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

In the Matter of

Docket No. 98-97-ST

WESTCHESTER SCHOOL OF BEAUTY CULTURE,

Student Financial Assistance Proceeding

Respondent.

Appearances:

Paul G. Freeborne, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Ronald L. Holt, Esq., Watkins, Boulware, Lucas, Miner, Murphy & Taylor, LLP, Kansas City, Missouri, for Westchester School of Beauty Culture.

Before: Frank K. Krueger, Jr., Administrative Judge.

DECISION

Respondent participates in the Pell Grant and Federal Family Education Loan (FFEL) programs authorized under Title IV of the Higher Education Act of 1965, as amended. On January 8, 1998, SFAP notified Respondent that its FFEL cohort default rate for fiscal year (FY) 1994 was 43.8 percent. As a result of Respondent's appeal under the procedures provided under 34 C.F.R. § 668.17(h) (1997), Respondent's final rate was reduced to 42.7 percent. On June 30, 1998, SFAP notified Respondent of its intent to terminate Respondent's participation in all programs authorized under Title IV. Respondent filed a timely request for a hearing under 34 C.F.R. Part 668, Subpart G to challenge the proposed termination.

Under 34 C.F.R. § 668.90(a)(3)(iv) (1997), since Respondent's FY 1994 FFEL cohort default rate is above 40 percent, and it is a “final” rate arrived at by SFAP under 34 C.F.R.
§ 668.17 (1997), I must find that the “remedy” proposed by SFAP -- termination -- is warranted. *See Aladdin Beauty College # 32*, Docket No. 97-108-ST, U.S. Dept. of Educ. (Order of the Secretary, Aug. 20, 1998). Respondent argues that its FY 1994 FFEL cohort default rate cannot be considered “final” since SFAP failed to apply the correct legal standards and failed to exclude certain data from its calculations. This argument was raised and rejected in *Hair Design Institute*, Docket No 97-122-ST, U.S. Dept. of Educ. (August 5, 1998). As I stated in *Hair Design*, to adopt Respondent's argument would eviscerate the meaning of section 668.90(a)(3)(iv) and place the hearing official in the middle of Respondent's challenge to the SFAP computation of its FFEL cohort default rate. It is precisely the purpose of section 668.90(a)(3)(iv) to ensure that the hearing official not become involved in such disputes. Respondent argues that a recent decision by this tribunal, *International Junior College*, Docket No. 97-164-ST, U.S. Dept. of Educ. (July 28, 1998), illustrates that it is appropriate for the hearing official to consider such disputes. In *International,* the school

argued that its FFEL cohort default rate was not “final” because of improper loan servicing. While recognizing that he had no authority to set aside an SFAP “final” rate determination, the hearing official went on to consider and reject the school's contention on its merits. The fact that the hearing official considered the school's arguments challenging the SFAP final determination does not mean that the hearing official had the authority to reject or lower the SFAP “final” determination. Since section 668.90(a)(3)(iv) specifically prevents the hearing official from changing a “final” FFEL cohort rate determination, that portion of the *International* decision dealing with the merits of the challenge to the final determination is *obiter dicta* and has no legally-binding effect.

Respondent also raises a number of mitigating factors which it contends should be considered by the Secretary in deciding whether to impose termination. Under section 668.90(a)(3)(iv), I have no authority to consider such factors. Respondent may raise these factors with the Secretary if it appeals this decision.

FINDINGS

1. SFAP made a final determination under 34 C.F.R. § 668.17 (1997) that Respondent's FFEL program cohort default rate for fiscal year 1994 was 42.7 percent.

2. SFAP seeks an order terminating Respondent's eligibility to participate in all programs authorized under Title IV of the Higher Education Act of 1965, as amended.

ORDER

Respondent is terminated from participation in all programs authorized under Title IV of the Higher Education Act, as amended.

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Frank K. Krueger, Jr.
Administrative Judge

Dated: October 27, 1998

SERVICE

A copy of the attached decision was sent by certified mail, return receipt requested, to the following:

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