In The Matter of UNITED EDUCATION INSTITUTE, Santa Ana, CA
Respondent.

Docket No. 93-59-SP
Student Financial Assistance Proceeding

Respondent

DECISION

LESLIE H. WIESENFELDER, Esq. and
SHERRY A. MASTROSTEFANO, Esq. for
Respondent. DONALD C. PHILIPS, Esq.,
for Student Financial Assistance
Programs of the United States
Department of Education.

Before Paul J. Clerman. Administrative Law Judge:

In a Final Program Review Determination (FPRD) dated April 8, 1993, respondent, United Education Institute (United) was notified by the United States Department of Education (ED) that pursuant to findings made in a Program Review Report (PRR) issued July 9, 1992, United must repay to ED the amount of $599,872. United was advised that this sum must be repaid within 45 days after the date of the FPRD unless, within that time period, United files an appeal to the FPRD in proper form, in which case an administrative hearing in the matter would be set before a hearing officer. An appeal was filed by United's counsel on May 27, 1993, in which a hearing was requested, and on June 10, 1993, I was designated to be the hearing official in this matter. My order issued August 13, 1993, set this matter for hearing, such hearing to consist of the filing by the parties of briefs and reply briefs, which briefs and replies were filed in due course.

United is an educational institution participating since May 1988 in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV HEA). The governing regulations, at 34 CFR 600.30, require, among other things, that such an institution shall notify the Secretary of ED of any change in the "address of locations other than the main campus at which it offers educational services." In Section 600.30(c) the regulations provide that the failure of an institution to timely notify the Secretary of such a change "may result in adverse action against it." On brief, counsel for the Student Financial Assistance Programs (SFAP) on behalf

of ED states that the instant proceeding is an adverse action against United as contemplated in Section 600.30(c), in that United failed to inform the Secretary that it was continuing to offer educational services at a particular location other than its main campus after United had notified the Secretary that this particular location had been closed down.

The material facts in this matter are not in serious dispute. At the time that United was notified that it was an eligible institution for Title IV purposes, in May 1988 as stated, United maintained its main campus at 7311 Van Nuys Boulevard in Van Nuys, CA (the Van Nuys location). About a year later United relocated its main campus to a location in Los Angeles, CA, and in an Institutional Eligibility Notice dated July 7, 1989, ED's Division of Eligibility and Certification -

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(DEC) acknowledged the change of address and notified United that
the Secretary had determined that United, at its Los Angeles location, satisfies the definition of an eligible proprietary institution of higher education as set forth in Title IV HEA.

As here pertinent, it appears: (a) that Abdi Lajevardi, United's Chief Executive Officer, by a document dated July 17, 1989, certified to the Secretary that:

[T]he school, formerly located at 7311 Van Nuys Blvd., Van Nuys, CA 91405 was closed on

- 6/30/89 because of expiration of lease on the

premises. All faculty and staff were transferred to our new location at 3727 West 6th Street, Los Angeles, CA 90020 on 7/1/89.

(b) that United, according to Lajevardi, "to protect the interests of current students," continued to maintain the Van Nuys location so that those students who did not elect to transfer to the new Los Angeles location could complete their educational program, and (c) that "because a substantial number of prospective students and employers in the Van Nuys area continued to show interest" in United's program at Van

Nuys, United decided to enroll new students in that program. Thus, according to Lajevardi, the Van Nuys location remained open as an "auxiliary classroom" location, and new students enrolled at the Los Angeles campus could attend classes at the Van Nuys location.

There is no serious dispute, also, to the fact that on and between July 1, 1989, and October 14, 1991, the review period covered by the FPRD, United continued to disburse Title IV HEA funds to students attending classes at the Van Nuys location, and on brief United does not dispute, and in fact does not address, the total amount of those funds disbursed as calculated by SFAP,

period was not pursued on brief by SFAP, and thus may be deemed to have been dropped by ED. It is with the other allegation in the FPRD finding, that is, that the Van Nuys location was not recognized as an eligible branch by the Secretary, that United takes issue.

