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IN THE MATTER OF ART OF BEAUTY      Docket No. 95-70-EA  
COLLEGE, NEW ORLEANS,  
Respondent.                      Emergency Action Proceeding

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DECISION

Appearances:      Jack L. Simms, Jr., Esq., of Leesville, Louisiana, for Art of Beauty College.

Denise Morelli, 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 2, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) imposed an emergency action against the Art of Beauty College, New Orleans (ABC), in accordance with Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §1094(c)(1)(G), and 34 C.F.R. §§600.41.

Pursuant to the Delegation of Authority from the Secretary of Education to conduct proceedings and issue final decisions in matters where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a telephone conference hearing in Washington, D.C., on May 2, 1995. Mr. Jack L. Simms, Jr., represented ABC and SFAP was represented by Ms. Denise Morelli.

This emergency action was initiated because ED alleges that ABC failed to continue to qualify as an eligible institution for purposes of the programs authorized under Title IV when its majority owner, Patricia Diane Ford, filed a petition for bankruptcy on April 21, 1994. See 20 U.S.C. §1141(a) and 34 C.F.R. § 600.4. ED contends that this act by Ms. Ford specifically excluded ABC from the definition of an institution of higher education. 20 U.S.C. §1088(a)(4). That provision states that "[a]n institution shall not be considered to meet the definition of an institution of higher education" if it or an affiliate has filed for bankruptcy. The statute further explains that the term affiliate includes anyone who has the power "to direct or cause the direction of the management or policies of the institution." Id. ED argues that this unquestionably includes Ms. Ford as an affiliate of ABC, based on information contained in the Application for Certification and Eligibility which ABC filed with ED on December 12, 1989.

Paragraph 11 of that document indicates that T & D Enterprises, Inc., is the owner of ABC and that Ms. Ford owns 52% of T & D Enterprises, Inc. Based on this line of ownership, ED asserts that Ms. Ford's personal bankruptcy filing acts to remove ABC's eligibility as an institution of higher education.

ABC challenges these proceedings on the grounds that SFAP has not established a *prima facie* case because SFAP has not shown that the institution itself filed for bankruptcy. While ABC concedes that Diane Ford filed for bankruptcy on April 21, 1994, ABC contends that SFAP has not shown that Ms. Ford was an "affiliate" of ABC of New Orleans. ABC argues that a corporation, T&D Enterprises, Inc., was the actual owner of ABC. ABC concludes, therefore, that since SFAP did not cite T&D in its emergency action notice, no action can lie because ABC was not a legal entity, but only a trade name. Under the governing regulations, however, this *pro forma* argument must fail. 34 C.F.R. § 600.7(a) states that an institution does not qualify as an eligible institution if that institution, or an affiliate of the institution that has the power by contract or ownership interest to direct or cause the direction of the management or policies of the institution, files for bankruptcy. As the majority owner of T&D Enterprises, Inc., which in turn owned ABC, Ms. Ford was an affiliate of ABC who had the power, through her ownership interest, to direct or cause the direction of the management or policies of the institution. This position is bolstered by the other documents submitted by SFAP, such as the Program Participation Agreement for ABC signed by Ms. Ford as its Chief Executive Officer, and Ms. Ford's petition for bankruptcy, in which in response to the box entitled "All other names used by the debtor in the last 6 years," Ms. Ford stated "d/b/a Art of Beauty College...." As a result, I find that Ms. Ford was an affiliate of ABC of New Orleans. I similarly reject Respondent's argument that because the school has changed its name to Sinclair Career College, no action can lie. In addition to the exhibits discussed above, the Dun & Bradstreet report identifies Sinclair Career College as the former Art of Beauty College in New Orleans owned by Ms. Ford. A mere change in name cannot resurrect the school's eligibility.

In an emergency action, the institution has the burden of persuading the deciding official that the emergency action is unwarranted or should be modified. In such a proceeding, the institution has the burden of persuading me that: 1) the grounds for emergency action listed in the notice no longer exist; 2) the grounds will not cause the loss or misuse of funds; or 3) the institution will implement procedures which will eliminate the risk of loss. 34 C.F.R. § 668.83(e)(4). In this instance, ABC has not satisfied this burden of proving any of the foregoing. Documentary evidence submitted by ED presents a *prima facie* case that Ms. Ford filed a petition for bankruptcy. Because she is an affiliate of ABC, her bankruptcy status removes ABC's eligibility to participate in Title IV programs. When Title IV funds are distributed to an ineligible institution, the possibility of a misappropriation of federal funds outweighs the competing interests of an institution to continue to maintain its disbursement of those funds.

Accordingly, I find SFAP had a proper basis to initiate immediate action to prevent the misuse of federal funds. The emergency action is affirmed.

SO ORDERED.

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Judge Richard F. O'Hair

Issued: May 4, 1995  
Washington, D.C.

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S E R V I C E

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

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