



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
Computer Processing Institute,

Docket Number 92-20-SP
Student Financial Assistance
Proceeding

Respondent

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 administrative law judge's (ALJ) April 28, 1994, decision on remand. In that decision, the ALJ dismissed the above-captioned matter, finding the final program review determination (FPRD) appeal of Computer Processing Institute (CPI) moot based upon the school's closure between the ALJ's issuance of the initial decision, dated April 6, 1993, and his decision on remand. The ALJ Decision (ALJ Dec.) at 1. Given SFAP's findings and computations in this matter, the ALJ also rendered an alternative ruling in the event CPI were to resume operations. ALJ Dec. at 2.

SFAP timely filed an appeal on June 16, 1994, asking that the ALJ's dismissal of this matter be reversed and that his alternative ruling be imposed. The appeal of SFAP (Appeal) at 3. CPI did not file an opposition to appeal. For the reasons outlined below, I reverse the ALJ's decision on remand, in part, and modify in part.

BACKGROUND AND PROCEDURAL HISTORY¹

This case finds its origins in the FPRD issued on December 17, 1991. The FPRD alleged that CPI improperly administered financial aid funds to its students, assessing \$753,880 in liability owed to the Department and \$947,902 owed to various lenders. CPI appealed the FPRD, and the ALJ issued an initial decision on April 6, 1993, upholding certain findings while dismissing others. The ALJ conducted this proceeding under 34 C.F.R. Part 668, Subpart H, which required, in pertinent part, CPI to establish that the contested financial aid expenditures were proper. However, a massive flood at the school destroyed student records, and the ALJ excused CPI from producing documents commonly used to validate student aid disbursements. Accordingly, the ALJ refused to uphold the monetary liabilities set forth in the FPRD.

The facts presented above are set forth in the ALJ Dec. and Appeal.

SFAP appealed the initial decision based upon the ALJ's refusal to compel CPI to remit the aforementioned liability due to the lack of student records. Upon review, the Secretary reversed the ALJ's findings concerning the effects of the flood upon CPI's ability to produce pertinent student aid documentation. The Secretary then remanded the matter to the ALJ to determine CPI's specific monetary liabilities.

In an Order dated January 14, 1994, the ALJ directed the parties to propose a recomputation of liabilities. SFAP filed its recomputation on March 28, 1994. CPI did not respond.

In his decision on remand, the ALJ dismissed CPI's FPRD appeal on the grounds of mootness, since the school had ceased operations at the time. The ALJ based his decision on the Secretary's ruling in In the Matter of Bliss College (Bliss), U.S. Dept. of Education, Dkt. No. 93-15-ST (February 23, 1994). The ALJ also issued an alternative ruling, adopting SFAP's recomputation of liabilities in the event CPI were to resume operations.

Now, SFAP appeals the ALJ's decision pertaining to the mootness of this matter.

DISCUSSION

SFAP argues CPI ultimately failed to disprove the various allegations of the FPRD and, thus, should remit the monetary liability set forth in the alternative ruling of the ALJ's decision on remand. Appeal at 6. As for the ALJ's dismissal ruling, SFAP claims, among other things, that his reliance on Bliss was misplaced. Id. at 8.

According to SFAP, Bliss is distinguishable from this case since, unlike this case, the primary remedy sought by the Department in Bliss was the termination of that school's eligibility to participate in the student financial aid programs. Id. SFAP notes the Secretary held that when Bliss closed, it rendered itself ineligible to participate in the student aid programs, thereby effectuating the sole remedy sought, *i.e.*, termination. Id. In other words, SFAP believes there no longer existed a controversy as to whether Bliss should lose its student aid eligibility because this issue became moot by virtue of the school's closing. See id.

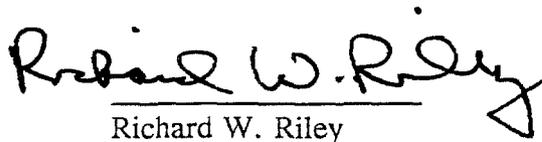
By contrast, SFAP asserts, although CPI is closed and is in bankruptcy, the remedy sought by the Department, *i.e.*, the remittance of disallowed student aid funds, is still attainable. Id. at 7-9. In SFAP's opinion, these funds can be retrieved by compelling either the school or its estate in bankruptcy to pay them. Id. Consequently, SFAP contends a controversy still exists and concludes the holding of Bliss is inapplicable to the facts herein. Id. at 10. Thus, according to SFAP, CPI is obligated to remit the monetary liabilities set forth in the ALJ's alternative ruling. Id. I agree.

Instead, the Department seeks to recover disallowed student aid funds, as provided under Subpart H of the foregoing regulation. This was and still is entirely possible, despite the closing and bankruptcy of CPI. Consequently, a controversy still exists. Contra Bliss at 1-2. Therefore, I reverse this portion of the ALJ's decision, and modify his alternative ruling such that it shall become enforceable irrespective of whether CPI ever resumes operations.

ORDER

I order that the ALJ's decision to dismiss this matter on the grounds of mootness be reversed. Further, I order that the ALJ's alternative ruling, which sets forth the monetary liability owed by CPI, be modified to reflect the above clarification, and be imposed accordingly.

So ordered this 13th day of April 1995.


Richard W. Riley

Washington, D.C.