For an understanding of the matters at issue it is helpful at this point to place in chronology several of the events that are deemed to be significant by opposing counsel on brief. As used below the term ACCET refers to Accrediting Council for Continuing Education & Training, United's accrediting agency; CPPVE is California Council for Private Postsecondary and Vocational Education, United's state licensing authority; and IE&C is ED's certificate of institutional eligibility, issued to institutions such as United pursuant to applications filed by such institutions on Form E40-34P.

May 5, 1988 IE&C issued by ED to United at Van Nuys location -
June 6, 1988 United executes agreement for program participation at Van Nuys
April 25, 1989 ACCET advised United that it had notified ED that it

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approved the relocation of United's main campus and the redesignation of the Van Nuys facility as an auxiliary classroom
April 25, 1989 ED notified United that to maintain eligibility for the site in Van Nuys it must submit a Form E40-34P to record its change of address to Los Angeles, and must file, on school stationery, a change of address

certification
July 7, 1989 ED issued an institutional eligibility notice, acknowledging United's change of address from Van Nuys to Los Angeles, and informing United that its facility at Los Angeles satisfies the definition of an eligible proprietary institution of education
July 17, 1989 Lajevardi certified that the school in Van Nuys was closed on June 30, 1989, because of expiration of lease on the premises, and that all faculty and staff were transferred to Los Angeles
June 8, 1990 ACCET advised ED, and notified CPPVE, that United changed its name from United Electronics Institute to United Education Institute, and that the name change does not affect United's accreditation, noting in this regard that United has an auxiliary classroom in Van Nuys
June 20, 1991 CPPVE notified United at Van Nuys that it approved its programs
October 4, 1991 ACCET advised United, and notified ED and CPPVE, that it approves the establishment by United of a branch in Van Nuys, which is accredited by virtue of the accreditation of the main campus in Los Angeles
October 11, 1991 United filed Form E40-34P as an update for additional location in Van Nuys

December 3, 1991 ED issued an IE&C approving the van Nuys facility as an eligible certified additional location of United as of October 15, 1991
December 11, 1991 Lajevardi executed a program participation agreement for United at Los Angeles, which was countersigned on behalf of ED on February 6, 1992

May 15, 1992 ED' s program review at United concluded

To establish that United's facility at Van Nuys during the review period was not a school at which students were eligible for disbursements under Title IV HEA, SFAP relies heavily on Lajevardi's July 17, 1989, certification that the school was closed. SFAP notes that United, in its August 1992

response to the PRR, recognized that there was a misunderstanding concerning the eligibility status of the Van Nuys facility, and that United had explained at that time that prior to being designated as a branch campus the Van Nuys location was an auxiliary campus, the status of which was intended to be "short lived," but that in view of a continuing interest by students in enrolling there "we continually maintained the original location as an operational site." SFAP alleges that the term "auxiliary classroom" as used by United is a term that is not defined in applicable statute or regulation.

SFAP also relies on the fact that United applied in

October 1991 to have the Van Nuys facility certified by ED as an additional eligible site, SFAP contending in this regard that if United believed that Van Nuys had not lost its eligible status United would not have filed an application to have that status restored. In SFAP's view, as seen, after Lajevardi certified that Van Nuys was closed and after United transferred its campus, faculty and staff to Los Angeles, Van Nuys no longer constituted an eligible facility for Title IV HEA disbursements. In order to restore eligibility at Van Nuys, according to SFAP, United would have to follow the same application procedures that it followed in establishing its original eligibility, which procedures, SFAP emphasizes, United actually did follow in October 1991. SFAP notes that United's former counsel in a letter to ED's DEC in April 1992 inquiring about the eligibility of certain programs, appeared to recognize the December 3, 1991 IE&C as the source of the eligibility status at Van Nuys.

