



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

FINAL DECISION

DATE .11.18.95.....

In the Matter of
Cincinnati Metropolitan College

Docket No. 93-22-ST

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 Administrative Law Judge Paul J. Clerman (AJ) dated August 16, 1993. In his Decision, the AJ determined that the notice of intent to terminate and fine (notice) was not issued by a "Designated department official" as required by 34 C.F.R. § 668.81. In making this determination, the AJ found that because the notice was signed by an ED employee who was subordinate to the Designated Department official, the signing of the notice by the subordinate employee amounted to an improper attempted re-delegation of authority precluded by Subsection (IX)(F) of the U.S. Education Department Departmental Directive A:GEN:1-104, Delegations of Authority, dated August 15, 1989.¹ Based on the AJ's findings, he dismissed the case.

DISCUSSION

On appeal, SFAP moves the Secretary to adopt a decision reversing the Decision issued by the AJ and remanding this case for further proceedings.²

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.

¹Departmental Directive A:GEN:1-105 was renumbered A:GEN:1-104 on May 22, 1991 by Department of Education Transmittal Sheet 91-20, Pen and Ink Changes.

²The Secretary accepts jurisdiction over this appeal for the reasons recognized in ICI, infra.

In the case at bar, a subordinate employee signed the notice of determination for his supervisor, the Acting Director of SFAP's Compliance and Enforcement Division, the position delegated with the authority to issue written notices to terminate and/or fine. The Acting Director designated a subordinate employee to serve in his stead during a temporary absence from the office.³ As in ICI, there is no basis in the record to conclude that anyone other than the Acting Director made the actual decision to *issue* the written notice of determination. Therefore, this decision adopts and follows the Secretary's Decision in ICI, and finds that the Notice of Intent to Terminate and Fine was properly issued. Accordingly, the Secretary HEREBY REVERSES the Hearing Official's decision, reinstates the Notice of Intent to Terminate and Fine and REMANDS this case to the AJ for further proceedings.

So ordered this 16th day of February, 1994.


Richard W. Riley

Washington, DC

³Although the document which designated the subordinate employee to act in the absence of the Acting Director was captioned "Delegation of Authority," the ALJ did not base his decision on this piece of evidence. Nor does the Secretary. Nonetheless, although inappropriately captioned, this document, just as the one in ICI, simply expresses the intent of one individual to have a subordinate employee act in their temporary absence.

SERVICE

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

Leslie H. Wiesenfelder, Esq.
Dow, Lohnes & Albertson
1255 Twenty-third Street, N.W.
Washington, DC 20037

Donald C. Philips, Esq.
Office of the General Counsel
U.S. Department of Education
Room 4083, FOB-6
400 Maryland Avenue, S.W.
Washington, DC 20202-2110