

In the Matter of RICE COLLEGE, Birmingham,  
Respondent.

Docket No. 94-142-ST  
Student Financial Assistance Proceeding

Appearances:

Steve Butler, Esq., of Arlington, Tennessee, for the Respondent.

James T. O'Neill, Esq., of the Office of the General Counsel, U.S. Department of  
Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

### DECISION

Rice College (Rice) of Birmingham, Alabama, is an eligible institution of higher education. It participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). Such programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED).

Rice failed to file the required audited financial statements for the period ending on December 31, 1993. SFAP made numerous requests to Rice to comply with that requirement, however, Rice provided only unaudited financial statements. As a result of Rice's continued failure to provide audited financial statements, on August 23, 1994, SFAP issued a notice of intent to terminate Rice's participation in the Title IV programs for this violation which constituted a failure to meet the requirements of financial responsibility found at 34 C.F.R. § 668.13. In addition, SFAP proposed a fine of \$15,000.

Rice filed a timely appeal requesting an administrative hearing and enclosing the audited financial statements in question. SFAP's review of those statements revealed that Rice failed to satisfy the requirements of financial responsibility because: it had a negative net worth, it had an acid ratio of assets to liabilities of less than one-to-one, and it had two consecutive years of operating losses. See, 20 U.S.C. § 1099c(c)(2) and 34 C.F.R. § 668.13(c).

In its defense, Rice points out that it has closed and that it has taught-out its students. It argues that although submitted late, the audited financial statements were eventually submitted and that, in the interim, Rice had provided SFAP with unaudited financial statements for their information. On these facts, Rice argues that the termination action is moot and that a \$15,000 fine is exorbitant.

### TERMINATION ISSUE

The procedures for initiating the termination of eligibility of an institution to participate in the Title IV, HEA programs are set forth in Subpart G, 34 C.F.R. § 668.81 et seq. During any such proceeding, ED has the burden of proof and persuasion. See, 34 C.F.R. § 668.88(c)(2). The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs, if the institution violates any provision of Title IV or any regulation or agreement implementing it. See, 34 C.F.R. § 668.86(a).

I find that SFAP has met its burden of establishing that Rice was not financially responsible and that it failed to timely file the audited financial statements, due on December 31, 1993, which are required by 34 C.F.R. § 668.13 (e). As a consequence, I find that termination of Rice's eligibility to participate in Title IV programs is warranted.

Further, I find that this termination action is not moot. At first blush, this case appears to fall clearly within that category as established by the Secretary in Bliss College, Docket No. 93-15-ST, U.S. Dep't of Educ. (February 23, 1994). However, in a number of subsequent cases, the Secretary has modified his position on this issue. Indeed, he has reversed decisions by hearing officials which dismissed as moot termination actions against closed schools in the same corporate family and under circumstances quite similar to Bliss. See, In re Fischer Technical Institute, Docket No. 92-141-ST; In re Draughan Business College, Docket No. 92-94-ST; In re Spencer College, Docket No. 93-27-ST; and In re Pikeville Beauty College, Docket No. 94-36-ST. Although the concerns raised by the Secretary in those cases are clearly not present in this case, I must conclude that the Bliss decision has been effectively overruled and cannot be applied here.

#### FINE CONSIDERATIONS

In addition to the proposed termination of eligibility, SFAP seeks a fine of \$15,000. In Puerto Rico Technology and Beauty College. and Lamec. Inc., Docket No. 90-34-ST, U.S. Dept. of Educ. (June 11, 1993), the Secretary iterated the statutory and regulatory requirement that in setting an appropriate fine, one must take into account the gravity of the violations as mitigated by the size of the institution. No doubt, Rice erred in not submitting its audited financial statements in a timely manner; they were, however, eventually submitted. My review of the record indicates that this case should be viewed as one where a business failed because of market conditions, not as one caused by wrongdoing. Therefore, I believe no fine is appropriate.

#### FINDINGS

- (1) ED has met its burden of proving that Rice failed to timely submit required audited financial statements due on December 31, 1993, and Rice is not financially responsible.
- (2) Rice's participation in federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, should be terminated.
- (3) Rice should not be fined.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Rice College, Birmingham, to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, be terminated.

Judge Ernest C. Canellos

Issued: April 6, 1995

Washington, D.C.