

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

In the Matter of

Docket No. 02-58-ST

RHODE ISLAND BEAUTY ACADEMY,

Student Financial
Assistance Proceeding

Respondent.

Appearances: William DeFusco, Director, Rhode Island Beauty Academy, for Respondent.

Steven Z. Finley, Esq., Office of the General Counsel, United States Department of Education,
Washington, D.C., for Student Financial Assistance Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

On July 5, 2002, Rhode Island Beauty Academy (RIBA) appealed a Notice of Intent to Terminate dated June 19, 2002, issued by the United States Department of Education, Office of Federal Student Aid (FSA). On July 30, 2002, I issued an Order Governing Proceedings in the above-captioned proceeding. In my July 30, 2002, order, FSA's brief and exhibits were due on or before September 10, 2002. Upon receipt of FSA's brief and exhibits, RIBA's brief and exhibits were due on or before October 12, 2002. FSA filed its brief on September 11, 2002. RIBA's Motion for a 10-day Continuance was granted on October 30, 2002. Since the expiration of the 10-day Stay, RIBA has neither submitted its brief nor requested an extension of time to file its submission. On February 27, 2003, FSA filed a Motion to Dismiss RIBA's appeal of the termination proceeding. In its motion, counsel for FSA stated that RIBA's director advised him that it planned to file a motion to dismiss its appeal of the termination proceeding. On February 28, 2003, I issued an Order to Show Cause as to why I should not dismiss Respondent's appeal of the Notice of Intent to Terminate. RIBA had until March 18, 2003, to respond to my February 28, 2003, order. To date, RIBA has failed to comply with my show cause 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 fails to pursue its administrative appeal. *See* 34 C.F.R. § 668.89(c)(3). As such, I find that RIBA's failure to file a brief as well as its failure to show cause as to why it did not file a brief warrants the termination of this proceeding. Notwithstanding RIBA's failure to pursue its administrative appeal, I find that FSA has carried its burden of proof in this proceeding.

The June 19, 2002, Notice, charged that RIBA failed to meet the standards of financial responsibility in both its fiscal year (FY) 2002 and 2001 statements. Specifically, the Notice stated that the institution did not have a passing financial ratio score as required by 34 C.F.R. §§ 668.23, 668.171, and 668.172. According to FSA, RIBA did not alternatively demonstrate its financial responsibility by posting a letter of credit of at least equal to 50% of the institution's annual funding in the Title IV programs nor, did it attempt to be provisionally certified to continue in the Title IV programs by posting a letter of credit of at least 10% of the institution's annual funding. FSA also asserts that during that time period, RIBA made unsecured loans to a related party for amounts in excess of what the institution would have needed to post under a letter of credit. FSA argues that these facts demonstrate that RIBA has withdrawn resources that were otherwise needed to strengthen the financial footing of the institution.

The financial responsibility regulations lay out a clear financial ratio standard an institution must meet to satisfy its regulatory obligations. See 34 C.F.R. §§ 668.171 and 668.172. If an institution does not meet this financial ratio standard, it has two options. The institution may post a letter of credit at least equal to 50% of its annual funding or it may post a letter of credit of at least ten percent in order to receive a provisional certification to continue in the Title IV programs. See 34 C.F.R. § 668.175. This tribunal has held that an institution that fails to meet the financial responsibility standards, including a failure to post a letter of credit in the amounts provided for in the regulations, must be terminated from participating in the Title IV programs. See *In re Bjorn's Hairstyling Academy*, Docket No. 98-49-ST, U.S. Dep't of Educ. (September 17, 1998); *In re Commercial College*, Docket No. 94-158-ST, U.S. Dep't of Educ. (August 3, 1995), certified by the Secretary (November 22, 1995); *In re National Shakespeare Conservatory*, Docket No. 95-133-ST, U.S. Dep't of Educ. (February 27, 1996), certified by the Secretary (May 31, 1996).

The financial ratio standard requires that a for-profit institution's Equity Primary Reserve and Net Income Ratios yield a composite score of at least 1.5. FSA's review of RIBA's audited financial statements for FY 2000 yielded a composite score of 0.5.[1] On October 12, 2001, FSA requested that RIBA provide the Department with a \$109,000 letter of credit by December 7, 2002.[2] RIBA did not submit such a letter of credit by the deadline.[3] FSA then placed RIBA on the reimbursement system of payment for the Title IV programs.[4] FSA notified RIBA that it could provisionally continue its Title IV eligibility if it provided the Department with a letter of credit for ten percent of the amount the institution received in Title IV aid for FY 2000 by January 12, 2002. RIBA failed to submit the required letter of credit.[5] FSA then issued its July 5, 2002, Notice of Intent to Terminate. Consequently, RIBA has failed to meet the financial responsibility standards required for participation in the Title IV programs by having a financial ratio below 1.5. RIBA has also failed, in the alternative, to post an irrevocable letter of credit in order to continue its participation in the Title IV programs.

ORDER

On the basis of the foregoing, 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 the Rhode Island Beauty Academy's eligibility to participate in the programs authorized under Title IV of the Higher Education Act of 1965, as amended, is terminated.

Judge Richard I. Slippen

Dated: April 3, 2003

SERVICE

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

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[\[1\]](#) See ED Exhibits 2 and 3.

[\[2\]](#) See ED Exhibit 4.

[\[3\]](#) See ED Exhibit 7.

[\[4\]](#) See ED Exhibit 6.

[\[5\]](#) See ED Exhibit 10.