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

In the Matter of

NATIONAL EDUCATION CENTER,
BRYMAN CAMPUS,

Respondent.

Docket No. 94-95-SP

Student Financial
Assistance Proceeding

PRCN: 93101008

DECISION ON REMAND

On April 3, 1996, the Secretary of Education remanded this case for clarification of whether Administrative Law Judge Reilly affirmed the respondent's pro rata refund policy when he ruled in the school's favor. The Secretary reserved his certification of Judge Reilly's decision until that point is clarified. Administrative Law Judge Reilly is now retired and the question was assigned to the undersigned.

After July 23, 1992, all Title IV institutions are required to disburse fair and equitable refunds. which include pro rata refunds when appropriate. to its first time students who withdraw from the institution. Sections 484 B and 485 (a) of the HEA of 1992. Publ L. 102-325. 106 Stat. 619 The Secretary holds in his remand decision that a refund policy is consistent with the statute if it applies to ail first time students no matter when they enrolled if they withdraw after the amendments were enacted. July 23, 1992. Judge Reilly's analysis of the statute and regulations coincided with that of the Secretary.

In answer to the Secretary's question. Judge Reilly did not affirm respondent's pro rata refund policy, or determine whether its application was consistent with the statute and the regulations. Moreover, it cannot be made now because the record does not identify the first the students who withdrew from respondent after July 23, 1992. The record does reflect that the respondent's refund policy was not consistent with the regulations and the law because it provided a pro rata refund upon withdrawal only if a student's period of enrollment began on or after July 23, 1992, the date on which Section 484 B of the Higher Education Act of 1965 was amended. Respondent's refund policy did not provide refunds to first time students who had enrolled before July 23, 1992, as required by the regulations. 1/

It should also be noted that in the ordinary course, this issue would not have been decided by this office since SFAP did not assign liability to respondent in its finding but sought an informal fine of $12,000. Despite the lack of a finding of liability, Judge Reilly granted the parties' request that he resolve the issue.

Edward J. Kuhlmann
Administrative Law Judge

Date: April 24, 1996

1/ The question that Judge Reilly decided was whether SFAP had applied the correct legal standard in its review of respondent's refund program. He found that SFAP had applied the wrong legal standard since it did not limit its review of respondent s refund policy to first time students who withdrew after July 23.1992. It is for this reason also that the record does not contain the relevant facts.