IN THE MATTER OF Cincinnati Metropolitan College,
Respondent.

Docket No. 93-22-ST
Student Financial Assistance Proceeding

Appearances: Lesile H. Wiesenfelder, Esq., Dow, Lohnes, & Albertson of Washington, D.C. for Cincinnati Metropolitan College.

Russell B. Wolff, Esq., and James D. Gette, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

On January 29, 1993, the United States Department of Education (ED) Office of Student Financial Assistance Programs (SFAP) issued a Notice of Intent to Terminate the eligibility of Cincinnati Metropolitan College (CMC) from participation in programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). See 20 U.S.C. § 1070 et seq. The Notice also imposed fines against CMC totaling $134,000. On November 16, 1994, CMC filed a motion to dismiss the above-captioned proceeding on grounds that dismissal is mandated by the Secretary's decision in In the Matter of Bliss College, Dkt. No. 93-15-ST, U.S. Dep't of Educ. (February 23, 1994) (Bliss) and warranted by orders in In the Matter of Draughon Business College, Dkt. No. 92-94-ST, U.S. Dep't of Educ. (March 4, 1994) (Draughon),See footnote 1 *1* In the Matter of Fischer Technical Institute, Dkt. No. 92-141-ST,

U.S. Dep't of Educ. (March 1, 1994), and In the Matter of Spencer College, Dkt. No. 93- 27-ST, U.S. Dep't of Educ. (March 9, 1994). In Bliss,See footnote 2 *2* and three cases following Bliss, the proceeding was dismissed on the basis that the action had become moot as a result of the institution's closing. In Bliss, the Secretary noted that a case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. Applying that analysis, the Secretary concluded that a termination action against an institution is rendered moot upon the closing of the institution.

SFAP opposes CMC's motion on the basis that Bliss is inapposite to the instant case. In addition, SFAP requests that this proceeding be stayed until the Secretary either reconsiders Bliss or issues a decision on the appeal of the three cases cited above which follow Bliss.See footnote 3 *3* I find that the relevant facts of the case before me and those in Bliss and its progeny are clearly indistinguishable. As CMC notes in its motion, the grounds for terminating CMC's Title IV eligibility and imposing a fine against the institution are essentially the same grounds that existed in Bliss. Namely, SFAP's allegation that the school failed to meet Title IV regulatory standards of financial responsibility and failed to make Stafford Loan refunds to lenders. Notably, the

allegation concerning CMC's financial responsibility is based on SFAP's analysis of the financial statements of Fischer Educational System, Inc., the corporate parent of both Bliss College and CMC for the same fiscal years at issue in Bliss.

Further, in both Bliss and the case before me, SFAP proposed to fine the institution on the basis that the school failed to make timely refunds to Stafford Loan lenders during the 1991 award year. Although SFAP argues that Bliss is distinguishable from the instant case because the administrative law judge's decision in Bliss did not uphold SFAP's proposed fine, I am unpersuaded that such "distinction" is relevant. The Secretary's decision in Bliss vacated the initial decision in that case. As it stands, the initial decision has been set aside in its entirety. The fact that the fine was not upheld by the judge has little or no bearing on the application of the *Secretary's* decision in Bliss. Infact, SFAP's reliance on the fact that the initial decision in Bliss did not uphold SFAP's proposed fine undercuts the fact that the Secretary's decision vacated the initial decision, and, as a result, rendered the initial decision void. Clearly, in reviewing the initial decision on appeal, the Secretary could have rejected the judge's determination not to uphold the fine and reinstated SFAP's proposed fine.

However, the Secretary did not do so. Consequently, the relevant facts of this case, and those in Bliss, are indistinguishable. Accordingly, the Secretary's decision in Bliss controls the present case.

ORDER

Accordingly, the above-captioned proceeding is DISMISSED as moot.

SO ORDERED:

Ernest C. Canellos
Chief Judge

Issued: December 7, 1994
Washington, D.C.

[Footnote: 1] *1 On page 3 of CMC's motion, the school attempts to bolster its position that a dismissal of this proceeding is warranted by arguing that the undersigned was so convinced of Bliss' correctness that I issued an order dismissing Draughon after I had already issued a decision on the merits of the Draughon case on November 5, 1993. This is incorrect. The case, which CMC mistakenly refers to, involved a proceeding against an Oklahoma City, Oklahoma, institution similarly named "Draughon College." See In the Matter of Draughon College, Dkt. No. 93-4-ST, U.S. Dep't of Educ. (November 5, 1993). The case that followed Bliss involved a Little Rock, Arkansas institution for which a decision on the merits had not been issued. See In the Matter of Draughon Business College, Dkt. No. 92-94-ST, U.S. Dep't of Educ. (March 4, 1994) (Order re: Dismissal of Proceedings).*

Footnote: 2 *2 In Bliss, the Secretary vacated the decision of the administrative law judge and dismissed the action.*

Footnote: 3 *3 SFAP has appealed all three of the cases noted above and has requested the Secretary to reconsider his decision in Bliss.*