

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

In the Matter of **Docket No. 97-158-SF**

**NEOSHO COUNTY
COMMUNITY COLLEGE,** Student Financial
Assistance Proceeding
Respondent.

Appearances:

Leigh M. Manasevit, Esq., Karen S. Lovitch, Esq., Washington, D.C., for Neosho County Community College.

Alexandra Gil-Montero, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Judge Richard I. Slippen

DECISION

Neosho County Community College (Neosho) is an institution which participates in the federal 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.* On October 20, 1997, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a notice of intent to fine Neosho \$75,600 for three violations of HEA program regulations. This fine action arises out of a program review conducted on July 29 - August 2, 1996, which resulted in the issuance of a July 22, 1997, final program review determination (FPRD). Neosho appealed the FPRD finding that student verification was not documented and/or incomplete (Finding #2). SFAP and Neosho settled the institution's appeal of the FPRD's liabilities, and a dismissal was issued by Judge Canellos on March 12, 1998. [See footnote 1¹](#)

The October 27, 1997, notice identifies three alleged bases for this fine action. The first violation charged was that Neosho failed to verify students' eligibility and need for Title IV financial aid prior to disbursement for which SFAP requested a fine of \$36,000. The second violation charged was Neosho's failure to apply a fair and equitable refund policy for which SFAP seeks a fine of \$28,000. For Neosho's alleged third violation, the institution's improper certification of Federal Family Education Loan Program (FFEL) applications, SFAP seeks a fine of \$10,800.

Failure to Verify Students' Eligibility and Need for Title IV Funds

For a selection of its students, an institution must secure and verify documentation regarding its students' eligibility for Title IV financial assistance. 34 C.F.R. 668, Subpart E. As part of the verification process, an institution must review

the documentation used to establish a student's expected family contribution such as his or her family's adjusted gross income. 34 C.F.R. § 668.56(a). An institution is required to verify the accuracy of its students' eligibility and need for Title IV financial assistance for up to 30 percent of its Title IV recipients. 34 C.F.R. § 668.54(a)(2)(i); *In re Fisk University*, Docket No. 94-216-SP, U.S. Dep't of Educ. (October 5, 1995).

In its program review, SFAP uncovered several instances where Neosho failed to complete verification of students' financial aid information. As a result, SFAP required Neosho to review the files of all the students Neosho had selected for verification for the 1993-94 award year. [See footnote 2²](#) The result of this file review identified 64 students for whom adjustments were required. According to Neosho, it appeared as if only 13 of these students resulted in a liability owed to the Department. [See footnote 3³](#) However, in its own review of the institution's files, SFAP uncovered an additional 27 students for whom verification was not completed, along with \$89,717 in associated liabilities. For each of these 40 violations, SFAP seeks a fine amount of \$400, totaling \$16,000. Additionally SFAP seeks a fine of \$20,000 for Neosho's failure to submit an accurate and complete file review. SFAP argues that Neosho's submission of an inaccurate file review reflects the institution's lack of cooperation and disregard for the program review process.

Neosho argues that SFAP may not impose a fine of \$20,000 for the institution's failure to submit an accurate file review because this violation occurred as a result of the failure to perform accurate verification. Thus, because one act gave rise to the other, the two violations actually constitute only one regulatory violation and only one fine is appropriate. SFAP argues that Neosho's submission of an inaccurate file review reflects the institution's lack of cooperation and disregard for the program review process. SFAP states that it does not seek to fine Neosho twice for the same conduct but that the institution's failure to comply with verification requirements and its submission of an inaccurate file review are two separate acts of misconduct.

