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

In the Matter of **Docket No. 97-179-ST**

AVANTI HAIR TECH, Student Financial Assistance Proceeding
Respondent.

Appearance: Stewart A. Smith, President, Avanti Hair Tech, Tampa, Florida, for Respondent.

S. Dawn Scaniffe, 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 48.2 percent. Respondent appealed the proposed termination, citing that such action is harsh and extreme in light of its circumstances.

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. *See* 34 C.F.R. §§ 668.17(a)(2) and 668.90(a)(3)(iv) (1997); *see also Palm Beach Beauty & Barber School*, Dkt. No. 97-102-ST, U.S. Dept. of Educ. (Oct. 23, 1997); *Aladdin Beauty College* #32,See footnote 1[1] 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). By my Order Governing Proceeding dated December 12, 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 Section 668.17. Pursuant to the Section 668.90(a)(3)(iv), 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.

Respondent's official FFEL cohort default rate for fiscal year 1995 is 45.6 percent; its official cohort default rate for fiscal year 1994 is 48.2 percent. Respondent seems to argue that these figures are misleading inasmuch as there were only four borrowers entering repayment in 1995, none of whom defaulted, and that of the eleven borrowers entering repayment in 1994, only five defaulted. The actual default rates, as noted in the termination notice, are 0 percent and 45.5 percent, respectively.

The assertion that the actual default rates are lower than those officially attributed to Respondent is correct. When an institution has fewer than 30 borrowers entering repayment in a specific fiscal year, that year's official cohort default rate is calculated by use of a three-year average. 34 C.F.R. § 668.17(d)(B)(1997). Specifically, the official rate becomes

the percentage of current and former student borrowers who entered repayment during the year at issue and the two prior years, and defaulted before the end of the fiscal year immediately following the year in which they entered repayment. While there is a disparity between the actual cohort default rates and those deemed final, such disparity is not a basis for appealing the termination action before me. 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 another rate would result in Respondent's rate being 40 percent or below. This is unfortunate inasmuch as, as argued by Respondent, it appears that, notwithstanding its high official rate, very few of Respondent's students are in default and the official rate is being used by SFAP to determine the quality of the institution.

Although Respondent paints a vivid picture of the hairstyling and nail industry, its efforts to educate qualified and employable students in this area, and the impact of Respondent's termination on its community, Respondent brings before me no evidence that would upset the attributed cohort default rate as final. Failing that, I must find that the sanction sought by the designated Department official is warranted. I do note, however, that while I lack any discretion in this matter, the Secretary of Education has the discretion to decide not to terminate the Respondent, notwithstanding high cohort default rates, or to otherwise modify, reverse, or remand the initial decision of the hearing official. *See* 34 C.F.R.§ 668.90(c)(2)(ix)(1997).

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:

Stewart A. Smith, President
Avanti Hair Tech
8877 N. Florida Avenue
Tampa, FL 33604

S. Dawn Scaniffe, Esq.

Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

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