The thrust of United's position in this matter is that at no time during the entire period involved did the educational facility at Van Nuys close down, but that, to the contrary, Van Nuys continued at all times to be accredited by ACCET, to be approved by CPPVE, to be operated by United, and to be attended by students and to constitute an educational facility at which such students properly may be disbursed Title IV HEA funds. United states that the status of Van Nuys during this period changed only from main campus to auxiliary classrooms to branch campus, its present status. United contends that ED throughout this period was well aware of the continuing accreditation, licensing approval, and operation of the Van Nuys facility, an

awareness that is documented in this record, according to United, in letters sent to ED by ACCET. Based on this awareness on the part of ED, and in light of the fact that ED did not appear to question Title IV disbursements by United at Van Nuys at any time during this period, United states that "no reason existed for submitting an application to [ED] with respect to the continued operation of Van Nuys."

United contends that even if it had contemplated filing an application in order to establish eligibility for the Van Nuys site, the instructions in the application form then in use in plain language did not require such a filing. As United construes it, a separate application was required only for a nonmain campus location at which a degree program is offered for which a separate catalog or course description is published. United points out that such was not the case at Van Nuys, and it contends that it was governed by the then-published instructions and not by the later-published instructions which require that when a program is offered in its entirety at any location other than the main campus, an application must be submitted to ED for approval to include that location in the institution's eligibility status. As United views it, its initial application for eligibility in 1988 contained all necessary information relative to Van Nuys, and this information was supplemented when United filed a Form E40-34P on May 5, 1989, to report the change of address of its main campus. United acknowledges that it did not in that application indicate that educational programs were offered at Van Nuys as well as at the main campus, but alleges that ED nevertheless had all the information needed to approve eligibility at the Van Nuys location.

United is critical of what it regards as SFAP's undue reliance on the absence of any reference to Van Nuys in United's May 5, 1989, application, and SFAP's overall reliance on Lajevardi's July 17, 1989, certification that Van Nuys was closed. In the latter regard, United notes that the certification form to be filled out and signed by Lajevardi was mailed to United on July 10, 1989, and signed on July 17, 1989, but that ED's IE&C, which acknowledged the move to Los Angeles of United's main campus but failed to list Van Nuys as an additional location, was issued on July 7, 1989. United argues that this time frame does not support SFAP's assertion

that by Lajevardi's certification United relinquished eligibility at Van Nuys.

United takes particular issue with the regulatory basis cited by SFAP for its demand that United repay to ED all of the Title IV HEA funds disbursed during the review period. SFAP alleged in that regard that "a location loses its eligibility when it closes," citing in support 34 CFR 600.32, and noting that this provision was redesignated 34 CFR 600.40 on August 7, 1990.

As seen, SFAP regards it as beyond question that United at its Van Nuys location lost its eligibility when it closed and the closure was certified by its Chief Executive Officer. SFAP concedes that United could properly disburse Title IV HEA funds to students who were enrolled at Van Nuys on the date that that facility lost its eligibility, and to students who enrolled prior to the date that the eligibility of the Van Nuys facility was restored. As stated on brief by SFAP, "The liability in this case is based solely on those students whose entire period of attendance at the Van Nuys Location fell outside those two dates." Under 34 CFR 600.10(b)(3), according to SFAP, if an institution such as United seeks to establish eligibility for a new location, or as in this case for a location that was closed and thus lost its eligibility, the institution shall apply for eligibility pursuant to 34 CFR 600.20 which provides for appropriate application to the Secretary. SFAP contends that United's failure to make timely application under Section 600.20 was fatal to United's authority to make Title IV HEA disbursements to those students whose entire period of attendance at Van Nuys was during the review period.

