



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of )  
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EASTERN TECHNICAL SCHOOL, )  
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Petitioner )  
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Termination and Fine  
Proceeding on Appeal

DECISION OF THE SECRETARY

This appeal arises out of a proceeding brought by the United States Department of Education (ED) seeking the termination of Eastern Technical School's (ETS) eligibility to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, (the Act) and the imposition of a fine. In the Initial Decision issued on July 24, 1989, Administrative Law Judge Walter J. Alprin (ALJ) determined that:

- (i) ETS is an otherwise eligible post-secondary educational institution authorized to participate in student financial assistance programs under Title IV of the Act;
- (ii) ETS violated provisions of Title IV of the Act, and of the regulations implementing said Title;
- (iii) The action of ED seeking to terminate ETS's eligibility is warranted in whole;
- (iv) A fine of \$120,000 against ETS for violations found and admitted is appropriate.

ETS now appeals the termination and fine imposed by the ALJ. On the basis of the official record in its entirety, the Secretary AFFIRMS the decision of the ALJ.

ETS asserts four primary arguments on appeal. First, ETS claims that because ED failed to prove most of the charges it leveled against ETS, the within proceeding should be dismissed. This argument refers to the ALJ's dismissal of 9 of the 17 findings contained within the Office of Student Financial Assistance's (OSFA) program review report for ED's failure to carry its burden of proof. This argument, at best, is specious. The fact that OSFA failed to sustain its burden with regard to the

findings dismissed below is not relevant to the ALJ's correct determination that OSFA satisfied its burden of proof as to five other violations.

ETS also asks that finding 8 of the report be dismissed or, in the alternative, be barred by laches. The ALJ was unable to establish a determination on this point, and declined to address that finding of the report. (Initial Decision, p. 7) I similarly decline to address it for the reasons noted by the ALJ.

Second, ETS argues that its candor in admitting violations should preclude its termination from participation in Title IV programs. ED's basic policy on termination was set forth in the preamble to its final regulations (42 Federal Register 64567 [1978]). Noting that termination is an extremely serious measure, the preamble states that:

(termination) will be undertaken only when (1) an institution has consistently violated the statute and regulations governing the aid programs and the standards of financial responsibility and administrative capability, and (2) attempts to remedy this situation have failed.

But the test does not end there. Of equal importance is the impact such a termination will have on students. As the ALJ noted:

Loss of an institution's eligibility results in a severe detriment to current students. Depending upon the location and other factors, it may result in severe hardship and loss to possible future students, who will find themselves without the availability of an educational institution which can meet their needs, and accordingly reflect negatively upon one or more entire communities . . . . We should also consider that ED has a finite ability to assist eligible students who can benefit from further education.

Moreover, just as the nature of the violations is a consideration inherent in this decision process, an institution's candor, in as much as it facilitates review or audit level compliance, is a consideration. It is not, however, a defense. While ED appreciates ETS' candor, which the ALJ took into consideration when he issued his decision, it cannot excuse the violations presented in this case.

Third, ETS asserts that termination is unwarranted because it has demonstrated its current ability to act in compliance with applicable statutes and regulations. The facts within the record, however, merely reflect an increased effort on ETS' behalf. This, alone, is insufficient.

Except for funds received for an administrative cost allowance, Title IV, HEA funds received by an institution from ED are held in trust for the intended student beneficiaries and the Secretary. 34 C.F.R. 668.16. As a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs. 34 C.F.R. 668.82. In the face of the violations found below and in the absence of proof that compliance and repayments were expedited when brought to ETS' attention, an increased effort and promises of a better system are insufficient.

Fourth, ETS argues that the within proceeding should be dismissed as a result of the denial of its due process rights. ETS states that holding the hearing on consecutive days when the schedule stated that it was "to be continued on subsequent days until completed" denied it sufficient notice that the hearing would be continued (and concluded) on the next day. I disagree. My reading of the phrase is that the hearing would continue until it was finished, in either consecutive day(s) or, if necessary, on later day(s) if a continuance was needed.

ETS also argues that a carbon copy of the program review report sent to an attorney with Brooklyn Legal Services violated its due process rights. ETS fails, however, to demonstrate any prejudice or harm caused by this correspondence. Moreover, ETS argues that the letter indicating that the proceeding would soon be commencing was improper under the Privacy Act. This is incorrect. The Privacy Act applies only to persons, not institutions.

For the above stated reasons, I AFFIRM the decision of the ALJ.

This ORDER is dated and signed this 5<sup>th</sup> day of January, 1990.

  
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Lauro F. Cavazos

Washington, DC