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

In the Matter of
Emergency Action Against
Dayton Academy of Hair Design

DECISION

On July 9, 1993, the Office of Student Financial Assistance Programs, of the U.S. Department of Education (ED) imposed an emergency action against the Dayton Academy of Hair Design (Dayton) of Dayton, Ohio, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 CFR §668.83. This notice was amended on July 26, 1993. On July 28, 1993, Dayton requested an opportunity to show cause why the emergency action is unwarranted. Further, ED notified Dayton on August 4, 1993, of its intent to terminate Dayton's eligibility to participate in the federal student financial assistance programs, under Title IV of the Higher Education Act of 1965, as amended.

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 10 and 11, 1993. At the hearing, Dayton was represented by Kelli J. Crummer, Esq. of Dow, Lohnes and Albertson, while ED was represented by Russell B. Wolff, Esq., from the Office of the General Counsel. The proceeding was transcribed by a Court Reporter.

ED's main contention in this case is that an emergency action is necessary because, during a program review conducted at Dayton between February 23, and March 5, 1993, reviewers from ED discovered that 30 students at the Fairborn, Ohio branch location had been provided Pell Grants despite the fact that the branch campus had not been certified as an eligible location. The reviewers also discovered that Dayton had not made timely refunds for 35 students that had withdrawn and had miscalculated the amounts of pro-rata refunds for 28 students. In addition, Dayton had enrolled students who were not beyond the age of compulsory education and did not posses either a high school diploma or its equivalent, in violation of 34 C.F.R. § 600.5(a)(3). In essence, ED alleged that these violations indicated that Dayton had violated its fiduciary duties, 34 C.F.R. § 668.82, and evidenced that Dayton does not have the administrative capability to properly administer the Title IV Programs, 34 C.F.R. § 668.15.

Dayton called seven witnesses. They were the President, the school's co-owners, its accountant, two employees involved in student financial assistance, and a paralegal. They testified, in essence, that all the violations have been corrected since the program review and none are current. They have stopped providing Title IV aid to students at the ineligible campus, have made all the refunds, have ceased providing aid to minors who do not have a high school diploma or GED, even though they argue that there is an exception to the rule which would allow such aid. Further, the school is on the reimbursement system of Pell payment and has withdrawn from the Guaranteed Student Loan Program, now know as the Federal Family Educational Loan Program, and a new Director of student financial assistance, who has not been tainted by the violations, has been appointed.

Dayton invoked the argument that the test to uphold an Emergency Action was not satisfied in this case. Specifically, it claimed that Dayton had rebutted the essence of ED's case by showing there were no current violations and there was no real emergency since it took ED over six months to take the action. Since the school was in good faith and the owners are committed to backing the school financially, it was unfair to continue the emergency action pending the completion of the termination hearing.

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

(a) there is reliable information that Dayton 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 Dayton failed in its regulatory obligation to adequately account for such funds. What Dayton is charged with, among others, is drawing funds for an ineligible program. This is a very serious charge and, however one characterizes it, clearly indicates a violation of fiduciary duties. Dayton's claim that they thought they were authorized to provide Title IV aid to students at the branch campus once that branch had been accredited, but before it had been certified as an eligible branch, is unbelievable.

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 Dayton failed to carry its burden of showing why the emergency action is unwarranted. At most, Dayton raised questions of fact, dispute of which must be resolved by the trier-of-fact assigned to hear the termination proceeding. Therefore, I hereby **AFFIRM** the emergency action.

Judge Ernest C. Canellos

Dated: August 31, 1993
Washington, DC