

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

In the Matter of

Docket No. 97-77-DA-S

JOHN A. BAD WOUND,

Suspension Proceeding

Respondent.

Appearances:

J. Crisman Palmer, Esq., Rapid City, South Dakota, for Respondent.

Before:

Frank K. Krueger, Jr., Administrative Judge

DECISION

On June 17, 1997, the U.S. Department of Education sent the Respondent a "Notice of Governmentside Suspension from Federal Procurement and Nonprocurement Transactions" under 34 C.F.R. § 85.411 (1996). The notice informed the Respondent that he was suspended from covered transactions under procurement and non-procurement programs of any Federal agency, and that the suspension would remain in effect pending the outcome of Federal criminal charges pending against him. By letter from his attorney received by the Office of Hearings and Appeals on July 23, 1997, Respondent contested the suspension. I have jurisdiction to decide this matter by virtue of a delegation of authority from the Department's Deciding Debarment and Suspension Official.

The suspension is based on a 125-count indictment filed by the grand jury with the U.S. District Court for the District of South Dakota, Western Division, on February 14, 1997. The indictment alleges that Respondent was part of a conspiracy which embezzled \$2,657,032.06 from the Oglala Lakota Community College in Rapid City, South Dakota. The alleged conspiracy involved the establishment of eight bogus companies which fraudulently charged the college for goods and services never provided, and then laundered the funds to avoid detection. Much of the money embezzled involved Federal assistance programs. During the period covered by the alleged conspiracy Respondent was employed by the college as Accounting Manager and Active Vice President for Business Affairs.

Respondent makes no attempt to contest the allegations in the indictment, but argues that he is a "valued employee of the American Horse School," that the administration of the American Horse School would approve his reinstatement during the pendency of the criminal proceeding, that, "as a consultant," Respondent would have no direct check-writing authority, could not disburse funds, and would not be in a supervisory position. Attached to the letter is what is represented as Respondent's job description with the American Horse School. It is not clear what relationship the American Horse School has with the Federal government. Assuming that Respondent's employment with the American Horse School would be affected by the suspension, there are several internal inconsistencies in Respondent's letter. On

the one hand the letter states that Respondent is a "valued employee" of the American Horse School and, on the other, it states that Respondent is a "consultant." The letter represents that the Respondent will have no check-writing authority, cannot disburse funds, and will not be in a supervisory position, and yet the attached position description is entitled "Chief Financial Officer," and provides for the supervision and management of the financial affairs of the school. Thus it appears that the position that the Respondent wishes to assume at the American Horse School is the very type of position which he occupied at the Oglala Lakota Community College where he allegedly engaged in a conspiracy which embezzled large sums of money from the college and the Federal government. The letter provides reasons to keep the suspension in place rather than have it lifted or modified.

Under 34 C.F.R. § 85.405 (1996), a suspension may be imposed by the Department upon adequate evidence to suspect the commission of fraud, embezzlement, theft, falsification of records, making false claims, or the commission of any other offense indicating a lack of business integrity or honesty. Under 34 C.F.R. § 85.405(b), an indictment constitutes adequate evidence. The indictment at issue contains allegations which cover all of these offenses and alleges the violation of a number of Federal criminal laws which would lead one to question Respondent's integrity and honesty.

ACCORDINGLY, I find that Respondent's suspension is appropriate and will remain in force.

Dated: August 11, 1997

Frank K. Krueger, Jr.
Administrative Judge

SERVICE

A copy of this order was sent to the following:

J. Crisman Palmer, Esq.
Gunderson, Palmer, Goodsell & Nelson
Attorneys at Law
American Memorial Life Building, 4th Floor
440 Mt. Rushmore Road
Post Office Box 8045
Rapid City, South Dakota 57709-8045

David L. Morgan
Acting Director, Compliance and Enforcement Division
Student Financial Assistance Programs
U.S. Department of Education
600 Independence Ave., S.W.
Washington, D.C. 20202-2110