

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

In the Matter of

Reconsideration of the Debarment of Carl Simmons,

Respondent.

Docket Nos. 96-46-DA (1)

Appearances:

Carl Simmons, Cold Spring Harbor, New York, pro se.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C.,
for the Department.

Before:

Judge Ernest C. Canellos

DECISION

On April 24, 1996, Carl Simmons, citing 34 C.F.R. § 85.320 (c)(5), filed a letter with the Director of the U.S. Department of Education's Office of Hearings and Appeals, requesting a reduction in the three year debarment period which I had imposed against him on April 18, 1994. The Director agreed to a reconsideration of the debarment action and, on May 9, 1996, the matter was assigned to me for resolution. On May 28, 1996, Counsel for the Department filed an opposition to this request, asking that I not modify the period of the debarment.

In his request for reduction in the debarment period, Mr. Simmons raises two issues - - that the debarment decision was not issued promptly and that the effective date of the debarment was not specifically detailed in that decision. As a consequence, he asked that the debarment period "be reduced minimally by six months...." Mr. Simmons presented neither any documentation affecting the merits of the debarment decision nor any evidence that he was legally prejudiced by either of the claimed errors. Counsel for the Department argued that the period of debarment should not be reduced because the grounds for the debarment were extremely serious and the decision was issued promptly.

As to the first claim, I find that Mr. Simmons has presented no articulable claim of legal prejudice which was occasioned by the delay in the issuance of that decision. I note that the Nonprocurement Debarment and Suspension Procedures, which were provided to the respondent when he was served with the Notice of Proposed Debarment on April 8, 1993, provide that the failure to meet any of the procedural time guidelines contained therein does not invalidate the debarment action. Nonprocurement Debarment and Suspension Procedures, C :GPA: 1 - 105, U.S. Dep't of Educ., Para. VII.G. 1 .d. (9/25/91). 2 As to the second claim, I find that the period of debarment was effective on the date of the issuance of the debarment decision (April 18, 1994) and, therefore, the debarment period runs from that date.

On the basis of the foregoing, the original debarment decision is AFFIRMED. It is hereby ORDERED that the three year debarment of Carl Simmons be continued as originally ordered: therefore, Carl Simmons remains debarred until April 17, 1997.

Judge Ernest C. Canellos

Dated: June 11, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Carl Simmons
51 Walnut Tree Lane
Cold Spring Harbor, New York 11724

Jennifer L Woodward, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
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[1](#) The original debarment action was styled In the Matter of the Proposed Debarment of Carl Simmons, Docket No. 93-95-DA.

[2](#) I disagree with the comments of the Counsel for the Department that the period of six months from the last day of the evidentiary hearing to the issuance of the decision is reasonable. I note that most of that delay was occasioned by an internal review process which was required at that time. That requirement has since been deleted, thereby alleviating the type of delay which occurred in this case.