

In the Matter of MICHIGAN COLLEGE OF BEAUTY,
Respondent.

Docket No. 94-23-ST
Student Financial Assistance Proceeding

Decision

This case involves an Office of Student Financial Assistance Program's (SFAP) complaint seeking to terminate Michigan College of Beauty's (MCB) eligibility to participate in the student financial assistance programs authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. . 1070 et seq. ED Ex. A. SFAP initiated this action against MCB for maintaining excessively high cohort student loan default rates for the most recent five fiscal years. ED Ex. A. MCB bears the burden of coming forward with evidence of diligent implementation of Appendix D. 34 C.F.R. . 668.90(a)(3)(iii).

The issue in this proceeding is whether MCB acted diligently to implement the default reduction measures in 34 C.F.R. Part 668 Appendix D (Appendix D). 34 C.F.R. . 668.90(a)(3)(iii).

Oral hearing on the complaint or letter notice was held at Detroit, Michigan. Post hearing briefs were filed. Absent such diligent implementation MCB must be terminated from all Title IV programs, not just loan programs but Pell Grants as well.

First, MCB offers a general statement made by its independent auditor regarding the school's compliance with student financial assistance regulations to serve as evidence that it complied with Appendix D. However, an institution is required to make an affirmative showing that it has taken steps to put into effect the numerous and comprehensive measures identified in Appendix D which are designed to reduce defaults. The individual must commence these steps as of the date it is first notified of its high default rate. 34 C.F.R. . 668.90(a)(3)(iii). A generalized statement by an auditor that a school has taken the necessary steps is not sufficient proof of the school's compliance with Appendix D default reduction measures.

MCB also argues that it produced other evidence sufficient to meet this burden. In this regard MCB relies upon the opinion testimony of one witness who admits that he has no first hand knowledge of the school's actual implementation of default reduction measures. Tr. at 57, 60-61.

In addition, SFAP produces evidence to rebut this witness,

opinion. SFAP submits a default review checklist and the testimony of a program reviewer. Tr. at 70 - 82; ED Ex . 6 . MCB argues that the checklist supports a finding of substantial Appendix D compliance. However, MCB' s claim to have diligently implemented default reduction measures is belied by its failure to take some of the Appendix D measures and by unrefuted evidence of steadily rising default rates over a five year period. Tr. at 30-31. Rather than decreasing, the default rates increased from 53 percent to 76 percent. MCB insists that it should be given credit for its alleged voluntary withdrawal from the Federal Family Education Loan (FFEL) programs. MCB approved its final loan a few months

before, in a separate ED action, the school was terminated from further participation in loan programs. Unfortunately this voluntary self-action by MCB is not a defense under Department of Education rules. As noted, the sole issue is weather the school sufficiently implemented default reduction measures as to loans already in existence.

MCB further contends that the socio-economic status of its students should be considered. However, the fact that MCB might have a high percentage of students who are "low income, socio-economically deprived students," again, is not an issue herein. The fact that two thirds or more of MCB students are individuals from disadvantaged economic backgrounds can be offered only as a seperate claim to the Secretary of Education under ED rules. In making such a claim, the institution bears the burden of proof and is required to submit very specific evidence to support its position. 34 C.F.R. . 668.15 (g)(9). MCB had a prior opportunity to raise this with the Secretary, but did not do so. Tr. at 3637. It cannot now raise this as a defense to the present action to terminate it from further participation in all Title IV programs.

I find that MCB maintained excessively high default rates for the 1987 through 1991 fiscal years, in violation of 34 C.F.R. i 668.15(b)(1); MCB failed to diligently implement the default reduction measures in Appendix D; and that MCB must be terminated from further participation in the Title IV programs, pursuant to 34 C.F.R . 668.90(a)(3)(iii). IT IS SO ORDERED.

Paul Cross

Dated: September 30, 1994