United acknowledges that since March 10, 1993, under Section 600.40 an institution or a location loses eligibility when that institution or location closes. United points out, however, that this regulation became effective long after the review period ended; that during the review period, as here pertinent, Section 600.40 provided only that:

An institution loses its eligibility on the date that

- ... [it] permanently closes [emphasis added]

United alleges that the earlier version of Section 600.40, applicable during the review period, clearly applied only to institutions and not to locations such as Van Nuys, and that the later version, which does apply to institutions or locations, cannot retroactively be applied in this case. United notes that even as to institutions the earlier version affected only those that permanently close, and that the Van Nuys facility did not permanently close. United emphasizes

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that after the main campus was moved to Los Angeles the Van Nuys facility was no longer itself an institution but became a location, and United contends that at no time prior to March 10, 1993, did ED's regulations "address the manner in which a location could lose eligibility," and thus that at no time during the review period was there any regulation in effect that mandated loss of eligibility at a location such as Van Nuys because of closure. For this reason, and for the reason noted below, United alleges that there is no "regulatory underpinning" for the FPRD or for this action being brought by ED.

Addressing the matter of Lajevardi's certification that Van Nuys had been closed, United states that Lajevardi completed ED's "fill-in-the-blank style" form as the institution expected events to proceed at that time. In his affidavit, dated May 25, 1993, and attached to United's brief as it was to United's appeal and request for hearing, Lajevardi stated that this form, captioned "Change in Address Certification," in no way indicated to him that Van Nuys would thereafter be unable to operate as an auxiliary classroom, as that term was used in a letter to Lajevardi, dated April 29, 1989, from ACCET, which was enclosed with Lajevardi's change of address certification to ED. That letter stated, among other things that:

> [Van Nuys] is now listed as an auxiliary classroom until students currently enrolled who did not wish to transfer to the new site have completed their instruction... The U.S. Department of Education has been notified.

Lajevardi noted that ACCET defines "auxiliary classroom" as a classroom site without administrative personnel which is operated to facilitate student accessibility to a program

offered by the main campus or branch of the institution, which description fits the Van Nuys facility, according to Lajevardi. On brief, United indicated that after the certification was executed by Lajavardi the institution "changed its mind and renegotiated its lease.'" United contends that nothing in the certification form executed by Lajevardi indicated that once that form was executed United could not change its mind regarding the Van Nuys site, or that ED must be updated if the situation at Van Nuys changes, or that the Van Nuys facility, previously approved and eligible for Title IV funds, became at once ineligible by virtue of that form being submitted. United alleges that if ED interpreted the certification form to have meaning not stated in that form, or even if ED concluded that Van Nuys was closed based on the plain language of that form, this is not sufficient to deprive Van Nuys of its eligibility absent a controlling Title IV regulation.

United alleges, finally, that there is absolutely nothing in this record to indicate or even to suggest that the institution did anything other than to award Title IV HEA funds to eligible students enrolled in eligible programs. In view of this, according to United, the assessment against respondent of a repayment liability totaling almost $600,000, a sum representing funds that were unquestionably disbursed by United to eligible students enrolled in eligible programs, is entirely unreasonable and should be rejected.

SFAP, on the other hand, regards this proceeding as a means for recovering from United "its ill gotten gains," the almost $600,000 improperly disbursed. SFAP stresses that ED does not seek to impose harsher remedies that are available, namely, to terminate United's institutional eligibility, or even to terminate the restored eligibility at Van Nuys. SFAP views as

irrelevant to this proceeding evidence as to the quality of the education offered by United, evidence and/or statements found specifically in Lajevardi's affidavit. SFAP moves to

strike from the record such evidence and/or statements and legal conclusions offered in the affidavit.

SFAP points out that more than 8,500 institutions participate in Title IV HEA programs, and SFAP contends that these institutions, as ED's fiduciaries, are expected to comply with regulatory requirements in disbursing federal funds to their students. SFAP alleges that ED has a right to know where federal money is being spent, and that the courts have confirmed that it is reasonable for a federal agency that administers large grant programs to require "punctiliousness" in money matters by institutional recipients of such grants, specifically by providing the agency, ED in this instance, with accurate information. SFAP states that ED has neither the time nor the resources available to oversee where every Title IV program dollar provided to eligible institutions goes, that it must rely on those institutions, its fiduciaries, to award those funds only to eligible students attending eligible instruction at eligible locations, and to provide true, timely and accurate information in that regard to ED. SFAP alleges that in this instance United as an institution failed to meet its obligations.

