In the Matter of

BLISS COLLEGE,
Respondent

Docket No. 93-15-ST
Student Financial Assistance

Decision of the Secretary

This case comes to me on respondent Bliss College's (Bliss) Motion to Vacate Initial Decision on Grounds of Mootness filed October 13, 1993. Counsel for the Student Financial Assistance Programs (SFAP) filed its opposition to the motion on November 26, 1993. Pursuant to my request, supplemental briefs were timely filed by both parties on January 14, 1994.

In both its Motion to Vacate and supporting Supplemental Brief, Bliss argues that because it "permanently closed all of its campuses on October 4, 1993 . . . Bliss College is no longer eligible to participate in any Title IV Programs. Bliss Brief (Br. at 1). By removing itself from the field of institutions eligible to participate in federal student financial assistance programs (authorized under Title IV of the Higher Education Act, as amended), Bliss argues the September 7, 1993, decision of Administrative Judge Paul S. Cross (ALJ) terminating Bliss from further participation in all Title IV Programs, should be vacated, as a matter of law, on grounds of mootness.

In opposition, SFAP argues, among other things, that the case presents an actual, live controversy to adjudicate because it has specific future effects on Bliss. SFAP Br. at 3.

For the reasons outlined below, I hold that the September 7, 1993, decision of the ALJ be vacated on grounds of mootness.

In its simplest terms, "a case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." Leonhart v. McCormick, 395 F. Supp. 1073, 1077 (1975). In the present matter, a requisite case or controversy ceased to exist on October 4, 1993, when Bliss College permanently closed all of its campuses. Thereby, Bliss College rendered itself ineligible to

participate in any and all student financial assistance programs authorized under Title IV programs. Certainly, if Bliss College does not exist as an institution of higher education, that it is prescribed from participating in SFAP programs is of no consequence whatever, and can have no practical affect.

Nor do the policy concerns raised by SFAP create a necessary actual case or controversy where one ceased to exist. SFAP argues that if Bliss is not specifically precluded from eligibility, it would not be subject to 34 C.F.R. § 668.96(a)(2) -- which requires an institute whose eligibility has been terminated to wait 18 months after the date of termination before it may apply for reinstatement. SFAP Br. at 3. SFAP further argues that effectiveness of the Department's accountability regulations would be diluted if Bliss or its owners apply for reinstatement after the expiration of the 18 month period. SFAP Br. at 3. But, whether Bliss may apply for reinstatement within 18 months or only after 18 months, or whether the Department is aided in "its gatekeeping role to use a prior termination decision to gain sufficient assurances that the conduct by Bliss or by Bliss owners does not recur," id., does not make the case an actual, live controversy presently to adjudicate. Moreover, the Secretary notes that Bliss has affirmatively represented that "it will not seek to participate in any federal financial assistance program within the 18-month period contemplated by 34 C.F.R. Sec. 668.96 (a)(2), and. indeed, that it has no intention ever to seek such eligibility." Bliss Supplemental Brief at 3.

In Friends of Keesville, Inc. v. Federal Energy Regulatory Comm'n, 859 F.2d 230, 232 (D.C. Cir. 1988), the Court of Appeals held:

> Unquestionably the petitioner suffered legally cognizable injury as a result of the agency's decision. The case must nevertheless be dismissed as moot 'if the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct, 1944, 1951, 21 L.Ed.2d 491 (1969).

Finally, SFAP's arguments ignore the procedural posture of this case. SFAP asks this tribunal to preserve a decision that but for the circumstances of Bliss' closure, may well have been appealed and reversed. The importance of this could not have been more clearly stated in United States v. Munsingwear, 71 S.Ct. 104, 107 (1950), where the court held:

> [t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary.

It seems to me that to permit an ALJ's non-final decision based as substantially as this one is on very specific factual circumstances to affect future litigation against other

allegedly financially irresponsible institutions is inconsistent with long-established jurisprudence on this issue.

Accordingly, it is the decision of this tribunal that respondent Bliss College's Motion to Vacate Initial Decision on Grounds of Mootness, filed October 13, 1993, is granted.

So ordered this 23rd day of February, 1994.

Richard W. Riley

Washington, D.C.

SERVICE LIST

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-3644

Donald C. Philips, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-3644

Leslie H. Wiesenfelder
Dow, Lohnes & Alberston
Suite 500
1255 Twenty-Third Street, N.W.
Washington, D.C. 20037