Based on the evidence submitted by both parties, I have concluded that a fine for the institution's failure to comply with verification requirements is appropriate but for a lesser amount that SFAP seeks. In its fine notice, SFAP asks that a fine of \$400 each for 40 violations be imposed. I find that the appropriate fine for this violation is \$200 for each of Neosho's 40 violations for a total of \$8000. Further, I am persuaded by Neosho's arguments and evidence that the institution attempted to submit a complete response to SFAP's request for a file review and that the institution's conduct does not warrant the imposition of an additional \$20,000 fine for its failure to submit a complete and accurate file review. Therefore, I hereby deny SFAP's proposed fine of \$20,000 contained in its October 20, 1997, fine notice

Failure to Apply a Fair and Equitable Refund Policy

An institution that participates in the Title IV programs is required to have a fair and equitable refund policy. 34 C.F.R. § 668.22(a). A refund policy must clearly explain the institution's refund process and procedures. 34 C.F.R. § 668.22(a)(2). In order to be fair and equitable, an institution's refund policy must provide for the largest refund possible under either applicable state law, the specific standards established by the institution's nationally recognized accrediting agency, or the *pro rata* refund requirements contained in 34 C.F.R. § 668.22(c). 34 C.F.R. § 668.22(b). To that end, an institution may need to calculate refunds under a number of different refund guidelines in order to ascertain which of the above-listed methods result in the largest refund possible for each student.

In its program review, SFAP determined that Neosho did not have a fair and equitable refund policy for various reasons. Specifically, Neosho's policy only covered the first two weeks of the semester; it did not disclose the *pro rata* refund requirement for first-time students who withdrew or otherwise stopped attending classes prior to completion of 60 percent of the academic term; and it did not reveal that a refund may be due whether or not the student had followed the published refund guidelines. As a result of this finding, Neosho was required to revise its refund policy and retroactively apply the amended policy to the 1993-94 through the 1995-96 award years. Neosho's review revealed 48 students for whom refunds were improperly calculated. The liability for these improperly calculated refunds totaled \$7,913. For this violation, SFAP now seeks to fine the institution \$600 for each of these 48 instances or \$28,800.

Neosho does not dispute that it improperly calculated refunds. Rather, the institution argues that its regulatory violations were inadvertent and that SFAP has not offered any evidence of fraud or abuse. Neosho agrees with SFAP that the nonpayment of tuition refunds is a serious violation. It states however, that since its failure to make proper refunds was not intentional, it would not be subject to criminal sanctions as SFAP suggests in its brief.

SFAP argues that Neosho has improperly characterized this violation. SFAP states that the violation also consists of the institution's failure to adopt a fair and equitable refund policy. SFAP states that the mitigating factors advanced by Neosho do not warrant reducing the fine. Specifically, SFAP states that Neosho's failure to pay refunds cannot be portrayed as inadvertent since the violation at issue is Neosho's failure to adopt a fair and equitable refund policy. According to SFAP, the institution's failure to adopt such a policy is graver than the failure to pay refunds to specific students because absent a refund policy, an institution may not make any refunds properly. SFAP also argues that Neosho's assertion that it has taken future-oriented corrective action is misleading since the only new procedure initiated by Neosho was the adoption of a new refund policy. SFAP argues that the imposition of a fine is aimed at an institution's improper conduct and that since its twin goals are punishment and deterrence, the severity of a violation should be evaluated at the time of commission. Therefore, corrective measures are not mitigating factors that justify dismissal or reduction of the fine.

SFAP is correct in its argument that the twin purpose of a Subpart G fine action is punishment and deterrence. However, SFAP is incorrect in asserting that an institution's motive in committing the violation(s) or its good faith efforts to take corrective action are not relevant to my determination of what fine amount, if any, is appropriate for the identified violations. *See* 34 C.F.R. § 668.92(a); *In re Dean's Westside Beauty College*, Docket No. 95-73-ST, U.S. Dep't of Educ. (November 8, 1995); *In re Wichita Area Vocational Technical School*, Docket No. 97-41-SF, U.S. Dep't of Educ. (September 10, 1997); *In re Universidad Eugenio Maria de Hostos*, Docket No. 97-61-SF, U.S. Dep't of Educ. (February 6, 1998). Further, the amount of loss suffered by the Department due to any statutory or regulatory violations has also been used to guide this tribunal's assessment of a fine. *See In re Hollywood School of Beauty Culture & Advanced Hair Design*, Docket No. 98-37-SF, U.S. Dep't of Educ. (June 10, 1998).

