APPLICATION OF THE FLORIDA DEPARTMENT OF EDUCATION,
Applicant.

Docket No. 92-51-R
Recovery of Funds Proceeding
ACN: 04-03223

DECISION

Appearances: Michael Brustein, Esq., Kristin E. Hazlitt, Esq.,
Brustein & Manasevit, for the Florida Department
of Education.

Jeffrey R. Rosen, Esq., Office of the General Counsel, U.S. Department of Education, for the
Regional Commissioner, Rehabilitation Services
Administration, Region IV.

Before: John F. Cook, Chief Administrative Law Judge

OPINION

On March 31, 1992, a Notice of Preliminary Departmental Decision (Notice of Disallowance Decision) was issued by the Office of Special Education and Rehabilitative Services and the Audit Review Branch, Division of Audit and Program Review, Office of Postsecondary Education, U.S. Department of Education (ED) and forwarded to the Chancellor of the State University System of Florida (Florida). An Application for Review from the Florida Department of Education was received in the Office of Administrative Law Judges on May 1, 1992.

An analysis of the notice of disallowance decision reveals inaccuracy and ambiguity such that it is not possible to know what actual amount or amounts of money the authorized Departmental official is seeking for recovery. More specifically the determination of March 31, 1992 states that:

The following amounts are being disallowed by the Office of Special Education and Rehabilitation Services in this program determination letter.

Enclosure 4 B $1,919

However Enclosure 4B does not appear to contain any reference to an amount of money which is "being disallowed."

Enclosure 4C however does contain references to various amounts of money. Under Audit Finding No. 1 the RSA Determination states, in part: "we are requesting the repayment of $806.94. . . ." Also under Audit Finding No. 4 the RSA Determination states, in part: "we are requesting repayment in the amount of $1,929.31 ($488.50 and $1,430.81)."

Even though Finding No. 4 seeks recovery of $1,929.31, it is true that the two amounts in the parenthesis add up a $1,919.31. However, when the request for payment of an additional $806.94 under Finding No. 1 is considered, it is not possible to reconcile these amounts with the basic statement as to the amount being sought for recovery contained in the "program determination letter" of March 31, 1992 signed by Ethelene R. Hughey.

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.

In this case, because of the multiple inaccuracies as to the amount or amounts of money which are sought for recovery and as
to the enclosures which form the foundation for the determination, the recipient cannot know with any reasonable

certainty what is actually claimed. The recipient consequently cannot know, with any reasonable certainty, what actual claim is alleged, against which it must defend itself. Further, the state of the record is such that the tribunal cannot know what the actual claim is.

Therefore, the notice of disallowance decision failed to meet the requirements of 34 C.F.R. § 81.24 in that it did not, with any reasonable certainty, state a prima facia case for the recovery of funds.

On May 22, 1992, an order was issued by the undersigned to counsel for the Regional Commissioner, Rehabilitation Services Administration, Region IV, of the U.S. Department of Education to show cause why the disallowance decision should not be returned to such official and the proceeding be dismissed without prejudice so that such official may modify the decision and, thereafter, reissue such decision so that it will be free from inaccuracy and ambiguity.

On June 9, 1992, counsel for the Regional Commissioner, Rehabilitation Services Administration, Region IV, filed a motion that this recovery of funds proceeding be dismissed without prejudice to permit the disallowance decision to be reissued.

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 so that a clear prima facie case may be stated.

John F. Cook
Chief Administrative Law Judge

Issued: June 25, 1992
Washington, D. C.

Distribution: Applicant/Representative

Authorized Departmental Official/Representative

OGC Operations Management Staff

Chief, Loans and Accounts Receivable Branch
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SERVICE

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

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