

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

**In the Matter of**

**HARTFORD TECHNICAL INSTITUTE,  
Hartford, CT**

**Respondent**

**Docket No. 93-28-ST**

**Student Financial Assistance Proceeding**

**DECISION**

**MR. ROBERT M. NEYERS for Respondent.  
RUSSELL B. WOLFF, Esq., for Office of  
Student Financial Assistance,  
U.S. Department of Education**

**Before:**

**Paul J. Clerman, Administrative Law Judge.**

This is a proceeding commenced by the United States Department of Education (ED) on February 10, 1993, by the issuance and transmission to Hartford Technical Institute (respondent) of a letter/notice in which ED stated its intention to terminate the eligibility of respondent to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 USC 1070 *et seq.* and 42 USC 2751 *et seq.*, for reasons set forth in the letter/notice. Also for reasons therein set forth, respondent was informed by ED that respondent would be fined in the amount of \$142,000.

The procedures being followed by ED in this matter are procedures established by the Secretary of Education and set forth in 34 CFR Subpart G, specifically at section 668.86, as amended, for initiating the termination of eligibility of educational institutions to participate in Title IV programs under HEA.

The letter/notice informed respondent that ED was taking this action based on the findings in a report, dated September 10, 1992, by an inspection team of ED's Office of the Inspector General (OIG) Concerning an inspection made by the team of respondent's premises in early 1992 that entailed examination of respondent's records and interviews with respondent's officials, employees, students and former students. The OIG made the determination in that report (the OIG report) that respondent is in violation of various regulatory provisions governing Title IV programs under HEA, and that respondent lacks the capacity to administer those programs adequately. Respondent was informed that the termination of its eligibility and the imposition of fines would take effect on March 5, 1993, unless prior to that date respondent submitted a

request for a hearing in the matter, in which case the matter would be referred to ED's Office of Hearings and Appeals (OHA) to be assigned for hearing before an independent hearing official.

Respondent's president, Robert M. Meyers (Meyers), requested a hearing in this matter on February 25, 1993, and a month later I was designated to be the hearing official. My procedural order issued June 10, 1993, required the parties, respondent on the one hand and on the other the Student Financial Assistance Programs (SFAP), to file with OHA and concurrently serve upon the opposing party the names of all witnesses who will or may be called to testify at an oral hearing in this matter, together with a brief description of the nature of that testimony and of any exhibits expected to be offered in evidence. The deadline of such filing and service was July 12, 1993.

SFAP made timely compliance with my order by filing and serving its lists of witnesses and exhibits. Respondent did not. Prior to that due date respondent filed a request to delay this proceeding indefinitely while it exhausts its appellate rights in a Freedom-of-Information (FOIA) matter related to the OIG report, which I construed as a motion to stay and denied in my Decision and Order dated July 1, 1993.

Based on respondent's failure to comply with my June 10 order to file and serve witness and exhibit lists, SFAP on July 16, 1993, filed its motion to terminate respondent's eligibility to participate in Title IV programs, to impose a fine, and to terminate this proceeding, pursuant to the hearing official's authority under 34 CFR 668.89(c) to take appropriate measures when a party fails to meet time limits that have been set in a case. In lieu of taking the requested action, however, I issued an Order to Show Cause, dated July 26, 1993, by which respondent was given a final opportunity to show cause why SFAP's motion should not be granted. In purported compliance with that order respondent submitted a letter, dated August 5, 1993.

In the August 5 letter Meyers, for respondent, states that respondent will offer as witnesses and as evidence the persons and the writings developed and produced in the OIG report and that respondent will do so when those names and those writings are made available by the OIG in response to respondent's FOIA inquiries or as a result of respondent's FOIA appeals. In his letter Meyers "contends that this proceeding is designed to develop the truth and not be adversarial in nature." Meyers asks that, in effect, OHA order the OIG to furnish "all pertinent writings."

In the August 5 letter, also, Meyers states:

1. "...that we ceased accepting new students in May, 1993."
2. That the State of Connecticut withdrew respondent's certificate of authorization and that in compliance with Connecticut's request respondent "dismissed our students and terminated all staff."
3. That as a result of the actions of the OIG and Connecticut respondent "has no funds and no assets" except for some items that are pledged on bank loans.

Further, in the August 5 letter, Meyers asks because of respondent's lack of resources that OHA appoint counsel to assist in respondent's defense. Meyers again requests what amounts to an indefinite stay pending the outcome of respondent's FOIA appeals.

SFAP responded on August 17, 1993, with regard to the August 5 letter. SFAP contends that respondent did not address the salient issue of why default judgment should not be granted and thus failed to show cause as required by my July 26 order. SFAP alleges that respondent continues to rely on its pending FOIA appeal as a justification for delaying the instant proceeding despite my ruling in the July 1 Decision and Order that proceedings under FOIA do not affect a proceeding under Subpart G. SFAP notes, also, that nothing in ED's regulations authorizes the appointment of counsel to assist respondent in this proceeding. SFAP requests that its prior motion for entry of judgment against respondent now be granted.

Matters critical to a decision in this proceeding are: (1) that ED's regulations at 34 CFR 668.88(c)(3) do not permit discovery in termination and fine proceedings under Subpart G, and (2) that it is the authority and responsibility of a hearing official in Subpart G termination and fine case to take whatever measures are appropriate to expedite the proceeding, including, as here pertinent, the setting of time limits for hearings and the submission of documents, and terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

The letter/notice issued February 10, 1993, spelled out the charges and allegations advanced by ED under statutes, regulations and precedent, and I conclude that there was presented a prima facie case for termination of eligibility to participate in student financial assistance proceedings under Title IV and for the imposition of fines as specified in the letter/notice. Respondent has been given every reasonable opportunity to make substantive responses to those charges and allegations but has failed to do so. It is indeed regrettable that, for whatever reasons, OIG has thus far declined to supply respondent under FOIA with the names and documents that respondent considers necessary to its case in the instant proceeding, but it is well established that, under law, there is no basis for delay in a Subpart G proceeding to allow a respondent to pursue discovery under FOIA. This is a matter that may well be pursued further with the OIG or in another forum, but not here. Respondent has shown no basis in law, regulation or precedent for the appointment of counsel to assist respondent in this proceeding, and respondent's request in this regard will be denied. I conclude and find in the circumstances that good cause has been shown for terminating respondent's eligibility to participate in student financial assistance programs under Title IV of HEA, for imposition of fines against respondent, and for terminating this proceeding. Accordingly, SFAP's motion dated July 16, 1993, for termination of proceedings and entry of judgment should be, and it is hereby, granted.

**IT IS ORDERED:**

1. That the eligibility of Hartford Technical Institute to participate in student financial assistance programs under Title IV of HEA is terminated.
2. That Hartford Technical Institute shall, in the manner provided by law, pay to the United States Department of Education a fine in the amount of \$142,000.

3. That the request by Hartford Technical Institute for the appointment of counsel is denied.
4. That this proceeding shall be terminated.
5. That this decision shall take effect when it is served.

By Paul J. Clerman, Administrative Law Judge, on August 19, 1993, at Washington, D.C.

**SERVICE LIST**

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