



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
**San Francisco College
of Mortuary Science**

Docket No. 92-8-ST

Student Financial
Assistance Proceeding

Decision of the Secretary

This matter comes before the Secretary through an appeal by the San Francisco College of Mortuary Science (SF) of the Initial Decision issued in this cause by Chief Administrative Law Judge John F. Cook on December 31, 1992. The Initial Decision terminated SF from participation in the student financial assistance programs of Title IV of the Higher Education Act of 1965, as amended; and, levied a \$15,000 fine against SF for regulatory violations.

In its appeal, SF cites three rationale for reversing the Initial Decision:

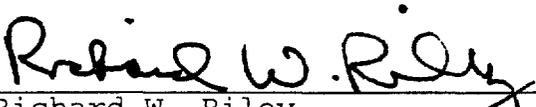
- a. this is an appropriate case for the Secretary to exercise his discretion and impose a lesser sanction than termination;
- b. the Office of Student Financial Assistance Programs (OSFA) failed to carry its burden of establishing that SF committed violations warranting termination from all programs; and
- c. 34 C.F.R. § 668.90 (a)(3)(iv) should not apply to this proceeding because the regulation was not intended to apply retroactively to violations alleged to have occurred prior to enactment of the rule, and because applying the regulation to this matter would violate rules against retroactive and ex post facto regulation.

The Secretary finds this appeal to be without merit. The second and third issues raised by SF were thoroughly discussed by the Administrative Law Judge in the Initial Decision. Regarding these issues the Secretary adopts the findings and conclusions of the Initial Decision.

Regarding the issue of the Secretary's discretion, assuming that such discretion exists, there is no rationale that could overcome the continued failure of SF to file required audits or the breach of SF's fiduciary duties found by the Administrative Law Judge. This argument is wholly without merit.

The Secretary affirms the Initial Decision issued by Chief Judge Cook as the final decision of the Department. The eligibility of San Francisco College of Mortuary Science to continue participation in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended is terminated; and, SF is ordered to immediately pay the fine of \$15,000 to the U.S. Department of Education in the manner provided by law.

So ordered this 26th day of March, 1993.


Richard W. Riley

Washington, DC

Service

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