

IN THE MATTER OF Docket No. 94-36-ST
PIKEVILLE BEAUTY COLLEGE,

Student Financial
Respondent. Assistance
Proceeding

DECISION

Appearances: Terry Hanner, President, Pikeville Beauty College,
McAndrews, Kentucky (no counsel of record).

Renee Brooker, Esq., Office of the General Counsel, U.S. Department of Education,
Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Thomas W. Reilly, Administrative Law Judge

On May 24, 1995, Respondent was served with an Order To Show Cause why Respondent's appeal should not be dismissed for failure to prosecute that appeal. (Corrected Order, May 24, 1995; original Order To Show Cause, May 22, 1995.) Respondent, by the school's president, replied to that Order by finally filing a Stipulation of Pikeville Beauty College, dated April 14, 1995, in which she withdrew the school's appeal and requested that a final order be entered terminating the school from HEA Title IV programs, and requested that the \$95,000 fine be upheld. (N.B.: in various documents and correspondence throughout this proceeding, this school has alternately been referred to as "Pikeville" and "Pikesville".)

The history of Respondent's refusal to participate in this remanded proceeding is clear and was summarized in the May 22d Show Cause Order. The Respondent not only failed to comply with the requirements and deadlines set forth in the Judge's March 15, 1995 Order Governing Proceedings, but informed SFAP counsel that she had no intention of doing so, and had no interest in prosecuting her appeal. Pursuant to 34 C.F.R. 668.89(c)(3), the Judge has the authority to terminate a hearing and issue a decision against a party if that party fails to meet time limits. [See also 34 C.F.R. 668.90(a)(1)(iii).] Additionally, it is an inherent part of the Judge's authority, in controlling the course and conduct of a proceeding, to terminate a proceeding if a party refuses to cooperate or to participate in that proceeding. It would be a vain and useless act to attempt to compel a party to continue to participate in a proceeding (an appeal for her own benefit) that she has clearly expressed a desire to ignore.

The summary of events contained in the May 22d Order To Show Cause is hereby incorporated by reference in this Decision.

On January 27, 1995, the Secretary issued an Order of Remand vacating dismissal orders in this and three other termination and fine proceedings that had been dismissed by Judges in the Office of Hearings and Appeals (OHA), based upon the Secretary's earlier decision in *In Re Bliss College*, Docket No. 93-15-ST, U.S. Dept. of Education (Feb. 23, 1994). All four cases were remanded back to OHA "for full adjudication below" and "for decisions on the merits."

On March 15, 1995, the Judge issued an Order Governing Proceedings setting forth a list of preliminary matters the parties were to undertake in preparation for a full evidentiary hearing on the appeal of an action terminating the school's eligibility to participate in Title IV, Higher Education Act (HEA) programs, and imposing fines (\$99,500) for regulatory violations. The termination and fine action was taken following an on-site review conducted by program reviewers from the U.S. Department of Education's (ED) Atlanta Regional Office, and the issuance of a formal Program Review Report (PRR)(see letter to school's owner dated February 2, 1994). The school filed an appeal on February 24, 1994. Two days after the Notice of Intent To Terminate was sent to Ms. Hanner at the school, the school closed and moved its operation to another school in Prestonburg, Kentucky, which Ms. Hanner also owns.

More recently, in view of Ms. Hanner's expressed disinterest in pursuing her appeal, SFAP counsel mailed a drafted Stipulation of Dismissal to Ms. Hanner for her to sign. Ms. Hanner indicated that she would review the stipulation with her attorney, S.K. Belhasen (who has never filed a Notice of Appearance in this proceeding and whose address is unknown), before deciding to withdraw her appeal. Ms. Hanner later stated (by phone) that she wished to sign the stipulation, that she had forwarded it to her attorney for review, and that she had no intention of complying with the Judge's Order Governing Proceedings. SFAP counsel spoke to Mr. Belhasen, who said he would complete his review and then respond to SFAP counsel "as soon as possible." (See Consent Motion dated April 11, 1995.) Since then, Ms. Hanner filed the Stipulation withdrawing her appeal (dated April 14, 1995, but not filed in the Office of Hearings and Appeals until June 2, 1995).

The details set forth in the February 2, 1994, letter to the school, giving notice of the intent to terminate eligibility to participate in Title IV HEA programs and to fine the school \$99,500, appear to fully support the action taken, and the imposition of the fine and termination are warranted.

In accordance with Ms. Hanner's Stipulation, and with the consent of counsel for SFAP, (1) the appeal of Pikeville Beauty College has been WITHDRAWN; (2) a Final Order is hereby entered TERMINATING the school from further participation in Title IV programs of the Higher Education Act of 1965, as amended; (3) a Final Order is hereby entered UPHOLDING THE \$99,500 FINE assessed against the Pikeville Beauty College in accordance with the February 2, 1994, letter sent to the school by certified mail from the U.S. Department of Education, Office of Postsecondary Education, Director of Compliance and Enforcement Division; and (4) the original appeal filed by Pikeville Beauty College on February 24, 1994, is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Thomas W. Reilly
Administrative Law Judge

Issued: June 8, 1995.
Washington, D.C.

S E R V I C E L I S T

On June 8, 1995, a copy of the attached document was sent by Certified Mail, Return Receipt Requested, to the following:

Terry Hanner, President
Pikeville Beauty College
P.O. Box 88
McAndrews, KY. 41543.

Renee Brooker, Esq.
Office of the General Counsel,
U.S. Department of Education
Room 5415 -- FOB-10B
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110.