

In the Matter of ACADEMIA ARECIBENA de BELLEZA,
Respondent.

Docket No. 94-167-ST
Student Financial Assistance Proceeding

Appearances:

Alfredo Torres, of Arecibo, Puerto Rico, for the Respondent.

James D. Gette, 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

Academia Arecibena de Belleza (Academia) of Arecibo, Puerto Rico, is a proprietary institution of higher education eligible to participate in the Pell Grant Program, the Supplemental Education Opportunity Grant Program, and the College Work Study Program, authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). These programs are administered by the Office of Student Financial Assistance Programs (SFAP), United States Department of Education (ED).

After reviewing the financial statements of Academia, SFAP official's determined that, based on Academia's tenuous financial condition (the ratio of current assets to current liabilities was less than 1 to 1) the school was required to submit a \$61,000 letter of credit as a condition of continued participation in the Title IV programs. Upon Academia's failure to submit the letter of credit, SFAP determined that Academia was not financially responsible and, as a result, decided to initiate termination action. In the course of preparing the termination action, SFAP discovered that Academia had failed to timely file its bi-annual audits as required by 34 C.F.R. § 668.23. In addition, a program review to examine the administration of Title IV programs was conducted at Academia by reviewers from ED's Regional Office in New York, New York. Based upon their review of student files and other pertinent information, the reviewers concluded in a program review report dated February 28, 1994, that Academia, among other violations, failed to make timely required refunds to students.

As a result of all these factors, on September 19, 1994, SFAP issued a notice of intent to terminate Academia's participation in the Title IV programs. A fine of \$159,500 was also

proposed. Academia filed a timely appeal and requested a hearing. The case was assigned to me and a briefing schedule was established. Academia's president subsequently informed me that Academia was closing effective December 31, 1994. He argued that SFAP's proposed fine should not be approved because: Academia has filed past due audits; it was in the process of completing the currently due audit; it is paying an informal fine of \$7,000 imposed in the program review, and it is paying the past due refunds. On April 25, 1995, I advised the parties that since they both agreed that an evidentiary hearing in this matter was not necessary, I would take the case under advisement and issue a decision based on the parties' submissions in the record.

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. 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. In addition, if a hearing official determines that an institution has failed to timely submit its required compliance audits, the hearing official must find that the termination is warranted. See 34 C.F.R. § 668.90(a)(3)(iv).

Academia withdrew its right to a hearing to dispute the issue of the termination of its eligibility. As a consequence of Academia's concessions, and the evidence in the record, I find that SFAP has met its burden of proving that the termination of Academia's eligibility to participate in the Title IV programs is warranted.

FINE CONSIDERATIONS

In addition to the proposed termination of eligibility, SFAP seeks a fine of \$159,500. It is clear that SFAP has the burden of persuasion in this regard. 34 C.F.R. § 668.88(c)(2). No doubt, Academia erred in not meeting its obligations to properly administer the Title IV programs, however I recognize that the mitigating factors enumerated above are present. In addition, I find no evidence of fraud. Since I have contemporaneously ordered the most serious sanction available, loss of eligibility to participate in the Title IV Programs, I find that no fine is appropriate. See generally, In re Fischer Technical Institute, Docket No. 92-141-ST, U.S. Dept. of Educ. (March 16, 1995), and the cases cited therein.

FINDINGS

- (1) ED has met its burden of proving that Academia's participation in federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, should be terminated.
- (2) Academia should not be fined.

ORDER

On the basis of the foregoing it is hereby ORDERED that the eligibility of Academia Arcibena de Belleza 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: June 5, 1995
Washington, D.C.

S E R V I C E

A copy of the attached decision was sent to the following:

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