



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of)

GULF COAST TRADES CENTER)

Docket No. 89-16-S

Student Financial
Assistance Proceeding

FINAL DECISION OF THE SECRETARY

On July 11, 1990, Administrative Law Judge Daniel R. Shell ("ALJ") issued his Initial Decision in the above-cited case. A decision by the Secretary remanding the case in part to the ALJ for additional action was issued on October 19, 1990. On November 21, 1990, the ALJ issued his Decision on Remand from the Secretary. The case is now before me for final decision.

The October 19, 1990, decision of the Secretary included three findings on appeal. First, the ALJ's finding that the Gulf Coast Trades Center ("Center") was legally authorized by the State of Texas to provide a program of education beyond the secondary level was affirmed. Second, it was determined that the weight of the evidence failed to demonstrate that the courses offered by the Center were postsecondary in nature. This second finding was accompanied by an instruction to the ALJ to consider, on remand, whether, under the circumstances, there was any impropriety in the Center's contemporaneous receipt of both Title IV funds and Chapter 1 assistance. Third, the ALJ was instructed to address on remand the question of the Center's eligibility to participate in Title IV programs within 20 calendar days of the Secretarial decision.*

* The ALJ failed to address the issue of revocation in his July 1990, decision, but, nevertheless, summarily ordered that the Center be retroactively reinstated as an institution eligible to participate in Title IV programs. See Initial Decision, pg. 30. The ALJ eventually issued his decision on the revocation issue on November 21, 1990.

Fourth, the ALJ was instructed to follow the Department's regulations as written and to adhere, specifically, to 34 C.F.R. 669.117(a). ["...the administrative law judge is bound by all applicable statutes and regulations. The administrative law judge may not- (1) Waive applicable statutes and regulations. . . ."]

On Remand, ALJ Shell made the following determinations. First, the ALJ found that revocation of the Center's eligibility to participate in Title IV programs was not warranted. Second, the ALJ noted his disagreement with a Secretarial comment regarding the deference owed to Departmental regulations which are properly drafted and promulgated pursuant to the mandates of the Administrative Procedure Act. Third, the ALJ determined that the Center's receipt of Title IV funds was improper. The ALJ concluded by determining that the Center must refund \$1,336,474 to the Department for funds received from March 14, 1984, through June 19, 1988.

* * * * *

I have carefully reviewed the current briefs of the parties, and reexamined the underlying decisions, briefs, evidence, and the record in its entirety. Before proceeding, I must note that the facts presented in the matter below and the posture of the case since it was first heard are distinct and unusual.

In the Decision of the Secretary below, it was found that considerable deference was owed to the State, in these particular circumstances, to the State of Texas' determination that the Center was properly authorized to offer postsecondary education. See Decision of the Secretary at 2, 3 (October 19, 1990). This finding did not, however, preclude investigation as to whether such authorization should summarily give an institution access to Federal funds. Because the ALJ initially failed to explicitly address whether the Center's program was, in fact, postsecondary, the Decision of the Secretary below examined this question. After consideration of this issue, the determination was made that the weight of the documentary and oral evidence, such as the documentation submitted, the evidence indicating the nature of the courses offered, and the kind of instructors utilized by the Center, did not demonstrate that the program offered by the Center was necessarily postsecondary. The matter was then remanded to the ALJ for further consideration as to whether there was any impropriety in the Center's receipt of both Chapter 1 benefits and Title IV funds.

On remand, the ALJ determined that the Center's receipt of Title IV funds was improper. Although the analysis behind his finding is scant, the ALJ seems to have concluded that because the weight of the evidence did not demonstrate that the program offered by the

Center was postsecondary in nature, the Center's receipt of Title IV funds was improper.

When, as here, an institution fails to persuasively demonstrate that the curriculum is, indeed, postsecondary, that situation does not necessarily lead to the conclusion that the institution is not postsecondary. On appeal, however, and under these particular facts, I have been presented with no argument from the parties that persuades me to disregard the evidence presented or overturn the ALJ's determination that liability is warranted. Therefore, I AFFIRM the ALJ's finding that the Center must refund \$1,336,474 to the U.S. Department of Education.

ALJ Shell's Decision on Remand similarly addressed the issue of revocation of the Center's eligibility to participate in Title IV programs. The ALJ concluded that revocation is not warranted. In finding on remand that revocation is not warranted, the ALJ determined that the Center was providing postsecondary education and was, therefore, properly in receipt of Title IV funds from March 14, 1984, to the present.

ALJ Shell recognized his inconsistency regarding the level of education offered by the Center by noting that the two findings "must be in harmony." Decision on Remand at 5, n. 14. Although the ALJ was unable to reconcile or rectify the situation, I do not find it fatal. The problem which I now face, however, is that a logical conclusion to this conflict must proceed from somewhere. Were I to proceed from my deference to the ALJ's finding that liability is appropriate because the Center's program of study was not postsecondary, it would appear that serious consideration must be given to the idea of imposing revocation. Such analytical gymnastics, however, would prove futile in settling these issues.

Revocation, as a form of termination, is a sanction. While proceedings may be commenced for audit liability and termination under the same factual scenarios, a finding adverse to a party on one issue does not necessarily mandate that a similar result is warranted on the other. Any type of termination requires the most exhaustive examination of the myriad of tangible and intangible factors present in a given case and serious consideration as to whether the totality of the circumstances present sufficient cause to impose such a sanction. After thorough and thoughtful review of the instant matter, I do not find that the actions and circumstances present in this case warrant revocation. Moreover, the Center subsequently applied to the Department for reinstatement of eligibility. This application was granted on March 28, 1988 and the Center remains eligible today.

Under the special and distinct situation presented in this matter, I do not find that the issue of revocation need be addressed further. Thus, under the particular facts presented and in light

GULF COAST TRADES CENTER

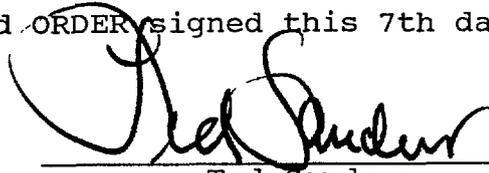
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of the efforts and merits of the institution, I see no purpose in revoking the Center's eligibility for the period in question. Therefore, I AFFIRM, for different reasons, the ALJ's determination concerning the revocation issue and DISMISS the issue in its entirety.

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In conclusion, I AFFIRM ALJ Shell's determination that the Center must refund \$1,336,474 to the U.S. Department of Education and DISMISS the issue of the Center's revocation.

This DECISION and ORDER signed this 7th day of March 1991.



Ted Sanders
Acting Secretary

Washington, DC