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

DECISION IN THE MATTER OF
EMERGENCY ACTION AGAINST
ROBINSON BUSINESS COLLEGE

On December 10, 1992, the Office of Student Financial Assistance (OSFA) of the Department of Education (ED) imposed an emergency action against Robinson Business College (Robinson), 1517 Jackson Street, Monroe, Louisiana. The notice of the emergency action stated it was imposed in accordance with 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. § 668.83. In fact, the correct statutory citation is 20 U.S.C. § 1094(c)(1)(E). I find that this is a simple irregularity and that Robinson received adequate notice of the action being taken against it. In response to the notice, Robinson requested an opportunity to show cause why the emergency action was unwarranted.

Pursuant to the Secretary's Delegation of Authority to me to conduct proceedings and issue final decisions in circumstances where an educational institution requests an opportunity to show cause why an emergency action may be unwarranted, I conducted a hearing in Washington, D.C., on December 22, 1992. At that hearing, Robinson was represented by Wayne Hartke, Esq., of Hartke and Hartke, while the Department was represented by Russell B. Wolfe, Esq., of the Office of General Counsel. The proceeding was transcribed by a court reporter.

Counsel for ED submitted that the emergency action was initiated because, at a hearing on a termination action before an Administrative Law Judge, the school had committed a fraud on the Court by submitting false documents. Specifically, in an attempt to rebut findings by the Inspector General that Pell grant funds were distributed to students who had not made satisfactory progress in their postsecondary education programs and, therefore, were improperly disbursed, Robinson presented evidence that certain students had completed the necessary course work and some had even graduated. In rebuttal, ED called students who testified that they never took those courses, their grades were not as reflected and/or they did not graduate.

ED then argues that: there can be no greater violation than perpetrating a fraud on the Court; such fraud is clearly a violation of fiduciary duty; every record of the school is suspect and, therefore, an emergency action is necessary to adequately protect the federal interest. In addition, Robinson failed to submit its required audits for award years 1989/90-

1990-91, and this has hampered ED's oversight of Robinson's administration of federal funds.

Robinson countered that the emergency action was inappropriate since there was no showing of any current violations, that all that was shown were, at most, past violations. The last program review at the school revealed no violations, and that every mistake should not lead to termination, or worse, emergency action. Mr. Brent D. Henley, the current owner of Robinson, testified that he purchased the school in 1988. At that time, he retained the incumbent financial aid officer, but that subsequently, upon discovering problems with the administration of that program, he terminated that person and hired another. Mr. Henley attributed many of the problems at the school to that person. He argued that he relied on the school records whenever he made any claims to ED and that some records may be wrong, but that there was no fraud.

Mr. Henley explained further that the reason the school has not filed its audits is that there have been unresolved disputes from a previous audit and he believed there was no purpose to be served by submitting a new audit until those issues were resolved. Finally, he stated that Robinson has been on the Pell reimbursement system under which the school only receives federal funds after submitting the required documentation and having it verified by someone approved by ED. As a result, ED is not in danger of losing federal funds.

It is quite apparent to me that some fraudulent documentation was submitted by Robinson at the termination hearing. On one document, a F grade was changed to an A and the score was changed from 0 to 100. This was crudely done and quite apparent to anyone who saw it. Although there was no evidence of who had done it, the document was submitted by Robinson with the claim that the student had successfully completed the course. In another case, the school submitted a transcript and diploma for a student who testified she did not complete the courses or graduate. Out of the fifteen students whose status Robinson sought to explain in the termination action, seven were called by ED and testified denying some material aspect of the claim.

The apparent fraud strikes at the very essence of the fiduciary relationship. As such, it is clear that Robinson has failed, in at least some respects, to adhere to the highest standards of care and diligence in administering the Title IV Programs and in accounting for the funds received under these programs.

I find that the evidence presented meets the criteria for imposing emergency action pursuant to 20 U.S.C. § 1094(c)(1)(E) and 34 C.F.R. § 668.83. There is reliable information indicating that Robinson is violating the Title IV of the Higher Education Act, as amended; that immediate action is necessary to prevent the misuse of federal funds, and, that the likelihood of loss outweighs the importance of following the procedures set forth

for termination. Specifically, I find that Robinson has failed to carry its burden of showing that the emergency action is unwarranted. At most, Robinson raises questions of fact which can only be resolved by the trier-of-fact assigned to hear the termination proceeding.

Having found that the three conditions for imposing emergency actions are met in this case, I hereby affirm the emergency action.

ERNEST C. CANELLOS

Dated: January 7, 1993
Washington, D.C.