

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

In the Matter of

Docket No. 98-49-ST

BJORN'S HAIRSTYLING ACADEMY, Student Financial
Assistance Proceeding

Respondent.

Appearances:

Bjorn Ford, of Vallejo, California, for Bjorn's Hairstyling Academy.

Howard D. Sorensen, 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 April 27, 1998, the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education issued a Notice of Intent to Terminate Bjorn's Hairstyling Academy (Bjorn's) from participation in student financial assistance programs governed by 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.* As provided in the notice, the basis for the termination action is Bjorn's alleged violation of the Department's financial responsibility regulations. Specifically, the notice alleges that Bjorn's failed to maintain an acid test ratio of at least 1:1 for fiscal year 1996.

On May 4, 1998, I issued an Order Governing Proceedings requiring the parties to file their respective submissions in a timely manner. SFAP was required to file its brief on or before June 18, 1998, and it did so. The institution was required to file its brief on or before August 2, 1998, but failed to do so. On August 12, 1998, SFAP filed a Motion For Entry of Decision against Bjorn's on the ground that the institution failed to comply with my Order Governing Proceedings. In this respect, SFAP noted that subsequent to its appeal of the termination notice, Bjorn's did not file a brief or *any* other type of submission in this proceeding.

In response to SFAP's motion, on August 17, 1998, I issued an order requiring the institution to show cause why I should not issue a decision entering judgment against it for failure to prosecute its appeal of the termination notice. On September 1, 1998, Bjorn's sent to the tribunal a facsimile transmission of a handwritten note signed by the institution's owner, Mr. Bjorn Ford.

The handwritten note did not transmit well on the facsimile machine, and is barely legible. The tribunal's attorney-advisor by telephonic communication requested that Mr. Ford send the tribunal a more legible copy of his note, but to date, Mr. Ford has not done so. The note appears to present one or two equitable reasons for why the institution should not be subject to this termination action. No further defense or substantiation of the institution's position is presented. Moreover, it is clear that the institution, for reasons not readily apparent, has chosen not to comply with my August 17,

1998, order by coming forward with a showing as to why I should not enter judgment against it for failure to prosecute its appeal of the termination notice.

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 administrative appeal. *See e.g.*, 34 C.F.R. § 668.117(c)(3). As such, I find that both Bjorn's failure to file a brief as well as its failure to show cause why it did not file a brief warrants the termination of this proceeding. More importantly, however, after a review of the record, I find that SFAP has carried its burden of proof and persuasively shown that termination of Bjorn's from participation in student financial assistance programs is warranted.

SFAP contends that the institution does not meet the applicable standards of financial responsibility. Under 34 C.F.R. § 668.15(b), an institution participating in the Title IV programs must maintain a 1:1 ratio of current assets to current liabilities (a ratio known as the acid-test ratio) or have a credit rating at or above the second highest rating of credit quality given by a nationally recognized statistical rating organization. For the most recent fiscal year for which SFAP has records - - 1996 - - the institution does not qualify as financially responsible under either of these alternatives. Despite this, Bjorn's could have continued participation in Title IV programs as a financially responsible institution, if it had submitted to the Secretary an irrevocable letter of credit that is payable to the Secretary in an amount equal to not less than one-half of the Title IV program funds received by the institution during the last complete award year for which figures are available. 34 C.F.R. § 668.15(d). In this regard, Bjorn's was required to submit an irrevocable letter of credit in the amount of \$55, 000, but did not do so. This failure resulted in SFAP's issuance of this termination notice.

Bjorn's does not contest the essential facts as alleged by SFAP. Instead, Bjorn's handwritten letter urged the tribunal to recognize that the institution has served its student population for some 27 years and throughout that time period maintained "a perfect record" with the Department. This notwithstanding, SFAP's position is correct. In *In re Commercial College*, Docket No. 94-158-ST, U.S. Dept. of Educ. (August 3, 1995), *certified by Sec'y*, (Nov. 22, 1995), the tribunal determined that the plain language of Section 668.115(d) requires institutions to obtain an irrevocable letter of credit in an amount equal to one-half of the total Title IV funds received by the institution in order for the institution to qualify as financially responsible institution under the circumstances of failing to maintain an acid test ratio of 1:1 in the preceding fiscal year. As such, I am convinced that the findings contained in the notice and the documentary evidence attesting to the institution's fiscal condition in the 1996 fiscal year are sufficient to carry its burden of proof that Bjorn's did not comply with the Department's financial responsibility regulations by failing to maintain an acid test ratio of at least 1:1. Nor did the institution otherwise qualify for continued participation in Title IV programs by obtaining an irrevocable letter of credit in the manner requested by SFAP.

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 Bjorn's Hairstyling Academy's eligibility to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended, is terminated.

Ernest C. Canellos
Chief Judge

Dated: September 17, 1998
Washington, D.C.