

UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, D.C. 20202

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In the Matter of the Proposed Debarment of **Docket No. 96-43-DA**  
**NELSON MURRAY,** Debarment Action  
Respondent.

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Appearances: Nelson Murray, pro se

Russell B. Wolff, Esq., Office of the General Counsel, United States  
Department of Education, Washington, D.C., for the Office of Student  
Financial Assistance Programs.

Before: Chief Administrative Law Judge Allan C. Lewis

DECISION

On April 29, 1996, Mr. Nelson Murray was issued, pursuant to 34 C.F.R. § 85.312, a Notice of Proposed Governmentwide Debarment from Federal Procurement and Nonprocurement Transactions which alleged that his conviction for the obstruction of a federal audit and the filing a false statement with the Internal Revenue Service constituted cause for debarment under 34 C.F.R. §§ 85.305 (a)(1), (a)(3), (a)(4), (b), and (d). Mr. Murray filed a timely opposition to the proposed debarment. Mr. Murray set forth six grounds which, in his view, precluded the proposed action by the Department's Notice Debarment and Suspension Official (Notice DSO). Thereafter, the undersigned issued an order which requested the parties to submit any additional documents and evidence and a brief on the issues raised in Mr. Murray's opposition. The order also set a date for an oral argument. Mr. Murray failed to respond to the order and did not appear at the oral argument. The Department filed a short brief and appeared at the oral argument where it urged a debarment for a period of three years.

1. Facts

The facts are undisputed. Mr. Murray was employed as the Director of Management Services with the USA Training Academy. On or about May 10, 1988, Mr. Murray filed a false 1987 federal income tax return in which he understated his income by approximately \$1,000 to \$2,500. This amount was given to him in \$20 and \$50's bills by a senior officer of the school as "tips" for delivering substantial sums of money illegally diverted to the senior officers of the school. In addition, between March and April of 1989, Mr. Murray endeavored to obstruct and impede federal auditors from the Department in the performance of an audit of the USA Training Academy by instructing another employee to remove approximately 5,000 student records from the computer system thereby disguising the extent of the school's failure to pay timely tuition refunds.

On October 13, 1989, Mr. Murray entered into a plea agreement with the authorities under which he agreed to plead guilty to the obstruction of a federal audit and the filing of a false income tax return. The agreement provided, in addition, that Mr. Murray would provide complete, honest, and truthful testimony at any trials at which his testimony would be relevant.

Ultimately, Mr. Murray was charged in an information issued on or about April 17, 1992. Thereafter, on July 14, 1992, Mr. Murray entered a plea of guilty to the charges in the information and his plea agreement was accepted by the Federal district court. The Federal district court imposed probation for a period of three years. This sentence was less

than the guideline range and was based upon a request by the government due to the substantial assistance provided by Mr. Murray.

Three months later, in October 1992, the Department's Deputy Assistant Inspector General for Policy, Planning and Management Services requested the Acting Notice DSO to initiate a debarment action against Mr. Murray based upon his conviction. Within four weeks, however, the Deputy Assistant Inspector General withdrew the request and the Notice DSO apparently concurred in this request. According to the Department's representative, Mr. Murray was a potential witness and a source of information in the civil and criminal matters involving the major operators of USA Training Academy. The withdrawal was made in order to await the completion of these proceedings. Mr. Murray was not informed of the proposed debarment action or the decision to cease its prosecution in October 1992. These civil and criminal matters were completed by June 1994 and resulted, *inter alia*, in a recovery in excess of \$20 million by the Department.

Two years after the completion of the proceedings against Mr. Murray's superiors and almost four years after his sentencing, the Assistant Inspector General made a belated request on April 2, 1996, for a "[r]e-initiation" of the debarment action against Mr. Murray stating that the resumption of the debarment proceedings "would not be detrimental to any judicial proceeding [concerning his superiors] and would therefore be appropriate at this time." As explained by counsel for the Department, the two-year lapse between the completion of the civil and criminal matters and the instant action was caused by negligence on the part of the Department and that the reinitiation of the debarment proceeding was launched only after a newly appointed official questioned why no action had been taken against Mr. Murray.

