



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of
Emergency Action Against
Chateau School of Cosmetology

DECISION

On January 27, 1993, the Office of Student Financial Assistance (OSFA) of the U.S. Department of Education (ED) imposed an emergency action against the Chateau School of Cosmetology (Chateau) of Laurel, Maryland, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 CFR §668.83. In response to the notice, on February 2, 1993, Chateau 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 February 26, 1993. At the hearing, Chateau was represented by Stacie J. Wollman, Esq., of Annapolis, Maryland, while OSFA was represented by Jennifer L. Woodward, Esq., from the ED Office of the General Counsel. The proceeding was transcribed by a Court Reporter.

The basic facts are not in dispute. Chateau was notified on March 19, 1991, that the State of Maryland, through the Maryland Higher Education Commission, was withdrawing Chateau's legal authorization to conduct business effective April 3, 1991. Chateau was then authorized by the State to conduct a "teachout" to wrap up the education of the already enrolled students. On July 17, 1991, Chateau received a new authorization from the State, and continued business as usual. Chateau failed to notify ED of these events and to reapply for certification for eligibility to participate in Title IV, HEA programs.

ED's main contention in this case is that an emergency action is necessary due to Chateau's loss of eligibility when the State of Maryland withdrew Chateau's legal authorization. This situation was discovered by OSFA program reviewers during a program review in December, 1992. As authorization

by the appropriate State agency is one of the statutory requirements for eligibility of an institution in order for it to participate in Title IV, HEA programs, 20 U.S.C. §§ 1085 and 1088, OSFA determined that Chateau had lost its eligibility to further participate in such programs.

The basis for a finding of a loss of legal authorization from the State of Maryland hinges upon the April 3, 1992 revocation of approval and a reapproval letter, dated July 17, 1991, from the Maryland Higher Education Commission. The State of Maryland treated Chateau, upon reapproval, as a new school. The State did not grant the authorization retroactively so as to assure authorization coverage during the three month break; and, ED is not in a position to question the State's methodology or practice. See generally, In the Matter of Gulf Coast Trades Center, Docket No. 89-16-S, U. S. Dep't. of Education (Sec. Dec., October 19, 1990).

Unrebutted evidence was presented at hearing to demonstrate that Chateau, for all intents and purposes, remained substantially unchanged between the time it lost its authorization and was reauthorized by the State. Moreover, there was no evidence that Chateau intended to mislead ED in neglecting to inform ED that there was a lapse in its State authorization. However, my authority in this matter is very limited; I cannot waive the statutes or the rules and am obliged to apply them as written.

The standard found at 34 C.F.R. § 668.83(c) states that an emergency action must be upheld if 1) there is reliable information that Chateau violated provisions of Title IV of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of financial loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions.

First, Chateau was not authorized by the Maryland Higher Education Commission, the State's approval agency, from April 3, 1991, to July 17, 1991. Moreover, although Chateau asserted that the existence of the process known as a "teachout," authorized by the State gave credence to its argument that the school remained in existence, it does not satisfy the need for full State authorization. Thus, the break in authorization constitutes a failure of one of the mandatory elements of eligibility and, as such, constitutes a violation of the provisions of Title IV, HEA. This finding is necessary due to a clear reading of the law; I possess no discretion to find otherwise. Second, due to the fact Chateau may have been ineligible to participate in Title IV, HEA programs from the time its authorization was withdrawn, I

find that immediate action is necessary to prevent misuse of federal funds. Third, given the fact that all aid disbursed by an ineligible institution is erroneous, the likelihood of loss does outweigh the importance of awaiting completion of the procedures for termination of eligibility in 34 C.F.R. Part 668. Therefore, I find that the third criteria is satisfied.

In conclusion, 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 Chateau was not properly authorized by the Maryland Higher Education Commission from April 3, 1991, to July 17, 1991, and that, in light of the facts presented, Chateau failed to successfully carry its burden of showing why the emergency action is unwarranted. Therefore, I hereby AFFIRM the emergency action.



Ernest C. Canellos

Dated: March 10, 1993
Washington, D.C.