

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF

DAYTON ACADEMY OF HAIR DESIGN

Respondent.

Docket No. 93-89-ST

Student Financial Assistance Proceeding

DECISION

Appearances:

William F. Gilmore, Vice-President of the Dayton Academy of Hair Design, for the Respondent

Russell B. Wolff, Esq., of the Office of General Counsel, United States Department of Education, for the Office of Student Financial Assistance Programs.

Before:

Judge Allan C. Lewis

This is an action initiated by the United States Department of Education, Office of Student Financial Assistance Programs (ED) to terminate the eligibility of the Dayton Academy of Hair Design (Dayton) to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, and to impose a fine of \$160,000. By letter dated August 17, 1993, Dayton filed an appeal of the Notice to Terminate and Fine issued by ED on August 4, 1993, and requested a hearing in the matter.

On October 19, 1993, the tribunal issued an Order Governing Proceedings which required the parties to, inter alia, exchange no later than December 1, 1993, lists of proposed witnesses and exhibits, and to disclose contentions of fact and law to the opposing party.

On December 1, 1993, ED submitted the requisite documentation. On December 15, 1993, ED filed a Motion for Termination of Proceedings and Entry of Judgment Against Respondent. In its Motion, ED alleges that Dayton has failed to comply with the October 19, 1993, Order Governing Proceedings and, as such, requests the tribunal to terminate Dayton from participation in Title IV programs and to impose the fine requested.

In light of ED's Motion, the tribunal issued, on December 15, 1993, an Order to Show Cause in which the tribunal directed Dayton to submit, on or before January 5, 1994, a statement reflecting why ED's Motion should not be granted and to file, by January 5, 1994, all information

required by the October 19, 1993, Order Governing Proceedings. As of the date of this decision, the Respondent has failed to responded to the Order to Show Cause.

Under 34 C.F.R. § 668.89(a) (1993) the hearing official--

regulates the course of the proceeding and conduct of the parties . . . and takes all steps necessary to conduct a fair and impartial proceeding. In addition, the hearing official shall, pursuant to 34 C.F.R. § 668.89(c), take--

whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following- -

. . .

- (2) [s]etting time limits for hearings and submissions of written documents; and
- (3) [t]erminating the hearing [process] and issuing a decision against a party if that party does not meet those time limits.

In light of Dayton's failure to comply with the Order Governing Proceedings and subsequent Order to Show Cause, it is HEREBY- -

ORDERED that the appeal of the Notice to Terminate and Fine by the Dayton Academy of Hair Design is dismissed and that judgment is entered against the Dayton Academy of Hair Design which terminates its eligibility to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended; and it is further.

ORDERED that the Dayton Academy of Hair Design immediately and in the manner provided by law pay fines to the United States Department of Education in the amount of \$160,000.

Allan C. Lewis
Administrative Law Judge

Issued: January 11, 1994
Washington, D.C.

SERVICE

On January 11, 1994, a copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

William F. Gilmore
Vice - President
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Russell Wolff, Esq.
Office of the General Counsel

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