In the Matter of Docket No. 93-96-DA

The Proposed Debarment of

RICHARD CRANCE

DECISION OF GOVERNMENTWIDE DEBARMENT

FROM FEDERAL NONPROCUREMENT TRANSACTIONS

This **DECISION** is issued by the United States Department of Education (Department) pursuant to 34 C.F.R. § 85.314. I have jurisdiction to act in this matter by virtue of a Delegation of Authority from the Secretary to me to act as the Department's Designated Deciding Debarment and Suspension Official. The regulations, 34 C.F.R. Part 85, and the Nonprocurement Debarment and Suspension Procedures mailed to Mr. Crance with the notice of proposed debarment govern this action.

On April 8, 1993, Mr. Richard Crance, an owner of Dudley Hall Career Institute (Institute) of Worcester, Massachussets, from 1989 until 1992, was issued a "Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions" pursuant to 34 C.F.R. § 85.312. The notice informed Mr. Crance that the proposed debarment was based upon the adverse findings of an October 1991 program review conducted jointly by the Massachusetts Higher Education Assistance Corporation (MEHAC) and Region I of the Department. Mr. Crance was also given notice of his right to submit information and argument in opposition to the proposed debarment.

On December 16, 1993, pursuant to Mr. Crance's request, I held a hearing on this matter in Washington, D.C. At such hearing, Mr. Crance appeared pro se, while the Department's Notice Official was represented by Jennifer L. Woodward, Esq., of the Office of the General Counsel. At the hearing, evidence was introduced and both Mr. Crance and Ms. Woodward presented oral argument. The hearing was recorded by a court reporter and a transcript was made.

As stated earlier, the Department's action is based primarily on the joint Department and MEHAC findings. Those findings, include: 1) repeated failures to make required tuition refunds of guaranteed student loans (GSL), pursuant to 34 C.F.R. § 682.607(c)(1); 2) failure to implement adequate procedures to evaluate satisfactory progress, in violation of 34 C.F.R. § 668.7(c); and 3) failure to adhere to the fiduciary standards required in administering the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV). The evidence presented at the hearing established the violations enumerated above. The Department argues that the violations are serious and have

continued over a long period of time. Mr. Crance participated first directly, then passively with respect to them and, therefore, should be debarred.

During his presentation, Mr. Crance did not dispute any of the facts but argued that he relinquished all financial control or management of the Institute upon its sale to an outside investor on April 12, 1989. Subsequent to that transfer, Mr. Crance maintains that although he retained the title of president, his role was "little more than an on-site manager" until he moved to New Jersey in September 1990, at which time he severed all contacts with the Institute. Also, Mr. Crance maintained that he ceased reviewing the Institute's financial statements at that time. With regard to certain refund checks which had been voided, Mr. Crance maintained that he had no knowledge that such voiding transpired. In sum, Mr. Crance argued that he was not personally responsible for the wrongdoing at Dudley Hall.

On cross-examination, Mr. Crance verified that he was majority owner of the Institute after April 12, 1989; sole owner from 1981 to 1989; represented the Institute in its 1989 program review as to what refunds were paid; and was signatory to the 1987 program participation agreement, in which he promised to act as a fiduciary with respect to funds made available under Title IV. Regardless of the finite time period into which one may wish to examine, the Department contends that Mr. Crance was in some position of authority - whether it be sole owner, majority owner, or president - when the Institute continued to be cited for failure to pay refunds. Further, after each such citation, Mr. Crance was the one who issued letters noting that the particular problems had been remedied and that new safeguards had been implemented to prevent recurrence.

Mr. Crance was co-owner and hands-on manager of the Institute, exercising control over the school's operations. It is abundantly clear that the violations at issue were significant and resulted in the loss of program funds. Consequently, I find that the Department has established, by a preponderance of the evidence, that he is subject to debarment under 34 C.F.R. § 85.305 (b) and (d). Moreover, based on the presentations of the parties and evidence submitted, I find that Mr. Crance participated directly in the violations cited. He was the signatory to the Institute's program participation agreement and, over the years at issue, maintained varying degrees of responsibility. Also, during the history of the Institute, Mr. Crance knew of the repeated violations that were occurring and which continued to recur despite "corrective measures." Therefore, he was in a position to know, or should have known, that practices resulting in violations were taking place.

The policy of the Federal Government is to conduct business only with responsible persons. 34 C.F.R. § 85.115. In order to support the governmentwide debarment from federal nonprocurement transactions of an individual, some degree of personal culpability must be shown. It is not sufficient to merely establish a violation of program regulations which could lead to termination of an institutions eligibility is not sufficient.

My review of the facts and circumstances in this case reveals the seriousness of the violations and the degree of personal wrongdoing by Mr. Crance has been established. Moreover, I note as significant that the failure to pay refunds in the federal student financial assistance programs can now lead to criminal penalties. 20 U.S.C. § 1097(a). Such failings clearly and adversely affect

Mr. Crance's present responsibility to participate in federal programs. See generally, Sellers v. Kemp, 749 F.Supp. 1001 (W.D.Mo. 1990).

I note that the other management players (Dr. Simmons and Mr. Riendeau) at the Institute were also subject to debarment proceedings. Although their respective failings are different as to degree, they all owed a similar degree of responsibility to the Department regarding the use and management of federal monies.

With regard to the period of debarment, however, I note that Mr. Crance's culpability is somewhat diminished for two reasons. First, whether or not they proved effective, Mr. Crance demonstrated that ameliorative actions were taken by the school following audits and program reviews during his tenure. Second, I note that the gravest misdoings arose and flourished after his physical departure. While these factors do not provide a defense, it must be stressed that debarment is not a punitive measure.

Therefore, I find that there are no disputes as to material facts and the Department has met its burden of proof and persuasion that the debarment of Mr. Crance is warranted. Under the provisions of 34 C.F.R. § 85.320, however, the period of debarment is to be commensurate with the seriousness of the cause(s) of debarment, generally not to exceed three years. Based upon the mitigating circumstances here, I have determined that the period of debarment shall be two years.

I order that Richard Crance be DEBARRED from initiating, conducting, or otherwise participating in any covered transaction under the nonprocurement programs and activities of any Federal agency, and is ineligible to receive Federal financial and nonfinancial assistance or benefits from any Federal agency under nonprocurement programs and activities. He may not act as a principal, as defined in 34 C.F.R. § 85.105(p), on behalf of any person in connection with a covered transaction. This debarment is effective for all covered transactions unless an agency head or authorized designee grants an exception for a particular transaction in accordance with 34 C.F.R. § 85.215.

ERNEST C. CANELLOS,
Deciding Debarment and
Suspension Official

Dated: April 19, 1994
Washington, D.C.