

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

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In the Matter of

**Docket No. 95-76-SP**

**CONCORDE CAREER INSTITUTE,**  
Respondent.

Student Financial Assistance Proceeding

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PCRN: 93409044

Appearances: David H. Larry, Esq., Manatt, Phelps & Phillips, Washington, D.C., for  
Concorde Career Institute

Steven Z. Finley, Esq., Office of the General Counsel, United States Department of  
Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Edward J. Kuhlmann, Administrative Law Judge

**DECISION**

On March 3, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Final Program Review Determination (FPRD) finding that during the award years 1990/91, 1991/92, and 1992/93, Concorde Career Institute violated 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.* On April 4, 1995, Respondent appealed the determination on finding #11 and the authority of the Department to assess informal fines. Respondent also challenged the timeliness of notice to Respondent of the date, time, and place of hearing. Administrative Judge Slippen found that proper notice had been given, and denied Respondent's request for certification of the issue to the Secretary of Education on June 27, 1995. Respondent sought review by the Secretary of Judge Slippen's order, and its request was denied pursuant to 34 C.F.R. § 668.124 (h), since the Secretary did not take any action within 15 days. [See footnote 11/](#)

SFAP found in finding # 11 that the Respondent held excess cash in its Federal EDPMS account during the 1990/91, 1991/92, and 1992/93 award years. SFAP stated that when an institution maintains excess funds, this causes the Federal Government to pay excess interest on these funds. Therefore, it concluded that Respondent is liable for the cost incurred by the Federal Government on the excess cash outlays. SFAP determined that Respondent owed \$297.00.

Respondent argues that SFAP lacks legal authority to recover interest costs for excess cash balances maintained in the institution's federal account. That issue has been repeatedly decided to

the contrary. In the Matter of Phillips Colleges, Inc., Docket No. 92-64-SA, U.S. Dep't of Educ., Initial Decision (Aug. 24, 1994), Final Decision (May 25, 1995), Motion to Reconsider Denied (Jul. 13, 1995); In the Matter of International Career Institute, Docket No. 92-144-SP, U.S. Dep't of Educ., Initial Decision (Jul. 7, 1994), Final Decision (May 15, 1995); In the Matter of New York Business School, Docket No. 93-81-SP, U.S. Dep't of Educ., Initial Decision (Jul. 22, 1994); and In the Matter of Puerto Rico Technology and Beauty College, Docket No. 92-73-SA, U.S. Dep't of Educ., Initial Decision (Aug. 31, 1992), Final Decision (Oct. 9, 1992). Respondent raises no new legal arguments about the Department's authority which would warrant a result different from that reached in the previously decided cases. In addition, Respondent and SFAP agree that the issue is moot since Respondent has demonstrated in its brief that it has returned interest earnings on its federal bank account for the period covered in the FPRD in an amount greater than the \$297 liability asserted in the FPRD. SFAP points out that the "repayments are consistent with the institution's fiduciary obligations to compensate the government for interest costs associated with making such funds available, and satisfy the liability sought in the FPRD." The legal issue presented by Respondent is therefore moot since SFAP has determined that Respondent has no further liability.

Respondent was assessed \$6,550.00 in "informal" fines. SFAP explained in the FPRD that such fines are not subject to the formal appeal process outlined in the appeals information section for liabilities. SFAP states in the FPRD that "[t]he institution is not obligated to pay this fine." Nevertheless, Respondent seeks a determination on the legality of "informal" fines. This office has repeatedly held that the issue of informal fines is not included within its appeal authority. In the Matter of Indiana Barber/Stylist College, Docket No. 94-111-SP, U.S. Dep't of Educ., Initial Decision (Mar. 23, 1995) at 7, Final Decision (Aug. 25, 1995); In the Matter of Kane Business Institute, Docket No. 94-70-SP, U.S. Dep't of Educ., Initial Decision (Oct. 21, 1994), at 2 n.2, Final Decision (Nov. 30, 1994). Therefore, it would be inappropriate to rule on Respondent's legal questions regarding "informal" fines since such matters are outside the scope of this proceeding.

## FINDINGS

1. SFAP in finding #11 found that Respondent owed the Department \$297 in interest for excess cash in its Federal EDPMS account during the 1990/91, 1991/92, and 1992/93 award years. Respondent has repaid that liability and, therefore, no issue remains to be decided.

2. Respondent's request to determine the legality of the "informal" fines assessed by SFAP is not within the scope of authority of this proceeding and therefore the request is denied.

## ORDER

On the basis of the foregoing, it is hereby ORDERED that the liability issue raised by the Respondent has been satisfied and accordingly is moot.

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Edward J. Kuhlmann  
Administrative Law Judge

Dated: May 28, 1996

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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 1/ A full account of respondent's contention and its disposition is in Concorde Career Institute, Docket No. 95-17-SP, U.S. Dep't of Educ. (Feb. 1, 1996).*