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

In the Matter of **WARNBOROUGH COLLEGE**,
Respondent.

Docket Nos. 95-164-ST
96- 60-SF
Student Financial Assistance
Termination and Fine Proceedings

Appearances: David B. Adler, Esq., Seattle, Washington, and John Walsh of Brannagh, Barrister, Norfolk Island, South Pacific, for Warnborough College.

Paul G. Freeborne, Esq., and Russell B. Wolff, 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 November 2, 1995, the office of Student Financial Assistance Programs (SFAP), of the U.S. Department of Education (ED), issued a notice of its intent to terminate the eligibility of Warnborough College, Oxford, England, (College) to participate in the federal 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.* In response to that notice, on November 9, 1995, counsel for the College requested a hearing in this matter. Subsequently, on April 24, 1996, SFAP notified the College that it was proposing to fine the College $350,000 for various alleged violations of the Title IV regulations. After the College appealed the fine action, the termination and fine procedures were joined. The parties filed briefs and made evidentiary submissions and, on July 22-23, 1996, I conducted an evidentiary hearing as to both matters. A verbatim record was made at the hearing and a copy of the transcript was provided to each side.

I will discuss the fine and termination actions separately. As a threshold matter, in either a termination or fine proceeding, SFAP has the burden of persuasion. 34 C.F.R. § 668.88(c)(2).

- TERMINATION ACTION -

According to the termination notice, SFAP determined that the College was not eligible to participate in the federal student financial assistance programs and, therefore, termination was mandated. SFAP alleged that in its application for re-certification as an eligible institution, the College claimed that it was a degree-granting institution of higher learning. However, SFAP received notices from the Education Department of the British Council, Washington D. C., dated September 29, 1995, and the Department for Education and Employment, Westminster, London, England, dated October 2, 1995, both indicating that the College was not authorized to grant degrees in Great Britain. Since the College had applied for and was certified as eligible to participate in the Title IV programs as a foreign degree-granting institution, SFAP found that the College was not eligible as a result of the information contained in the two notices.See footnote 1 *1*

In support of the termination action, SFAP, citing 34 C.F.R. §600.54(c), points out that there are three alternative ways that a foreign institution may be eligible to participate in Title IV programs: (1) as an institution which is legally authorized to grant degrees; (2) as an institution which has a program of at least two years in length whose credits are fully and freely transferable toward a baccalaureate degree at an eligible institution in the United States; or (3) as an institution which offers a vocational program of at least one year in duration which leads to a recognized educational credential and which prepares its students for gainful employment in a recognized occupation. Since the evidence showed that the College applied for re-certification to participate in the Title IV programs as a degree granting foreign institution, and it is not currently authorized to grant degrees in Great Britain, SFAP succinctly argued that the College is clearly ineligible to participate in the Title IV programs.

During the course of the hearing, Warnborough did not dispute the fact that it is not currently authorized to issue degrees in Great Britain, although it did present some evidence to the effect that it had previously been authorized by the District of Columbia to confer such degrees between 1988 and 1991. Although apparently conceding that it is not currently authorized to grant degrees, College's counsel, at the hearing, attempted to explain that the College's renewal Application for Institutional Eligibility, dated June 13, 1994, which claimed that the college issued degrees in graduate, bachelor, and associate degree programs, was not misleading. He pointed to a note on the application which referred to an attachment which stated that such degrees were actually awarded by Greenwich College, with which the College had an agreement.

The College raises three arguments in its defense in the termination action. First, since 1982, the institution had been an eligible foreign institution participating in the Title IV programs, and it was never directly asked by SFAP to provide the type of detailed information during the recertification process that SFAP apparently now requires.See footnote 2 *2* Second, it is a legitimate school where students earn credits which have been and which are now capable of being transferred to approximately 200 colleges in the United States. Third, even if it cannot satisfy the eligibility criteria as a degree-granting institution through its contract with Greenwich College, it is clearly eligible on the other two grounds provided for in the regulations.

My review of the record in this case reveals that the College was previously certified as, and applied to ED for re-certification as, an eligible foreign institution on the basis of its degree granting status. The evidence is abundantly clear -- the College is not now authorized to grant degrees and, therefore, it is not now eligible to participate in the Title IV programs on that basis. The arrangement with Greenwich College does not qualify the College as a degree-granting foreign institution. A previous designation of eligibility by the Secretary does not entitle an institution to re-certification if that institution does not meet the current eligibility criteria at the time it applies for re-certification.

