



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

In the Matter of  
Emergency Action Against  
Clark College

DECISION

On August 9, 1993, the Office of Student Financial Assistance Programs, of the U.S. Department of Education (ED), imposed an emergency action against the Clark College (Clark) of Lake Charles, Louisiana, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 CFR §668.83. Clark requested an opportunity to show cause why the emergency action is unwarranted.

Pursuant to the Delegation of Authority from the Secretary to me to conduct proceedings and issue final decisions in circumstances where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a hearing in Washington, D.C., on August 23 - 27, 1993. At the hearing, Clark was represented by Wayne Hartke, Esq., of Hartke and Hartke, and James Patrick MacManus, Esq., while ED was represented by Lawrence G. Brett, Esq., from the Office of the General Counsel. Witnesses testified under oath, documentary evidence was submitted, and the proceeding was transcribed by a Court Reporter.

ED's main contention in this case is that an emergency action is necessary because, during an unannounced program review conducted at Clark's branch campus at Harvey, Louisiana, between July 30 and August 3, 1993, reviewers from ED discovered that Clark officials had committed fraud and were taking action to cover-up that fraud. Specifically, ED alleges that Clark falsified student attendance and grade information in order to secure Title IV funding and then created false records in order to mislead ED. In addition, ED alleged that Clark officials denied access to program reviewers and threatened the reviewers and a witness. The perceived threats resulted in the program reviewers terminating their review prematurely. In essence, ED alleged that these violations of program regulations and failures to cooperate during the program review evidence that Clark does not properly administer the Title IV Programs, and indicate that Clark has violated its fiduciary duties. See 34 C.F.R. § 668.82.

At the hearing, ED called the Designated Department Official and three of the program review team. They testified that the team visited Clark after a complaint was filed by a former employee alleging that Clark officials were fraudulently altering records at the school. When the reviewers arrived, they were told they had to wait for the Director, who arrived 2 1/2 hours later. There was no spirit of cooperation by Clark officials; records were slow in being provided and fast in being removed; some files were never provided, and backup information was not provided because it was reportedly not maintained. Many of the files contained conflicting data as to completion dates and test scores. There were many cross outs and substitutions of this data without any backup data to support the changes. Clark officials' explained that they had corrected many files that had been erroneously maintained by a former employee. However, even after these corrections, the files contained inconsistent information and were not supported by backup data. After observing the hostility of some of the employees and some indication of erratic behavior of the Director, the group, feeling threatened, terminated the review prior to completion.

Clark called six witnesses. In essence, they testified that the former director of the truck driver program quit without notice. After he departed, employees noticed inconsistencies in the files and reported them to management. With the assistance of a consultant, it was determined that the files needed to be reconstructed and the staff commenced that operation. This reconstruction was to be accomplished by finding copies of exams and other documents, verifying with instructors and students and entering the correct data after striking out the erroneous data. The school maintained it cooperated in every way and certainly did not threaten anyone. Except for a few erroneous second payments, Clark asserted that the records were correct and in compliance with regulations.

The successor Director of the truck driver program stayed about three weeks and was terminated for performance reasons. This employee complained to officials of the State of Louisiana, reporting the alleged fraudulent activities. An official from Louisiana visited the school and investigated the matter, finding no problems.

Clark invoked the argument that the test to uphold an Emergency Action was not satisfied in this case. Specifically, it claimed that Clark had rebutted the essence of ED's case by showing there were no current violations, there was no real emergency and no risk of loss of federal funds. Since there were only a few errors, which Clark attempted to rectify, and no fraud shown, Clark argued it was unfair to continue the emergency action pending the completion of the termination hearing. This is especially true since Clark is on the reimbursement system of payment whereby all payments of federal funds to the school must be approved by an independent escrow agent who has been approved by ED.

ED argued that this was a classic case of when an emergency action is appropriate. First, ED had never been informed of the errors in the files and the attempts at reconstruction. Even after these actions, the files are still inconsistent and not correct. The atmosphere during the review was hostile with resistance to giving records to the reviewers. It was clear that Clark had been caught in an attempt to clean up its records after its scheme had been reported to authorities.

Upon my review of the evidence, and consideration of respective arguments of counsel, I find that:

- (a) there is reliable information that Clark is violating provisions of Title IV of the HEA;
- (b) immediate action is necessary to prevent misuse of Federal funds, and
- (c) in light of the serious nature of the violations, the likelihood of financial loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions.

The holder of Federal funds, such as student grants and loans, acts as a fiduciary. I find that Clark failed in its regulatory obligation to adequately account for such funds. What Clark is charged with, among others, is fraudulently creating and maintaining student financial assistance records. This is a very serious charge and, however one characterizes it, clearly indicates a violation of fiduciary duties. Clark's claim that the errors were caused by a single employee is unbelievable. Even if true, the lack of oversight is appalling. The reconstruction of records, even if taken in the best light for Clark, evidences a total failure to establish a clear audit trail for the erasure and substitution in the school's official records, and is, likewise, a very serious violation.

I find that the three conditions for imposing emergency actions, as enumerated in 34 CFR §668.83, are met in this case. Specifically, I find that Clark failed to carry its burden of showing why the emergency action is unwarranted. At most, Clark raised questions of fact, dispute of which must be resolved by the trier-of-fact assigned to hear the termination proceeding and outside my jurisdiction. Therefore, I hereby **AFFIRM** the emergency action.

  
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Judge Ernest C. Canellos

Dated: September 20 , 1993  
Washington, DC