## 2. Opinion

In his letter of protest against the proposed debarment, Mr. Murray raises several points which, when taken as a group, question whether this action is timely and justified. He maintains that the debarment is only valid for a period of five years; that he has served this time; and that he has not had any dealings with the Department or any other Federal agency. In addition, Mr. Murray indicates that he was not advised of the possible debarment when he met with the officials of the Department and the U.S. District Attorney; that he assisted the Department in every way possible and that he was assured that he "was not the person they wanted."

The Department responds that there is no statute of limitations on the commencement of a debarment action. It also argues that the equitable equivalent of the statute of limitations, the doctrine of laches, does not apply. In the Department's view, it may maintain a debarment action at any time after the cause arises -- even many years after the cause. In effect, the Department argues that Mr. Murray is considered a present threat to the public interest due to his conviction some four years ago and the serious nature of his offense.

Debarment proceedings are initiated due to the Federal government's desire to protect the public interest by conducting its business only with responsible persons. 34 C.F.R. § 85.115(a). As explained in the implementing policy letter, the serious nature of debarment "requires that these sanctions be imposed only in the public interest and not for the purpose of punishment." Office of Federal Procurement Policy Letter 82-1, 47 Fed. Reg. 28,854(1982). This concept is well established and recognized in the Department's regulations and the case law. 34 C.F.R. § 85.115(b); *see, e.g. Roemer v. Hoffmann*, 419 F.Supp. 130 (D.D.C. 1976), *W. George Keat, et. al.*, AGBCA No. 84-292-7, 85-3 BCA P 18,198. The period of protection of the public interest is commensurate with the seriousness of the cause and the period of debarment generally, with the exception of the criminal drug statutes, should not exceed three years. 34 C.F.R. § 85.320(a). The initial period of protection may only be extended upon a showing of new, significant transgressions. 34 C.F.R. § 85.320(b).

The Secretary's regulations establish three points of policy pertinent herein. First and most importantly, a debarment is not to be used for the purpose of punishment. Rather, it is employed to protect the public interest. Second, as to the period of debarment, the line of demarcation between the protection of the public interest and punishment is generally three years. Third, even in the most outrageous situations, a debarred is considered fit to do business with the Federal government upon the expiration of the debarment period absent any new, significant transgressions.

As of October 1992 when the initial debarment request was made, Mr. Murray was clearly a candidate for debarment. He had plead guilty to a felony -- the obstruction of a Departmental audit of a proprietary school -- an offense which constituted cause under 34 C.F.R. § 85.305(a)(3). [See footnote 1](#)<sup>1</sup>. The nature of the offense was serious and could warrant nearly the maximum three year period of debarment absent the presence of extenuating circumstances which, based on this record, may or may not have been present.

In the instant case, the appropriate time to prosecute a debarment action was immediately following the conviction of Mr. Murray in July 1992 as originally pursued by the Department in October 1992. Such an action would have protected the public interest by precluding Mr. Murray from conducting business with the Federal government through October 1995. The present action was instituted, however, some four years after his conviction and six months after Mr. Murray would have been considered, once again, fit to conduct business with the Federal government if he had been debarred in a timely fashion. This four-year delay transforms an otherwise act for the protection of the public interest into a form of punishment and violates the fundamental principle underlying a debarment proceeding. [See footnote 2](#)<sup>2</sup>. Such a situation cannot be condoned. Accordingly, the proposed debarment of Mr. Murray is denied.

Allan C. Lewis  
Deciding Debarment and Suspension Official

Dated: August 15, 1996

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#### SERVICE

A copy of the attached decision was sent on August 15, 1996, by certified mail, return receipt requested to the following:

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[Footnote: 1](#) <sup>1</sup> *The false statement on his 1987 tax return is a relatively insignificant matter in this case.*

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[Footnote: 2](#) <sup>2</sup> *The Department's explanation for its initial failure to prosecute Mr. Murray -- to await the completion of the civil and criminal actions against his superiors -- cannot justify or excuse the delay of the action against him. A debarment action is designed to protect the public interest with respect to a particular individual. Thus, a delay*

*predicated upon this individual's assistance in other matters not affecting him directly, while it may well serve some other Federal interest, does not serve to protect the public interest from this particular individual.*