

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

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In the Matter of

**Docket No. 96-58-EA**

**NEW CONCEPT BEAUTY ACADEMY,**  
Respondent.

Emergency Action Show Cause Proceeding

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Appearances: Steve Butler, Esq., Arlington, Tennessee, for New Concept Beauty Academy.

Renée 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 Richard F. O'Hair

**DECISION**

On April 24, 1996, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) imposed an emergency action against New Concept Beauty Academy (New Concept) in accordance with the provisions of 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. §§ 600.41 and 668.83. In response to that notice, on May 15, 1996, counsel for New Concept requested an opportunity to show cause why the emergency action was unwarranted.

Pursuant to the Delegation of Authority from the Secretary of Education to conduct proceedings and issue final decisions in matters where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a hearing on June 4, 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 parties.

This emergency action was initiated after SFAP conducted a no-notice program review of New Concept's compliance with the requirements of Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070a *et seq.* The first and most serious of the four

allegations of misconduct was that New Concept submitted false documentation with its reimbursement requests and that this was accomplished for the purpose of obtaining excessive and improper disbursements of Title IV funds. The second allegation was that the president of New Concept diverted Pell Grant funds to his personal bank account; the third allegation was that New Concept failed to provide SFAP program reviewers with pertinent Title IV school documentation, despite repeated requests. Lastly, SFAP concluded that the misconduct exhibited in these three allegations, collectively, represents New Concept's failure to comply with the fiduciary duties it owes to ED.

Following a no-notice on-site review from January 30 - February 8, 1996, SFAP's program reviewers reported they found evidence that New Concept submitted false documents to ED to support its request for reimbursement of federal financial aid the institution had provided to its students. [See footnote 1 1](#) These falsified documents included student account cards, school-generated student cover sheets, attendance records, and lists of students who purportedly were to be the recipients of this financial aid. The reviewers compiled a list of 87 [See footnote 2 2](#) students for whom the institution had submitted reimbursement files which contained falsified attendance records. These records indicated the students had completed sufficient clock hours (450) to be eligible for subsequent Pell Grant funds when, in fact, the students had not completed the reported clock hours. This erroneous attendance data was then transferred to the student cover sheets, thus making them false as well. Furthermore, the cover sheets for these students indicated they had received only one Pell Grant payment, the initial payment, when, in fact, ED records indicated these students already

had received their maximum yearly Pell Grant payments. ED approved and paid New Concept's reimbursement request for these students, but the Pell Grant ledgers and student account cards maintained by New Concept for each of these 84 students did not reflect Pell Grant payments following the institution's receipt of Pell Grant reimbursements. The program reviewers then located a list of 39 students whose accounts were credited with a Pell Grant payment during this same period of time, but the payments were erroneous because ED had not previously approved a reimbursement for these 39 students.

Through the testimony of Mr. Glen Bogart, a professional student financial aid consultant who New Concept hired after receiving the initial program review report, New Concept forthrightly admitted that its Pell Grant reimbursement requests contained false information regarding student eligibility for second Pell Grant payments. However, on behalf of the

institution, he denied that the erroneous data was motivated by, or amounted to, fraud by the owners of New Concept. Mr. Bogart explained that once he was retained by New Concept and had an opportunity to evaluate New Concept's financial aid program, his first recommendation was to terminate the employment of New Concept's financial aid administrator. New Concept immediately followed this recommendation. Thereafter, Mr. Bogart testified he completed as many reconciliations as possible of the student files that were the subject of SFAP's program review. During this process, he discovered that the former financial aid administrator, for purposes of expediency, often estimated, rather than ascertained precisely, when students would have completed sufficient clock hours to entitle them to a subsequent Pell Grant payment. This also required that the former financial aid administrator generate false student attendance records to support the estimated hours. The employee utilized this estimate rather than bother to examine the attendance records maintained by the instructors. Based upon this estimate, the financial aid administrator, on behalf of New Concept, submitted requests to SFAP for reimbursement of Pell Grant payments. When the reimbursement requests were approved and Pell Grant payments arrived, the employee then examined attendance records of those students on the reimbursement request list to be certain that the students were still enrolled and had indeed completed 450 clock hours of course work. If any student did not satisfy this requirement, that student's funds would not be returned to ED, but were then paid to the account of another student who satisfied the clock hour requirement, but for whom no reimbursement request had been submitted. Mr. Bogart was unable to track the exact substitutions of students when the financial aid administrator applied to substitute students the funds requested on behalf of ineligible students. Nevertheless, Mr. Bogart testified that he verified that, in most instances, all Pell Grant reimbursement payments were directed to students who were otherwise eligible to receive those payments. Mr. Bogart readily agreed with SFAP that the process amounted to an improper diversion of Pell Grant funds to students whose eligibility had not been approved by ED; however, he explained the cause of this violation was the unorthodox accounting system the financial aid administrator used in the annotation of the student account cards. Through this testimony, Mr. Bogart illustrated that he believed none of the students had improperly received more than two Pell Grant payments per academic year.

