accusations, admitted in June of 1988 that the problems existed. The certified public accountant for MPTI testified that he had been associated with the school since 1977. He explained that the school had a system to track the refunds, but he acknowledged that the school had previous difficulties with the refund program. The testimony reveals that drop lists were being sent to the business office, the financial office, and to the President of the school. However, according to the accountant, the President failed to issue the refund checks.

Shirley Prendes attempted to blame a former employee with a drug problem and Education's cost reimbursement policy for the school's difficulty in keeping accurate records. The school also creates much smoke in its argument that HEAF failed to negotiate a new agreement in December

of 1988. MPTI overlooks the fact that an agreement was in place which required the school to keep accurate records, to disburse funds, and to make refunds in a correct and timely fashion.

No matter what staffing problems the school may have had, the execution of the contractual duties were to be done by the terms of the basic HEAF-MPTI agreement. Prendes fully understood the school's options when it entered into the limitation agreement in December 1988. The school gave up its right to a hearing and bargained for the extra time to get their records in order.

Both Fenton and Raue credibly testified that the use of a limitation agreement is a common practice in the enforcement and use of Education grant money. The concept is used to provide "another chance" to a school which the Department of Education or a guaranty agency believes, with time, will correct any violations that have been noted.

Here, HEAF was not required to provide MPTI a second chance to furnish information that the school was mandated by the terms of the basic HEAF-MPTI agreement to disclose. HEAF chose to forego its enforcement under the terms of the basic agreement and afforded MPTI a second chance to comply with the record keeping and refund requirements.

However, after agreeing to the extension of time for the school to comply, the school failed, even through the date of the evidentiary hearing, to provide complete and accurate records which could be used to audit the school's program. The limitation agreement granted only a period of 60 days for the school to reconcile the records. HEAF liberally interpreted the agreement and permitted MPTI more than one and one-half years to comply with the terms of the limitation agreement. HEAF's actions gave every benefit to the school. In fact, at the time of the evidentiary hearing in October of 1990, the records had not been delivered to HEAF in a certified reliable form.

HEAF's action to terminate the school is based on the terms of the limitation agreement. The use of the limitation is a normal practice or policy of the U.S. Department of Education. While no formal rules or regulations provide for the use of limitation agreements, it is not unreasonable to assume that without a statutory or regulatory prohibition, the parties could enter into any lawful agreement they desire.

Here, the terms of the limitation agreement specify that HEAF may terminate the school if the school fails to provide an adequate explanation of the violations. The test of adequacy is not defined by the terms of the agreement; however, the test of reasonableness is implied.

It is not unreasonable for HEAF to expect the school to provide records for the refund calculation in far less than one and one-half years. -As it was clear to the HEAF officials, it is clear to any reasonable person that the task required of MPTI was not an impossibility. The demand for the complete records is necessary and reasonable. HEAF reasonably concluded in February l990 that MPTI was unable to provide accounting materials, ledgers or other support for its financial operations. Therefore, HEAF was unable to verify the refund policy of the school without the complete and accurate records of the school.

Conclusion

It is found that the actions taken by HEAF were reasonable and calculated to provide the due process required by a guaranty agency when terminating a school from participation in the student loan programs of the U.S. Department of Education. Since the action by the Higher Education Assistance Foundation is found to be proper, it is further concluded that the disqualification by the U.S. Department of Education of the Michigan Paraprofessional Training Institute from participation in any other guaranty agency student loan program is proper and required by 20 U.S.C. § 1082(h)(3).

It is, therefore, ORDERED that the Michigan Paraprofessional Training Institute be disqualified from participatinq in the student loan insurance program of each of the guaranty aqencies under 20 U.S.C. § h 1082(h)(3).

