



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

**NORTH CAROLINA ACADEMY
OF COSMETIC ART,**

Respondent.

Docket No. 98-123-EA
Docket No. 98-129-ST
Student Financial
Assistance Proceeding

DECISION OF THE SECRETARY

The North Carolina Academy of Cosmetic Art (NCACA) was a proprietary institution that participated in 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. Following an extensive investigation and audit, on August 20, 1998, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) imposed an emergency action against NCACA. This action withheld all Title IV funds from NCACA and removed its authority to disburse Title IV funds. SFAP also notified NCACA of its intent to terminate the eligibility of the school to participate in programs authorized under Title IV. A hearing was held on both administrative actions.

At the administrative hearing below, the parties stipulated to the fact that Respondent falsified the attendance and financial aid records of nine students awarded Title IV funds. Consequently, Judge O'Hair made numerous findings of Respondent's fraudulent and criminal conduct. In spite of these findings, the hearing official refused to terminate the institution's Title IV eligibility. Instead, on November 24, 1998, Judge Richard F. O'Hair issued the Initial Decision in the above-captioned case, which suspended Respondent's participation in all Title IV programs for a period of 12 months and imposed a \$45,000 fine.

NCACA was a proprietary cosmetology school owned jointly by Frank Jennings and James Howard. Mr. Howard did not participate in the operations of the school. Mr. Jennings' wife was the director of the school, and the facts demonstrate that she committed the fraudulent and criminal conduct at issue, falsifying attendance and financial aid records. Although there was no direct evidence of Mr. Jennings' participation in his wife's criminal and fraudulent conduct, the evidence indicated that he was at the school on almost a daily basis during the period in 1998 when his wife was falsifying records.

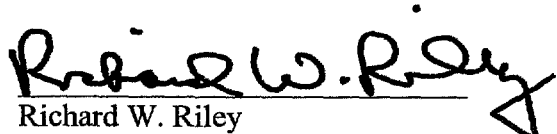
As a fiduciary, an institution is subject to the highest standard of care and diligence as it administers Title IV programs. 34 C.F.R. § 668.82(a), (b). Any fraudulent conduct is a severe breach of a school's fiduciary duty, and the facts of this case demonstrate a serious breach of the school's fiduciary responsibilities. On these facts, NCACA's eligibility to participate in the Title IV programs should be terminated. See In the Matter of the Northeast Center for Judaic Studies, Dkt. No. 94-55-ST (May 2, 1995); In the Matter of Maurice Charles Academy of Hair Styling, Dkt. No. 91-18-ST (May 17, 1993); In the Matter Yorktowne Business Institute, Dkt. No. 92-33-ST (March 10, 1993), aff'd by the Secretary (July 1, 1993).

In other cases, fines of \$25,000 per instance for fraudulent conduct have been imposed both as an appropriate punishment and to deter others from committing similar violations. See In the Matter of Bais Fruma, Dkt. No. 92-131-ST (August 24, 1993), aff'd by the Secretary (September 18, 1995); In the Matter of Jesode Hatorah, Dkt. No. 94-15-ST (March 15, 1996). Here, there was a pattern of fraud committed by the director of the school. The facts of this case do not present any convincing reason to impose a lesser fine. Therefore, a fine of \$225,000 is imposed for the nine fraudulent instances established at the hearing below.

For the reasons stated herein, Respondent's participation in the Title IV programs is terminated and a fine of \$225,000 is also imposed.

So ordered this 12th day of December, 2000.

Washington, D.C.


Richard W. Riley

SERVICE

Richard F. O'Hair
Administrative Judge
Office of Hearings and Appeals

Ronald L. Holt, Esq.
Watkins, Boulware, Lucas, Miner, Murphy & Taylor, LLP
5440 North Oak Trafficway
Kansas City Missouri 64118

Alexandra Gil-Montero, Esq.
Russell B. Wolff, Esq.
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202