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

In the Matter of

VOGUE COLLEGES of COSMETOLOGY,

Respondent.

Docket No. 96-5-EA

Emergency Action
Show Cause Proceeding

Appearances:
John Allen Chalk, Esq., Michener, Larimore, Swindle, Whitaker, Flowers, Sawyer, Reynolds & Chalk, L.L.P., of Fort Worth, Texas, for Vogue Colleges.

Renee Brooker, Esq., and Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:
Judge Ernest C. Canellos

DECISION

By notice dated December 7, 1995, the Office of Student Financial Assistance Programs (SFAP), of the U.S. Department of Education (ED), imposed an Emergency Action against Vogue Colleges (Vogue), headquartered in Wichita Falls, Texas, in accordance with the provisions of 20 U.S.C. § 1094(c)(l)(G) and 34 C.F.R. §§ 600.41 and 668.83. In response to that notice, on January' 17, 1996, counsel for Vogue requested an opportunity to show cause why the emergency action was unwarranted.

Pursuant to a delegation of authority from the Secretary 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 on February 22 - 23, 1996, in Washington, D. C. At such hearing, evidence was submitted in the form of sworn testimony and documentary submissions, and oral argument was provided by counsel for both sides. A verbatim transcript of the proceeding was made by a court reporter and a copy of such transcript was provided to each counsel.

According to the notice, the emergency action resulted from a determination by SFAP that Vogue was improperly diverting federal funds into its corporate account and then falsifying students' files in order to cover up that wrongdoing. Specifically, SFAP alleges that vogue: diverted refunds owed to students and falsified student ledger cards to reflect offsetting charges; purged student files to mislead Department officials and independent auditors; and failed in its fiduciary duties imposed by Title IV of the Higher Education Act of 1965, as amended, (Title IV), 20 U.S.C. § 1070 et seq.

In its request for a show cause hearing, Vogue argued in its defense that ED had made a grave mistake and that it had not engaged in fraudulent activities. Vogue also claimed that it can not fully defend itself as to the specific allegations cited in the notice of emergence action because ED's investigators had seized all of its records and they were not

available for review. 1 Lastly, it points out that it currently has pending reimbursement claims for 897 students which ED refuses to honor. In Vogue's opinion, this refusal is made even more aggravated by the fact that the requests for reimbursement were verified as correct by an independent review agent, who was approved by ED.

Prior to the hearing date, on February 14, 1996, SFAP filed a Motion in Limine to exclude evidence contained in approximately 900 student files which Vogue sought to introduce. In support of its motion, SFAP claimed that, in this action, it is proceeding on the basis of the problems it has documented in the files of approximately 40 students identified to Vogue; all other student files were outside the scope of the emergency action and should not be considered. Vogue responded on February 14, 1996, and objected to the Motion claiming that the evidence was relevant to this procedure because the files were the ones that the institution submitted in its reimbursement requests and they would show that Vogue has reliable data and its submissions were not fraudulent. At the hearing, after considering the record and the argument from counsel for both sides. I granted the Motion.

At the evidentiary hearing, Vogue presented the testimony of three witnesses, the institution's owner. data processing manager, and an independent consultant. In essence, the consultant testified that she was engaged by Vogue to examine the student files in issue. She disagreed with SFAP's determinations on some of the files and offered an explanation as to those files. As to approximately 28 of the files, she could not explain Vogue's entries and, therefore, agreed with SFAP's determination as to liability. The data processing manager testified on the operation of the school's computer system, that he never made erroneous entries and that the school's owner did not have the capability to make such entries. Finally, the owner testified that: he did not authorize or know of any fraudulent activity at the school - he surmised that the claims by former employees of such a scheme resulted from personal animosity between the former financial aid officer and these employees: that the school made mistakes but those mistakes were attributable to the previous financial aid officer and the new consultant would prevent such errors in the future.

SFAP presented the testimony of a member of the SFAP team that conducted the review at the school. She testified that her analysis of the 40 records in issue revealed unsupported charges to student accounts which resulted in reducing balances owed by the school to zero. In each case, the witness attempted to ascertain the reason for the charge but was unable to do so. In conversations with former employees, she was told that the school had a scheme whereby any balance which was due and owing was "zeroed out" by creation of a fictional and unsupported charge. Some of these charges occurred years after the student left the school. Counsel for SFAP indicated in her opening statement that one of the former employees would testify concerning the alleged scheme, however, that did not occur. In the record, other than some anecdotal information, the hearsay testimony of the reviewer and a statement of one of the employees is the only direct evidence of a fraudulent scheme. Although I admitted this evidence into the record, I give it little weight given the lack of an opportunity to cross-examine.

At the hearing, SFAP succinctly argued that it had determined that Vogue should be declared ineligible to participate in the Title IV programs because of its fraudulent scheme as evidenced by statements of former employees and by the student records which reveal that balances owed to either students or ED are offset by unexplained and unauthorized "charges" - which were never refunded. Further, SFAP urged that I should affirm the emergency action because Vogue failed to satisfy its burden of persuasion that the emergency action is inappropriate.

Vogue argued that there was no evidence of any scheme to defraud; its records are reliable; the approximately 40 student files which were the subject of SFAP's complaint were self identified as problems that needed to be rectified; it was on the reimbursement system of payment for the Pell Grant program and there was no potential of loss of federal funds; its operations were being scrutinized by the independent consultant; the school had changed its financial aid officer; it would pay the amounts due to students which were erroneously charged off; and, therefore, an emergency action was inappropriate.

Despite the obvious inadequacy of SFAP's proof as to the fraud allegation, my review of the record shows that the deciding official acted on reliable information and that Vogue has not rebutted the allegations. In a show cause proceeding, the institution has the burden of persuading me that the emergency action is unwarranted. 34 C.F.R. § 668.83(e)(4). Pursuant to 34 C.F.R. § 668.83(c), an emergency action should be upheld if: (1) there is reliable information that the institution is violating a provision of Title IV; (2) immediate action is necessary to prevent the misuse of federal funds, and (3) the likelihood of loss from the misuse outweighs the importance of adherence to the

procedures for termination actions. In light of my finding that Vogue failed to meet its burden of showing that it did not violate the provisions of Title IV alleged, I find that a violation of Title IV occurred. As such, permitting Vogue to continue to participate in the Title IV programs would lead to the misuse of federal funds. Moreover, given the nature of the violations, I find that the likelihood of loss of Federal funds clearly outweighs the importance of awaiting the completion of the termination action.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the emergency action imposed against Vogue Colleges of Cosmetology is AFFIRMED.

Judge Ernest C. Canellos

Dated: March 19, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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1 Representatives of Vogue subsequently were provided access to these records.