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

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In the Matter of                    **Docket No. 95-103-ST**

**Penn-Ohio College,**             Student Financial Assistance Proceeding

Respondent.

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Appearances: James E. Roberts, Esq., Roth, Stephens, Blair, Roberts & Co.,  
Youngstown, Ohio, for Penn-Ohio College.

S. Dawn Robinson, 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 June 27, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a notice of intent to terminate the eligibility of Penn-Ohio College (Penn-Ohio) from participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The notice also imposed fines against Penn-Ohio totaling \$40,000. By letter dated July 11, 1995, Penn-Ohio filed a timely appeal of the notice of intent to terminate and fine.

On August 10, 1995, SFAP issued an amended termination notice wherein it provided an additional basis for terminating Penn-Ohio's eligibility for participation in student financial assistance programs. According to SFAP, Penn-Ohio's accrediting agency, the Accrediting Council for Independent Colleges and Schools (ACICS), informed the Department that it had recently withdrawn Penn-Ohio's accreditation.

As a condition of participation in Federal student financial assistance programs (Title IV programs), institutions must account for the expenditure of Title IV program funds by submitting periodic compliance audits to the Department. 34 C.F.R. § 668.23(c). According to SFAP, Penn-Ohio failed to file its compliance audit covering award years 1989-90 and 1990-91 and also failed to file a compliance audit covering award years 1991-92 and 1992-93. [See footnote 1](#) In support of its position, SFAP submitted a written and signed declaration by an auditor for the

Department's Office of Inspector General (OIG), William T. Allen, which stated that although Penn-Ohio's compliance audit covering award years 1989-90 and 1990-91 was due on June 30, 1992 and the institution's compliance audit covering award years 1991-92 and 1992-93 was due on June 30, 1994, the institution had not filed either audit report as of September 14, 1995, the date of Mr. Allen's declaration.

The material facts in this case are not in dispute. In its defense, Penn-Ohio argues that the current administration, appointed by the institution's Board of Trustees in January 1993, was unaware of the institution's violation of Title IV audit filing requirements. In that regard, the institution does not dispute that it has not filed its compliance audits, but urges that I reject the fine sought by SFAP because the institution is undergoing a good faith attempt to complete the required audits. In addition, Penn-Ohio concedes that ACICS withdrew its accreditation, and as a result, the institution became ineligible to participate in Title IV programs. Although SFAP seeks to terminate the institution's eligibility on the basis of the school's loss of accreditation, SFAP does not propose to fine the school. Consequently, I find that SFAP has met its burden of proof establishing that Penn-Ohio failed to maintain the standards of institutional eligibility as a result of its loss of accredited status.

With regard to the institution's failure to file compliance audits, it is well established that the nature of enforcement of Title IV programs creates the need for institutions to adhere to program regulations requiring institutions to timely file compliance audits that account for the disbursement of program funds. This data assists the Department in determining whether any, if not all, program funds were disbursed contrary to statutory and regulatory requirements. In this respect, this tribunal has consistently determined that, under Title IV regulations, a finding that an institution failed to timely file a compliance audit requires the Hearing Official to terminate the institution's participation in Title IV programs. *See, e.g., In re Putnam County Technical Center*, Dkt. No. 94-155-ST, U.S. Dep't of Educ. (August 28, 1995) (holding that if biennial audits are not timely filed, even by one day, the Hearing Official must order termination of eligibility); *In re Art of Beauty College*, Dkt. No. 95-72-ST, U.S. Dep't of Educ. (August 31, 1995) (holding that under 34 C.F.R. § 668.90(a)(3)(iv), the Hearing Official must find that termination of eligibility is warranted if the institution fails to timely file its required audits). It is abundantly clear that Penn-Ohio does not dispute SFAP's contention that the institution has not filed compliance audits covering award years 1989-90, 1990-91, 1991-92 and 1992-93. Accordingly, I find that SFAP has met its burden of proof establishing that Penn-Ohio failed to timely file its compliance audits. On this basis, the institution's eligibility to participate in Title IV programs is terminated.

When assessing the appropriate penalty for the violation of program regulations, I must determine whether the total punishment sought by SFAP is appropriate. In this regard, I must consider whether SFAP's proposed \$40,000 fine is warranted in light of the fact that I have determined that the institution's eligibility must be terminated. *See, In re Northeast Center for Judaic Studies*, Dkt. No. 94-155-ST, U.S. Dep't of Educ. (May 2, 1995). In evaluating whether the imposition of SFAP's proposed fine is warranted, 34 C.F.R. § 668.92 requires that I consider the gravity of the institution's violation and the size of the institution. Although, as I have noted *supra*, the institution's failure to file compliance audits is a serious and significant violation

program regulations, I find that there are mitigating factors present in this case warranting rejection of SFAP's proposed fine.

It has been consistently recognized that an institution's size should be measured by the average amount of Title IV funds disbursed by an institution during an applicable award year. *See, e.g., In the Matter of Fischer Technical Institute*, Dkt. No. 92-141-ST, U.S. Dep't of Educ. (March 16, 1995); *In the Matter of Bais Fruma*, Dkt. No. 93-171-ST, U.S. Dep't of Educ. (March 9, 1995); *Hartford Modern School of Welding*, Dkt. No. 90-42-ST, U.S. Dep't of Educ. (January 31, 1991). By SFAP's own determination, Penn-Ohio is a small institution that disbursed only \$115,000 in Title IV funds in 1993. In addition, there is no evidence in the record of intentional wrong-doing or fraudulent conduct by Penn-Ohio. Therefore, in view of the fact that I have upheld the severest sanction available to SFAP, the termination of an institution's eligibility to participate in Title IV programs, I find that the imposition of a fine in this case is unwarranted.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of the Penn- Ohio College 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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Ernest C. Canellos  
Chief Judge

Dated: October 27, 1995

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#### SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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*Footnote: 1 SFAP also contends that as a result of the institution's failure to timely file compliance audits, the institution failed to meet the standard of conduct required of a fiduciary as set forth at 34 C.F.R. § 668.82.*

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