



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

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In the Matter of

**AVALON BEAUTY COLLEGE,**

**Docket No. 04-24-SP**

**Student Financial  
Assistance Proceeding**

Respondent.

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**DECISION OF THE SECRETARY**

This matter comes before the Secretary on appeal by the United States Department of Education, Federal Student Aid office (FSA) of the Initial Decision issued by Chief Administrative Judge Ernest C. Canellos on December 10, 2004. FSA requests that I reverse Judge Canellos's decision.

**DISCUSSION**

Upon review of the record in this case, I find the particular facts of this case support a finding that it would be inequitable to assess liability against Avalon Beauty College for its admitted failure to demonstrate that two students passed an ability to benefit (ATB) exam prior to their enrollment and receipt of Title IV funds as required by law.

To the extent the Administrative Judge's Decision determined that it is proper for an institution to administer an ATB exam after enrollment and disbursement of Title IV funds or otherwise evidence an ability to benefit (in lieu of taking an ATB exam) after enrollment and disbursement of Title IV funds, that reasoning is hereby rejected.

A student's successful completion of the ATB exam is required prior to enrollment and disbursement of Title IV funds based upon a common sense reading of the statute and as supported by the decision in *Hamilton Professional Schools*, U.S. Department of Education, Dkt. No. 02-49-SP (June, 2003).

**ORDER**

Accordingly, I HEREBY AFFIRM the Decision of Chief Administrative Judge Ernest C. Canellos on other grounds and the Respondent, Avalon Beauty College, is relieved of any obligation to repay the funds in question to the U.S. Department of Education as a result of this proceeding.

So ordered this 20<sup>th</sup> day of December 2005.

  
Margaret Spellings

Washington, D.C.

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