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

In the Matter of

**UNIVERSIDAD EUGENIO MARIA
de HOSTOS,**

Docket No. 95-128-ST

Student Financial Assistance Proceeding

Respondent.

Appearances: Arcadio J. Reyes, Esq., of Washington, D.C., for Universidad Eugenio Maria de Hostos.

Paul G. Freeborne, 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 July 27, 1995, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a notice of intent to terminate the eligibility of Universidad Eugenio Maria de Hostos (Universidad), located in the Dominican Republic, from participation in Federal student financial assistance programs authorized by 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 proposed to fine Universidad \$95,000. [See footnote 1](#) SFAP initiated the termination and fine action as a result of its determination that the institution failed to satisfy Title IV's general standards for administrative capability during the 1992-93 and 1993- 94 award years. *See* 34 C.F.R. § 668.16 (1993).

During the award years at issue, Universidad participated in Title IV programs as a postsecondary foreign university. On May 23 through May 26, 1994, program reviewers from SFAP's regional office in New York conducted an on-site review of Universidad's administration of the Federal Family Educational Loan (FFEL) program. The program review report dated January 12, 1995, revealed several alleged deficiencies in the institution's administration of the FFEL program. Based on these findings, SFAP concluded that Universidad was not administratively capable to participate in Title IV programs.

The law is well-established that to begin and continue to participate in Title IV programs, an institution must demonstrate that it is capable of adequately administering Title IV programs under the standards set forth by 34 C.F.R. § 668.14 (1993). [See footnote 2](#) Section 668.14 sets out a range of factors that SFAP considers when determining whether an institution can adequately administer Title IV programs including, but not limited to, whether the institution: designates a capable individual to be responsible for administering the institution's Title IV programs; provides adequate financial aid counseling to eligible students who apply for Title IV financial assistance; obtains and reviews all student aid applications and other documents to verify information received from the student or other sources; and establishes, publishes, and applies reasonable standards for measuring a student's satisfactory academic progress. According to SFAP, Universidad's administration of the FFEL program was deficient in each of these areas, and so pervasive that it evidences an unwillingness on the part of the institution to comply with Title IV program requirements and, therefore, warrants the institution's termination from participation in Title IV programs. [See footnote 3](#)

According to SFAF, Universidad failed to meet the standards of administrative capability in several respects; namely, that the institution failed to maintain FFEL program records such as loan applications, need analysis documents, and statements of educational purpose, that the institution failed to develop a satisfactory academic progress policy, failed to publish a tuition and fee refund policy, and failed to develop adequate systems for establishing student eligibility and loan counseling.

Universidad generally defends itself against these allegations by arguing that in most instances the institution relied on the students' certification on their loan applications as documentation for determinations of educational purpose, non-default status, and other such requirements. In addition, Universidad argues that the fact that substantial acts of fraud by students occurred under this rather relaxed system should not result in the institution being held accountable since the fraud was perpetrated by the independent acts of others.

The institution's argument is meritless. Indeed, the institution's position, if correct, would vitiate the fiduciary role institutions play as participants in Title IV programs. [See footnote 4](#) Institutions that participate in Title IV programs owe the highest standard of care and diligence in documenting that each student awarded Title IV financial assistance meets the eligibility requirements of Title IV. 34 C.F.R. § 668.82(b). While a student's statement certifying that he or she meets the eligibility requirements as required by the loan application is entitled to due regard, reliance on such statements, without other checks and balances, is clearly inadequate to identify or resolve discrepancies in the information a student may submit to an institution.

Universidad also argues that to the extent that the institution did not meet some of its administrative obligations under Section 668.14 those deficiencies were the result of the Department's failure to provide the institution with adequate counseling, guidance and pre-certification training. In particular, Universidad notes that since its entrance into participation in Title IV programs, the institution has never received the “mandated” program materials or counseling guidance from SFAP's Office of Training and Program Information.

My review of the record persuades me that SFAP has met its burden of proof in establishing that Universidad failed to meet the general standards of administrative capability as required by Title IV. After careful consideration of Universidad's evidence, I find that the records Universidad proffers simply do not demonstrate that the institution met its record keeping obligations. Many of the records do not cover the award years at issue and the ones that are pertinent are too few to be statistically representative of Universidad's overall record keeping performance. This evidence clearly is inadequate to rebut SFAP's evidence obtained during the onsite program review.

Further, Universidad's argument regarding the Department's failure to adequately train the institution's staff on Title IV program responsibilities is without merit; it is the responsibility of the participating institution, not the Department, to take affirmative steps to ensure that school personnel are adequately trained in Title IV program requirements. Further, the mere fact that an institution was not provided with adequate guidance on how to administer its Title IV program responsibilities cannot, thereby, excuse the institution from its duty to comply with Title IV program regulations.