In particular, SFAP alleges that nowhere in its briefs does United dispute that, if true to Lajevardi's certification the Van Nuys facility had been closed on June 30, 1989, United would have to so notify ED as required under 34 CFR 600. 30:

(a) An eligible institution shall notify the Secretary...of any change in the following information provided in the institution's eligibility application:

* * * *

(3) The name, number, and address of locations other than main campus at which it offers educational services.

SFAP again notes that the Lajevardi certification, construed according to its plain language, clearly notified ED that Van Nuys had been closed and its faculty and staff transferred elsewhere, and SFAP contends that if Van Nuys was not in fact closed, whether due to an institutional change of mind or for any other reason, another Section 600.30(a)(3) notification should have been made to ED. SFAP sees as United's only defense

to its failure to make such notification its belief that such formal notification was unnecessary because ED had access to such information in letters from ACCET or otherwise, or that

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if ED had chosen to specifically verify the information in Lajevardi's

certification it would have found that the certification on behalf of United, ED's fiduciary, was false. SFAP contends that the acceptance of such a scenario by this tribunal is unreasonable and should be rejected.

SFAP alleges, finally, that since this proceeding results from an appeal brought by United to overturn an FPRD, under 34 CFR 668.116(d) the burden of proof is upon United, and that United has not met that burden. As here pertinent, Section 668.116(d) provides that:

> An institution requesting review of the...final program review determination issued by the designated-ED official shall have the burden of proving the following matters, as applicable(1) That expenditures questioned or disallowed were proper; (2) That the institution complied with program requirements.

CONCLUSIONS AND FINDINGS OF THE HEARING OFFICIAL

I conclude, first, that the document signed by Lajevardi on July 17, 1989, and transmitted to ED must be reasonably construed in its own literal terms, that is, as a notification to ED by United's Chief Executive Officer that the school formerly located in Van Nuys was closed on June 30, 1989, because the lease on the premises expired, and that all faculty and staff were transferred on the following day to Los Angeles. Contrary to a view expressed on brief by respondent, it is of no consequence that a portion of the text of that certification was in a form prepared at ED and the remainder filled in by Lajevardi; the certification in its entirety was

executed and signed by Lajevardi. The message that is conveyed in the certification is clear and it is explicit--the school at Van Nuys was closed. There was no reason for ED to disregard or to doubt that message. Earlier, on July 7, 1989, ED's DEC had issued an IE&C in which United's change of address from Van Nuys to Los Angeles was acknowledged and in which the institution at Los Angeles and the programs at that institution were determined by the Secretary to be acceptable for Title IV HEA purposes. In that IE&C the Van Nuys location is mentioned only in conjunction with the words "formerly at." Nothing in the certification by Lajevardi that the school at Van Nuys was closed offered any reason to believe that the closing was other than permanent, and it was reasonable for ED after receiving that certification to consider the school at Van Nuys to be closed and no longer to constitute a site at which Title IV HEA funds could properly be disbursed to students. On its face the message from United to ED gave ED no reason to regard the closed school as a location that retained continuing eligibility.

Thereafter, according to United, respondent underwent an

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institutional change of mind. For reasons previously adverted to, United decided that the educational process at Van Nuys would not be terminated but would be continued. It is not entirely clear whether that process at Van Nuys stopped, however briefly, and then resumed or whether it never stopped at all; it is clear, however, that the licensing and accreditation covering the Van Nuys facility did not cease. It is equally clear that at no time prior to October 1991 was any formal notification made by United to ED that the situation at Van Nuys, so explicitly pictured in Lajevardi's certification, had undergone change; that the Van Nuys location, far from being dead, was alive and well; and, that Title IV HEA funds to the tune of almost $600,000 were disbursed by United during the review period to students at Van . United chose neither to comply with its own certification nor to correct, revise or supplement that certification.

