

IN THE MATTER OF EDMONDSON JUNIOR COLLEGE,
Respondent.

Docket No. 93-7-SP
Student Financial Assistance Proceeding

Appearances: Leslie H. Wiesenfelder, Esq., of Washington, D.C., for the Respondent

Howard D. Sorensen, Esq., of Washington, D.C., Office of the General Counsel, United States Department of Education for the Office of Student Financial Assistance

Before: Judge Ernest C. Canellos

DECISION

Edmondson Junior College (Edmondson) is a two-year proprietary school located in Chattanooga, Tennessee. Phillips College, Incorporated (PCI) was the corporate owner and operator of Edmondson until Edmondson closed in July, 1992. PCI owns and operates approximately thirty career and technical schools in the United States, including Phillips College (Phillips).

The Office of Student Financial Assistance (OSFA) conducted a program review at Edmondson from May 6-10, 1991. A program review report, issued on July 31, 1991, found that Edmondson had violated federal regulations for the years 1988-89 and 1989-90 by awarding Title IV student financial assistance in accordance with regulations applicable to schools that do not have established academic terms while declaring in its catalog that the school provided instruction based on academic terms. The program review report recommended that Edmondson remit \$786,027, and pay an informal fine of \$112,000, to the United States Department of Education (ED).

A final program review determination was issued by OSFA on November 18, 1992, adopting the recommendations of the program review report and directing Edmondson to remit \$786,027. The fine was not pursued. On January 7, 1993, Edmondson appealed, arguing that it does not have, nor ever had, established academic terms and does not believe that it violated any federal regulations by issuing student financial assistance in accordance with regulations applicable to schools that do not have academic terms.

This appeal was routinely assigned to Judge Ernest C. Canellos for resolution. In due course, briefs and evidentiary matters were filed in a timely manner by OSFA and Edmondson, and the case was taken under advisement.

ISSUE

The sole issue in this case is whether Edmondson should be treated as a term school even though it maintains that it is actually practicing as a non-term school. The major difference between having the status of a term school as opposed to a non-term school for federal financial aid purposes is that a term school is required to make payments to students in three installments while a non-term school is to make payments in two installments. Consistent with its claim that it is a non-term school, Edmondson has historically disbursed federal student financial assistance in two installments.

DISCUSSION

The only support OSFA provides for its determination that Edmondson disbursed Title IV funds using the incorrect academic year definition is that Edmondson's catalog states that the school has sessions divided into terms, yet Edmondson disbursed Title IV funds as a non-term school. OSFA admits that it cannot impose, and is not imposing, academic terms on Edmondson. Rather, since Edmondson indicated in its catalog that it has terms with definite starting dates, OSFA believes that Edmondson should be treated as a school that has academic terms.

Although OSFA's brief defines the required "payment period" for a school with academic terms (34 C.F.R. § 690.3(a)) and a school without academic terms (34 C.F.R. § 690.3(b)), OSFA does not cite any authority defining an academic term. In essence, OSFA admits that there is no regulation or statutory provision defining an academic "term". Rather, a 1979 memorandum (memo) written by the Director of Policy and Program Development for the United States Department of Health, Education and Welfare (now ED) regarding Phillips states that the definition of a term school depends upon the actual definition of the academic calendar at the school. It is significant to note that the Phillips calendar which was the subject of the memo and the Edmondson calendar which is at issue in this case are indistinguishable. It appears clear that it is left up to the school to determine whether it practices as a term or non-term school.

According to the memo, if a school publishes in its catalog that it has regular quarters although it does not have academic terms, the school should follow the regulation governing those institutions with credit hours but without academic terms. According to PCI, the only reason the term calendar is used and published in the Phillips catalog is to show start dates for new students. There is no indication that Edmondson's program policy differs from that used at Phillips.

There is nothing in Edmondson's catalog stating that the school has established terms, even though the school's four sessions are divided into seasonal "terms". In fact, the catalog states that new students may begin classes at any of the four different seasonal start dates, thus supporting Edmondson's contention of the purpose of the phrase "term". Edmondson's catalog also states that students have the opportunity to take "mini-terms", which overlap the four regular sessions. By offering overlapping courses, Edmondson's schedule is not typical of a term school, which generally has separate, non-overlapping sessions.

Although Edmondson's catalog does not specifically indicate whether the school is term or non-term, PCI's 1987 and 1988 Financial Aid Policies and Procedure Manual, which is used by Edmondson and other schools owned and operated by PCI, states that the colleges of the PCI system measure student progress without academic terms. Furthermore, tuition and book costs are charged on a per program basis rather than a per term basis. Term schools typically charge students a tuition rate on a per term basis rather than on a per program or degree basis.

In rejoinder, OSFA relies on Harris School of Business, Initial Decision, No. 91-109-SP (Feb. 5, 1993), which states that auditors must be able to rely on the written policy of the school as the basis of an audit. However, the fact that Edmondson divides its program into "terms" is inadequate to support a finding that Edmondson's written policy states that it is a term school. In fact, the written policy of Edmondson, as stated in the financial aid manual, is that the school does not have academic terms.

In deciding whether Edmondson portrayed itself as a term school while practicing as a non-term school, and therefore should be deemed to be a term school, it is appropriate to determine whether Edmondson gained any advantage by acting in such a fashion. OSFA offers no argument or proof that Edmondson purposely deceived the public or unjustly benefitted from its use of the word "term" in its catalog. On the contrary, Edmondson argues that it has always considered itself to be a non-term school and has never believed that it was portraying itself as a term school.

Rather than being a mere academic exercise of defining the school's program, OSFA contends that Edmondson issued excess funds to students who withdrew by disbursing 50% of the available Title IV funds as a non-term school rather than the 33% it should have disbursed as a term school. For those students who dropped out during the first term, the loss to the federal government was the difference between the 50% and the 33% of the aid authorized. However, OSFA fails to realize that Edmondson may have saved federal money at those times when the school disbursed 50% of the available funds before a student withdrew rather than the 66% that it would have disbursed had a second payment been authorized and the school been practicing as a term institution. The discussion of whether Edmondson saved or cost OSFA money is moot, as Edmondson had the choice to decide how it wished to practice and it disbursed funds based on its decision to be a non-term school.

There is no indication that any students were placed at a disadvantage by Edmondson's decision to use the phrase "term" in its catalog while practicing as a non-term school. Students do not normally decide whether to attend a school based on the school's decision to consider itself term or non-term for financial aid purposes. In fact, if a student stays in school for the entire program, the student would receive the same amount of federal aid regardless of whether the school practiced as a term or non-term institution. However, in 1979, the Department did recommend, albeit for reasons not related to basic grant regulations, that Phillips explain in its catalog how the calendar actually operates. Such advice still has merit today. Had PCI explained in Edmondson's catalog, in addition to its financial aid manual, that the school was a non-term institution perhaps these proceedings would have been spared.

FINDINGS

I FIND the following:

Edmondson was free to choose whether it should be treated as a term or non-term school;

Edmondson chose to be treated as a non-term school; and,

Edmondson's listing of course start times in its catalog did not alter the school's intention to practice as a non-term school.

ORDER

On the basis of the foregoing it is hereby--

ORDERED, that Edmondson Junior College be relieved of the obligation to pay the United States Department of Education the sum of \$786,027.

Ernest C. Canellos

Issued: June 4, 1993
Washington, D.C.