Neosho's failure to adopt a fair and equitable refund policy is a serious violation and warrants the imposition of a fine, although in an amount lesser than which SFAP seeks. I find that Neosho's failure to make appropriate refunds to the students identified in the fine action was inadvertent, and that it did not result in the misuse of a significant amount of Title IV funds. Further, Neosho took suitable corrective action to cure its violations. Therefore, I find the appropriate fine to be in the amount of \$300 for each of Neosho's 48 violations, or \$14,400.

Improper Certification of FFEL Loan Applications

An institution that participates in the FFEL program must certify that the information it provides to lenders regarding student borrowers is complete and accurate. 34 C.F.R. § 682.603(a). As part of the program review, Neosho was required to review a statistical sample of all FFEL borrowers in the 1993-94 and 1994-95 award years for errors in the FFEL application certifications. This review resulted in the identification of 18 borrowers for whom liabilities were due based on incorrectly certified FFEL applications. SFAP asserts that since 18 errors were found in the statistical sample alone, the number of errors in the overall student population is much higher and, therefore, warrants the imposition of a significant fine. SFAP seeks a fine of \$600 for each of the 18 student borrowers resulting in a total liability of \$10,800.

Neosho admits that it failed to properly verify student information, but states that these violations were unintentional. Neosho argues that it took timely action to correct its administration of Title IV program requirements and has offered assurances to the Department that these violations will not reoccur. Neosho asserts that its violations were isolated incidents rather than part of an overall pattern of misconduct. Neosho further argues that this tribunal has previously considered both the lack of an ill-motive and an institution's corrective action to be mitigating factors in a fine action. Neosho disputes SFAP's assertion that it routinely disregarded verification requirements and that this amounted to a systemic and widespread problem at the institution. Neosho also proposes that given the relatively small liabilities assessed in the FPRD and the fact that many verification errors did not result in a program liability should be considered in lowering the fine sought by SFAP.

As Neosho admits, the institution clearly violated the requirement that it verify its students' financial aid documentation. However, I note that Neosho's errors were not intentional, and resulted in only small liabilities owed to the Department. I also am not persuaded by SFAP's argument that it is appropriate in this case to analogize the projection of liabilities from a statistical sample as SFAP does in assessing program review liabilities in Subpart H

proceedings, to set a fine amount in this Subpart G fine action. [See footnote 4](#)⁴ Neosho's improper certification of FFEL loan applications for students contained in the program review sample has not demonstrated to me that this violation was pervasive. In fact, if, in response to a program review report, an institution, such as Neosho, opted for a full file review in determining any liabilities owed to the Department as opposed to extrapolating from a program review sample, no more errors may have been uncovered. Therefore, I find that a lesser fine of \$100 for each of the 18 violations, or \$1800, is appropriate.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Neosho County Community College be fined \$24,200.

Judge Richard I. Slippen

Dated: January 12, 1999

SERVICE

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

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*[Footnote: 1](#) ¹Neosho submitted a copy of the settlement agreement reached in *In re Neosho County Community College*, Docket No. 97-133-SP. I consider the submission of a settlement agreement to this tribunal to be immaterial and improper and Exhibit R-1 is hereby excluded from the record. See 34 C.F.R. § 668.88(c)(1).*

[Footnote: 2](#) ²Originally, SFAP also required Neosho to review the files for the 1994-95 award year, but it later eliminated this award year because the bulk of the alleged verification errors appeared to be concentrated in the 1993-94 award year.

[Footnote: 3](#) ³Liabilities for these students totaled \$1,150.

[Footnote: 4](#) ⁴In Subpart G proceedings, in which SFAP bears the burden of persuasion, I note that SFAP's use of a projection of liabilities in determining whether or not to assess any fine may be inapposite given the nature of these proceedings. See 34 C.F.R. § 668.88(c)(2).