

program successes and lessons learned, and cooperative efforts with state and local governments.

#### Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: January 18, 1995.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 95-1625 Filed 1-20-95; 8:45 am]

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## DEPARTMENT OF EDUCATION

### Advisory Council on Education Statistics Nominations

**AGENCY:** Department of Education.

**ACTION:** Acceptance of Nominations for Membership on the Advisory Council on Education Statistics (ACES).

**1. Introduction**—New reauthorizing legislation for the National Center for Education Statistics, (NCES) in the Office of Educational Research and Improvement, directs the Secretary of Education to expand the membership of the Advisory Council on Education Statistics. In accordance with this directive, notice is hereby given that the Secretary of Education is accepting nominations of individuals who are qualified to advise NCES, as described elsewhere in this Notice. NCES collects, analyzes and reports on the condition of education in the United States. (Section 405 of P.L. 103-382, Improving America's School Act, October 20, 1994; 108 stat. 3513, 4055.)

**2. Description of the Council**—The Council shall consist of 18 public members. (Previously, there were 7 public members.) There will be three members from each of the following categories: practicing educators, education policymakers, professional statisticians, education researchers, experts in educational measurement, and the general public.

Members of the Council shall be appointed by the Secretary for three year terms, except that some initial terms may be shorter to avoid the expiration of more than six members in the same calendar year. The Council is required to meet at least two times a year.

**3. Functions of the Council**—The Council has responsibility to:

(a) Review policies for the operation of NCES and advise the Commissioner

of NCES on standards to ensure that statistics and other information disseminated by the Center are of high quality and not subject to partisan political influence; and

(b) Advise the Commissioner and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress.

**4. Nomination Categories**—Nominations are being requested for the 6 categories cited above.

**5. Nomination Procedures**—Nominations should include the nominee's name, address, telephone number and brief biography and be mailed, no later than February 10, 1995, to Diane Rossi, U.S. Department of Education, Office of the Secretary of Education, 600 Independence Avenue, SW, Room 6100, Washington, DC 20202-0106. Individuals may nominate themselves for consideration.

Dated: January 17, 1995.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 95-1623 Filed 1-20-95; 8:45 am]

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### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on January 13, 1992, an arbitration panel rendered a decision in the matter of *State of Michigan, Michigan Commission for the Blind, Petitioner v. U.S. Postal Service, Respondent*. This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d-2. The Randolph-Sheppard Act (the Act) creates a priority for blind individuals to operate vending facilities on Federal property. Under the Act, State licensing agencies dissatisfied with Federal operation of the vending facility program authorized under the Act may file an arbitration complaint with the Secretary of Education.

**FOR FURTHER INFORMATION CONTACT:** George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298. A copy of the full text of the arbitration panel

decision may be obtained from this contact.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 107d-2(c) of the Randolph-Sheppard Act, the Secretary publishes a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal property.

### Synopsis of Arbitration Panel Decision

#### *Factual Background and Procedural History*

Since January 3, 1987, Garnett Laurell, a blind vendor licensed by the Michigan Commission for the Blind (the Commission), has operated the Central Lunchroom that includes 10 vending machines at the Detroit Bulk Mail Center (Mail Center) pursuant to an agreement between the Commission and the U.S. Postal Service (the Postal Service).

The Canteen Corporation (the Canteen), also in an agreement with the Postal Service, operated approximately 21 vending machines located around the workroom floor and vending machines in non-workroom areas (administrative offices and in the truckers' lounge). The Commission asserted that it should have been allowed to operate the vending facilities operated by the Canteen (in addition to the Central Lunchroom) on a permit basis and that, as a result, the Postal Service failed to comply with provisions of the Randolph-Sheppard Act (Act), as amended, 20 U.S.C. 107 *et seq.* On May 3, 1989, the U.S. Department of Education ordered the convening of an arbitration panel pursuant to 20 U.S.C. 107d-1(b), which governs disputes between State licensing agencies.

Previously, on December 27, 1983, the Postal Service had notified the Commission that it could bid on a vending contract at the Mail Center. On February 12, 1984, the Postal Service issued a solicitation for the Central Lunchroom and snack vending at the Mail Center with offers due by March 13, 1985. The Commission did not submit a bid on the basis that it believed that it was entitled to a permit for the facility. The Central Lunchroom and snack vending contract was awarded to the Canteen on March 27, 1985, for a period of three years, with two possible one-year renewals at the Postal Service's option. The Commission's application for a permit to operate the Central Lunchroom at the Mail Center was submitted on November 15, 1985, and was approved by the Mail Center manager on January 6, 1986. In October 1987, the Commission submitted an application for the satellite vending operated by the Canteen. That

application was not approved by the Mail Center.

