

IN THE MATTER OF IVANHOE INSTITUTE,  
Respondent.

Docket No. 92-2-ST  
Student Financial Assistance Proceeding

### DECISION

Appearances: Howard Sorensen, Esq., Office of the General Counsel, for the Office of Student Financial Assistance, United States Department of Education.

John E. Nagurney, Esq. for Ivanhoe Institute.

Before: Judge John F. Cook

On December 3, 1991, the Office of Student Financial Assistance (OSFA), initiated a proceeding to terminate Respondent's (Ivanhoe's) eligibility to participate in Federal Student Financial Assistance 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). Ivanhoe then filed a request for a hearing dated December 23, 1991.

A Notice of Receipt of Request for Hearing and Prehearing Order was issued January 17, 1992, by the undersigned. This Order required the parties to file initial briefs, reply briefs and a statement of stipulations and issues. Deadlines were issued for filing the various briefs etc. The parties' initial briefs were due on or before February 17, 1992. Reply briefs were due on or before March 18, 1992. Joint Statements of Stipulations and Issues were due on or before April 17, 1992.

As a result of a February 18, 1992, telephone conference call between counsel for Ivanhoe, counsel for OSFA and the judge

the deadline for initial briefs was extended to February 21, 1992. Subsequent to the conference call, counsel for Ivanhoe faxed a draft stipulation of the request for an extension of time to counsel for OSFA. Counsel for OSFA faxed his requested revisions to Ivanhoe on February 19, 1992. To date counsel for Ivanhoe has not returned a finalized version of the stipulation to counsel for OSFA for approval or filing.

On April 7, 1992, OSFA, through counsel, filed a Motion for Entry of Decision. Counsel for OSFA based its motion upon the following: 1) Ivanhoe's failure to file its brief due on February 21, 1992 and 2) Ivanhoe's failure to submit a letter of credit for \$50,000 due by 5:00 p.m., on March 31, 1992, as specified by the parties through an agreement signed by the president of Ivanhoe, thus triggering the proviso that Ivanhoe's eligibility to participate in all Title IV Programs would terminate thereby. This last attempt at settlement was due to a phone call from Ivanhoe's counsel to OSFA's counsel on February 21, 1992. During this call Ivanhoe's counsel

inquired whether OSFA would allow Ivanhoe one last opportunity to submit the \$50,000 letter of credit at issue in this proceeding. OSFA assented to the request and an agreement was drawn up. The agreement was signed by OSFA and countersigned by the president of Ivanhoe. However, the letter of credit was never received.

Consequently, an Order was issued on April 8, 1992, by the undersigned, establishing a time limit for Ivanhoe's response to OSFA's motion. It was ordered that Ivanhoe, would have until 5:00 p.m. on April 23, 1992, to respond to OSFA's Motion for Entry of Decision. On April 24, 1992, a letter was received from Ivanhoe's counsel stating that it had no objection to the entry of an order granting OSFA's Motion for Entry of Decision.

OSFA's Motion for Entry of Decision included Exhibit A and Exhibit B. Exhibit A is a copy of the signed agreement, dated February 26, 1992, between OSFA and Ivanhoe Institute. The agreement detailed the criteria that Ivanhoe had to meet to execute the settlement. The accord stated that the Program Compliance Branch of the Office of Student Financial Assistance was willing to let Ivanhoe submit a \$50,000 letter of credit by the close of business on March 31, 1992. The agreement had to be countersigned by Dr. Lazorick, the president of Ivanhoe, and a copy returned by telecopier by 5:00 p.m. on March 2, 1992. The original agreement had to be returned by Federal Express, or an equal method of service, on March 3, 1992. The letter of credit had to have been received by counsel for OSFA by 5:00 p.m. on March 31, 1992, or Ivanhoe would forfeit its eligibility to participate in all student financial assistance programs under Title IV of the Act of 1965, as amended. Additionally, as a result of failure to send such letter, Ivanhoe had to withdraw its appeal of the notice of intent to terminate and agree that judgement should be entered forthwith by the Administrative Law

Judge upholding the notice of intent to terminate its eligibility. Ivanhoe had to agree that it would appoint Howard Sorensen, counsel for OSFA, its attorney to withdraw the appeal by presenting the countersigned letter, and that it would waive any and all rights to appeal the termination of its eligibility. The letter also explained to Ivanhoe that a change in ownership would require the new owners to satisfy the requirements of 34 C.F.R. § 600.31 before being eligible to participate in Higher Education Act programs. Those were the requirements that Ivanhoe agreed to meet by countersigning the letter on February 28, 1992. Ivanhoe never forwarded the letter of credit. This fact is evidenced by an affidavit filed by OSFA's counsel.

Exhibit B submitted by counsel for OSFA is a Department of Education form issued by the Chief of the Institutional Review Branch, Region III of the Division of Field Operations stating that the Ivanhoe Institute had closed for business as of April 1, 1992.

An order should therefore, be entered in accordance with the agreement as outlined in Exhibit A, in view of Ivanhoe's failure to post the letter of credit due on March 31, 1992, and its failure to comply with the Briefing Schedule of January 17, 1992, as amended, which are grounds for termination of the eligibility of Ivanhoe Institute to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended. 34 C.F.R. § 668.89

**IT IS THEREFORE ORDERED:**

1. That a decision be entered against Ivanhoe Institute terminating its eligibility to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, and

2. That these proceedings be terminated.

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John F. Cook  
Administrative Law Judge

Issued: April 30, 1992  
Washington, D.C.

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SERVICE LIST

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A copy of the attached service list was sent to the following:

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