

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

In the Matter of **Docket No. 97-169-ST**
INTERACTIVE LEARNING SYSTEMS, Student Financial Assistance Proceeding
Respondent.

Appearance: Stanley A. Freeman, Esq., and Joel M. Rudnick, Esq., Powers, Pyles, Sutter & Verville, P.C., Washington, D.C., for Respondent.

Paul G. Freeborne, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Student Financial Assistance Programs.

Before: Frank K. Krueger, Jr., Administrative Judge

DECISION

On November 4, 1997, the Student Financial Assistance Programs (SFAP), U.S. Department of Education, issued a notice of intent to terminate Respondent's participation in all student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended. The proposed termination was based on Respondent's cohort default rate under the Federal Family Education Loan (FFEL) program for fiscal year 1994 of 46.4 percent. Respondent, on November 21, 1997, appealed the proposed termination, asserting that such action is inappropriate since the 1994 rate is not its most recent cohort default rate.

Since SFAP has determined that Respondent's final FFEL cohort default rate for fiscal year 1994 exceeds 40 percent, I am compelled to find that the proposed termination is warranted. By my Order Governing Proceeding dated December 2, 1997, Respondent was given the opportunity to demonstrate that the cohort default rate used by SFAP in its notice of termination is not a final rate determined by the Department under 34 C.F.R. § 668.17(a)(2)(1997). Pursuant to 34 C.F.R. § 668.90(a)(3)(iv)(1997), Respondent can prevail only if it demonstrates by "clear and convincing evidence" that the cohort default rate is not the final rate, and that the correct rate would result in the institution having a rate of 40 percent or below. *See Palm Beach Beauty & Barber School*, Dkt. No. 97-102-ST, U.S. Dept. of Educ. (Oct. 23, 1997); *Aladdin Beauty College #32*, [See footnote 1¹](#) Dkt. No. 97-108-ST, U.S. Dept. of Educ. (Dec. 15, 1997) (on appeal to the Secretary); *Academy for Career Education*, Dkt. No. 97-124-ST, U.S. Dept. Of Educ. (Feb. 20, 1998) (on appeal to the Secretary); *Jon Louis Schools of Beauty*, Dkt. Nos. 96-108-ST and 97-19- ST, U.S. Dept. of Educ. (April 3, 1998) (on appeal to the Secretary) pp. 15-16; *Trend Beauty College*, Dkt. No. 97-173-ST, U.S. Dept. of Educ. (April 28, 1998); and *Michigan Beauty School*, Dkt. No. 97-172-ST, U.S. Dept. of Educ. (May 5, 1998).

Respondent's official FFEL cohort default rate for fiscal year 1995 is below 40 percent; its official cohort default rate for fiscal year 1994, however, is 46.4 percent. Inasmuch as the lower 1995 cohort default rate was formulated subsequent to the 1994 rate at issue, Respondent would have me dismiss this matter. Respondent, however, fails to recognize that Section 668.17(a)(2) clearly grants the Secretary the authority to initiate a termination proceeding if an institution has an FFEL program cohort default rate "that exceeds 40 percent for any fiscal year." (Emphasis added.) As noted above, I am compelled, under the applicable regulatory scheme, to terminate Respondent absent a showing that the cohort default rate attributed to it is not a final rate and that the final rate for the year in question would be 40 percent or below.

FINDING

SFAP made a final determination that Respondent's FFEL cohort default rate for fiscal year 1994 exceeded 40 percent and seeks an order terminating Respondent's eligibility to participate in all programs authorized under Title IV of the Higher Education Act of 1965, as amended.

ORDER

Respondent is terminated from participating in all programs authorized under Title IV of the Higher Education Act of 1965, as amended.

Frank K. Krueger, Jr.
Administrative Judge

Dated: May 21, 1998

S E R V I C E

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

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Footnote: 1 ¹ Misspelled in caption of initial decision as "Alladdin."
