

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

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In the Matter of

**Docket No. 96-16-ST**

**UNIVERSIDAD FEDERICO HENRIQUEZ**

**Y CARVAJAL,**

Student Financial Assistance Proceeding

Respondent.

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Appearances:

Arcadio J. Reyes, Esq., Washington, D.C., for Universidad Federico Henriques Y Carvajal.

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

Before:

Judge Richard F. O'Hair

**DECISION**

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 Universidad Federico Henriquez y Carvajal (Carvajal or Respondent) to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), and to impose a fine of \$124,900. 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* This termination notification was followed by Carvajal's request for a hearing. A hearing on this matter was conducted in Washington, D.C., on October 1 and 2, 1996.

The grounds for this termination and fine proceeding, initiated pursuant to 34 C.F.R. § 668, Subpart G, are that Carvajal failed to meet appropriate standards of administrative capability with respect to its conduct of the Title IV, HEA programs in that it: 1) failed to conduct and/or use a need analysis for Federal Family Education Loans (FFEL); 2) had no established refund policy and failed to pay refunds; 3) failed to maintain required FFEL documentation; and, 4) failed to develop a proper satisfactory academic progress policy. The letter of notification concludes by alleging that Carvajal also does not adhere to the required fiduciary standard of conduct in administering the Title IV, HEA programs. At the beginning of the hearing, SFAP withdrew the allegation that Carvajal failed to maintain required FFEL documentation, and it will not be further addressed in this decision.

Respondent is a private, postsecondary university located in the Dominican Republic which has been participating in Title IV, HEA programs for its United States students since 1987. The bulk of its United States students receiving Federal student financial aid have been enrolled in Respondent's four year medical program. Respondent originally operated under the name of Universidad Mundial Dominicana (Mundial), which was administered by Dr. Ronald Bauer. Dr. Bauer allegedly engaged in some financial improprieties with funds belonging to Mundial and on February 3, 1988, Consejo Nacional de Education Superior (CONES), the National Council for Higher Education for the Dominican

Republic, assumed operational control of Mundial. [See footnote 1<sup>1</sup>](#) From that point, until February 12, 1991, Dr. Margarita Cornielle and her husband, Mr. Rinaldo Fermin, two former Mundial administrators, were appointed by CONES to jointly administer Mundial. Recognizing that Mundial's professional reputation had been tarnished by Dr. Bauer's misconduct, on February 12, 1991, CONES, by means of two presidential decrees, first terminated Mundial as a legal entity, and then established Universidad Federico Henriquez y Carvajal. Respondent stressed that the point for issuing these two separate decrees was to reinforce the fact that Carvajal was a new, independent institution, and not a successor institution of Mundial.

From May 23 through May 26, 1994, the Department conducted a program review of the Federal Family Education Loan (FFEL) Programs administered at Carvajal for award years 1992- 93 and 1993-94. [See footnote 2<sup>2</sup>](#) The program reviewers requested that Dr. Cornielle, acting in her capacity as the director of financial aid, provide them with all of Carvajal's Title IV student financial aid files for those two years. Dr. Cornielle was able to locate 61 such files for their examination. The program reviewers prepared a program review letter which described regulatory deficiencies they found in Carvajal's administration of the Title IV programs. This termination and fine proceeding was initiated after Carvajal was given an opportunity to respond to the findings of that letter.

To begin and continue participation in Title IV, HEA programs, an institution must demonstrate its capability to properly administer the Title IV programs in which it participates. 34 C.F.R. § 668.16. Simultaneously, an institution which participates in these programs is also obligated to act with the competency and integrity necessary to qualify as a fiduciary. 34 C.F.R. §§ 668.82(a), (b) (1993). The regulations governing these programs clearly provide that any one violation of a regulation, regardless of significance, provides a basis for a termination of an institution's eligibility. 34 C.F.R. § 668.86(a) (1993).

The senior program reviewer's overall opinion of the state of the financial aid records at Carvajal was that they were the worst she had ever seen. She related that she found that the student records were scattered throughout the office and were brought to her in a "piecemeal" fashion, were not well organized, and many were incomplete. Dr. Cornielle explained to the program reviewers that some of the missing student financial aid files had been confiscated by CONES in 1988. The program reviewers examined student files maintained under CONES' control in two different locations, but these files were only academic files, not financial aid files.

## TERMINATION

### Need Analysis

Before an institution can certify that a student is eligible for a Title IV loan, the institution must be satisfied that the student has a financial need. 34 C.F.R. § 668.7(a)(10) (1993). Compliance with this responsibility is documented through the institution's performance of a need analysis, a process by which the student's cost of attendance at the institution and the student's expected family contribution are evaluated to arrive at the student's financial need. 20 U.S.C. §§ 1087kk, ll; 20 U.S.C. § 1070a-6. The expected family contribution means the amount of funds which the student and his or her family may be reasonably expected to contribute toward his or her postsecondary education. 20 U.S.C. § 1087mm.

