IN THE MATTER OF BLAINE HAIR SCHOOL,
Respondent.

Docket No. 94-129-SP
Student Financial Assistance Proceeding

Appearances: Leslie H. Wiesenfelder, Esq., of Washington, D.C., for Blaine Hair School.

Sarah L. Wanner, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education, Washington, D.C.

Before: Judge Ernest C. Canellos

DECISION

Blaine Hair School (Blaine) is a proprietary school located in Lowell, Massachussets. Blaine appeals a final program determination letter (FPRD) of June 14, 1994, issued by the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED), only one finding of which remains for adjudication. That finding alleges that Blaine incorrectly implemented the refund requirements enacted under the Higher Education Amendments of 1992, which became effective on July 23, 1992, the date of its enactment. The FPRD identified eight students as having a refund due for a total liability of $5,441. Those students were identified with specificity by name, Social Security number, loan program, and refund amount owed.

Blaine's position is that it acted correctly in applying the refund requirements of the 1992 Amendments only to those students who began their first enrollment on or after July 23, 1992. Blaine contends that such was a reasonable construction of the statute in the absence of any guidance from ED. Blaine claims that applying the new refund policy to students who had already begun attending class before July 23, 1992, would be to alter the refund policies that were contractually agreed to and would impermissibly give retroactive effect to the statute. Citing, Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988). Blaine also contends that it made good faith efforts to ascertain ED's interpretation of the new refund policy and to implement it based on such guidance. It faults ED for lack of guidance and claims that even the "Dear Colleague" letter which ED issued in October of 1992, does not provide guidance on the subject. Blaine further argues that at least one guaranty agency (Education Assistance Corporation in South Dakota) interpreted this provision of the 1992 Amendments to apply only to enrollments beginning on or after July 23, 1992. Blaine asserts that the guaranty agency is ED's agent in endorsing the interpretation Blaine makes.

SFAP maintains that the refund policy requirement of the 1992 Amendments was to be effective "on the date of enactment" and there is no justification for reading in an enrollment-date limitation. SFAP disputes any retroactivity problem since the refund policy only applies to refunds made on or after enactment. Also, Blaine's asserted defense of "good faith" efforts to determine the meaning of the provisions does not excuse its failure to pay the refunds because there is nothing in the statutory provision which sets forth a "good faith" exception to the obligation to pay refunds under the new statutory scheme.

DISCUSSION

The facts in this case do not appear to be in dispute. The refund provisions of the Higher Education Act of 1965, as amended (HEA), prior to July 23, 1992, were followed by Blaine in the cases of the eight students referenced above; the refund provisions required by the amendments were not followed by Blaine in those cases; the refund provisions of the amendments are more favorable to the students involved; and, by not applying these more favorable rules, Blaine realized a gain of $5,441.

This case involves a narrow question of law - what does the statute provide as to how Congress intended the new refund policy to be applied. It is not ED's interpretation or guidance which is at issue here because a question of statutory construction arises only where ambiguities are present and the plain meaning of the statute cannot be determined. That problem is not apparent in this case because the statutory provisions are abundantly clear.

It is uncontroverted that, on July 23, 1992, as part of the 1992 Amendments to the Higher Education Act of 1965, Congress enacted P.L. 102-325, § 485(a), adding to the HEA, amended Section 484B, 20 U.S.C. § 1091b. This legislation expressly provided that Section 484B "shall take effect on the date of enactment of this Act." See Effective Dates for 1992 Acts at 20 U.S.C. §1088. Section 484B mandates a fair and equitable refund policy under which institutions are to make refunds to students - the intent is to provide the largest refund amount due the student under one of three enumerated refund situations. The statutory purpose here is to give the greatest degree of protection to students in their refund returns. Blaine's assertion that an enrollment-date limitation applies flies in the face of the purpose of the statute of insuring such protection to the students who qualify for refunds.

Further, the operative date for determinations relative to refunds is the date a student withdraws. No other date is pertinent. Applying the new refund requirements to any student who withdraws as of the date of enactment is consistent with the plain meaning of the statute. There is no legal justification for Blaine to disallow the refund policy advantages to students because they enrolled prior to, rather than on or after, July 23, 1992, so long as they withdrew after that date.

Blaine offers nothing of substance to support its contention that there are ambiguities in the statutory language. The language is clear and unambiguous. It is readily discernable that the refund policy was meant to be applied to any student who withdraws on or after July 23, 1992.

Blaine's argument that retroactive application is being given to the refund policy provisions is simply inaccurate. The changes in policy under the amendments are applied prospectively to those who qualify for a refund. Finally, Blaine tries to validate its position because of ED's lack of guidance on how the pro rata refund policy was to be applied. Blaine points out that one guaranty agency interpreted the language the same as it did. Yet, Blaine is silent about what all the other guaranty agencies, including its own, did or said about applying the refund policy. Clearly, it would have been more reasonable for Blaine to have adopted and followed its own guaranty agency's position. In any event, the "reasonable efforts" claim is not a consideration here because the statute is unambiguous.

Accordingly, under the circumstances, Blaine has not met its burden of proving that the refunds owed the eight enumerated students totalling $5,441 were lawfully paid under the amended refund provisions. Blaine is, therefore, directed to repay the liability as set forth in the FPRD.

SO ORDERED.

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Ernest C. Canellos
Chief Judge

Issued: January 31, 1995
Washington, D.C.