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

In the Matter of

Docket No. 97-143-EA Docket No. 97-145-ST

SUE BENNETT COLLEGE.

Student Financial Assistance Proceeding

Respondent.

Appearances:

Steven J. Moore, Esq., Corbin, Kentucky, for Sue Bennett College.

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

Before:

Judge Richard I. Slippen

DECISION

On October 6, 1997, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) imposed an emergency action against Sue Bennett College (SBC) and issued a Notice of Intent to Terminate the institution from participation in the Federal student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* SFAP issued its notice in accordance with 20 U.S.C. § 1094(c)(1)(G) and (H), and 34 C.F.R. §§ 600.41 and 668.83. In response to the notice, on October 23, 1997, SBC requested a hearing in the above-captioned proceedings.

According to the Department, both the emergency action and termination action were based upon SBC's failure to meet the definition of an eligible institution of higher education. In order to satisfy the definition of an eligible institution, an institution must be, among other things, accredited by a nationally recognized accrediting association or agency or must have been granted preaccreditation status. *See* 20 U.S.C. §§ 1141(a), § 1085(a) and 1088(a), (b), and (c). By letter dated September 23, 1997, SBA's accrediting agency, the Southern Association of Colleges and Schools (SACS), informed the Department that it had affirmed its decision to remove SBC's accreditation, effective September 22, 1997. See footnote 1 SBC does not dispute that SACS withdrew the institution's accreditation effective September 22, 1997. SBC merely reiterates that it has litigation pending in U.S. District Court for the Eastern District of Kentucky to have SACS reinstate its accreditation.

The pertinent facts in this case are not in dispute. SBC lost its accreditation, effective September 22, 1997. If the basis for the loss of eligibility is the loss of accreditation, the sole issue before me is whether the institution has the requisite

accreditation. 34 C.F.R.

§ 600.41(e)(1). I have no authority to consider challenges to the action of the accrediting agency. *Id.* Consequently, SBC's pending action in federal district court is neither determinative nor relevant in the instant proceedings. Accordingly, I find that SBC, by virtue of its loss of accreditation, fails to satisfy the definition of an institution of higher education, and as a consequence, is ineligible to participate in the Title IV, HEA programs.

An emergency action must be upheld if: 1) there is reliable information that SBC violated provisions of Title IV of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of financial loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions. 34 C.F.R. § 668.83(c). Here, SBC failed to meet its burden of showing that it meets the statutory definition of an eligible institution. Therefore, a violation of Title IV has occurred. As such, continuing to operate within the Title IV programs would lead to further misuse of Federal funds. The final prong is irrelevant given the nature of this combined proceeding. Having found that the three- pronged test for imposition of an emergency action has been met, I affirm the emergency action.

As previously stated, if an institution loses its accreditation, the institution no longer satisfies the statutory requirements that define it as an eligible institution, and, on that basis, the Department may terminate the institution's eligibility designation. 20 U.S.C. § 1088(b)(4), 34 C.F.R. § 600.5(a)(6). See In re Academy of Hair Design and Technology, Docket No. 93-124- ST, U.S. Dep't of Educ. (August 4, 1994). Given my finding that SBC does not meet the definition of an eligible institution, I find that the termination action taken against SBC is warranted.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the emergency action imposed against Sue Bennett College
is upheld. It is FURTHER ORDERED that Sue Bennett College's eligibility to participate in the student financial
assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended, be terminated.

Judge Richard I. Slippen

Dated: February 10, 1998

SERVICE

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

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