

UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, D.C. 20202

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In the Matter of **PUTNAM COUNTY TECHNICAL CENTER**  
Respondent.

**Docket No. 94-155-ST**  
Student Financial Assistance Proceeding

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Appearances: James W. Withrow, Esq., Charleston, West Virginia, for Putnam County  
Technical Center.

Edmund J. Trepacz, II, Esq., Office of the General Counsel, United States Department of  
Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

**DECISION**

On September 21, 1994, the Office of Student Financial Assistance Programs (SFAP), of the U.S. Department of Education (ED) issued a notice of intent to terminate the eligibility of the Putnam County Technical Center (Putnam) to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The notice also imposed a fine of \$19,000. Putnam filed a request for hearing on September 26, 1994, asserting that the proposed termination and fine were too severe.

The basic allegation against Putnam is that it failed to timely submit its biennial audits for the award years 1987-1988 thru the 1992-1993, as required by 34 C.F.R. § 668.23(c)(4)(1993). The evidence is clear and unambiguous -- Putnam did not file the subject audits on time. Putnam does not dispute that fact. When the subject action was initiated by SFAP, Putnam belatedly had filed all the audits except the ones for the last award year, which were due on January 31, 1994. These reports eventually were submitted in October 1994. Based on the above, I find that Putnam failed to timely file its biennial audits, in violation of 34

C.F.R. § 668.23(c)(4). SFAP asserts that, as a result of my finding above, I must find that the termination of Putnam's eligibility to participate in the Title IV student financial assistance

programs is warranted. [See footnote 1 /](#) Further, SFAP claims that I do not have any discretion in that regard. 56 Fed.Reg. 36682, 36694 (1991).

This is not the first case where the question of the appropriate punishment for failure to timely file biennial audits has been discussed. *See In the Matter of Institute of Multiple Technology*, Docket No. 92-26-ST, U.S. Dep't of Educ., (Decision of the Secretary, November 26, 1993). There, similarly to the present case, biennial audit reports were submitted late. As a result, the hearing official determined that termination was mandated, and that he had no discretion to substitute other forms of punishment. On appeal, the Secretary affirmed the termination decision, however, he indicated that, in an appropriate case, the Secretary had discretion to "reverse the termination decision," but that the mitigating factors claimed by the respondent did not warrant such action. *See also, In the Matter of San Francisco College of Mortuary Science*, Docket No. 92-8-ST, U.S. Dep't of Educ., (Decision of the Secretary, March 26, 1993).

In the present case, Putnam does not dispute that it filed its audits late. Instead, it claims that certain mitigating circumstances exist in an attempt to persuade me that termination and fine are too severe. In essence, Putnam claims that the most recent audit was delayed because of the illness of the financial aid officer and "inclement weather." It attributes the late filing of the previous audit reports to the failure of its previous financial aid consultant to recognize that audits were due and the failure of ED to send a delinquency notice. Finally, Putnam asserts that it has hired a new financial aid consultant, has engaged an auditor who is experience in performing biennial audits for the future, and that loss of federal student aid would be detrimental to students at this small, public, non-profit institution. It is of interest to note that, except for some relatively minor write-ups, there is no indication in the biennial audit reports of other violations of Title IV. Also of note is the fact that after the appeal was filed, the parties requested six stays of the proceeding to engage in settlement negotiations and, finally, to draft and execute a settlement agreement. Apparently, such settlement negotiations failed to reach fruition.

As mentioned above, the rules appear quite clear. If I determine that the required biennial audits are not timely filed, even by one day, I must order the termination of eligibility of the institution. I may not mitigate the termination and substitute another form of punishment, as

otherwise provided in 34 C.F.R. § 668.90(a)(2). [See footnote 2 2](#) Consequently, I find that SFAP has met its burden of proof that Putnam failed to timely file its biennial audit reports and, therefore, Putnam's eligibility to participate in the Title IV programs should be terminated.

In addition to termination of eligibility, SFAP seeks a fine of \$19,000. Here, there are mitigating factors present including the fact that Putnam is a small school. *See In the Matter of Puerto Rico Technology and Beauty College, and Lamec, Inc.*, Docket No. 90-34-ST, U.S. Dep't of Educ. (June 11, 1993). In view of the fact that I have ordered the termination of Putnam's eligibility, and the fact that mitigating circumstances are present, I find that SFAP has failed to meet its burden of establishing that a fine is appropriate.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Putnam County

Technical Center to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated.

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Judge Ernest C. Canellos

Dated: August 28, 1995

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SERVICE

On August 28, 1995, a copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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[Footnote: 1](#) 1 34 C.F.R. § 668.90(a)(3)(iv) provides:

*In a termination action taken against an institution based on the grounds that an institution has failed to comply with the requirements of § 668.23(c)(4), the hearing official must find that the termination is warranted; . . . .*

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[Footnote: 2](#) 2 *Were such discretion available to me, I would substitute a \$5,000 fine in lieu of termination in this case.*