The thinking at United in the latter regard appears to have been that formal notification to ED concerning the changed plans at Van Nuys was unnecessary. The reason offered for this is that ED must have been aware of the changed situation because ACCET in several letters to ED made mention of the fact that accreditation of Van Nuys as an auxiliary classroom of United continued. In fact, United included copies of ACCET's letters in its change of address and change of name notifications to ED. United takes the position that ED had sufficient notice that Van Nuys continued to exist as a licensed and accredited location after it ceased to be United's main campus, and that there was thus no basis for what United terms ED's "belief" or "misunderstanding" of the situation at Van Nuys. SFAP sees in the position taken by United the implication that based on the information to which ED had access, ED could have checked out the situation at Van Nuys to verify whether that location continued to exist as a classroom site.

Under 34 CFR 600.30(a) it is the institution that must notify the Secretary of any change in the information provided in that institution's eligibility application with regard to, as here pertinent, locations other than the main campus at which it offers educational services. United complied with this requirement when it notified ED that the location at Van Nuys was closed. I find that United failed to comply with this requirement when it failed to make timely notification to ED that Van Nuys was not closed, that educational services at Van Nuys continued to be offered. Such information must come from the institution; such information coming from a collateral source, such as ACCET, is not an acceptable substitution and will not suffice. As noted, ED oversees the disbursement of many millions of dollars of Title IV HEA funds for student aid to many hundreds of educational institutions, and ED is charged under statute with the obligation to ensure that such funds are expended properly in accordance with statute and regulations. I find it to be a fact that ED does not possess the resources to follow each federal student aid dollar to the ultimate recipient in the first

instance, and that ED must rely and is entitled to rely on its fiduciaries, the recipient institutions such as United, to award such funds to eligible students attending eligible instruction at eligible locations, and to apprise ED on a

timely basis of the data relevant thereto. Under Section 600.30(a) that data must come from the institutions, and in this case it did not.

On brief United makes much of the fact that regulations in effect during the review period, in Part 600 under the caption "Subpart D - Loss of Eligibility," at 34 CFR 600.40(a), addressed the effect of an institution's permanent closing on the institution's eligibility, but failed to address the effect of closing a location on that location's eligibility. It was not until March 1993, as respondent pointed out, that Section 600.40(a) was amended to address loss of eligibility by "an institution or location." This is the basis for the position taken by United that during the review period and up until the 1993 amendment there was no authority having the force or effect of law that could serve as the regulatory underpinning for the loss of eligibility at a location solely because of the closing of that location. Stated another way, United contends that the only way that a location such as Van Nuys could lose its eligibility during the review period was as a legal consequence required by statute or regulation. United alleges that no statute or regulation in effect during the review period imposed such a legal consequence. Hence, according to United, the location at Van Nuys could not and did not lose its eligibility whether it closed or did not close on June 30, 1989.

-- I find United's reasoning in this regard to be seriously flawed. On June 30, 1989, the date on which according to the Lajevardi certification the facility in Van Nuys was closed, Van Nuys was not a location, it was United's main campus. It was, in fact, the institution. The basis for the eligibility at Van Nuys was the IE&C issued in May 1988, which granted eligibility status
to United at Van Nuys as an institution and not as a location. The facility at Los Angeles did not become United's main campus, or the institution, until the later IE&C was issued on July 7, 1989. Thus, as an institution on June 30, 1989, the Van Nuys facility came within the purview of Section 600.40(a) as it was then in effect, and the closing of Van Nuys on that date triggered the loss of its eligibility.

Assuming, on the other hand, that contrary to Lajevardi's certification the facility at Van Nuys did not close on June

30, 1989, but instead remained open and in operation as a location, and that on the following day operations commenced also at Los Angeles as United's main campus, there would then ensue a period of about a week during which eligibility issued to United in May 1988 to authorize operations only at Van Nuys would be relied on by United to authorize operations at that site and also at Los Angeles, to be followed on and after July 7, 1989, by a period of

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two and a half years during which eligibility issued to United on the latter date to authorize operations only at Los Angeles would be relied on to authorize operations there and also at Van Nuys. Such a scenario does not comport with the eligibility actually issued by ED in May 1988 or in July 1989. Assuming also, as United alleges, that until March 1993 there was no regulation in effect that addressed the matter of how

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eligibility could be lost at a location, it would have been possible at any time during the two and half years for United's operations to be closed down and terminated for whatever reason at Los Angeles, a site at which eligibility was specifically authorized in July 1989, and yet to be continued at Van Nuys, a site at which eligibility was not authorized until December 1991. This also does not comport with the eligibility granted to United.

