



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
Chauffeur's Training School

Docket No. 92-113-SP
Student Financial
Assistance Proceeding

Decision of the Secretary

This matter comes before the Secretary on appeal, by the U.S. Department of Education, Office of Student Financial Assistance Programs (SFAP), of an "Order of Dismissal" issued by Judge Ernest C. Canellos (Hearing Official) dated December 3, 1993. In his Order of Dismissal, the Hearing Official determined that the final program review determination letter (FPRD) was not issued "by a designated ED official" as required by 34 C.F.R. § 668.112. In making this determination, the Hearing Official found that because the FPRD was signed by an ED employee who was subordinate to the designated ED official, the signing of the FPRD by the subordinate employee amounted to an improper attempted redelegation of authority precluded by Subsection (IX)(F) of the U.S. Education Department Departmental Directive A:GEN:1-104, Delegations of Authority, dated August 15, 1989.¹ The Hearing Official dismissed the case because the signature on the FPRD "constitute[d] a jurisdictional failure."

DISCUSSION

On appeal, SFAP moves the Secretary to adopt a decision reversing the Order issued by the Hearing Official and remanding this case for further proceedings.²

The salient facts and issues in the case at hand are substantially similar to the facts and issues in In the Matter of International Career Institute, Dkt. No. 92-144-SP, U.S. Dept. of Education (Decision of the Secretary February 16, 1994) (ICI), wherein a subordinate employee was designated to temporarily fill the position of Chief of the Institutional Review Branch and

¹Departmental Directive A:GEN:1-105 was renumbered A:GEN:1-104 on May 22, 1991 by Department of Education Transmittal Sheet 91-20, Pen and Ink Changes.

²The Secretary accepts jurisdiction over this appeal for the reasons recognized in ICI, infra.

during that time, signed a written notice of determination which ultimately gave cause for a hearing official's determination that the written notice had been improperly signed.

In the case at bar, a subordinate employee signed the FPRD for his immediate supervisor, the Chief of the Institutional Review Branch, the position delegated with the authority to issue FPRDs. The Chief designated the subordinate employee to serve in his stead during a temporary absence from the office. As in ICI, there is no basis in the record to conclude that anyone other than the Chief of the Institutional Review Branch made the actual decision to *issue* the written notice of determination. Therefore, this decision adopts and follows the Secretary's Decision in ICI, and finds that the FPRD was properly issued. Accordingly, the Secretary HEREBY REVERSES the Hearing Official's decision, reinstates the FPRD, and REMANDS this case to the Hearing Official for further proceedings.

So ordered this 16th day of February, 1994.


Richard W. Riley

Washington, DC