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

In the Matter of **Docket No. 98-69-ST**

NASSON INSTITUTE, Student Financial Assistance Proceeding
Respondent.

Appearances: Edward P. Mattar, III, of P awtucket, Rhode Island, for Nasson Institute.

Alexandra Gil-Montero, 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 13, 1998, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a notice of intent to terminate the eligibility of Nasson Institute (Nasson) from participation in Federal student financial assistance programs authorized 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.* SFAP initiated the termination action as a result of the institution's cohort default rate for the 1995 fiscal year, which SFAP asserts was 42.1 percent.

On May 22, 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 21, 1998, and it did so. The institution was required to file its brief on or before July 21, 1998, but failed to do so. On July 28, 1998, SFAP filed a Motion For Default Judgment against Nasson on the ground that the Nasson had failed to comply with my Order Governing Proceedings. In this respect, SFAP noted that subsequent to its appeal of the termination notice, Nasson had failed to file a brief or *any* other type of submission in this proceeding.[See footnote 1]

In response to SFAP's motion, on August 19, 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. To date, the institution has not responded to my order.

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 Nasson'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 Nasson's from participation in student financial assistance programs is warranted.

Under 34 C.F.R. § 668.17(a)(2), when an institution's cohort default rate exceeds 40 percent, SFAP may seek termination of the institution's eligibility for participation in Title IV programs by issuing a Notice of Termination.[See footnote 2] To avoid being terminated from Title IV programs on the basis of SFAP's proposed finding, Nasson must demonstrate 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.

Since Nasson has not filed a substantive submission in this proceeding, it did not offer any argument directly disputing whether SFAP's rate actually is final or whether the final rate, which is above the regulatory threshold according to SFAP, is *correctly* attributed to Nasson Institute. In this regard, there is no relevant issue in dispute. SFAP submitted a

copy of a letter addressed to the Chief Executive Officer of Nasson, Mr. Edward P. Mattar, III, dated March 17, 1998, issued by Jeanne Van Vlandren, the Director of Institutional Participation and Oversight Service for SFAP, in which Nasson is officially notified that its fiscal cohort default rate for 1995 is 42.1 percent. Accordingly, I find that Nasson's final cohort default rate for fiscal year 1995 is 42.1 percent. Therefore, SFAP's proposed termination of Nasson's Title IV eligibility is warranted.

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 Nasson Institute'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 23, 1998
Washington, D.C.

SERVICE

A copy of the attached document was sent to the following:

Mr. Edward P. Mattar, III
President
Nasson Institute
286 Main Street
Pawtucket, RI 02860

Alexandra Gil-Montero, Esq.
Office of the General Counsel
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600 Independence Avenue, S.W.
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Footnote: 1 This case is distinct from another termination case involving the same parties, wherein Nasson complied with my briefing order and filed timely submissions. See In re Nasson Institute, Dkt. No. 98-5-ST, U.S. Dep't of Educ. (this case has been taken under advisement, but remains undecided).

Footnote: 2 The language of Section 668.17(a)(2) ostensibly authorizes SFAP to initiate a subpart G action against an institution whose Title IV loan program cohort default rate or weighted average cohort default rate exceeds 40 percent for any fiscal year. Although Section 668.17(a)(2) provides SFAP with discretion to determine whether a subpart G action should be brought against an institution as well as the discretion as to what remedy it deems is appropriate under the circumstances, once SFAP has determined that an institution should be terminated under Section 668.17(a)(2), the Hearing Official is restricted to determining whether SFAP has met its ultimate burden of proof. 34 C.F.R. § 668.90(a)(3)(iv). In this regard, I am plainly precluded from going beyond the dictates of Section 668.90(a)(3)(iv) to consider whether a sanction other than termination is more appropriate under the circumstances. See also In re Aladdin Beauty College #32, Dkt. No. 97-108-ST, U.S. Dep't of Educ. (Decision of the Secretary August 20, 1998).
