

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

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In the Matter of **Docket No. 98-65-SA**

**AMERICAN NANNY COLLEGE**, Student Financial  
Assistance Proceeding  
ACN: 09-94-74128  
Respondent.

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Appearances: Dr. Beverly Benjamin, of Montclair, California, for American Nanny College.

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 March 24, 1998, the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education issued a final audit determination (FAD) assessing a total liability of \$25,638 against American Nanny College (ANC) for violations of various program regulations promulgated pursuant to 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.* Thereafter, ANC filed a request for a hearing challenging the findings of the FAD. On May 14, 1998, I issued an Order Governing Proceedings requiring the parties to file their respective submissions in a timely manner. ANC was required to file its initial brief on or before June 13, 1998. On July 10, 1998, SFAP filed a motion requesting that I issue an order requiring ANC to come forward with an explanation why I should not enter a default judgment against it. In this respect, SFAP noted that subsequent to its appeal of the FAD, ANC had not filed *any* submission in this proceeding. In response to SFAP's motion, on July 16, 1998, I issued an order requiring ANC to show cause why I should not issue a decision entering judgment against it for failure to prosecute its appeal of the FAD. To date, ANC has neither requested an extension of time to comply with my Order Governing Proceedings, nor shown cause why judgment should not be entered against it.

It is well established that in Subpart H -- audit and program review -- proceedings, the institution has the burden of proof. 34 C.F.R. § 668.116(d). Consequently, to sustain its burden the institution must establish, by a preponderance of the evidence, that Title IV funds were lawfully disbursed. *See In re National Training, Inc.*, Dkt. No. 93-98-SA, U.S. Dep't of Educ. (October 18, 1995). It is abundantly clear that under the circumstances of this case, ANC has not met its burden. In this regard, I note that along with its request for an administrative hearing, the institution submitted a letter stating that it could show that prior owners of ANC may owe some of the liability sought by SFAP in this proceeding; that notwithstanding, the institution neither came forward to support its argument with the submission of a brief or evidence, nor did it show how its argument was relevant or probative of the allegations contained in the FAD. Indeed, I find that the institution's position, without more clarification and support, has no apparent probative relevance to the findings in the FAD.

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 appeal of the FPRD. *See*, 34 C.F.R. § 668.117(c)(3). As such, I find that the institution's failure to file a brief warrants the termination of this proceeding. More importantly, I am convinced that the findings contained in the FAD sufficiently state allegations in a manner that demonstrate the existence of a *prima facie* showing that the institution failed to comply with Title IV program requirements as determined therein.

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 American Nanny College pay to the United States Department of Education the sum of **\$14, 440.00** and pay **\$11, 198.00** to the current holders of Title IV loans consistent with the determinations contained in the FAD and in the manner as required by law.

Ernest C. Canellos

Chief Judge

Dated: September 24, 1998

Washington, D.C.