

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

In the Matter of

Docket No. 02-63-SP

NATIONWIDE BEAUTY SCHOOL,

Student Financial
Assistance Proceeding

Respondent.

Appearances: Van Thai Tran, Esq., of Westminster, California, for Nationwide Beauty School.

Denise Morelli, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

On June 17, 2002, the United States Department of Education (ED), Federal Student Aid office issued a Final Program Review Determination (FPRD), which included findings against Nationwide Beauty School (NBS) concerning NBS' failure to comply with all Title IV program requirements.^[1] According to the findings in the FPRD, NBS failed to adhere to a fiduciary standard of conduct, as required by 34 C.F.R. § 668.82. According to the FPRD, NBS had engaged in a routine practice of falsifying or fabricating documents used to support proof of eligibility for Title IV student financial assistance. As a result of the findings in the FPRD, FSA required NBS to return to ED \$197, 069.^[2] In response, NBS requested a hearing to challenge the findings of the FPRD and, once assigned the case, I issued an order to commence that process.

On December 20, 2002, FSA filed a motion requesting that I issue an order entering a default judgment against Respondent for failure to comply with my Order Governing Proceedings requiring Respondent to submit a brief statement supporting its challenge to the findings of FSA's FRPD. FSA stated that as of December 20, 2002, Respondent had neither filed its brief nor requested additional time for filing its brief as required by my orders.^[3]

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 a party if that party does not meet time limits established pursuant to my orders.^[4] Instead of immediately granting FSA's request, on January 3, 2003, I ordered NBS to show cause why I should not enter judgment against it for failure to prosecute its appeal.^[5] NBS neither responded directly, nor otherwise indicated why a judgment against is unwarranted. Even so, I recognize that NBS has not explicitly expressed an intention to withdraw its appeal. In addition, NBS submitted documents along with its request for review. In light of the aforementioned, I have reviewed the record as it is.

After careful review of the record, including the documents submitted by NBS in its request for review of the

FPRD, I find that NBS has not substantiated its position that the findings of the FPRD are incorrect. It is well established that in Subpart H -- audit and program review -- proceedings, the institution has the burden of proof.^[6] Consequently, to sustain its burden, the institution must establish, by a preponderance of the evidence, that Title IV funds were lawfully disbursed. It is abundantly clear that under the circumstances of this case, NBS has not met its burden.

In this regard, I note that although the institution filed several documents along with its request for an administrative hearing, these documents are not probative of the allegations contained in the FPRD. Instead, these documents are copies of documents that the institution's independent auditor explicitly rejected as unreliable in the audit report submitted to FSA. Although NBS, in its request for review, "rejects" the auditors' conclusions and considers them "fraught with mistakes," the institution's failure to come forward to prosecute its appeal undermines its position that it could prevail. Without more from the institution, I find that the documents submitted have dubious credibility and no apparent probative relevance to the findings in the FPRD. Moreover, I find that the institution's failure to file a brief or otherwise respond to my orders warrants the termination of this proceeding.

I am convinced that the findings contained in the FPRD 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 Nationwide Beauty College pay to the United States Department of Education the sum of **\$197, 069** consistent with the determinations contained in the FPRD and in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: January 15, 2003

SERVICE

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

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[1] Title IV program requirements are 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.*

[2] FSA ordered a full file review in order to determine NBS' liability. NBS secured the services of an independent auditor, the Williams & Tucker Accountancy Corporation, whose report was submitted to FSA and used to calculate NBS' liability.

[3] NBS failed to comply with my initial order requiring a submission on or before September 26, 2002; I extended that deadline until November 17, 2002 when Respondent, through counsel, indicated that my initial order had not been received.

[4] *See*, 34 C.F.R. § 668.117(c)(3).

[5] NBS was ordered to file a responsive submission on or before January 13, 2003.

[6] 34 C.F.R. ' 668.116(d); *See In re National Training, Inc.*, Dkt. No. 93-98-SA, U.S. Dep't of Educ. (October 18, 1995).