

IN THE MATTER OF UNITED GER INSTITUTIONS,
Respondent.
Docket No. 94-110-SP
Student Financial Assistance Proceeding

DECISION

Appearances: Leigh M. Manasevit, Esq., and Kristin E. Hazlitt, Esq., of Brustein & Manasevit, Washington, D.C. for United Ger Institutions.

Russell B. Wolff, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Judge Richard I. Slippen

BACKGROUND

On June 17, 1994, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a Final Program Review Determination (FPRD) finding that during a four year period, commencing September 1989, United Ger Institutions (UGI) received \$18,800.00 in Pell Grants for two students who allegedly never attended UGI's branch in Israel. The FPRD was issued following an unannounced visit to the home of Student A and Student B, who are husband and wife, in Jerusalem, Israel, on January 19, 1993. During this visit, ED program reviewers asked Student B, the wife, a series of questions about her and her husband's status as students at a school called "United Ger Institutions." At this initial visit, Student B wrote and signed an affidavit stating that she had never heard of United Ger Institutions and that she and Student A had not attended classes beyond high school. ED program reviewers made a second visit to the home of Student A and Student B approximately 45 minutes after the initial visit. The ED program reviewers were prompted to make this second visit after realizing that UGI had recently started to use the name "Moreshet" and wanted to ask about attendance at an institution using that name.

At this subsequent visit Student B was agitated and upset about the statement that she had previously rendered to ED program reviewers. In the time between visits, Student B claims that she phoned her husband, Student A, who had discussed with her the instruction that she and her husband were in fact receiving at UGI. Student B informed the ED program reviewers that she was indeed continuing her education and asked to have her previous affidavit returned. Student B then stated to the ED program reviewers that they had caught her "off guard" and that she took bible study classes at UGI. ED Ex. 3, Affidavit of Program Reviewer Barbara Wingel. The ED Program Reviewers refused Student B's request to return her previously signed affidavit, but did give Student B the opportunity to amend her earlier affidavit. Student B declined the opportunity to make any changes to her earlier statement and continued to recant her previous declarations. Subsequent to this visit, ED program reviewers sent a letter to Student B on January 27, 1993, memorializing their visit. Student B answered this letter on February 4, 1993, reaffirming her contention that her initial statement was false and that she and her husband were "full-time students at United Ger Institutions/Moreshet." UGI Ex. 6, Letter of Student

B. Based upon these facts, this matter comes before this tribunal for determination of UGI's appeal of the FPRD. 34 C.F.R. Part 668, Subpart H (1994). For the reasons stated below, I find for the Respondent.

DISCUSSION

I.

This case involves the resolution of a single issue. Whether the statement of Student B is an accurate account of the status or non-status as students at UGI of Student B and her husband, Student A. SFAP contends that Student B's original affidavit, obtained by ED program reviewers, is a truthful statement revealing that she and her husband were not students at UGI during the four year period in which UGI received Pell funds for Students A and B. Regarding the first affidavit, SFAP argues that Student B "knowingly, willingly and freely rendered a written statement, since the information she was providing was the truth." SFAP Reply Brief at 2. SFAP asserts that Student B's subsequent recanting of her signed statement and changed story emanated from learning of the "significance of her admissions," following a conversation with her husband. *Id.* SFAP contends, therefore, that \$18,800.00 was improperly disbursed to UGI as a result of representations that the husband and wife were students. Accordingly, SFAP argues that the FPRD is supportable in its entirety, and that liabilities in the amount of \$18,800.00 should be assessed against UGI.

In response to SFAP, UGI asserts that the weight of the evidence demonstrates that Students A and B were students at UGI during the four years in question. Furthermore, UGI contends that Student B's first, and subsequently withdrawn statement to the ED program reviewers, was a product of confusing questioning and intimidating investigative tactics. The "[d]epartment has based a claim of fraudulent file keeping on one retracted hand-written note while purposing [sic] ignoring extensive student files, signed affidavits of each student, and signed affidavits of each student mentor." UGI Brief at 8. Despite SFAP's arguments to the contrary, I am persuaded by UGI's voluminous evidence that students A and B attended UGI during the years in issue. The record contains admission applications, grade reports, and affidavits of mentors (teachers) attesting to the students' participation in UGI's program. SFAP has not rebutted any of this evidence resting instead, on the validity of the first affidavit of Student B that she and her husband were not UGI students. I find, therefore, that UGI has met its burden of proof by coming forward with unrebutted evidence that Students A and B were students at UGI and that Pell Grant awards to the husband and wife were properly dispensed and administered. 34 C.F.R. § 668.116(d) (1994).

II.

In response to Respondent's request for an oral argument, or in the alternative, an evidentiary hearing, I find that neither an oral argument nor an evidentiary hearing in this matter is warranted. 34 C.F.R. § 668.116(b) and 34 C.F.R. § 668.116(g) provide the basis for UGI's assertion that it is "entitled" to an oral presentation of the evidence. The hearing process calls for the submission of written briefs by each party. 34 C.F.R. § 668.116(b). The hearing official has discretion to determine if an oral argument is necessary. The oral argument, if granted, is

intended to "clarify the issues and positions of the parties as presented in the parties' written submissions." 34 C.F.R. § 668.116(g). Thus, UGI's assertion that it is "entitled" to an evidentiary hearing to clarify the sole issue of Student B's credibility is a tenuous reading of the regulations.

The granting of an oral argument is a determination made by the hearing official on a case by case basis. Whether a party's request for some kind of evidentiary hearing is permissible under the regulations is an issue that need not be decided in this case. In the present matter, the weight of evidence in the written record is more than sufficient to support UGI's position and I find no reason to consider my authority, under the regulations, to grant the requested oral hearing or an evidentiary hearing. This tribunal finds, therefore, that it needs neither an oral hearing nor an evidentiary hearing to rule in the instant matter. [See footnote 1 1/](#)

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that United Ger Institutions is relieved of any obligation to repay funds to the United States Department of Education.

Richard I. Slippen
Administrative Judge

Issued: June 13, 1995
Washington, D.C.

[Footnote: 1 1/](#) The Respondent filed a Motion to Strike the Reply Brief of SFAP asserting that the brief contained, among other things, ad hominem personal attacks. I find that the somewhat overzealous language used in SFAP's Reply Brief was within the bounds of proper advocacy and I, therefore, deny Respondent's motion to strike.