IN THE MATTER OF DENVER PARALEGAL INSTITUTE,
Respondent.

Docket No. 92-86-SP & 92-87-SA
Student Financial Assistance Proceeding

ORDER RE RECONSIDERATION

On March 14, 1994, this tribunal issued a decision which ordered Denver Paralegal Institute (DPI) to pay a sum of $185,764 to the United States Department of Education. This decision resolved several disputes between the parties that arose following an audit and program review which concluded that DPI had certified ineligible and excess Stafford and Supplemental Loans for Students. Subsequent to the issuance of the decision, DPI filed a motion for reconsideration which noted, correctly, that the primary issue -- whether DPI students were entitled to Stafford loans at the second-tier level available to third year or above undergraduates -- was resolved based upon an interpretation of 20 U.S.C. § 1075(a)(1)(A) which was not urged by DPI or the Department's Office of Student Financial Assistance Programs (SFAP).

In its motion for reconsideration, DPI requested, inter alia, an opportunity to address this interpretation. While the rules governing audit proceedings are silent on this matter, such a request was appropriate under the circumstances in this case and, accordingly, the tribunal granted DPI's motion. In support of its motion for reconsideration, DPI's supplemental brief raises three arguments. For the reasons set forth below, the tribunal reaffirms the decision.

Initially, DPI argues that SFAP's program review determination, which sought the recovery of overawards of Stafford loans under 20 U.S.C. § 1075(a)(1)(A), must be reversed because the tribunal rejected SFAP's interpretation of this statute in the program review. According to DPI, the tribunal may only uphold the program review determination on the same basis asserted in the program review. Hence, where the tribunal's interpretation of the relevant statute differs from that advanced in the program review determination and yet upholds the assessment of the proposed liability, the tribunal may not, according to DPI, impose the liability. Its only recourse is to reverse the program review determination.

The program review determination raised the issue regarding the

appropriate funding level for student loans under 20 U.S.C. § 1075(a)(1)(A). Thus, DPI was apprised of the issue and its pertinent facts. While DPI and SFAP urged different constructions of 20 U.S.C. § 1075(a)(1)(A) before the tribunal, the tribunal adopted yet another interpretation of this statute. There are occasions, such as this one, when a tribunal will resolve an issue on a basis not advocated by one of the parties. Such action does not affect, however, the administrative process. Notice of the issue has been given to the institution and the institution has

provided its views regarding the matter. The tribunal's decision represents, at this point within the administrative process, the Department's current view regarding this issue. Hence, a reissuance of a program review determination is inappropriate.

DPI argues that In re Sara Schenirer Teachers Seminary, Dkt. No. 94-8-EA, U.S. Dep't of Education (March 28, 1994) supports its view that the only recourse for the tribunal is to reverse the program review determination. In Sara Schenirer, SFAP sought to impose an emergency action against the Seminary. According to the opinion, the emergency action was based upon the Seminary's purported failure to qualify as an eligible-type institution under 20 U.S.C. §§ 1141(a) or 1088(c), on the theories that it lacked proper accreditation and that it did not provide a program to prepare students for gainful employment. The designated deciding official found that the Seminary was accredited and that it offered at least two programs which were eligible programs. Thus, the designated deciding official determined that the Seminary had established that the emergency action was not appropriate and disapproved the action.

As an aside, the designated deciding official indicated that the evidence "suggests" that the students enrolled in ineligible programs "may have received Title IV funds, however, as SFAP opted to apparently not pursue this issue by this emergency action, and since my jurisdiction is limited to such action, I leave this issue for a more appropriate forum." Id. at 3. Thus, the designated deciding official made no finding regarding whether any students in the ineligible programs had received Federal funds. Hence, his reversal of the emergency action was not related to this issue. As such, Sara Schenirer does not mandate the course of action sought by DPI.

DPI's second contention concerns its estoppel argument. DPI argues that it processed its students as fifth year undergraduates entitled to the higher, second-tier loan amount in accordance with the guidance and instructions from its guaranty agency, the Colorado Student Loan Program (CSLP), which was acting as the agent of the Department. Therefore, according to DPI, SFAP is estopped from asserting that DPI acted improperly in processing the student loans at the second-tier loan level amount.