Issued: February 22, 1991
Washington, D. C. Daniel R. Shell
Administrative Law Judge

Footnote: 1 *1 Ed. Ex. 1, 20 U.S.C. § 1082(h)(3).*

Footnote: 2 *2 Ed. Ex. 6, pg. 1.*

Footnote: 3 *3 Ed. Ex. ,3, pg. 1.*

Footnote: 4 *4 Ed. Ex. 9, pg. 3.*

Footnote: 5 *5 Ed. Ex. 10.*

Footnote: 6 *6 Ed. Ex. 11.*

Footnote: 7 *7 Ed. Ex. 12 states: The Department took this action as a result of the allegations HEAF made with respect to your administration of Title IV, Higher Education Programs.... Your claim that one of your employees with a drug abuse problem was "negligent in his duties" does not relieve your institution of its responsibilities to administer properly the student aid programs.*

Footnote: 8 *8 Ed. Ex. 12. There is some confusion as to the correct date for the hearing. The testimony of Shirley Prendes, discussed later, refers to the hearing scheduled December 16, 1988.*

Footnote: 9 *9 The testimony of Shirley Prendes, Administrator for MPTI, states she wanted the meeting to avoid a termination hearing on December 16, 1988. Tr. pg. 214.*

Footnote: 10 *10 The agreement recites that the parties wish to avoid the expense and uncertainty of litigation. Paragraph C of the Introduction on page one of the limitation agreement states:*

The school's past administration of its financial aid functions has resulted in violations of the Act and the HEAF Rules and Regulations and policies and procedures with the result that: (l) some former students of the school are owed tuition refunds, which tuition refunds are required by the Act to be paid by the school directly to the holders of the guaranteed student loan debt incurred by those former students in order to attend the school; and, (2) some persons who enrolled at the school or applied for enrollment, but never registered for or attended any classes (considered herein to be "never enrolled") are owed repayments of student loan debt resulting from the School's negotiation of student loan checks without indorsement by the borrower.

Additionally, the limitation agreement in Article II,2-2,a states that 15 days after the execution of the agreement, the school shall provide HEAF with the name, address and credentials of a financial aid consultant or certified public accountant retained to review the files. Article II,2-2,b states:

Within forty-five (45) days after the date of this agreement, the school must provide and certify to HEAF a Certificate which includes the following information: a complete list of student (including SSN's) with HEAFguaranteed student loans whose lenders are entitled to tuition refunds due to the student leaving the school; the date these students left the school; and the amount of tuition refund due for the account of all such students.

Article II,2-2,c. states:

Within sixty (60) days after the date of the agreement, the school must provide and certify to HEAF a Certificate which includes the following information: a complete list of persons (including SSN's) who enrolled at the school and applied for HEAF-guaranteed student loans, but never accepted their loans by endorsing their loan checks, whose loan checks were nevertheless negotiated; whether those persons ever attended the school, and if so, for what period; and, the amount of the loan(s) for which each such person applied and the lender of such funds.

See Ed. Ex. 3 for the entire limitation agreement.

Footnote: 11 *11 Higher Education Assistance Foundation Bulletin L/S No. 61, January 26, 1988, sets out the HEAF rules which afford a hearing before a designated official. .See section 7,B. pg.5.*

Footnote: 12 *12 Ed. Ex. 3, Article 2-8a. of the limitation agreement.*

Footnote: 13 *13 Article I, 1-1. This term was conditioned upon the school's delivery of $25,000 upon execution of the agreement. There is no dispute that MPTI delivered the $25,000. Also see Tr. pg. 119. Ellen Raue testified of two payments equaling $25,000 in December, 1988.*

Footnote: 14 *14 Ed. brief filed June 8, 1990, pg. l.*

Footnote: 15 *15 See Education brief dated June 8, l990, pg. 14.*

Footnote: 16 *16 Tr. pg. 10.*

Footnote: 17 *17 See MPTI's brief dated May 14, 1990, at pg. 4. II.*

Footnote: 18 *18 See MPTI's brief dated May 14, 1980, pg. 4. III.*

Footnote: 19 *19 Howard Fenton is an attorney for the Program Compliance Branch, of the Division of Audit and Program Review of the Office of Student Financial Assistance. Tr. pg. 34.*