The program reviewers reported they could find no evidence that a need analysis was performed in 53 out of the 61 sample student files. The number of deficient files was reduced at the hearing from 53 to 11 because the parties stipulated that a need analysis had been conducted by the loan guarantee agency in all but 11 of the original 53 files. In the case of these remaining 11 student files, the documents disclosed that Dr. Cornielle completed the School Certification Section of the loan Application and Promissory Note. In that section a school official indicates the cost of attendance and the expected family contribution, and then certifies the loan amount for which the student is eligible. In nine files she indicated that the student had an expected family contribution of \$0; in two files she reported the students had an expected family contribution of \$900. However, none of the files contained any financial documents supporting her conclusion as to what, if anything, these 11 students or their families were able to contribute to the students' educational costs and, consequently, there was nothing to support her conclusion of the students' financial need. [See footnote 3<sup>3</sup>](#)

Dr. Cornielle explained that, in her capacity as Carvajal's financial aid advisor since 1991, she regularly and conscientiously interviewed each financial aid applicant and, based upon the student's responses, plus other submissions, exercised her professional judgment in determining the expected family contribution for each student. In the process, she decided whether or not a student was receiving money from other sources that could be applied to the student's educational expenses. She testified she looked at the Student Activity Reports which contained financial data about the applicant and his or her family, but she did not retain a copy for the files because she was unaware this was required. She blames the Department for any deficiencies in the student financial aid files on the basis that she has not received training from the Department on the proper administration of these financial aid files. Additionally, Carvajal argued that it has never been sent copies of the applicable regulations, Dear Colleague letters, or any other correspondence from the Department.

I find that Carvajal's determination of the expected family contribution for each of the 11 student files examined by the program reviewers was inadequate to satisfy the need analysis required by 34 C.F.R. § 668.7(a)(10) (1993). Without Dr. Cornielle preparing a memorandum of her personal judgment regarding financial need, and retaining copies of suitable documentation supporting her determination, Carvajal has not conducted a satisfactory need analysis for its financial aid files. As such, there has been a violation of the regulation because there is no assurance any of these student loans were made to eligible students. In arriving at this conclusion I give no weight to Respondent's argument that the Department has failed either to properly train its personnel to perform this function, or to provide Respondent with appropriate guidance materials. It is the responsibility of a participating institution, and not the Department, to ensure that the institution has the trained personnel and appropriate statutes, regulations, and guidance materials to properly administer the Title IV, HEA programs.

### Refund Policy

After examining Carvajal's Title IV program materials and questioning Dr. Cornielle, the program reviewers concluded that Carvajal had not established a fair and equitable refund policy. By law, an institution, such as Respondent, which participates in the FFEL program must establish a refund policy which provides for a refund of unearned tuition, fees, room and board, and any other institutional charges to a student who receives Title IV, HEA program assistance and withdraws prior to the completion of the program. 34 C.F.R. § 682.606 (1993). This refund must be paid within 60 days of a student's withdrawal or within 30 days of the last day of a leave of absence for a student who does not return from a leave of absence. 34 C.F.R. §§ 682.607(c)(1), (2) (1993). Further, to be fair and equitable, the refund policy must provide for a refund which is the greatest of the amounts provided under:

- 1) the requirements of applicable state law;
- 2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or
- 3) the pro rata refund calculation as defined by the HEA [and found in 34 C.F.R. Part 682, Appendix A].

34 C.F.R. § 682.606(b)(1) (1993).

When the program reviewers questioned Dr. Cornielle regarding Carvajal's refund policy, they reported she told them that Carvajal does not refund any tuition and fees to the students. She explained that when the tuition and fees are paid in United States dollars, they are immediately deposited with the Central Bank, which converts them into Dominican pesos, and it is too cumbersome to convert the funds from pesos back into dollars. Dr. Cornielle acknowledged that during the seven years she had been administering the Title IV program, there had been students who had withdrawn but that Carvajal had not paid refunds to, or on behalf of, any of them. The program reviewers were not shown, and did not discover on their own, any documentation which described Carvajal's refund policy.

Dr. Cornielle testified that Carvajal has always had a refund policy and denied telling the program reviewers otherwise, but she admitted that Carvajal has never had an opportunity to apply its refund policy to a FFEL participant. She then referred to several paragraphs in the Medical School Catalog which address Carvajal's Tuition Refund Policy. She recounted that since 1991 there has been only one student who was entitled to, and was paid, a refund. Additionally,

she was aware of one other student who had been on a type of leave of absence and, rather than refund the tuition to the student, Carvajal held the money for the student in some form of informal escrow account.