Testimony for the Commission before the arbitration panel, Ms. Laurell asserted that the vending machines operated by the Canteen were in direct competition with her operation. Additional testimony demonstrated that the Canteen, a national corporation, purchased in bulk and could offer the same products as those available at the Commission facility, but at lower prices, and that the Canteen's low prices were part of a "no profit" or "break even" policy, which was directed at benefitting the postal employees. As a result, profit from the Commission facility was limited to approximately \$24,000 per year, which was too low to make Ms. Laurell's facility a viable operation in terms of sharing of competing vending machine income.

The Administrator of the Business Enterprise Program, Michigan Commission for the Blind, who was involved in setting up the vendor facility at the Mail Center in 1983, believed that the assigned blind vendor should have been given priority to operate all food services at the facility. Postal Service management disagreed, asserting that a blind person could not safely work on the workroom floor because of danger from mechanized equipment as evidenced by incidents in which postal employees had been hit and injured by mail-moving equipment. The Postal Service's position was that blind vendors posed a safety problem and that, if it had been determined that the vending machines were to be operated by blind vendors, management may have decided to remove the machines.

#### *Arbitration Panel Decision*

The key issue of the dispute, as identified by the panel, was the extent to which the blind vendor should be given priority in operating all the vending facilities at the Detroit Bulk Mail Center. Because the Randolph-Sheppard Act limited the priority provided to blind vendors to the extent that any facility operated by a blind vendor "would not adversely affect the interests of the United States," the panel concluded that the Postal Service was not required to approve the Commission's request to operate all of the vending machines at the Mail Center. Specifically, the panel identified the possibility for injury as among those circumstances that might adversely affect the Federal Government's interests. Hence, the Postal Service's legitimate safety concerns for a blind vendor servicing machines on the workroom floor supported its decision

not to afford the blind vendor priority in operating those facilities. Other factors cited by the panel in support of the Postal Service's position included—(1) the potential negative effect on employee morale that would result from a management decision to eliminate vending machines from the work area for purposes of safety; and (2) the finding that the Canteen-run vending machines on the workroom floor were not in "direct competition" with the blind vendor since the Central Lunchroom operated by the blind vendor was not readily accessible to most postal employees.

While the panel offered the preceding rationale for supporting the Postal Service's actions in connection with the workroom floor vending machines, the status of those machines could not be conclusively decided until the Postal Service fully justified its finding in writing to the Secretary, as required under the Act. Accordingly, the panel remanded the issue of the working area machines to the Postal Service, either to resolve with the Commission or to handle in accordance with section 107(b) of the Act.

As to the non-workroom vending facilities, the panel concluded that the blind vendor should be given priority in operating those facilities on the basis that—(1) the potential safety hazards that existed on the workroom floor were not present at those sites; and (2) the vending machines at those locations were situated in non-mail processing areas, were relatively close to the Central Lunchroom operated by the blind vendor, and were, therefore, in direct competition with the blind vendor's operation. Thus, the panel found that the priority requirement of the Act had been satisfied and ruled that the operation of vending machines in the non-workroom area be turned over to the blind vendor or the Commission as soon as possible. In addition, the Postal Service was ordered to pay an amount equal to the profits from the operation of these machines to the blind vendor or the Commission from the time the option to operate those machines became available to the Commission.

The panel member appointed by the Commission, concurring in part and dissenting in part with the majority, wrote a separate opinion in which he stated that he would require the Postal Service to make restitution to the Commission for its failure to follow the law when it denied the blind vendor priority in operating the vending machines at the Mail Center. The panel member also dissented from the majority's conclusions concerning the alleged safety risks to the blind vendor

on the workroom floor and the panel's resolution of the direct versus indirect competition issue, citing the absence of competent, factual evidence from both parties.

The views and opinions expressed in the arbitration panel decision do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: January 17, 1995.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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#### **Arbitration Panel Decision Under the Randolph-Sheppard Act**

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on August 15, 1991, an arbitration panel rendered a decision in the matter of *Florida Department of Education, Massachusetts Commission for the Blind, and Virginia Department for the Blind and Visually Handicapped v. United States Department of Defense, (Docket Nos. R-S/85-8, 87-1, and 87-4)*. This panel was convened by the Secretary of the U. S. Department of Education pursuant to 20 U.S.C. 107d-1(b). The Randolph-Sheppard Act (the Act) creates a priority for blind vendors to operate vending facilities on Federal property. Under this section of the Act, the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnaw, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.