IN THE MATTER OF PIKEVILLE BEAUTY COLLEGE,
Respondent.

Docket No. 94-36-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Ms. Terry Hanner, President, Pikeville Beauty School, Pikeville, Kentucky for the Respondent

Renee Brooker, 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 Office of Student Financial Assistance Programs of the United States Department of Education (ED) to terminate the eligibility of Pikeville Beauty School (Pikeville) 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 in the amount of $99,500.

In In re Bliss College, Dkt. No. 93-15-ST, U.S. Dep't of Education (Sept. 7, 1993), the Administrative Law Judge terminated Bliss' participation in the Title IV programs and did not impose a fine. Subsequently, the Secretary vacated, as moot, the Initial Decision of the Administrative Law Judge because the institution had permanently closed its campuses. In re Bliss College, Dkt. No. 93-15-ST, U.S. Dep't of Education (Feb. 23, 1994). The Secretary held that " '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)." Id., at 1.

The present case is factually similar to Bliss. ED seeks to terminate and fine Pikeville. According to ED, Pikeville ceased all operations shortly before the issuance of the notice of termination and fine on February 2, 1994. The Closed School Section of the Department of Education notified all affected sections within the Department that the school has ceased all activities. The disposition of this case is controlled by Bliss which mandates that this matter be dismissed with prejudice.

ED argues that Bliss does not control the dismissal because an outcome in this proceeding is "critical to SFAP's decision regarding whether to institute an action to suspend or debar Ms. Hanner, or other individuals affiliated with PBC [Pikeville Beauty College], under 34 C.F.R. Part 85." ED also adds that the Kentucky Board of Cosmetology is presently investigating Pikeville and that, according to ED, it is "relying almost solely upon the Department's final adjudication in the present action with respect to Title IV regulatory violations." Lastly, ED argues that Pikeville, by hastily acting to close its doors, should not be permitted to avoid monetary sanctions for its egregious behavior.

The matters raised by ED are not particularly pertinent. The present case is pending before the Office of Higher Education Appeals. The Secretary did not assign this office the decision-making authority as to whether to pursue a debarment action. Similarly, the Office of Higher Education Appeals has no authority regarding the pursuit of any action by the Kentucky Board of Cosmetology. Hence, the Office of Higher Education Appeals does not evaluate the facts and law or participate in the decision-making process regarding the pursuit of these matters. Moreover, debarment actions within the Department and state enforcement proceedings have their own procedures for determining facts and law. 34 C.F.R. § 85.100 et seq.; C:GPA1-105 Nonprocurement Debarment & Suspension (Sept. 25, 1991). Thus, the Office of Higher Education Appeals has no function in these matters.

Finally, ED rationalizes that a dismissal of this proceeding relieves Pikeville of the monetary sanctions for past behavior. This view misconstrues the reality of the situation. Virtually all proprietary trade schools are operated as corporations. Pikeville is no different. The schools, which have been the subject of termination and fine actions in the past, were thinly capitalized and their limited assets were encumbered by liens. Under 11 U.S.C. § 507 of the Bankruptcy Reform Act of 1978, a fine imposed by the Department is treated as a claim by an unsecured creditor. See In re Divine, 127 B.R. 625 (Bankr. D. Minn. 1991); In re Standard Johnson Co., 90 B.R. 41 (Bank. E.D.N.Y. 1988). Therefore, the Department's claim is part of the last group of creditors in line for payment and preceded by the secured creditors and eight classes of other unsecured creditors. 11 U.S.C. §§ 506 and 507. This effectively moots the collection of any fine. Hence, the pursuit of a fine in these cases is tantamount to chasing ghosts and constitutes a waste of the Department's resources.

Accordingly, it is HEREBY ORDERED that the above-captioned proceeding is dismissed with prejudice.

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Allan C. Lewis
Administrative Law Judge

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

SERVICE

On April 19, 1994, a copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Ms. Terry Hanner, President
Pikeville Beauty College
967 North Mayo Trail
Pikeville, Kentucky 41501

Renee Brooker, Esq.
Office of the General Counsel
U.S. Department of Education
Room 4091, FOB-6
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110