With regard to SFAP's contention that the institution failed to maintain FFEL program records and loan applications, Universidad concedes that it can only account for 5 of the 10 missing FFEL applications noted in the program review report, but argues that it need not account for each of the missing documents noted in the program review because this proceeding is limited to issues in the termination proceeding. Universidad argues that its proffer of evidence need not rebut each allegation advanced in the program review report. In the institution's view, it sufficiently defends itself in a termination proceeding by merely presenting evidence that some of the allegedly missing FFEL applications were, in fact, maintained as records by the institution; it need not present evidence accounting for each missing FFEL application.

SFAP argues that the institution's alleged refusal to comply with its request, issued in the program review report, to perform a full file review for the award years at issue and report the results of the review to the Department "implicitly admits that it failed to maintain" FFEL program applications for all students who received FFEL program funds during award years 1989-90 through 1993-94. On the limited basis of the sample of student files selected by the program reviewers, it is evident that the institution was able to account for only half of the FFEL applications at issue. In this regard, the evidence shows that the institution, at the very least, was negligent in administering the FFEL program.

According to SFAP, Dr. Jorge Diaz-Vargas is employed by Universidad as its director of finance. During a May 1994 program review exit interview, Dr. Diaz-Vargas allegedly stated to SFAP's program reviewers that Universidad could not be held responsible for program deficiencies in its administration of the FFEL program since the FFEL program existed as an agreement between the Federal government and student beneficiaries, and that the school was essentially a conduit between the students and the Federal government. On this basis, SFAP determined that Dr. Diaz-Vargas, as the person directly responsible for finances at Universidad, was not "capable" of administering the FFEL program for the institution, as required by 34 C.F.R. § 668.14.

For its part, Universidad argues that SFAP mischaracterized Dr. Diaz-Vargas' statement and, more to the point, that the institution throughout the award years at issue had always designated a capable individual to administer its FFEL program. In support of its position, Universidad submitted the sworn affidavit of Dr. Diaz-Vargas attesting to the fact that he was never the director of finance or any way ever directly responsible for finance at Universidad. Dr. Diaz-Vargas stated that his position with Universidad was initially as general administrator, and later as administrative vice-president. In each capacity, according to Dr. Diaz-Vargas, he had no direct responsibility for the institution's finances.

SFAP persists in its claim that Dr. Diaz-Vargas maintained direct responsibility for the administration of FFEL programs, and, in that capacity, insisted that Universidad could not be held responsible for program violations. In support, SFAP offers the declaration of Yessyka Santana, a SFAP program reviewer, who states, without explanation, that she believes that Dr. Diaz-Vargas was the official responsible for the administration of FFEL programs at Universidad. In addition, Ms. Santana states that Dr. Diaz-Vargas told her at the exit interview that Universidad would not pay any liabilities assessed by SFAP as a result of the program review. [See footnote 5](#)

34 C.F.R. § 668.14 requires institutions that participate in Title IV programs to “designate[] a capable individual to be responsible for administering” all Title IV programs in which the institution participates. Under the regulation, in addition to other factors, an individual is considered capable if the individual is certified by the state in which the institution is located, if the state requires certification of financial aid administrators, and if the individual has previous experience and documented success in administering Title IV programs properly. While Dr. Diaz-Vargas' alleged statement to Ms. Santana, if true, unquestionably would exhibit a lack of understanding of the nature of an institution's fiduciary responsibility in administering FFEL program funds, that statement, alone, could not warrant a determination that Dr. Diaz-Vargas is incapable of administering the institution's Title IV programs. Section 668.14 sets out several factors which, when analyzed together, could indicate whether an individual was capable of administering Title IV programs. There is simply no regulatory basis to conclude that the statement attributed to Dr. Diaz-Vargas sufficiently demonstrates that Dr. Diaz-Vargas was not competent to oversee the administration of Title IV programs. Accordingly, I find that SFAP's allegation, that Universidad failed to designate a capable individual to administer the FFEL program, is unsupported by the evidence in the record.

To be eligible to receive Title IV funds, a student must maintain satisfactory academic progress in his or her course of study. 20 U.S.C. § 1091(a)(2) and 34 C.F.R. § 668.7(a). To ensure that a student can meet this obligation, an institution must establish, publish, and apply reasonable standards for measuring satisfactory academic progress. 34 C.F.R. § 668.14. According to SFAP, at the time of the program review, Universidad did not present program reviewers with evidence that the institution had established and published a satisfactory academic progress policy. Although the institution subsequently presented evidence to this tribunal meeting this requirement in this proceeding, SFAP cautions the tribunal from finding that the institution was in compliance with the law during the award years at issue. According to SFAP, Universidad's policy was “clearly manufactured” after the program reviewers had completed their onsite program review.

