

In the Matter of TWENTIETH CENTURY COLLEGE, Mobile, AL  
Respondent.

Docket No. 93-19-SP  
Student Financial Assistance Proceeding

## DECISION

JOHN P. HORNUNG, President, Twentieth  
Century College, for Respondent

EDMUND J. TREPACZ, II, Esq., for the  
Institutional Participation and

Oversight Service of the United  
States Department of Education.

Before Paul J. Clerman, Administrative Law Judge:

By a motion dated July 20, 1993, counsel for the Institutional Participation and Oversight Service (IPOS) of the United States Department of Education (ED) requested that I issue a decision dismissing this proceeding, with prejudice, and that I enter judgment against respondent, Twentieth Century College (TCC). TCC is not represented by counsel in this proceeding, but is represented by its President, John P. Hornung (Hornung), who did not offer a response to IPOS' motion to dismiss.

In lieu of acting on IPOS' motion to dismiss I issued an Order to Show Cause, dated August 17, 1993, in which, for reasons stated in my Order, I gave respondent a final opportunity to show cause why IPOS' motion should not be granted by offering such a showing no later than fifteen days after the date of service of m. Order. TCC did not offer such a showing or make any other response during the prescribed time period.

Now, by a letter dated October 18, 1993, counsel for IPOS adverts to TCC's failure to respond to IPOS' motion to dismiss or to my show-cause Order, and renews its request for an order dismissing this proceeding and entering judgment against TCC.

IPOS acknowledges that its motion to dismiss, served upon Hornung at his last-known address by first-class mail, was returned, undelivered, by the postal service, but points out that my Order to Show Cause was apparently delivered in due course to Hornung. IPOS states that it has not been contacted by Hornung or TCC since the service of that Order.

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This proceeding was commenced November 18, 1992, when ED's Region IV Institutional Review Branch issued a Final Program Review Determination (FPRD) in which TCC was notified, through Hornung, of certain liabilities of TCC resulting from the findings in the FPRD, was provided with instructions regarding payment of TCC's liabilities, and was informed of TCC's right to appeal the FPRD. Under Subpart H of 34 CFR Part 668, the Student Assistance General Provisions, specifically at Section 668.111 et seq., procedures are established whereby an educational institution, such as TCC, may request a review of a FPRD, including a hearing before an authorized hearing official. Such a request for review was filed by Hornung on behalf of TCC on January 21, 1993. The procedures followed in this regard are as authorized in Title IV of the Higher Education Act of 1965, as amended (HEA).

On brief, IPOS supported various findings in the FPRD that indicated a failure on the part of TCC to show that TCC has complied with program requirements of Title IV student assistance programs and a failure by TCC to show that certain expenditures were proper, as required under 34 CFR 668.116(d). IPOS showed on brief, for example, that TCC failed to make timely refunds of Title IV program funds; that TCC failed to implement a default reduction plan, by not calculating correctly pro rata refunds for students; that TCC disbursed Title IV program funds to ineligible students; that TCC admitted students to Title IV programs without first determining whether they had the ability to benefit therefrom; that TCC failed to document the independent status of students receiving Title IV program funds; that TCC misappropriated Title IV program funds by improperly drawing such funds as administrative cost allowances; and that TCC misappropriated Supplemental Educational Opportunity Grant funds. In all, IPOS requests that the findings in the FPRD be upheld and that judgment be entered for ED in the total amount of \$38,293. Additionally, IPOS requests that TCC be required to remit the sum of \$7,468 to present holders of loans under the Stafford Federal Student Loan Program, as described in the FPRD findings.

In his motion to dismiss counsel for IPOS contends that in proceedings where an educational institution is appealing the findings in an FPRD, as here, the hearing official has the authority to issue a decision adverse to the party, TCC in this case, that failed to meet the procedural time limits previously established by the hearing official. Among other decisions, IPOS cites No.

93-13-ST, In the Matter of Tri-State Beauty Colleges, decided June 24, 1993. In that case, under somewhat similar circumstances, the hearing official noted that ED regulations gave him the authority and the responsibility to take all steps necessary to conduct a fair and impartial proceeding, and also to

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take whatever measures are necessary and appropriate to expedite the proceeding, including but not limited to setting time limits for the submission of documents. Under 34 CFR 668.117(c)(3), in Subpart H proceedings, specifically, the hearing official may terminate the hearing process and may issue a decision against a party if that party fails to meet time limits previously established. In Tri-State, where a prima facie case was presented by ED, and where respondent was given every reasonable opportunity to make substantive response thereto but failed to do so, good cause was found to be shown for granting a motion to dismiss.

A like conclusion is warranted here. Good cause is shown for granting IPOS' motion to dismiss the proceeding, with prejudice, and for entering judgment against TCC. I so

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conclude and find. Accordingly,

IT IS ORDERED:

1. That this proceeding is dismissed, with prejudice.
2. That judgment is entered against respondent, in the amount of \$38,293 to be paid to ED, and in the total amount of \$7,468 to be remitted to present holders of student loans under the Stafford Student Loan Program as described in the FPRD issued November 18, 1992, in this proceeding.
3. That this Decision shall take effect when it is served.

By Paul J. Clerman, Administrative Law Judge, on November 3, 1993, at Washington, D.C.