

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

APPLICATION OF THE
STATE OF VERMONT DEPARTMENT OF LIBRARIES,
Applicant.

Docket No. 91-23-R

Recovery of Funds Proceeding

ACN: 01-93239

DECISION

Appearances:

Patricia E. Klinck, State Librarian, for the State of Vermont Department of Libraries.

Daphna Crotty, Esq. Office of the General Counsel, U.S. Department of Education, for the Assistant Secretary for Educational Research and Improvement. Jeffrey C. Morhardt, Esq. Office of the General Counsel, U.S. Department of Education, for the Director, Office of Financial and Management Control.

Before:

Judge John F. Cook

OPINION

On March 29, 1991, a preliminary departmental decision (disallowance decision) was issued and sent to the "Honorable Richard P. Mills, Ph.D., Commissioner of Education, State Department of Education" of the State of Vermont. This decision, referring to Audit Control No. 01-93239, was issued by the Director of the Office of Financial and Management Control, U.S. Department of Education and also contained a determination by the Assistant Secretary for Educational Research and Improvement, enclosure 3.

The Commissioner of Education of the State of Vermont sent a copy of the disallowance decision to the State of Vermont Department of Libraries. On April 23, 1991, an Application for Review was filed by the State of Vermont Department of Libraries. This related to enclosure 3 to the disallowance decision. In that enclosure the auditee was listed as "State of Vermont-Department of Libraries(State Library)."

34 C.F.R. § 81.28 provides that the administrative law judge determines whether the notice of a disallowance decision meets the requirements of 34 C.F.R. § 81.24. If it does not meet those requirements the judge returns the notice of disallowance decision to the authorized Departmental official who made the disallowance decision and gives the official the reasons why the notice does not meet the requirements of 34 C.F.R. § 81.24. The judge is also required to inform the recipient of his decision by certified mail, return receipt requested. The regulation also provides that the authorized Departmental official may modify and reissue a notice that a judge returns.

34 C.F.R. § 81.24 requires that the official give the recipient written notice of a disallowance decision if the official decides that the recipient must return funds under 34 C.F.R. § 81.20. Enclosure 3 contains a determination of the Assistant Secretary for Educational Research and Improvement that the recipient, State of Vermont Department of Libraries, must remit funds in the amount of \$4,961.00 to the U.S. Department of Education.

In this case the disallowance decision was addressed to and given to the Commissioner of Education of the Vermont State Department of Education rather than the State of Vermont Department of Libraries which is the actual recipient in this case. Therefore, the notice of disallowance decision failed to meet the requirements of 34 C.F.R. § 81.24 in that it was not addressed to the actual recipient. In addition the authorized Departmental official did not give the actual recipient written notice of the disallowance decision.

On May 24, 1991, an order was issued by the undersigned to the Director of the Office of Financial Management Control and the Assistant Secretary for Educational Research and Improvement to show cause why the disallowance decision should not be returned to such officials and the proceeding be dismissed so that such officials may modify the decision and thereafter reissue such decision to the actual recipient.

On May 30, 1991, counsel for each of the above mentioned U.S. Department of Education officials filed a request that this proceeding be dismissed without prejudice to permit the disallowance decision to be reissued to both proper addressees.

ORDER

Based on the foregoing findings and conclusions, IT IS ORDERED:

1. That this proceeding be DISMISSED, without prejudice; and
2. That the attached disallowance decision, as filed in this case, be returned to the authorized Departmental officials who made the decision so that it may be reissued to the proper addressees.

John F. Cook
Administrative Law Judge

Issued: June 6, 1991
Washington, D. C.