The evidence Universidad submits is a copy of its 61 page booklet on student regulations. This booklet contains the institution's satisfactory academic progress policy. The publication date indicated on page 61 is February 1995. Although the institution offers no explanation for why it submitted the February 1995 booklet, as opposed to submitting one that existed during the award years at issue, it does not strain credulity to assume that the institution submitted the currently available booklet. Consequently, I do not find the institution's evidentiary submission defective or somehow lacking probative value. More important, the February 1995 publication predates the issuance of the notice of termination and fine, which was issued in July 1995. In that regard, it is unclear to me why SFAP persists in alleging that Universidad failed to produce "any" evidence that the institution has a satisfactory academic progress policy, while at the same time giving short shrift to the publication submitted in this proceeding. [See footnote 6](#) Accordingly, I find that Universidad produced evidence demonstrating that the institution established and published a satisfactory academic progress policy. SFAP did not meet its burden of proof in establishing that the policy did not exist during the award years at issue.

SFAP proposes to terminate Universidad from participation in Title IV programs because the institution fails to satisfy the general standards for administrative capability. To participate in Title IV programs an institution must demonstrate that it is *capable* of administering Title IV programs. Based on the evidence presented, I am persuaded that SFAP has met its burden of proof by showing that the institution's administrative defects were so egregious as to warrant the conclusion that the institution lacks the capability of administering Title IV programs properly. The evidence shows that Universidad failed to maintain loan applications, need analysis documents, and statements of educational purpose, and failed to develop adequate systems for establishing student eligibility and loan counseling. At best, the institution appears to have had a rather lackadaisical approach to fulfilling its obligation to administer its Title IV program properly. Accordingly, I find that the seriousness of the defects in Universidad's administration of the FFEL program warrants the termination of the institution's eligibility to participate in Title IV programs.

SFAP also proposes to fine Universidad \$95,000. Under Section 487(c)(2)(B)(i) of the Higher Education Act of 1965, as amended by Section 451(a) of the Education Amendments of 1980, Pub. L. 96-374, 94 Stat. 1367 (to be codified at 20 U.S.C. ' 1094(c)(2)(B)(i)), the Secretary "may impose a civil penalty upon an institution of not to exceed \$25,000 for each violation" of Title IV. Noting that I have determined that the ultimate sanction of termination is appropriate in this case, and recognizing that the imposition of termination is a significant sanction in and of itself, I find that the imposition of a fine is inappropriate. In this regard, it is noteworthy to recognize that many of the defects in the institution's administration of Title IV programs were not shown to be the result of fraud or intentional wrongdoing, but, instead, the result of the institution's apparent negligence and mismanagement of its FFEL program. More important, the small size of the institution mitigates the level of punishment that should be imposed in this case.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Universidad Eugenio Maria de Hostos' eligibility to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended, is terminated.

Ernest C. Canellos
Chief Judge

Dated: January 6, 1997

SERVICE

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

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Footnote: 1 Subsequent to the issuance of the notice, SFAP reduced the proposed fine from \$120,000 to \$95,000.

Footnote: 2 34 C.F.R. § 668.14 (1993) was substantially revised and redesignated as 34 C.F.R. § 668.16, effective April 29, 1994. The revised regulation strengthened the administrative capability standards. 59 Fed. Reg. 9526, 9545 (February 28, 1994). Further technical changes to Section 668.16 were made effective July 31, 1995. Although the parties cite Section 668.16 throughout their submissions, the notice states that the termination and fine action is based upon the institution's administration of Title IV programs during the 1992-93 and 1993-94 award years, periods during which Section 668.16 and its accompanying revisions were not effective. Consequently, the stricter administrative capability standards do not govern the dispute in this proceeding. Unless otherwise specified, citations to the regulation governing the standards for an institution's administrative capability are to the 1993 regulation set forth at 668.14.

[Footnote: 3](#) SFAP raises several allegations in the notice that are either unfounded or simply dropped during the course of this proceeding. For example, in support of the allegation that Universidad failed to complete or maintain student status confirmation reports, SFAP notes that a former student of Universidad is “suspected” of committing fraud in the Title IV program. SFAP makes no attempt to support this allegation through its submissions, yet calculates its proposed fine, in part, on the basis of this suspected fraud. Clearly, this is inappropriate.

[Footnote: 4](#) Notably, the institution points out that it has subsequently adopted a system for meeting these important administrative requirements.

[Footnote: 5](#) Apparently, Dr. Diaz-Vargas' statement emanated from allegations contained in the program review report concerning loan applications that may have been forged by some or one of Universidad's former students. In Dr. Diaz-Vargas' view, the institution was not responsible for the alleged forgeries.

[Footnote: 6](#) Notably, SFAP does not argue that the policy contained in the booklet does not meet the substantive requirements of a satisfactory academic progress policy. Nor do I find such an argument meritorious.
