In re MICHIGAN PARAPROFESSIONAL TRAINING INSTITUTE	Docket No. 90-7-ST Student Financial Assistance Proceeding

DECISION OF THE SECRETARY

This matter comes before me on appeal by the U.S. Department of Education (Education) from a February 22, 1991, decision by an Administrative Law Judge (ALJ). Education does not contest the result reached by the ALJ, but requests clarification as to how disqualification proceedings should be conducted.

In a typical disqualification proceeding, a guaranty agency has first terminated an institution from participation in one or more of the various student loan programs. As a consequence of that termination, Education notifies the institution that it will review the guaranty agency's termination action for purposes of determining whether the institution should be nationally disqualified from loan programs. The institution may request an administrative review to determine whether the guaranty agency's termination action was taken in compliance with section 428(b)(1)(T) of the Higher Education Act (HEA), 20 U.S.C. 1078(b)(1)(T).

Administrative review of a guaranty agency's termination is available pursuant to section 432(h)(3) of the HEA, 20 U.S.C. 1082(h)(3). That section states:

> (A) The Secretary shall, in accordance with sections 556 and 557 of title 5, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 1078(b)(1)(T) of this title within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification-

> (i) if such review is waived; or
> (ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section....

Section 1078(b)(1)(T) reads as follows --

> (1) Requirements of insurance program: Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) of this section if the Secretary determines that the student loan insurance program- ...
>
> (T) provides no restrictions with respect to eligible institutions (other than nonresidential correspondence schools) which are more onerous than eligibility requirements for institutions under the Federal student loan program as in effect on January 1, 1985, unless-
>
> (i) that institution is ineligible under regulations for the emergency action, limitation, suspension, or termination of eligible institutions (other than nonresidential correspondence schools) under the Federal student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program; ....

This section has been interpreted to mean that a guaranty agency's termination action is supportable if: (1) the agency took action on the basis of substantive agency requirements regarding either initial or continuing eligibility that were not more onerous than those in effect for schools participating in the Federal Insured Student Loan Program (FISLP) as of January 1, 1985; and (2) the agency took that action in accordance with procedures that were substantially the same as those that govern the limitation, suspension or termination of a school's eligibility under FISLP. See, 55 Fed. Reg. 48335 (1990).

On review, counsel for Education poses two issues. The first issue is whether a disqualification hearing, as described in the pertinent interpretative release in 55 Fed. Reg. 48335 (1990), is limited to a consideration of whether a guaranty agency's requirements for continuing a school's eligibility are more onerous than similar requirements under the FISLP and whether the guaranty agency's procedures to terminate a school's eligibility are

substantially similar to the procedures used to terminate a school's eligibility under the FISLP. The second issue posed is whether a school may summarily relitigate the factual findings made by a guaranty agency in a disqualification proceeding.

* * * * *

I conclude that a disqualification proceeding, under section 432(h)(3), is limited. A hearing is always first available before the guaranty agency. Although an institution may choose not to avail itself of the opportunity to be heard by the guaranty agency, section 432(h)(3) is clearly not intended to give schools a second, or alternative, full and complete hearing. In short, a disqualification proceeding should be limited to consideration of whether the guaranty agency's termination should be given national effect in light of the guaranty agency's requirements and procedures.

The ALJ below, however, primarily in reliance on In re Aristotle, Docket No. 89-35-S, U.S. Department of Education (April 19, 1990), determined that the reference to sections 556 and 557 of Title 5, United States Code, in section 1078(b)(1)(T), summarily requires a full hearing on the record in disqualification actions. The ALJ further noted that a disqualification proceeding "is an evidentiary hearing to consider the facts and circumstances considered by the (guaranty) agency which preceded th(e) disqualification action...." I disagree.

Under section 556, an agency is not required to provide an oral hearing unless the statute governing the agency's action mandates an oral hearing. See, Sierra Assoc. for Environment v. F.E.R.C., 744 F.2d 661, 663-664 (9th Cir. 1984); American Transfer & Storage Co. v. I.C.C., 719 F.2d 1283, 1301 (5th Cir. 1983). The applicable statute here, section 432(h)(3) of the HEA, does not require an oral hearing. Moreover, an oral, trial-type hearing is necessary only when disputed facts exist which are material to issues within the scope of review. Sierra at 663-664. That will seldom be the case in the type of proceeding at hand.

The two issues upon which a disqualification proceeding should focus have been clearly identified. See, 20 U.S.C. 1078(b)(1)(T) and 55 Fed. Reg. 48335 (1990). Therefore, the review necessary for a disqualification should focus on these issues and involve an examination of the guaranty agency's termination action only to the extent necessary to address these particular issues. If the requirements addressed and the procedures applied by the guaranty agency are appropriately similar to those previously utilized under FISLP, the inquiry is at an end. Moreover, the school may not relitigate before the U.S. Department of Education the substantive merit of the agency findings.

Therefore, I (1) **AFFIRM** the result below, and (2) accept Education's invitation to clarify the disqualification process as described above.

This decision signed this 29 day of August, 1991.

Lamar Alexander

Washington, DC