



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

92-144-SP
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REPRODUCED AT THE NATIONAL ARCHIVES

IN THE MATTER OF

Docket No. 92-144-SP

INTERNATIONAL CAREER INSTITUTE,

Student Financial
Assistance Proceeding

Respondent.

ORDER OF DISMISSAL

On November 2, 1993, I issued an Order to Show Cause, requiring Counsel for Student Financial Assistance Programs (SFAP) to establish that the final program review determination letter (FPRD) in this proceeding, issued on October 23, 1992, was properly issued. In the meantime, the Respondent filed a Response requesting that the proceeding be dismissed.

The facts in this case are clear. Robert J. McKiernan had been designated as the Chief of the Institutional Review Branch, Region II, the person charged with the responsibility for issuing FPRDs. Thereafter, on October 19, 1992, Mr. McKiernan issued a memorandum in which he "designated" one of his subordinates, William J. Swift, to assume the duties of Acting Branch Chief while he was on leave between October 20-23, 1992. It was during this period, that Mr. Swift signed the subject FPRD.

Respondent's position is the FPRD was not properly issued by the authorized individual and that Mr. McKiernan's attempt to transfer authority to his subordinate constituted a prohibited redelegation. SFAP's position is that Mr. McKiernan could "designate" one of his subordinates to carry out the duties of the Institutional Review Branch Chief and this would not constitute a prohibited redelegation.

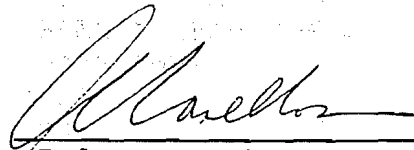
I note that the Delegation of Authority to the position of Chief, Institutional Review Branch, provides "(t)his authority may not be redelegated." Furthermore, U.S. Education Department Departmental Directive A:GEN:1-105, Delegations of Authority, dated, August 15, 1989, Subsection IX. F., "Authority to Redelegate" provides that any authority may be redelegated unless precluded by the original delegation.

Regardless of whether a designation or temporary assignment of duties was being attempted here, this was, in essence, an attempted redelegation of authority which was specifically precluded by the reservation against further delegation in the original Delegation. The facts lead to the conclusion that Robert J. McKiernan was the Designated Departmental official and any attempt to confer that authority on Mr. Swift was ineffective. For further discussion on this issue, see Long Beach College of Business, U.S. Dept. of Education, Docket No. 92-132-SP (November 30, 1993), and cases enumerated therein.

This determination is bolstered by other facts. First, the "designation" was not accomplished by the same official that had designated Mr. McKiernan originally and, second, the attempted issuance of the FPRD was in the name of Mr. McKiernan, not Mr. Swift. It is also significant to note that the original delegation provides if the Designated Departmental official is recused because of a conflict of interest, then the supervisor of that official will issue the final determination letter.

I FIND that SFAP has failed to establish that the FPRD was issued by the proper authority and this constitutes a jurisdictional failure. Accordingly, the FPRD is dismissed and returned to the Department for any further action it deems to be appropriate.

SO ORDERED.



Judge Ernest C. Canellos

Issued: December 1, 1993
Washington, D.C.