In its motion for reconsideration, DPI argues that CSLP's advice was given following DPI's full disclosure of the facts that some of its students had only 1½ years of college. Specifically, DPI argues the CSLP and the Department were aware of DPI's admission policies by virtue of ED's July 1983 program review and CSLP's March 1985 program review. The first program review focused, in part, on the proper classification of its students as graduates or undergraduates. In the second program review, DPI provided CSLP, as part of the audit process, a current catalog which outlined its admission requirements. Based on these events, DPI implies that CSLP and Department were aware that some of its students had less than two years of college education.

This information does not alter the conclusion previously reached by the tribunal which rejected DPI's estoppel argument. The critical factor is the written information provided by the institution to the representative of CSLP or Department upon whose advice the institution seeks to rely. The information provided must be full and complete. It cannot be expected or required that a representative of Department or CSLP will research and review any records of their respective organizations prior to responding to a request for advice. Such a standard would impose an

enormous and improper burden upon the Department and the guaranty agencies. Thus, it is the duty of the party seeking advice to set forth all of the pertinent facts in its request. Unfortunately, this did not happen in this case.See footnote 1 1/

Lastly, DPI asserts that most or all of its students were entitled to the higher or second-tier loan amounts under 20 U.S.C. § 1075(a)(1)(A). It argues that 85% of its students qualified for second-tier loans since, prior to their admittance to the DPI program, they had completed fours years of college, two years more than the minimum required for second-tier loans. DPI also maintains that students admitted with 1½ years of college and 3 years of legal experience also qualified as these students had the equivalent of at least 2 years of college for purposes of studying to become a paralegal on the theory that alternative eligibility requirements in the American system of education are "simply accepted as an equivalent of the other."

Although not addressed by DPI, it presumably believes that its students admitted with 1½ years of college and an employer's sponsorship also qualify for the second-tier loans.

For the majority of the period in issue, DPI's program had three different academic admission requirements that exceeded the typical undergraduate program requirement, which is a high school diploma. Moreover, its academic admission requirements were insufficient to qualify its program as a graduate program. Unlike students who transfer undergraduate programs, receive differing amounts of credits toward their new programs, and, therefore, need differing amounts of additional credits to complete their new programs, DPI students took the same course load regardless of the criterion under which they were admitted to the program. The absence of a reduced load for the more academically advanced students indicates that DPI's program treated all students as academically equal at the beginning of the program.

It is then, in this context, that the question arises as to which academic admittance requirement establishes the academic level of DPI's program for purposes of the Stafford loans. The highest academic admittance requirement was a baccalaureate degree. The lowest requirement was 1½ years of college plus an employer's sponsorship.See footnote 2 2/ The sponsorship aspect does not add to a student's level of academic education. Thus, these students possess insufficient education to qualify under the statute for the second-tier loan level. As such, the highest academic requirement would allow these students access to loan amounts which they could not otherwise obtain. Therefore, the lowest academic requirement must govern in order to maintain the integrity of the statute. Accordingly, DPI's students are not entitled to second-tier Stafford loans.

In view of the above, DPI's motion for reconsideration is denied and the prior decision is reaffirmed.

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Allan C. Lewis
Administrative Law Judge

Issued: June 15, 1994
Washington, D.C.

Footnote: 1 *1/ In its reply to DPI's motion for reconsideration at 14- 16, ED argues, for the first time, that the doctrine of estoppel may not be applied against the Federal government. It is inappropriate to address this argument. A reply to a motion for reconsideration, like the motion for reconsideration, is not to be used as a means "to put forward additional arguments which it could have made but neglected to make before judgment." McDowell Oil Serv. v. Insterstate Fire and Casualty Co., 817 F. Supp. 538, 541 (M.D. Pa. 1993); Davis v. Lukhard, 106 F.R.D. 317, 318 (E.D. Va. 1984), vacated on other grounds, 788 F.2d 973 (4th Cir. 1986).*

Footnote: 2 *2/ During the remaining period, this requirement was further reduced and only a high school diploma was required.*