



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

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In the Matter of  
Southeastern University

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Docket No. 93-61-SA

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 October 22, 1993. In his Order of Dismissal, the Hearing Official determined that the final audit determination letter (FAD) 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 FAD was signed by an ED employee who was subordinate to the Acting designated ED official, the signing of the FAD 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.<sup>1</sup> The Hearing Official dismissed the case because the signature on the FAD "constitute[d] a jurisdictional failing."

### 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.<sup>2</sup>

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 16th, 1994) (ICI), wherein a subordinate employee was designated to temporarily fill the position of Chief of the Institutional Review Branch and

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<sup>1</sup>Departmental 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.

<sup>2</sup>The 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 FAD for her immediate supervisor, the Acting Chief of the Audit Review Branch, the position delegated with the authority to issue FADs. The Acting Chief designated a subordinate individual to serve in her stead during a temporary absence from the office.<sup>3</sup> As in ICI, there is no basis in the record to conclude that anyone other than the Acting Chief of the Audit 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 FAD was properly issued. Accordingly, the Secretary HEREBY REVERSES the Hearing Official's decision, reinstates the FAD, and REMANDS this case to the Hearing Official for further proceedings.

So ordered this 16th day of February, 1994.

  
Richard W. Riley

Washington, DC

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<sup>3</sup>Unlike in ICI, the document designating the subordinate employee to act in the stead of her immediate supervisor is not part of the record in this case. Instead, a declaration is in the record which purports to support SFAP's position that a written designation was made, but subsequently destroyed. The Hearing Official found it significant that the declaration contained the words "delegate," "delegation," or "delegated" seven times. However, the declaration should not be construed against SFAP based on its language because it is not the actual written designation. In fact, the declaration was prepared, as SFAP concedes, in the course of this litigation. Notably, neither the Hearing Official nor the Respondent disputed SFAP's contention that the Acting Chief designated her subordinate employee to act in her stead while she was temporarily out of the office.

SERVICE

A copy of the attached decision was sent to the following:

Stanley A. Freeman, Esq.  
White, Verville, Fulton & Saner  
1156 Fifteenth Street, N.W.  
Washington, DC 20005

Russell B. Wolff, Esq.  
Office of the General Counsel  
U.S. Department of Education  
Room 4083, FOB-6  
400 Maryland Avenue, S.W.  
Washington, DC 20202-2110