Based on the evidence of record I conclude and find that during the review period, as previously identified, United disbursed to students at Van Nuys Title IV HEA funds in the total amount of $599,872; that the facility at Van Nuys during the review period was shown by SFAP not to have been a place at which such Title IV HEA disbursements were authorized to be made; that the burden was upon United to show otherwise and that United failed to do so; and that, accordingly, the said disbursements made by United were thus improper and contrary to the requirements of the governing statute and regulations.

Under the caption "Final Determination" in the FPRD it is stated that the total amount of Title IV HEA funds disbursed by United to students at Van Nuys "represents an institutional

liability and must be repaid to the U.S. Department of Education." On brief SFAP also refers to United's disbursements as liabilities, liabilities that should be repaid to ED. In fact, as previously noted, SFAP has characterized these funds as United's "ill gotten gains," and the purpose of this proceeding to be to require United to "disgorge" those gains. SFAP requests that this tribunal uphold the FPRD, and states that all that ED wants is the return of these funds. United, on the other hand, characterizes SFAP's request in this regard as constituting a proposed penalty that would irreparably harm United as an educational institution.

It is appropriate at this point to determine what are the consequences provided in the regulations for the improper disbursement of Title IV HEA funds by an institution such as United in the circumstances hereinbefore described. Part 600 of the governing regulations deals with institutional eligibility under HEA, and in Subpart B thereof with procedures for establishing eligibility, in Subpart C with maintaining eligibility, and in Subpart D, as previously noted, with loss of eligibility. These are the regulations cited by the parties as governing in this proceeding, and in these regulations it is only at 34 CFR 600.30(c) that anything in the nature of a consequence

is provided, namely, that the failure of an institution to timely notify the Secretary of certain changes relating to a location other than its main campus may result in adverse action against it, including the loss of its eligibility. As previously noted, on brief SFAP stated that the instant proceeding is the adverse action contemplated by Section 600.30(c). Insofar as I have been able to determine or have been made aware of by the parties, the repayment by the institution to ED of Title IV HEA funds is not mentioned in Part 600 as a consequence of the improper and unauthorized disbursement of such funds by the institution.

It must be noted, however, that the Title IV HEA funds

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disbursed by United during the review period to students at Van Nuys are described in the FPRD as "Federal Pell Grant

funds." In the regulations at Part 690, captioned PELL GRANT PROGRAM, under Subpart G--Administration of Grant Payments, at 34 CFR 690.79, captioned "Recovery of overpayments," it is provided that:

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

The "procedures set forth in this Part," that is, Part 690, appear to relate to such matters as student status and eligibility, family contributions, calculation of Pell Grant awards, methods of disbursement, fiscal controls and fund accounting, and the maintenance and retention of records. Nothing in Part 690 appears to relate to the matters at issue in the instant proceeding, that is, whether the institution's Title IV HEA disbursements were made during a period of ineligibility of the institution at the location made, and what are the consequences provided for such improper disbursements. I particularly note that within the limited context of Section 690.79(a)(2), the consequence provided is not the repayment of the disbursed funds to ED.

I conclude and find that in the particular facts and circumstances of this proceeding and in light of the election made by SFAP on behalf of ED in its adverse action not to seek the loss by United of its eligibility, there are no specific consequences that are impelled by the governing regulations for the improper and unauthorized disbursement by United of Title IV HEA funds to students at a facility at which, at the time that the disbursements were made, there was no authorization for such disbursements. It follows that this tribunal is not compelled to require United to repay those disbursed funds to ED. It is clear, however, that United failed to observe the regulatory

requirements, and that a reasonable and appropriate penalty should be imposed. After reflection, I have concluded that the imposition of a fine would constitute such a reasonable and appropriate penalty.

