

93-6-SP



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

SIMMONS SCHOOL,

Respondent

Docket No. 93-6-SP

**Student Financial Assistance
Proceeding**

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by Simmons School (Simmons) of the initial decision issued by the Administrative Law Judge (ALJ) on August 2, 1993. In his decision, the ALJ upheld a U.S. Department of Education (Department) Final Program Review Determination (FPRD) that Simmons violated various provisions of Title IV of the Higher Education Act of 1965, as amended, (Title IV). ALJ Decision (ALJ Dec.) at 7. Specifically, the ALJ held that despite the expiration of a court reporting program's (CRP) state authorization for nearly two years, Simmons proceeded to distribute Title IV loans to students who were ineligible to receive them as a direct result of the expiration of that CRP's authorization. Id. at 7.

Simmons filed a timely appeal and the Department's Office of Student Financial Assistance Programs (SFAP), a timely opposition to appeal, on September 10 and October 13, 1993, respectively. Principally, Simmons asks that the initial decision be reversed, in whole or in part, while SFAP requests that it be affirmed in its entirety. For reasons outlined below, I affirm the initial decision subject to the following conditions.

BACKGROUND AND PROCEDURAL HISTORY

Simmons is a for-profit proprietary school located in White Plains, New York. See ALJ Dec. at 2. On November 10, 1992, SFAP's New York regional office issued the FPRD to Simmons. See id. at 2. The FPRD was based on a program review report, dated April 30, 1992, which found that Simmons had disbursed Title IV funds to 167 students enrolled in an unauthorized CRP from April 30, 1990, to February 2, 1992. See id. at 1. Simmons appealed the FPRD and, thereafter, the parties submitted briefs to the ALJ for consideration. See id. at 2. As mentioned above, the ALJ issued his decision on August 2, and Simmons appealed.

In a subsequent letter, SFAP, on behalf of itself and Simmons, proposed to the Secretary that settlement of this matter may be appropriate in the wake of The Simmons School v. Regan decision, a related New York State Supreme Court case. See SFAP Letter (SFAP Letter), dated December 20, 1993, at 2. According to the parties, the court in the aforementioned case held that the state acted arbitrarily when it imposed the revocation of Simmons's CRP authorization from October 24, 1990, to February 2, 1992. See *id.* at 1. In the letter, SFAP and Simmons requested that they be given until January 14, 1994, to pursue an alternative resolution. See *id.* at 2.

On September 7, 1994, I issued an Order requesting that the parties apprise me of the outcome of the settlement negotiations and discuss the affect, if any, of the above-cited case upon the instant proceeding. See Secretary's Order, dated September 7, 1994. On September 19, 1994, both parties responded timely to that order, informing me that no settlement had been reached. See Simmons Response to Secretary's Order (Simmons Response), dated September 19, 1994, at 1; see also SFAP Status Report (SFAP Report), dated September 19, 1994, at 1. The parties did, however, report that the above-cited case was being appealed by the state of New York. See Simmons Response at 1; SFAP Report at 1. Based upon the foregoing, I am now prepared to render a final order in this matter.

ORDER

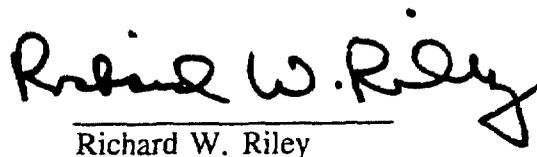
I affirm the merits of the initial decision. However, given the potential implications of the above New York State Supreme Court ruling and in the interest of fairness, Simmons shall, at this time, remit only that amount of disallowed Title IV funds disbursed to the 167 CRP students from April 30, 1990, to October 23, 1990, *i.e.*, the interim wherein Simmons's CRP authorization had undisputedly expired. Accordingly, Simmons shall remit \$92,388.29. This amount represents:

1.	Pell Grant funds ---	\$20,225.00
2.	PLUS loans ---	\$53,634.25
3.	GSL and SLS loans ---	\$18,529.04

In addition to the above Pell Grant liability, SFAP noted in the FPRD that it was unable to calculate the Department's actual loss for ineligible PLUS loans. Therefore, the amount owed by Simmons is the total amount of ineligible PLUS loans disbursed during the period noted above. The GSL and SLS liabilities reflect the Department's total estimated actual loss that has or will result from the ineligible loans certified by the institution. This calculation of liability includes both estimated GSL and SLS defaults as determined by the formula relied upon by SFAP, but does not include subsidies or special allowance payments yet to be determined, given the appeal of the foregoing state court decision. Pending the outcome of that appeal, Simmons shall either be (i) released from its outstanding monetary liability, except subsidies and special allowance payments owed the Department, or (ii)

obligated to remit the remainder of said liability to the Department immediately after the issuance of a final judgment by a court of competent jurisdiction.

So ordered this 4th day of November, 1994.


Richard W. Riley

Washington, D.C.

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