The evidence also indicates that the College does not qualify as an eligible foreign institution on the basis of either a two year program whose credits are fully transferable to a school in the United Stated or a one year vocational program. The College tried to explain that it did not claim to be eligible on either of these bases on its application for re-certification because it believed that its notation of being degree-granting subsumed the other two categories. This conflicts with the clear instruction on the re-certification application form that all bases for eligibility must be checked. In addition, the evidence the College presented in an attempt to establish such eligibility is clearly inadequate. Such evidence included "agreements"with other schools, some dated as long ago as 1978, which the College claims proves it had commitments from these schools to accept the College's credits. However, in some instances, the agreements are not executed by the other school and, in some cases, there is a disclaimer from the other school that any current agreement exists between the schools. In no case is there a clear commitment by any school to accept all the credits as freely transferable.

Moreover, the College presented the testimony of a former student to the effect that he received credit for his classes when he applied to New York University (NYU). However, my review of his NYU transcript indicates that no such credit was given. Furthermore, the College did not make an adequate showing that it had a qualified one year vocational program. At the hearing, the College claimed that its tourism program was such a qualified program. However, rather than leading to the awarding of a certificate by the institution, the program results in a certificate which is issued by Oxford University under a pre-existing arrangement. Also the program was described as taking "about a year" to complete, and more important, the College conceded that no student has ever enrolled in the tourism program. I find, therefore, based on the record before me, that SFAP has met its burden of establishing that the College does not qualify as an eligible institution for Title IV purposes as provided in 34 C.F.R. §600.54, and should be terminated.See footnote 3 *3*

- FINE ACTION -

In its notice of proposed fine, SFAP based its fine decision on three grounds: First, the College's alleged failures to make tuition refunds ($25,000); second, the College's alleged substantial misrepresentations regarding the nature of its educational programs to 15 of its students ($20,000 each = $300,000); and third, the College's alleged misrepresentations to ED ($25,000). At the outset of the evidentiary hearing, SFAP reduced its recommended fine for the misrepresentation to students allegation to $80,000 ($20,000 per student for 4 students).

SFAP presented the testimony of five former students of the College. Four of them testified, in essence, that after reading some literature about the College and assuming that the College was part of the Oxford University system, they contacted the College. They were sent materials about the school which, through the prominent display of the word "Oxford" therein, further convinced them they were reading about Oxford University. As a consequence, each of the students applied for admission. During the application process, each of the four students contacted Mr. Mark Huck, who was proffered by the College as its responsible agent in the United States. Mr. Huck was asked specifically and assured the students that they were, in fact, applying to Oxford University. Mr. Huck sent each of the students an audio compact disc (CD) about the school. My review of the CD and its jacket convinces me that it is misleading and could easily cause any observer to believe that Warnborough College is a part of Oxford University. My review of the other written brochures and catalogues sent to the students leads to the same conclusion. When the students arrived in England to start classes, they discovered that the College had no connection with Oxford University. On that basis, they withdrew from the school and demanded a refund. Some withdrew immediately without attending any classes, while one withdrew after attending classes for six weeks. All but one of the four have not received their required refund even though they have demanded it. The fourth has received a refund of tuition but has not been refunded any of the fees that she had paid. A fifth student testified that she enrolled at the College, withdrew shortly thereafter, but has not received a refund from the College.See footnote 4 *4* Further, SFAP presented evidence that even if the refunds had been paid, the College's refund policy does not satisfy the refund policy required by Title IV. Finally, SFAP supported its allegation of a misrepresentation to it by incorporating the evidence of the College's false claim that it was a degree granting foreign institution in its application for re- certification.

In its defense to the fine action, the College argues that the substantial fine proposed by SFAP is inappropriate; they do concede, however, that some smaller fine is in order. As for the failure to make refunds, the College agrees that a number of refunds are due and have not been made. It explains, however, that the reason that it has not yet made the refunds is that the College has not received any federal funding for students since an emergency action was taken against it on October 4, 1995, and it does not have the funds to pay the refunds. Further, it asserted that the school never received some of the federal student aid funds in question.See footnote 5 *5* It also claims that it was unaware that its refund policy did not satisfy Title IV requirements. In so far as the misrepresentation to students is concerned, the College argues that it was not a party to the misrepresentations. It claims that all the misrepresentations cited by the former students were made by Mr. Huck, and they were clearly not authorized by the College. As for the claim of a misrepresentation to ED, the College argues that it made a full disclosure on the application form and it never intended to mislead ED.

I have examined the College's refund policy and have determined that it does not comply with the requirements of 34 C.F.R. §669.22.

