UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of	**Docket Number 92-121-ST**
	Student Financial Assistance
MR. ARNOLD'S EXCELLENCE BEAUTY SCHOOL,	**Proceeding**
Respondent	

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by the United States Department of Education (Department), Office of Student Financial Assistance Programs (SFAP) of the initial decision issued by the administrative judge (AJ) on January 3, 1994. Based upon an October 26, 1992, termination notice (Notice) and submissions related thereto, the AJ concluded, among other things, that Mr. Arnold's Excellence Beauty School (Mr. Arnold's) should not be terminated from the student assistance programs under Title IV of the Higher Education Act of 1965, as amended, (Title IV). The AJ Decision (AJ Dec.) at 5. However, the AJ ordered Mr. Arnold's to pay a $6,000 fine for violations identified below.

SFAP timely filed an appeal on February 3, 1994, asking the Secretary to terminate Mr. Arnold's participation in the Title IV programs and fine the school $65,900 for various violations. SFAP's Brief on Appeal (SFAP Appeal) at 34-35. Mr. Arnold's did not file a response to SFAP's appeal.[1] For the reasons outlined below, I affirm the AJ's decision, in part, and remand the decision, in part, for further consideration below.

BACKGROUND AND PROCEDURAL HISTORY

Mr. Arnold's is a proprietary institution of higher learning located in Miami Beach, Florida. AJ Dec. at 1. The school participates in the Pell Grant program authorized under Title IV. Id. At one time, the school participated in what was formerly known as the Guaranteed Student Loan program, but ultimately withdrew to avoid being terminated from that program due to a high cohort default rate. Id.

[1] Citing a change of counsel, Mr. Arnold's filed a motion requesting permission to submit a late response to SFAP's appeal. The motion was granted, but a response was never filed by Mr. Arnold's. See In the Matter of Mr. Arnold's Excellence Beauty Schools, Inc., Docket No. 92-121-ST, U.S. Dep't of Education (Order, August 18, 1994).

The Department conducted an audit at Mr. Arnold's campus between November 12-15, 1991. Id. According to the audit report, Mr. Arnold's: 1) failed to implement the default reduction measures outlined in 34 C.F.R. § 668, Appendix D (Appendix D); 2) falsified Ability-to Benefit (ATB) test answers; 3) failed to refund tuition and fees of students who withdrew; and 4) failed to serve as a Title IV fiduciary by not administering student aid programs properly. See id. at 2. SFAP issued the Notice, setting forth the foregoing allegations. Id. at 2. Mr. Arnold's timely appealed the Notice. Id. By letter dated April 30, 1993, SFAP notified Mr. Arnold's of an additional violation (i.e., Mr. Arnold's alleged failure to file a biennial compliance audit). Id.; see also SFAP Appeal at 18. The AJ held oral arguments in October 1993. Id.

The AJ dismissed the violation cited in SFAP's April 30, 1993, letter, ruling the issuance of the letter by unauthorized departmental personnel voided its contents. Id. at 2-3. The AJ then ruled that SFAP did not carry its regulatorily imposed burden of persuasion regarding the first, second, and fourth allegations listed above. Id. at 3-4. The AJ did rule that Mr. Arnold's failed to repay student refunds in a timely manner, and ordered the school to pay a $6,000 fine. Id. at 5. Now, SFAP appeals the AJ's decision.

DISCUSSION

SFAP argues that Mr. Arnold's should be terminated from the Title IV programs because Mr. Arnold's did not prove that it had diligently implemented the default reduction measures as required under Appendix D during the disputed award years.[2] SFAP Appeal at 5-12. SFAP notes the school's 1989 cohort default rate was 67.5%, while its 1990 rate was 77.9%. Id. at 6-7. In fact, these rates exceed the regulatory threshold rates of 60% and 55%, respectively, for those years. See 34 C.F.R. § 668.15(b). SFAP asserts the foregoing default rates are grounds for termination, unless Mr. Arnold's can demonstrate that it implemented corrective steps. SFAP Appeal at 8. Citing the record, SFAP claims Mr. Arnold's did not make that showing, nor did the AJ confirm that the school satisfied its evidentiary obligation. Id.

In his decision, the AJ summarily concluded SFAP did not demonstrate that Mr. Arnold's implemented the corrective measures of Appendix D. AJ Dec. at 4. However, SFAP correctly argues that Mr. Arnold's, not SFAP, is required to make such a showing.

[2] In addition to claiming Mr. Arnold's falsified ATB tests, SFAP argues the school's purported failure to serve as a Title IV fiduciary, and pay student refunds are grounds for termination. See,SFAP Appeal at 27; 9,n1; and 20.

("The administrative law judge shall find that [termination]. . . is warranted. . . except. . . if the institution demonstrates that it has acted diligently to implement the default reduction measures described in [Appendix D]." 34 C.F.R. § 668.90(a)(3)(iii)). Thus, this portion of the initial decision is remanded to the tribunal below for a ruling on whether Mr. Arnold's demonstrated that the school complied with Appendix D. If the tribunal rules Mr. Arnold's did not diligently act to implement Appendix D during the disputed award years, the school must be terminated from the Title IV programs, and may be fined accordingly.

Next, SFAP contends the AJ's dismissal of the additional violation identified in the April 30, 1993, letter was an error. Id. at 12, 18. The AJ ruled that letter a deficient notice because it was signed by a departmental employee who, despite being identified as the "acting" relevant supervisor, was not purportedly authorized to execute such a document on behalf of the supervisor who was authorized to execute similar documents. See AJ Dec. at 3.

At the time of this proceeding, other matters involving similar facts and issues were on appeal before me. I have since held that when a person assumes a particular departmental position on a "temporary" basis and thereafter executes documents, he or she may do so provided that he or she is exercising the authority delegated to that position. See In the Matter of International Career Institute, Docket No. 92-144-SP, U.S. Dep't. of Education, (Secretary's Decision, February 16, 1994). The individual in this case who issued the April 30th letter indeed served as the "acting" supervisor. Thus, the letter and the allegations therein were proper. Consequently, I reverse the AJ's ruling and remand the April 30th letter to the tribunal below for a ruling on its merits.

I shall withhold my decision as to whether the AJ correctly ruled Mr. Arnold's satisfied its Title IV fiduciary obligation, pending the review of the matters subject to remand. Finally, I affirm the AJ's other rulings. He correctly found that Mr. Arnold's did not falsify ATB test answers, and that the school failed to refund tuition and fees.

ORDER

I set aside and remand that portion of the AJ's decision pertaining to implementation of Appendix D. Furthermore, I reverse and remand the AJ's ruling pertaining to the April 30,

1993, letter of notification. Accordingly, the tribunal below shall review these rulings pursuant to my instructions herein. All other aspects of the AJ's decision are affirmed.[3]

So ordered this 18th day of July 1995.

Richard W. Riley

Washington, D.C.

[3] Any subsequent fine rendered by the tribunal below shall include the $6,000 fine imposed against Mr. Arnold's.

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