It is well established that fines are imposed to punish an offender and to discourage future offenses by that offender, and also to serve as a warning to other potential offenders. Fines imposed must be high enough in amount to effectively serve the purposes of their imposition; too low, they serve neither as penalty nor warning, and too high they may become arbitrary and capricious and thus unreasonable. There should be direct and logical relation between the amount of the fine and the gravity of the offense for which it is imposed. As stated in popular parlance, the punishment must fit the crime.

The general purpose of federal student financial assistance legislation and of the regulations promulgated in connection therewith is to foster and support the national education process, and the key to efficient and economical administration by ED of Title IV HEA programs is the full cooperation with ED of the participating institutions, ED's fiduciaries. It is through these institutions that massive federal funds are channeled to further the educational process, and the responsibility is theirs, under ED's supervision, to ensure that these funds at all times are applied only to the education of eligible students in eligible programs at eligible schools. There is no evidence in this record that the Title IV HEA funds here in issue were disbursed other than in furtherance of the educational process, or that the beneficiaries of those funds were other than eligible students. The issue was whether those students during the review period were participating in programs at a facility which was, during that particular period, an eligible facility. The record establishes that the Van Nuys facility prior to the occurrences in June and July 1989 was recognized as eligible by ED, and that when United made application for eligibility at Van Nuys in late 1991 that eligibility was promptly granted. It was only during the review period, as I have hereinbefore found, that the facility at Van Nuys was ineligible, and the record strongly suggests that this was only because United, whether through misunderstanding or otherwise, failed to make timely application for continued

eligibility at Van Nuys prior to the movement of its main campus to Los Angeles.

I do not perceive here ill gotten gains by United in the gross amount alleged by SFAP. Without minimizing the gravity of the offense committed, what I perceive is the failure on the part of United to fully cooperate with ED in administration of the Title IV HEA program, a failure to fully cooperate for which United must be fined. The regulations at 34 CFR 668.84(a) provide that:

(a) Scope and consequences. The Secretary may impose a fine of up to $25,000 per violation on an institution that (1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title...

Elsewhere in Section 668.84 it is provided that the institution upon which a fine is to be imposed must be notified by certified mail of the Secretary's intent to fine, and as to the alleged violations which are the basis for the fine, the amount and effective date of the fine, and of that institution's right to request a hearing thereon. In the latter regard it appears to me, and I so find, that the notification requirements of Section 668.84 were adequately complied with by ED in the FPRD served on United in the instant case in connection with what to United amounted to the equivalent of a fine in the amount of $599,872.

It may be acknowledged that the process of determining the amount of a fine in any given circumstances is far from being an exact science. In the circumstances of this case, however, I am convinced that an adequate guideline is provided in Section 668.84(a); a fine may here be imposed of up to $25,000 per violation. In the FPRD it is indicated that a sampling of student aid files at United disclosed that, based on only the sampling, Federal Pell Grant funds were disbursed during the

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review period to at least 34 students at Van Nuys out of the total amount of $599,872 disbursed during that period to students enrolled at that location. I find that each improper and unauthorized disbursement of Title IV HEA funds at Van Nuys

during the period in which that facility was an ineligible facility constituted a separate violation, in connection with which a fine of up to $25,000 may be imposed. In the circumstances considered and discussed in this decision, however, I conclude and find that adequate and reasonable punishment and deterrent will be provided by the imposition of a fine in the total amount of $60,000. United is directed, accordingly, within 45 days of the date of service of this decision, using the payment method described in the FPRD, to pay to ED a fine in the amount of $60,000.

In light of the foregoing and in the absence of good cause shown, SFAP's motions to strike are denied in their entirety.

IT IS SO ORDERED.

By Paul J. Clerman,

Administrative Lay Judge.

at Washington, D.C.

June 8, 1994