In addition, I find that the College did not even comply with its own refund policy, and its assertion that it did not have the funds to pay the refunds does not, even if true, constitute an valid excuse. As for the misrepresentation to ED, I find that SFAP's evidence is insufficient to convince me that it was an actionable violation. Finally, as to the misrepresentations to the four students, I find that such misrepresentations did occur and that the College is responsible for them. At a minimum, it clearly contributed to the actions of Mr. Huck. It placed him in a position of apparent authority and exercised absolutely no supervision over him. Although the College officials denied that they were involved in the preparation of written materials which were sent to potential applicants for the school and attributed the responsibility for all of them to Mr. Huck, they did admit that they were involved somewhat in the preparation of the CD. My review of all these items convinces me that they are clearly misleading -- anyone who reads them could reasonably be convinced that Warnborough College is a part of Oxford University. The College's protestation that the items clearly state that the College is "independent" and, therefore, there was no misrepresentation, is not meritorious. It is quite obvious that there was no disclaimer in the true sense of the concept, despite the fact that such a clear disclaimer was mandated by the circumstances.

As an aside, it also seems strange that an individual who could derive no pecuniary benefit would perpetuate a fraud on students by misleading them into believing that they were applying to Oxford University. This claim of the "rogue employee did it on his own" is, therefore, not easily believable. As a balance, however, I can not understand why the College would participate in such a fraudulent scheme since it would be discovered quickly by the students (as it was). Suffice it to say that the College was, at a minimum, culpable of gross negligence in the manner in which it engaged and supervised Mr. Huck. Such lack of care is deplorable and clearly falls far short of satisfying the school's fiduciary responsibility of a participant in the Title IV programs enumerated in 34 C.F.R. § 668.82. Since I determined to base the College's culpability for the misrepresentation to students violation on its failure to properly circumscribe the operations of Mr. Huck, I will treat that failure as a single violation for purposes of the fine.

Based on the above, I find that SFAP has met its burden of showing that the following fines are appropriate: $15,000 for the failures to make appropriate refunds and $25,000 for the misrepresentations to the students. I have determined the fines to be appropriate after considering the nature of the offenses as well as the mitigating effect of the small size of the institution, as required by 34 C.F.R. § 668.92. *See generally, 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 addition to the mitigating effect of being a small school, I have also taken into account the fact that I have simultaneously found that the eligibility of the College should be terminated. *See In the Matter of Cosmetology Training Center,* Docket No. 93-86-ST, U.S. Dep't of Educ. (1993).

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the eligibility of Warnborough College to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, be terminated. It is further ORDERED, that Warnborough College, immediately and in a manner prescribed by law, pay a fine in the amount of $40,000 to the United States Department of Education.

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Judge Ernest C. Canellos

Dated: August 9, 1996

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 1 The College alluded to the fact that it was incorporated in the District of Columbia, arguing that, as an American institution, it was not in violation of British law while operating in Great Britain. However, in so far as Title IV eligibility is concerned, it has always held itself out to be a foreign institution. Since it applied for certification as an eligible foreign institution, it cannot be eligible as a domestic institution.

Footnote: 2 2 At the end of the evidentiary portion of the hearing, the College requested a 90-day delay in order to gather evidence to support its claim that it qualified as an eligible institution through its two year fully transferable program and its one year vocational program. The evidence presented by the College on this subject during the hearing was totally unpersuasive; I concluded, therefore, that any more probative evidence was not available and a delay would not be justified. I found that the College's claim that it was not on notice that such information was required during the hearing process was not meritorious.

Footnote: 3 *3 Because it is not necessary for my resolution of this case, I specifically do not decide whether the College was ever eligible to participate in the Title IV Programs or, if it was eligible at some time, when that eligibility was lost. For the same reason, I do not decide on the applicability of the provisions of 20 U.S.C. § 1088(a)(2)(E).*

Footnote: 4 *4 During the hearing, I granted the College's motion to limit the testimony of this witness to the failure to make refunds allegation. My ruling was based on the fact that this witness had not been listed in the fine notice as one to whom misrepresentations had been made.*

Footnote: 5 *5 Some evidence presented at the hearing seemed to confirm that some of the loan checks which were made payable jointly to the respective student and the College were deposited by Mr. Huck into an account which he had set up. My review of the canceled checks reveals that they were deposited into that account without an indorsement from either of the payees and, yet, the checks were paid by the drawee bank. I am extremely concerned because the requirement for dual payees of loan checks in the Federal Family Education Loan Program was implemented as a protective measure against fraud and other violations. Although not within my purview, I recommend that the failure of such measures in this case should be separately reviewed by the appropriate authority within ED.*
