



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

PAN AMERICAN SCHOOL,

Respondent

Docket Number 91-94-SA

Student Financial Assistance

Proceeding

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by the United States Department of Education (Department), Office of Student Financial Assistance Programs (SFAP) of the initial decision issued by the administrative law judge (ALJ) on February 25, 1994. Based upon a September 18, 1991, final audit determination (FAD), the ALJ concluded that the respondent, Pan American School (Pan American), failed to administer an appropriate ability-to-benefit (ATB) examination to various prospective students. ALJ Decision (ALJ Dec.) at 5. Accordingly, the ALJ ordered Pan American to remit \$606,243 (plus interest) in disallowed Pell Grants to the Department. *Id.* at 6.

SFAP timely filed an appeal on April 1, 1994. *See* SFAP Appeal Brief (Appeal) *passim*. SFAP attempted, unsuccessfully, to serve Pan American with the Appeal via certified mail. *See* SFAP letter, dated April 11, 1994. Further, Pan American did not file an opposition to the Appeal. Although SFAP agrees with portions of the ALJ's decision, it asks the Secretary to impose greater monetary liability against Pan American and, thus, reverse the ALJ's monetary liability ruling. Appeal at 2-3. For the reasons outlined below, I affirm the ALJ's decision, in part, and reverse in part.

BACKGROUND AND PROCEDURAL HISTORY

Pan American, a private career school, is located in New York, New York, and is wholly owned by Pan American School, Inc. ALJ Dec. at 7. Among its many course listings, Pan American offered instructional programs in English as a second language. *Id.* From June 4 to July 6, 1990, the Department conducted an audit at the school for the period between July 1, 1987, through June 30, 1990. *Id.* On September 18, 1991, the Department issued the FAD. *Id.* at 2. Thereafter, Pan American timely requested a review of the FAD. *Id.*

Specifically, the FAD alleged that Pan American, in violation of applicable statutes and regulations, failed to administer a nationally recognized, standardized, or industry developed ATB test to those prospective students seeking to enroll in the school's English courses. *Id.* at 3. As a result, Pan American purportedly forfeited its institutional eligibility and, thus, any loans and/or grants received by the school should have been disallowed. Accordingly, the FAD instructed Pan American to remit, among other things, \$2,873,190 (plus interest) in

disallowed Pell Grants to the Department. Id. at 12. The above amount represents the sum total of Pell Grants received by Pan American between July 1, 1987 through June 30, 1990.

The record shows that Pan American administered two tests to its applicants. One test was the Pan American School Test (PAT), an in-house test. Id. The second test was the University of Michigan Examination in Structure Test (Michigan Test), a nationally recognized, standardized, or industry developed test. Id. The primary dispute was whether the Michigan Test was used for purposes of determining a potential student's ability to benefit from the training offered, as required by departmental regulations.

After reviewing the facts, the ALJ ruled that the PAT was inappropriately used to measure a prospective student's ability to benefit from Pan American's instructional English courses, while the Michigan Test was used as an academic placement test. Id. at 5. In other words, after students took the in-house PAT, they would then take the Michigan Test to determine the academic level at which they would begin English instruction.

Notwithstanding his ruling, the ALJ ordered Pan American to remit \$606,243 (plus interest) in disallowed grants. Id. at 6. This amount is based upon the following calculation: the total Pan American student population at the time of the review period divided by the number of Pell Grant recipients who enrolled in English courses and took the improper ATB test, which quotient is then converted into the corresponding percentage and multiplied by \$2,873,190. Id. at 5-6. The ALJ discounted the remaining monetary liability imposed by the Department because the other Pell Grant recipients who enrolled in the school's English programs were found to be eligible for their grants. Id.

Now, SFAP appeals the monetary liability imposed by the ALJ. See Appeal passim. The following discussion sets forth SFAP's position and addresses the merits of the ALJ's rulings.

DISCUSSION

In general, SFAP agrees with the ALJ's decision. Appeal at 2. However, SFAP argues that Pan American is obligated to remit \$2,873,190 in disallowed grants, i.e., the amount equal to the school's total Pell Grant receipts from July 1, 1987 to June 30, 1990. Id. at 7. SFAP asserts that departmental regulations stipulated that schools, like Pan American, had to qualify as an eligible institution before receiving and disbursing Pell Grants. Id. at 3. During the foregoing time period, SFAP notes that, as a condition to obtaining and maintaining institutional eligibility, Pan American was obligated to admit only those students who (i) possessed a high school diploma, (ii) obtained a general education certificate, or (iii) demonstrated, through an ATB test, an ability to benefit from the offered instruction. Id. SFAP contends that Pan American forfeited its institutional eligibility when it failed to administer a proper ATB test between July 1, 1987 through June 30, 1990. Id. at 3-4.

Consequently, SFAP concludes that all Pell Grants received by Pan American during the above time period must be disallowed and remitted to the Department. Id. at 4-6.

SFAP argues that the ALJ's monetary liability ruling reflects a post-1990 interpretation of departmental regulations. Id. at 5. According to SFAP, as of July 1, 1991, institutional eligibility was no longer contingent upon, among other things, a student's demonstration of an ability to benefit from a particular course of study. Id. at 4. Rather, this became strictly a criterion of student eligibility. Id. Thus, whereas prior to 1991, a school under the circumstances presented herein had to remit all grants and loans received during a period of institutional ineligibility, a school is presently obligated to remit only those loans and grants disbursed to ineligible students. Id. at 5.

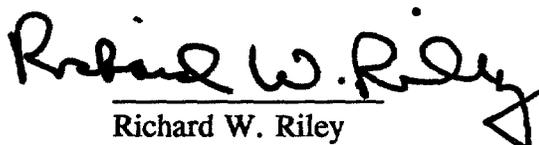
Given the lack of opposition to this appeal and the basis of the ALJ's monetary ruling, I am persuaded by SFAP's argument. A school had to qualify as an eligible institution in order to participate in the Pell Grant program. 20 U.S.C. §1070(a),(b) (1987). At the time in question, one criterion of institutional eligibility was the demonstration of a prospective student's ability to benefit from the chosen course of study through the administering of a nationally recognized, standardized, or industry developed ATB test. 20 U.S.C. §§1088(b), 1141(a) (1988); see 20 U.S.C. §1091(d)(3)(A).

Pan American failed to administer such a test. ALJ Dec. at 5. Therefore, the liabilities imposed must equal all funds Pan American received while operating as an ineligible institution. See, e.g., In the Matter of Academia La Danza Artes Del Hogar, Docket No. 90-31-SP, U.S. Dept. of Education (Initial Decision, May 19, 1992) (Aff'd by Secretary, August 20, 1992) (school liable to repay all monies received while operating as an ineligible institution because it failed to possess requisite accreditation). Consequently, I reverse the ALJ's monetary liability ruling.

ORDER

Accordingly, I order Pan American to remit \$2,873,190 (plus interest) -- the amount equal to the school's total Pell Grant receipts during its period of ineligibility -- to the Department. The remainder of the ALJ's initial decision is affirmed in all other respects.

So ordered this 12th day of January 1995.


Richard W. Riley

Washington, D.C.

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