

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

In the Matter of

Docket No. 97-114-SP

JETT COLLEGE OF COSMETOLOGY Student Financial
AND BARBERING, Assistance Proceeding
PRCN: 199- 640412876

Respondent.

Appearances: Glenn Bogart, of Higher Education Compliance Consulting, Birmingham, Alabama, for Jett College of Cosmetology.

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

Before: Judge Ernest C. Canellos

DECISION

On June 13, 1997, the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education issued a final program review determination (FPRD) assessing a total liability of \$328,136 against Jett College of Cosmetology and Barbering (Jett) for violations of various program regulations promulgated pursuant to Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. ' 1070 *et seq.* and 42 U.S.C. ' 2751 *et seq.* Thereafter, Jett filed a request for a hearing challenging the findings of the FPRD. On August 8, 1997, I issued an Order Governing Proceedings requiring the parties to file their respective submissions in a timely manner. Jett was required to file its initial brief on or before September 7, 1997. On September 22, 1997, SFAP filed a Motion For Termination of Proceedings And Entry of Judgment against Jett on the ground that Jett did not comply with my Order Governing Proceedings. In this respect, SFAP noted that subsequent to its appeal of the FPRD, Jett had not filed *any* submission in this proceeding. Accordingly, on September 23, 1997, I issued an order requiring Jett to show cause why I should not issue a decision entering judgment against it for failure to prosecute its appeal of the FPRD. In response, Jett requested an extension of time to comply with my previous order setting forth the time for submission of briefs. This request was granted.

On October 23, 1997, Jett submitted a letter addressed to the undersigned stating that the institution "cannot afford to file a brief in this case." Although the institution did not state that its inability to file a brief in support of its challenge to the findings of the FPRD amounted to its withdrawal of its appeal, the fact that it is unable to substantiate its position that the findings of the FPRD are incorrect or improper ostensibly requires me to review the record as it is. After careful review of the record, including the documents submitted by Jett in its request for review of the FPRD, I find that the institution has failed to carry its burden of proof.

It is well established that in Subpart H -- audit and program review -- proceedings, the institution has the burden of proof. 34 C.F.R. ' 668.116(d). Consequently, to sustain its burden the institution must establish, by a preponderance of the evidence, that Title IV funds were lawfully disbursed. *See In re National Training, Inc.*, Dkt. No. 93-98-SA, U.S. Dep't of Educ. (October 18, 1995). It is abundantly clear that under the circumstances of this case, Jett has not met its burden. In this regard, I note that although the institution filed several documents along with its request for an administrative hearing, these documents are not probative of the allegations contained in the FPRD.

According to the institution's letter, which accompanied the documents submitted to SFAP, the documents represent a file review as requested by SFAP. However, the institution did not offer any explanation regarding what probative relevance these documents have in rebutting the findings of the FPRD. For example, the FPRD alleges that the institution certified Title IV loans to 43 students who enrolled in the institution at an ineligible location. Nothing in the documents submitted by the institution directly disputes this allegation or otherwise relates to the resolution of this allegation. Indeed, I find that the documents, without more, have no apparent probative relevance to the findings in the FPRD.

In accordance with my obligation to regulate the course of this proceeding and the conduct of the parties, I have the authority and the discretion to terminate the hearing process and issue a decision against the institution if it, through neglect or otherwise, fails to prosecute its appeal of the FPRD. *See*, 34 C.F.R. § 668.117(c)(3). As such, I find that the institution's failure to file a brief warrants the termination of this proceeding. More importantly, however, after a review of the record and the documents attached to the institution's request for review, I find that the institution failed to carry its burden of proof. Additionally, I am convinced that the findings contained in the FPRD sufficiently state allegations in a manner that demonstrate the existence of a *prima facie* showing that the institution failed to comply with Title IV program requirements as determined therein.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that the hearing process initiated pursuant to the institution's request for a hearing is **TERMINATED**. It is **FURTHER ORDERED** that Jett College of Cosmetology and Barbering pay to the United States Department of Education the sum of **\$146,794** and pay **\$181,342** to the current holders of Title IV loans consistent with the determinations contained in the FPRD and in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: November 14, 1997
Washington, D.C.