



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

In the Matter of

Docket No. 16-50-EA

WARD'S CORNER BEAUTY ACADEMY,

Emergency Action Proceeding

Respondent.

Appearances: William A. Lascara, Esq., James T. Lang, Esq., and Jesse B. Gordon, Esq.,
Virginia Beach, VA., for Ward's Corner Beauty Academy.

Angela L. Sierra, Esq., Office of the General Counsel, U.S. Department of
Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Ward's Corner Beauty Academy (Ward's) is a proprietary, post-secondary educational institution located in Norfolk, Virginia providing a variety of programs in cosmetology and barbering. It was eligible to participate in the federal student financial assistance programs that are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* Within the U.S. Department of Education (ED), the office of Student Financial Assistance (FSA) is charged with oversight of these programs. To meet Title IV eligibility, an institution is required to gain and then maintain accreditation status from a nationally recognized accrediting agency, designated as such by the Secretary of Education. Ward's received the requisite accreditation from the National Accrediting Commission of Career Arts & Sciences (NACCAS). However, on March 17, 2016, Ward's was notified by NACCAS that it was withdrawing its accreditation. Ward's appealed, and on October 13, 2016, NACCAS affirmed its withdrawal action and notified the Department of Education. Ward's thereby effectively lost its eligibility to participate in the Title IV programs because it lost its accreditation from its sole accrediting agency.

Upon receiving information of final withdrawal of accreditation from NACCAS, on November 1, 2016, FSA issued a Notice informing Ward's that it was imposing emergency action under authority of 34 C.F.R. §600.41(a)(3) and 34 C.F.R. §668.83. At the same time, FSA informed Ward's that it was intending to terminate Ward's eligibility to participate in the Title IV programs. On November 21, 2016, Ward's representative filed a notice of appeal.

I was assigned to adjudicate both aspects of the issue raised by the withdrawal of Ward's loss of accreditation. Therefore, on December 5, 2016, I issued an Order Governing Proceedings wherein I established two separate briefing schedules. First the question regarding an Emergency Action constitutes a preliminary matter in which a Respondent has the right to Show Cause why that action is inappropriate. Therefore, I ordered the parties to each brief their respective positions on the test for the appropriateness of the initiating of an Emergency Action that has been promulgated in 34 C.F.R. § 668.83 (c)(1) (i)(ii) and (iii). The parties filed their briefs. First, Ward's argued that NACCAS' removal action was inappropriate because it did not follow its own rules for removal of accreditation; it had a conflict of interest and, its information is unreliable. Finally, Ward's argued that the immediate action is unnecessary because it is no longer receiving Title IV funds and, therefore the risk of loss is not present. Conversely, FSA argued that Ward's is no longer eligible to participate in Title IV programs and, without an emergency action, Ward's could continue to draw down federal funds up until the time that the termination action is completed -- they are clearly ineligible to receive these funds and they could easily not be clearly recoverable by FSA.

As a preliminary matter, in a show cause proceeding, the Respondent has the burden of persuading me that the action being taken is clearly inappropriate. I find that Ward's has failed to meet that burden. First, I am precluded to look behind the withdrawal action of an accrediting agency. 34 C.F.R. §600.41 (e)(1). Further, October 31, 2016, Ward's moved for a Temporary Restraining Order (TRO) against NACCAS. On November 14, 2016, the Court found that the decision by NACCAS on the withdrawal of Ward's accreditation was entitled to deference and that Ward's was unable to meet its burden for issuance of a TRO.

FINDINGS and ORDER

Accordingly, I FIND that the Emergency Action that was instituted by FSA against Ward's Corner Beauty Academy complied with the applicable laws and regulations and is hereby AFFIRMED. Further, it is ORDERED that the Emergency Action shall continue in force and effect during the pendency of the Termination Action, Docket No. 16-52-ST.

Ernest C. Canellos
Chief Judge

Dated: January 26, 2017

SERVICE

A copy of the attached decision was sent to the following:

William A. Lascara, Esq.
James T. Lang, Esq.
Jesse B. Gordon, Esq.
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462

Angela L. Sierra, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110