



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

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In the Matter of  
Atlanta College of Medical  
And Dental Careers

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Docket No. 91-93-SA  
Student Financial  
Assistance Proceeding

### Decision of the Secretary

This matter comes before the Secretary on appeal, by the U.S. Department of Education, Office of Student Financial Assistance Programs (SFAP), of a "Decision" issued by Chief Administrative Law Judge John F. Cook (AJ) dated December 30, 1993. In his Decision, the AJ determined that the final audit determination letter (FAD) was not issued "by a designated ED official" as required by 34 C.F.R. § 668.112. In making this determination, the AJ found that because the FAD was signed by an ED employee who was subordinate to the designated ED official, the FAD was not properly issued. Based on the AJ's finding, he dismissed the case.

### DISCUSSION

On appeal, SFAP moves the Secretary to adopt a decision reversing the AJ's decision and remanding this case for further proceedings.<sup>1</sup>

The salient facts and issues in the case at hand are substantially similar to the facts and issues in In the Matter of International Career Institute, Dkt. No. 92-144-SP, U.S. Dept. of Education (Decision of the Secretary February 16th, 1994) (ICI), wherein a subordinate employee was designated to temporarily fill the position of Chief of the Institutional Review Branch and during that time, signed a written notice of determination which ultimately gave cause for a hearing official's determination that the written notice had been improperly signed.<sup>2</sup>

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<sup>1</sup>The Secretary accepts jurisdiction over this appeal for the reasons recognized in ICI, infra.

<sup>2</sup>The AJ distinguishes ICI from the case at bar on the ground that in ICI "the designated ED official had previously purported to delegate his or her authority to the person who signed" the written notice, while in the case at bar, no attempted delegation

In the case at bar, a subordinate employee signed the FAD for her immediate supervisor, the Chief of the Audit Review Branch, the position delegated with the authority to issue FADs. Unlike in ICI, however, there is substantial basis in the record to conclude that someone other than the Chief of the Audit Review Branch, Ethelene R. Hughey, made the actual decision to issue the FAD.


To begin with, Ethelene R. Hughey was out of the office on sick leave from August 12, 1991 through August 23, 1991. The FAD was dated August 22, 1991. The signatory to the FAD had not been formally designated to sign the FAD for Hughey by Hughey. In addition, SFAP, itself, recognizes the unlikelihood that Hughey made the decision to issue the FAD during her time away from the office; to wit, SFAP posits the tenuous argument that Hughey, upon her return to the office and her "subsequent inaction," impliedly ratified her subordinate's "signing of the FAD." Undoubtedly, if the FAD had been properly issued in the first instance, ratification would be unnecessary, and SFAP would not be relying on such an untenable position. The record reveals that there is considerable doubt that this is a case in which a subordinate employee simply fulfilled a ministerial duty by signing an FAD after being authorized to do so by a designated ED official. In fact, there is substantial evidence in the record to conclude that the subordinate employee or someone other than the Chief of the Audit Review Branch, Ethelene R. Hughey, made the actual decision to issue the FAD. Under such circumstances, the FAD must be deemed to have been improperly issued. Accordingly, the Secretary **AFFIRMS** the conclusion of the AJ that SFAP failed to establish that the FAD was *issued* by a designated ED official, but does not adopt the rationale of the AJ's decision to the extent that it is inconsistent with the Secretary's Decision in ICI.<sup>3</sup>

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of authority occurred. However, the issue involving the permissibility of a purported delegation of authority was irrelevant to the Secretary's Decision in ICI. Consequently, the Secretary's decision in ICI does apply to the case at bar.

<sup>3</sup>The AJ's decision regarding the findings concerning the Declaration of Victoria Edwards and the ratification of past acts are not addressed by this decision because the Secretary holds that the FAD was improperly issued ab initio.

So ordered this 16th day of February, 1994.

  
Richard W. Riley

Washington, DC

SERVICE

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

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