
HI-TECH INSTITUTE OF HAIR DESIGN
AND RICKERSON BEAUTY
ACADEMIES #3 AND #5,
Respondents.

Docket No. 94-66-ST
Student Financial
Assistance Proceeding

DECISION

Appearances: Jim Conley, Esq. , for Hi-Tech Institute of Hair Design and Rickerson Beauty Academies #3 and #5.

Edmund J. Trepacz, II, Esq. , Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard F. O'Hair

On March 3, 1994, the Department of Education (ED), through the Office of Compliance and Enforcement Division, initiated procedures to terminate the eligibility of Respondents, Hi- Tech Institute of Hair Design (Hi-Tech) and Rickerson Beauty Academy #5 (Rickerson #5), to participate in programs authorized under Title IV of the Higher Education Act of 1965. [See footnote 1 /](#) Simultaneously, the Division also initiated procedures to impose a fine on both of these institutions, as well as on Rickerson Beauty Academy #3 (Rickerson #3). All three Respondents appealed these terminations and/or fines and, following the submission of briefs, a hearing was conducted on November 2, 1994.

The termination and fine procedures were initiated against Hi-Tech and Rickerson #5, pursuant to 34 C.F.R. § 668.86 and 34 C.F.R. § 668.84, because of the failure of both institutions to submit in a timely manner the required biennial, non-federal audit report for each Title IV program in which they participated for the award years of 1990-91 and 1991-92. Those particular audit reports were required to have been submitted to ED by June 30, 1993, but they were not submitted until March 22, 1994. The termination and fine proceedings are also

grounded on the allegation that the two institutions failed to meet the standards of conduct required of a fiduciary, as required by 34 C.F.R. § 668.82, because of their failure to submit the same required audit reports. Only fine proceedings were initiated against Rickerson #3 for its failure to submit a biennial audit for its award years of 1989-90 and 1990-91. [See footnote 2 2](#)

The Respondents' primary defense is that they were exempted from submitting these required audits because of the Single Audit Act, 31 U.S.C. 7502(6). The single audit to which they refer was one conducted by the ED Regional Inspector General (IG) between March and July, 1993,

and it addressed all student financial assistance funds expended by the three institutions for the period July 1, 1987, through March 31, 1991. In the alternative the Respondents maintain that it was improper for ED to initiate this termination proceeding because no ED employee ever provided them with a "date certain" by which their audits must be submitted or in any manner informed Respondents that on March 3, 1994, ED was going to initiate these termination/fine proceedings. Finally, the Respondents challenge these proceedings on the ground that during the period between June 30, 1993, and March 3, 1994, they were providing ED with monthly financial reports as a result of their placement on the Reimbursement Program in July, 1991. Accordingly, they argue that ED had current financial information from them for the entire audit period and that these reports attested to their compliance with their fiduciary responsibilities. Based on this, they assert that the requirement to have an independent audit amounted to a redundant, expensive submission. I am not persuaded.

Federal regulations, 34 C.F.R. § 668.86, clearly permit ED to terminate the eligibility of any institution to participate in any Title IV Programs if that institution violates certain specified provisions of Title IV or the implementing regulations. One of those provisions is 34 C.F.R. § 668.23, which requires any participating institution to have a financial and compliance audit performed of all its Title IV, HEA programs.

This audit is to be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

34 C.F.R. § 668.23(c)(1).

Further, "[t]he institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the last audit." This audit is due March 31 of the year following the last award year covered by the audit. Id. § 668.23(c)(3). However, for audits due in 1992 and 1993, the due dates were extended to June 30 of the following years. The regulations provide only two exemptions from this audit requirement, one of which is the Single Audit Act, but neither of these exemptions apply in this

case. Id. § 668.23(d). [See footnote 3 3](#)

The regulations provide that, when presented with evidence that an institution has failed to comply with these audit requirements, the hearing official must find that termination is warranted. Id. § 668.90(a)(3)(iv).

I find Respondents did not comply with the requirement that they submit a timely audit which had been prepared by an independent auditor. Applying the regulation to the instant facts, Rickerson #3 was required to submit an audit by June 30, 1992 for the award years 1989-90 and 1990-91. No such audit has ever been submitted. Similarly Hi-Tech and Rickerson #5 were required to submit audits by June 30, 1993, for award years 1990-91 and 1991-92. Those audits were not submitted until March 23, 1994. The latter two audits were not timely and, without more, the institutions are immediately subject to termination proceedings. [See footnote 4 4](#)

Despite arguments to the contrary by Respondents, ED had no responsibility to warn them of potential termination action for regulatory non-compliance. That notice already existed in the regulations. Although not required, ED has the discretion, and was within its rights, to give these Respondents a reasonable amount of time to submit the required audits before it initiated termination action. In this case ED waited over nine months, but this delay did not inure to the benefit of Respondents, who did not submit their audits prior to the initiation of the instant proceedings.

To address Respondents' last defensive position, there is no authority in the regulations for the proposition that an IG audit will serve as a substitute for the required biennial audit, which must be conducted by an independent auditor. In the absence of any extension of the due date, ED acted properly to initiate the termination procedures. I find the defenses proffered by Respondents in their brief and during the hearing to be without merit.

Addressing the second of the two grounds for the termination of Hi-Tech's and Rickerson #5's eligibility to participate in Title IV programs, I find that Respondents' failure to submit the required biennial audit also constituted a failure to adhere to the highest standard of care and diligence required of a fiduciary in the administration and accounting of funds, as prescribed in 34 C.F.R. § 668.82. This failure provides the basis for a termination of these institutions.

The authority for imposing fines on all three Respondents for not submitting timely biennial audits is found in 34 C.F.R. § 668.84. The regulation authorizes the Secretary to impose

a fine of up to \$25,000 for each violation by an institution. I find that the three institutions before me have each committed one violation and that the seriousness of these violations warrants the imposition of fines on each. Using a formula which takes into account the amount of Title IV funds received by the students attending each institution, SFAP seeks to impose the following fines: \$12,700 against Hi-Tech; \$7200 against Rickerson #5; and \$6800 against Rickerson #3. I find these amounts to be reasonable and just.

Based on the foregoing, I find Hi-Tech and Rickerson #5 should be terminated from further participation in Title IV programs, and that, along with Rickerson #3, each institution should be fined in the amounts discussed above.

SO ORDERED:

Judge Richard F. O'Hair

Issued: November 22, 1994
Washington, D.C.

S E R V I C E

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

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[Footnote: 1](#) 1 This includes the Federal Pell Grant, Federal Supplemental Education Opportunity Grant, Federal Work-Study, Federal Perkins Loan, and Federal Family Education Loan programs.

[Footnote: 2](#) 2 Termination proceedings were not initiated against Rickerson #3 because it ceased operation on or about May 6, 1991.

[Footnote: 3](#) 3 The Single Audit Act applies only to audits of state agencies, not to private institutions such as those which are the subject of this proceeding.

*[Footnote: 4](#) 4 In the Matter of Institute of Multiple Technologies, Dkt. No. 92-26-ST, U.S. Dept. of Education (Decision) (November 26, 1993), *aff'd* by the Secretary (Decision of the Secretary, April 18, 1994).*