



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the matter of

TREND COLLEGES, INC.

Docket No. 90-56-ST

Student Financial
Assistance Proceeding

DECISION OF THE SECRETARY

This is an appeal to the Secretary by Trend Colleges, Inc. (Trend), of the Decision of Administrative Law Judge Allan C. Lewis (ALJ), dated May 28, 1991. The Decision found that Trend failed to satisfy the standards of financial responsibility of 34 C.F.R. 668.13, and held that Trend must provide a \$500,000 letter of credit within 40 days of the Decision becoming final, or be terminated from participation from Title IV, HEA programs.

Trend filed its notice of appeal on June 17, 1991, and subsequently requested and received an extension until August 26, 1991, to file its appeal brief in this cause. The extension was granted by verbal order of the then Attorney-Advisor to the Secretary.

Trend attempted to file its appeal brief (without exhibits) by facsimile transmission to the U.S. Department of Education, Office of Hearings and Appeals (OHA) at 5:45 pm, on August 26, 1991. However, OHA maintains a daily filing deadline of 4:30 pm, consistent with its daily close of business. This policy was affirmed by the Secretary in his Order Barring Appeal, issued in In the Matter of Community College of Philadelphia, dated December 7, 1989. Further, OHA policy does not provide for the filing of pleadings via facsimile. On August 27, 1991, Trend hand delivered its appeal brief to OHA. OHA accepted the document as received on August 27, 1991.

In its appeal brief, Trend has requested the Secretary do one of two things. The Secretary is asked to either dismiss this cause due to a second termination action pending against Trend, or to modify the ALJ's Decision to allow Trend to demonstrate its financial responsibility in a way other than a letter of credit.


On October 1, 1991, the U.S. Department of Education, Office of Student Financial Assistance (OSFA) timely filed its responsive brief in support of the ALJ's Decision. In its response, OSFA argues that Trend's appeal brief should be excluded from the record due to its untimely filing.

I agree. Trend's appeal brief was not timely filed with OHA and is excluded from the record in this cause. I am therefore compelled to affirm the ALJ's Decision in its entirety.

However, I am equally compelled to note that this is only one alternative rationale leading to this same result. Prior to receiving OSFA's motion to exclude Trend's appeal brief from the record, I examined the document and considered its arguments. Even if Trend's brief had been properly filed, I found no reason to overturn or modify the ALJ's Decision.

Pursuant to the ALJ's Decision, it is therefore ordered that Trend submit to the United States Department of Education a letter of credit in the amount of \$500,000 within 40 days of the date of this Decision; and if such a letter of credit is not submitted within this period, it is further ordered that the eligibility of Trend Colleges, Inc. to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, is terminated.

This Decision is issued this 25 day of October 1991.


Lamar Alexander

Washington, DC