Footnote: 20 *20 Tr. pg. 35. He referred to Ed's Exhibit 19.*

Footnote: 21 *21 Exhibit l9, pg. 1, paragraph 3.*

Footnote: 22 *22 Tr. pg. 36. Fenton testified that he assisted in drafting the procedural guidelines set out in Exhibit 19.*

Footnote: 23 *23 Tr. pg. 51.*

Footnote: 24 *24 Tr. pg. 65.*

Footnote: 25 *25 Tr. pg. 78.*

Footnote: 26 *26 Tr. pg. 92.*

Footnote: 27 *27 Tr. pg. 94.*

Footnote: 28 *28 Tr. pg. 95-96.*

Footnote: 29 *29 Tr. pg. 98.*

Footnote: 30 *30 Tr. pg. 130.*

Footnote: 31 *31 Tr. pg. 131.*

Footnote: 32 *32 Education Exhibit 23 is a letter from Shirley Prendes, School Administrator, dated October 15, l990, which acknowledges $272,629.86 in unpaid refunds.*

Footnote: 33 *33 Tr. pg. 134-135.*

Footnote: 34 *34 Tr. pg. 190.*

Footnote: 35 *35 Her husband's brother, Tr. pg. 194.*

Footnote: 36 *36 Tr. pg. 216.*

Footnote: 37 *37 Tr. pg. 219.*

Footnote: 38 *38 Tr. pg. 376.*

Footnote: 39 *39 Tr. pg. 386.*

Footnote: 40 *40 Tr. pg. 240.*

Footnote: 41 *41 Tr. pg. 244.*

Footnote: 42 *42 Tr. pg. 266.*

Footnote: 43 *43 Tr. pg. 267-268.*

Footnote: 44 *44 Tr. pg. 341.*

Footnote: 45 *45 Tr. pg. 384.*

Footnote: 46 *46 Tr. pg. 283-284.*

Footnote: 47 *47 Tr. pg. 303.*

Footnote: 48 *48 Tr. pg. 305*

Footnote: 49 *49 Tr. pg. 319.*

Footnote: 50 *50 Tr. pg. 322.*

Footnote: 51 *51 Lenore Donnellon, a campus director for MPTI, testified that she prepares drop lists of those students that withdraw from school. She explained that the list is forwarded to Michael Prendes, the President of the School, as well as the Business Office and the Financial Office.*

Footnote: 52 *52 Tr. pg. 324.*

Footnote: 53 *53 See In re Aristotle, Docket No. 89-35-S, Order of Administrative Law Judge Lewis, U.S. Department of Education (April 19, 1990).*

Footnote: 54 *54 Fenton's assertion that Education can establish policy through a Dear Guarantee Agency Director letter must be rejected for the reasons given in In re Aristotle, Docket No. 89-35-S, Order of Administrative Law Judge Lewis, U.S. Department of Education (April 19, l990), at 6.*

Footnote: 55 *55 This is an independent action to review the two-fold purposes set out above. It is not an appellate review of the HEAF action; nor is it a de novo review which could possibly reverse the actions taken by HEAF. Counsel for Education correctly argues: "Guaranty agencies*

are not under the control of the Department and [they] possess independent authority to terminate schools from participation in their loan programs." This review will not in any way affect the specific action taken to terminate the HEAF-MPTI relationship. MPTI, if dissatisfied with the disposition of the HEAF action, must seek a remedy in the appropriate forum. This is not the proper forum to enforce its rights under the terms of any contractual agreement between MPTI and HEAF.

Footnote: 56 *56 It is important to point out that this case illustrates the importance of cross examination of witnesses and its essential nature in revealing all of the facts and exposing credibility of the witnesses.*

Footnote: 57 *57 The basic agreement is the contractual relationship originally entered between HEAF and MPTI. This is not to be confused with the later limitation agreement shown in Ed. Ex. 3.*

Footnote: 58 *58 Had MPTI actually proceeded to a hearing before HEAF, the issue concerning the make up of the HEAF review process may have been relevant; since MPTI voluntarily waived the hearing, the argument is not relevant to these proceedings.*