

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

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In the Matter of

**Docket No. 97-41-SF**

**WICHITA AREA VOCATIONAL  
TECHNICAL SCHOOL,**  
Respondent.

Student Financial  
Assistance Proceeding

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Appearances:

Thomas R. Powell, Esq., Hinkle, Eberhart & Elkouri, L.L.C, Wichita, Kansas, for Wichita Area Vocational Technical School.

Jennifer L. Woodward, 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 Wichita Area Vocational Technical School of Wichita, Kansas (Wichita), is a publicly funded institution which participates in the Pell Grant and Federal Family Educational Loan (FFEL) 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 March 6, 1997, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) issued a notice of intent to fine Wichita \$38,250 for HEA program violations, pursuant to Section 487(c)(3)(B) of the HEA, 20 U.S.C. § 1094(c)(3)(B). Wichita filed a timely request for hearing, and briefs have been submitted by both parties.

From September 25-29, 1995, ED personnel conducted a program review of Wichita's administration of the Title IV, HEA programs for the period of July 1, 1992, to June 30, 1994. During a review of a sample of student files, it was discovered that Wichita had not made timely refunds on behalf of students who had participated in the Pell Grant and FFEL programs and for whom refunds were due. Upon this finding, the program reviewers ordered Wichita to conduct a full file review of all refund calculations for the two award years under consideration. SFAP examined the results of this file review and concluded that Wichita was late in the payment of 51 of 55 refunds.

Wichita readily acknowledged its obligation under the Title IV programs to make a timely refund to the appropriate program on behalf of students who withdraw, drop out, or are expelled on or after the first day of class. 34 C.F.R. § 668.22(a). For Pell Grant refunds, the refunds must be made to the Pell Grant account 30 days after the date the student officially withdraws, is expelled, or the institution determines the student has officially withdrawn. For FFEL loans, the refund must be paid to the student borrower's lender within 60 days after the student's withdrawal. 34 C.F.R. §§

668.22(j)(1), (4); 34 C.F.R. §§ 682.605, 607. Wichita explained that its late refunds resulted from its use of an improper method of tracking student withdrawals, but argues that it has remedied these mechanical problems and assures ED all future refunds will be timely. Although it admits that it made late refund payments during those two award years, it challenged the number of refunds SFAP alleges were made late. To this end Wichita submitted un rebutted evidence, which I adopt as my findings, that there were only 42, not 51, late refunds from the pool of 55 refunds examined during its file review.

SFAP initiated this fine proceeding with the intention of seeking a fine of \$750 for each late refund. Wichita argued that such an amount is excessive, given that its failure to make refunds was unintentional on its part and resulted in no monetary gain to the institution, the approximate interest cost to ED for the late refunds was only \$110, all refunds have been paid, and it has modified its procedure to insure that all future refunds will be timely. In light of these mitigating factors, Wichita believes a fine of \$50 per late refund is more appropriate, and I agree. The regulations provide for the authority to fine an institution up to \$25,000 as punishment for each violation of the Title IV program requirements. 34 C.F.R. § 668.84. The imposition of a fine is intended to punish the violator, as well as serve as a deterrent to other institutions. The fine amount should also reflect consideration of the volitional character and seriousness of the offense, the size of the institution in terms of Title IV funds received, and whether the offense represents a repeat violation. Both parties have cited a number of ED cases which support the imposition of a wide range of amounts of fines for violations similar to that found here. [See footnote 1](#)\* After considering these cases and the mitigating factors provided by Wichita, I concur with its recommendation that the amount of the fine be reduced from \$750 to \$50 for each of the 42 late refunds. This results in a fine of \$2100.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that the Wichita Area Vocational Technical School be fined \$2100.

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Judge Richard F. O'Hair

Dated: September 10, 1997

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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](#) \* *In re National Computer College, U.S. Dept. of Education, Dkt. No. 95-156-ST (Oct. 7. 1996); In re*

*Dean's Westside Beauty College, U.S. Dept. of Education, Dkt. No. 95-73-ST (Nov. 8, 1995); In re Southern Institute of Business and Technology, U.S. Dept. of Education, Dkt. No. 90-62-ST (May 28, 1991); In re Hartford School of Modern Welding, U.S. Dept. of Education, Dkt. No. 90-42-ST (Jan. 31, 1991).*

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