

IN THE MATTER OF MEDICAL ARTS TRAINING CENTER,  
Respondent.

Docket No. 93-164-EA  
Emergency Action Proceeding

Appearances: Frank Brady, Esq., of Boca Raton, Florida, for the Respondent.

Steven Z. Finley, Esq., and Donald Philips, Esq., of Washington D.C., Office of the General Counsel, U.S. Department of Education, for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

### DECISION

On December 7, 1993, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) imposed an emergency action against the Medical Arts Training Center (Center) of Margate, Florida, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 CFR §§600.41 and 668.83. In response to the notice, on December 10, 1993, Center 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 by teleconference on December 21, 1993. At the hearing, I reviewed the letters of notification and each party made an oral presentation. Because of the technical nature of the issues and because their appeared to be questions of law rather than fact, I directed the parties to submit post-hearing briefs. Each side did so and I have considered such presentations in reaching my decision.

The basic facts are not in dispute. Center was notified on November 4, 1993, by the Accrediting Bureau of Health Education Schools (ABHES) that Center's institutional accreditation was withdrawn. It was on the basis of this accreditation, as well as on the completion of other prerequisites, that Center was determined to be eligible to participate in federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (HEA). As a consequence of the loss of this accreditation, SFAP issued its Notice of Emergency Action on December 7, 1993. This notice was followed by SFAP's issuance of a Notice of Intent to Terminate the eligibility of Center to participate in Title IV programs. The basis of both SFAP actions was predicated upon the failure of Center to satisfy one of the mandatory statutory requirements for eligibility in order to participate in such programs, namely the requirement that an institution be accredited by a nationally recognized accrediting agency. 20 U.S.C. 1085(b)(5). ED's contention is that an emergency action is necessary due to Center's loss of eligibility.

Center, in defense, raises three principle arguments. First, SFAP's use of an emergency action is unwarranted because the requirements of 34 CFR § 668.83(c) are not satisfied because there is no misuse of federal funds and no likelihood that federal funds will be lost. Second, Center has not lost its eligibility because one of its programs is currently accredited by the American Medical Association, Committee on Allied Health Education Accreditation (CAHEA), and, therefore, such alternative accreditation makes the school otherwise eligible. Third, the withdrawal by ABHES of its accreditation violated the Due Process rights provided in both the HEA and ABHES' own written procedures.

On the basis of the Due Process assertion, the Center has sued both ABHES and ED for Temporary and Permanent Injunctive Relief to reinstate its accreditation so as to permit continuation in the Title IV programs. Such a forum is the appropriate venue for Center's Due Process claim.

34 C.F.R. § 668.83(c) provides that an emergency action is appropriate if: 1) there is reliable information that an institution is violating provisions of Title IV of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions.

In light of the above, I make the following findings. First, an emergency action is an appropriate measure to take against an institution which loses its eligibility because the institution then fails to meet one of the mandatory statutory requirements for such eligibility within the Title IV programs. By definition, the granting of Federal financial assistance by a non-accredited institution is a violation of the HEA. Second, because any granting of funds is erroneous, I find that immediate action is necessary to prevent the misuse of such federal funds. Third, given the fact that any aid disbursed by an ineligible institution is erroneous, the likelihood of loss does outweigh the importance of awaiting the completion of the procedures for the termination of eligibility. In conclusion, I find that the three conditions enumerated at 34 CFR § 668.83 are met here.

As to Center's second claim, regarding alternative accreditation by CAHEA, I find that accreditation of a program does not satisfy the applicable statutes. The Accreditation must be maintained by the institution, per se. Programmatic accreditation, on its own, will not suffice.

Center's third claim is, in essence, that I should examine the procedures employed by ABHES in withdrawing Center's accreditation and find that they violated the notice requirements of Due Process. Once making that determination, I am urged to negate the emergency action. However, as the hearing official assigned to review the appropriateness of the emergency action, I am barred from considering challenges to the propriety of the accrediting agency's termination of an institution's accreditation. 34 CFR § 600.41(g)(1).

In conclusion, I find that the Respondent has failed to carry its burden of establishing that the emergency action is unwarranted. Having found that the three conditions for the imposition of an emergency action are met in this case, I hereby AFFIRM the emergency action.

---

Ernest C. Canellos

Dated: January 6, 1994  
Washington, D.C.