



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
Yorktowne Business Institute

Docket No. 92-33-ST

Student Financial
Assistance Proceeding

Decision of the Secretary

Yorktowne Business Institute (Yorktowne) has appealed the Initial Decision of Administrative Law Judge Paul S. Cross (ALJ) dated March 10, 1993. In the Initial Decision the ALJ determined that the violations committed by Yorktowne warranted termination of Yorktowne's participation in the federal student financial assistance programs of Title IV, Higher Education Act of 1965, as amended (SFA programs).

On appeal to the Secretary, Yorktowne argues that the ALJ erred in applying the Secretary's "new termination standard", adopted in 48 Fed. Reg. 45673 (1983), rather than the criteria for termination found in the preamble to ED's final regulations issued in 1978, 42 Fed. Reg. 64567 (1978). Yorktowne argues that because it was not continuing to violate the regulations, it could not be terminated under the 1978 standards.

DISCUSSION

Yorktowne's argument is flawed. The 1978 termination criteria and 1983 statement are compatible. The 1978 policy states:

The termination of an otherwise eligible institution's eligibility for student financial aid programs is an extremely serious measure. As a general matter, this procedure will be undertaken only when (1) an institution has consistently violated the statute and regulations governing the aid programs and the standards of financial responsibility and administrative capability, and (2) attempts to remedy this situation have failed.

The 1983 statement states, in relevant part:

The designated ED official need not show continuing improper administration, or the continuing inability or unwillingness of an institution to properly administer the programs or account for funds.

The 1978 termination criteria remains the general rule to be applied in termination proceedings. However, the 1983 statement complements the 1978 criteria. In general, the 1978 criteria should be followed, but when an institution's violations are sufficiently egregious the 1983 statement is relevant.

In the case at hand, the ALJ found the regulatory violations committed by Yorktowne to be sufficiently egregious to justify immediate termination.

The ALJ's Initial Decision is affirmed as the final decision of the Department. The violations committed by Yorktowne justify termination of Yorktowne's eligibility to participate in the SFA programs and the imposition of a fine in the amount of \$214,900.

So ordered this 1st day of July, 1993.


Richard W. Riley

Washington, D.C.

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