I find that Carvajal has not adopted a fair and equitable refund policy which complies with the regulations. Because Carvajal is not located in a state and is not accredited by a recognized accrediting agency, it was required to implement a refund policy which guarantees a pro rata refund to withdrawing students. The policy set out in the Medical School Catalog requires that requests for refunds must be submitted 30 days prior to the beginning of the term, and states that there will be “no pro-rated refunds given once classes begin.” This is contrary to the provisions of 34 C.F.R. Part 682, Appendix A. Furthermore, it appears that in the one instance where Dr. Cornielle could recollect that a student was entitled to a refund, Carvajal elected to hold the tuition funds in trust for the student rather than make a refund payment. In either event, Carvajal has not implemented a fair and equitable refund policy.

### Satisfactory Academic Progress Policy

To be eligible to receive Title IV funds, a student must be currently enrolled and must be maintaining satisfactory academic progress in the student's course of study. 34 C.F.R. § 668.7(a)(5) (1993). To ensure this obligation is met, the institution must establish, publish and apply reasonable standards for measuring whether a student is maintaining satisfactory academic progress. An institution's failure to establish a satisfactory academic progress policy demonstrates its lack of administrative capability. The program reviewers found that although Carvajal had a stated academic progress policy, it was deficient in that it failed to contain a number of essential elements set out in 34 C.F.R. § 668.14(e) (1993). The missing elements were the following:

1. Grades, work projects completed, or comparable factors which are measured against a norm.
2. A maximum time frame in which the student must complete his or her educational program.
3. Specific policies defining the effect of course incompletes, withdrawals, repetitions, and non-credit remedial courses on satisfactory academic progress.
4. Specific procedures for appeal of determination of non- satisfactory academic progress.
5. Satisfactory academic progress standards that are not less restrictive for Title IV, HEA program funds recipients than for non-recipients.

34 C.F.R. § 668.14(e)(3) (1993).

The program reviewers examined the provisions of a document entitled General Academic Policy and found it did not cover the above described elements of a satisfactory academic progress policy. During the hearing, Carvajal presented evidence of additional school policy which was contained in a document entitled Student Rules. I have examined the relevant portions of both documents, General Academic Policy and Student Rules, and I agree with SFAP that neither of them contain sufficiently complete, unequivocal elements of a satisfactory academic progress policy to satisfy the requirements of the regulation. Accordingly, the evidence has not documented that Carvajal has established, published, or applied reasonable standards for measuring whether its students are maintaining satisfactory academic progress.

In summary, I find that SFAP has met its burden of proving that Carvajal failed to conduct the appropriate need analysis for 11 of its students, failed to implement and apply a fair and equitable refund policy, and also failed to implement and apply a satisfactory academic progress policy. These inadequacies illustrate that Carvajal lacks the administrative capability to administer the Title IV, HEA programs, and that Carvajal has failed to act in a manner consistent with its fiduciary obligations to its students and the Department. The seriousness of these violations warrants termination of its eligibility to participate in the Title IV, HEA programs.

FINES

Title IV, HEA program regulations permit the Department to impose a fine of up to \$25,000 for each program

violation. 34 C.F.R. § 668.84 (1993). In determining the amount of the fine, one must consider the gravity of the offense, as well as the size of the institution, which takes into account the amount of Title IV program funds received by or on behalf of the students in attendance at the institution. After examining the relevant factors, SFAP determined that Carvajal qualifies as a small institution. SFAP initially assessed a fine of \$124,900; however, SFAP reduced this amount by \$49,400 because of its aforementioned withdrawal of certain allegations of misconduct. In addition to fines for program violations, the initial assessment also included a fine of \$20,000 for Carvajal's failure to comply with the conditions of the Program Review Report that it conduct a full file review to address its alleged failures to provide refunds and to conduct appropriate need analyses.

Taking into consideration that I am terminating Carvajal's eligibility to participate in Title IV programs, which I consider to be a significant punishment in and of itself, the mitigating effect of its status as a small school, and the absence of any evidence of fraud or other malfeasance by its administrators, I have determined that a fine is not appropriate in this case. Accordingly, I am not assessing a fine against Carvajal for the substantiated program violations.

### FINDINGS

1. Carvajal failed to conduct a proper need analysis for 11 recipients of Title IV student financial aid.
2. Carvajal failed to implement a fair and equitable refund policy.
3. Carvajal failed to develop a satisfactory academic progress policy.

### ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Universidad Federico Henriquez y Carvajal 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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Judge Richard F. O'Hair

Dated: December 16, 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* <sup>1</sup> When CONES assumed control of Mundial, Respondent related that CONES also confiscated all of

*Mundial's administrative, academic, and Title IV, HEA loan documentation.*

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*[Footnote: 2](#)<sup>2</sup> The program reviewers expanded the scope of their review to include all previous award years after they found programmatic deficiencies which occurred during the 1992-93 and 1993-94 award years.*

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*[Footnote: 3](#)<sup>3</sup> The guarantee agency for these 11 student loans, through a declaration from one of its employees, Ms. Peterson, offered into evidence by SFAP, informed the tribunal that the agency did not perform the need analyses for any of these 11 student loan applications. Respondent's objection to the introduction of this declaration is overruled. Respondent's motion to file a declaration from another guarantee agency employee, Mr. Scott, is granted.*