UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

ALADDIN BEAUTY COLLEGE #32

Respondent.

Docket No. 97-108-ST
Student Financial
Assistance Proceeding

ORDER

A cohort default rate is the percentage of graduates from a Title IV institution who fail to repay loans received under the Federal Family Education Loan (FFEL), program. Excessive cohort default rate is one indication that an institution lacks the administrative capacity to continue in the Title IV, HEA programs. In accordance with its rule making authority, the U.S. Department of Education (Department), adopted 34 C.F.R. § 668.17(a)(2) (1997), which provides that:

> The Secretary may initiate a proceeding under subpart G of this part to limit suspend, or terminate the participation of an institution in the Title IV, HEA programs if the institution has a FFEL Program cohort default rate that exceeds 40 percent for any fiscal year.

When applying this provision the Hearing Official is not given any discretion. 34 C.F.R. § 668.90(a)(3)(iv). Thus, once a final determination is made that a school's default rate exceeds 40 percent, the Hearing Official must order the sanction sought by SFAP. [1]

The 1994 cohort default rate for Aladdin Beauty College, Respondent, was 44.2 percent. As a result of this cohort default rate, Student Financial Assistance Programs (SFAP), initiated a termination action. On December 15, 1997, Judge Frank K. Krueger Jr. issued an Initial Decision in the above-captioned matter finding that SFAP made a final determination that Respondent's FFEL cohort default rate for fiscal year 1994 was 44.2 percent. In accordance with the applicable regulations, Judge Krueger ordered Respondent's termination from participation in all programs authorized under Title IV.

The court, however, also stated that "[g]iven the severity of the 'remedy' proposed by SFAP, the small number of defaulted loans at issue, and the fact that the school appears to have a default rate for fiscal year 1995 below 40 percent, the school should be allowed to challenge the SFAP 'final' determination in a subpart G type of hearing." Decision at 5. In addition, the court stated that consideration should be given

[1] Although the final rate may be challenged in the Federal Courts, review of the final rate by a disinterested third party within the Department is not available.

to imposing sanctions other than termination, and recommended that the Secretary remand the case for an evidentiary hearing to allow Respondent an opportunity to challenge SFAP's determination. I disagree.

Respondent argues that In the Matter of Cannella Schools of Hair Design, Docket No. 95-141-ST (May 20, 1997) establishes that automatic termination provisions under the Department's regulations should not be implemented where mitigating circumstances exist. Respondent's Brief at 5. The circumstances in Cannella are unique and not applicable in the case at hand. The per se regulations were properly applied in this case. The Initial Decision properly ordered Respondent terminated from participation in all programs authorized under Title IV of the HEA. Accordingly, that decision is hereby affirmed.

Washington, D.C.
August 20,1998

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Frank K. Krueger, Jr.
Administrative Judge
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