After acknowledging past violations in the documentation supporting the institution's Pell Grant reimbursement requests, Mr. Bogart explained that New Concept has implemented a two step plan to correct those violations and ensure they will not recur. The first stage involves creating satisfactory procedures to administer the Title IV program. He explained that his extensive experience in this area has permitted him to serve as New Concept's financial aid administrator and get New Concept into compliance with the Title IV statutes and regulations. He has agreed to remain with New Concept until such time as a suitable replacement can be installed. The second step of the corrective procedures is for New Concept to enter into an agreement with Fedele and Company, a CPA firm, to act as a secondary level reviewer of all Title IV reimbursement requests and as a third party escrow agent. This agreement provides that

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the Fedele firm will:

1. Examine the reconciliation of all 1994-95 and 1995-96 Pell Grant disbursements.
2. Examine all pending and future reimbursement requests to verify eligibility.
3. Receive all federal reimbursement funds and place them in escrow, with later payment to New Concept upon a reconfirmation of student eligibility.
4. Receive all checks from lenders and hold the checks pending a confirmation of student eligibility.

I find that the efforts New Concept has expended to determine the nature of the problem with their record keeping for

student financial aid purposes, the corrective action taken to date, and their remedial plans are genuine and reasonable.

SFAP program reviewers also alleged that New Concept improperly accounted for some of the ED reimbursement funds because it appeared that some of the funds were diverted to a personal bank account of New Concept's owner. Although the institution is not required to maintain a separate bank account for Pell Grant funds, there is a requirement the institution must account for the receipt and expenditure of those funds. 34 C.F.R. § § 668.164, 690.81. As explained above, Mr. Bogart refuted this allegation through his finding that New Concept could account for all reimbursement funds. He testified that these funds were paid to student accounts, albeit some of the students technically were not eligible because they were other than those for whom reimbursement was requested. Furthermore, the validity of this allegation is questionable because this institution was not drawing down Pell Grant funds before they were credited and paid to student accounts, but presumably New Concept was being reimbursed for having previously credited, or paid, Pell Grant funds to its students. If the institution has the resources to pay a student account for a Pell Grant with the understanding that it would later be reimbursed for this act, it would seem the institution should not be so bound by the regulatory requirement to maintain exact accountability for this reimbursement payment from ED.

New Concept also defended itself on the grounds that the owner had a minimal understanding of the administration of student financial aid. This is not a valid defense to any charge of financial aid misconduct, particularly since the training of institutional owners in this area of the law is a prerequisite to obtaining institutional eligibility to participate in Title IV programs. 34 C.F.R. § 668.13(a)(4). Even though the owner may have hired someone believed to be competent to administer this aspect of the program, ultimate responsibility for compliance with the statute and regulations lies with the owner. *In re Allied Schools of Puerto Rico*, Dkt. No. 94-125-ST, U.S. Dept. Of Educ. (March 23, 1995) at 7.

The next allegation concerns New Concept's failure to provide the program reviewers with all pertinent Title IV documentation they had requested. This alleged lack of cooperation is

a clear violation of 34 C.F.R. § 668.23(b)(1). In response to this charge, New Concept explained that it had provided ED with every requested document except for a bank statement and the records of two students. New Concept has requested that statement from the bank and will give that to ED upon its receipt; and maintains that it will continue to search for the student records. I find that New Concept has made a good faith effort to obtain those documents ED requested.

The final allegation is a general, collective allegation that because of the three previous allegations of fraud, submission of false documents and other misconduct, New Concept has violated its fiduciary responsibilities to ED. 34 C.F.R. § 668.82. In defense of this, Mr. Bogart reiterated he was shocked at the methods and documentation used by New Concept's former financial aid officer, but is satisfied that the situation is correctable. I find the evidence New Concept presented during the hearing satisfactorily refutes the argument that this alleged violation continues to exist.

SFAP may initiate an emergency action against an institution when it receives reliable information that the institution is violating a regulatory provision; immediate action is necessary to prevent misuse of funds; and the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding to limit, suspend or terminate the Title IV eligibility of that institution. 34 C.F.R. § 668.83(c)(1). I find SFAP received sufficiently reliable information from its program reviewers to support the initiation of this emergency action. After an emergency action is initiated, the institution has the burden of persuasion in a show-cause hearing that continuation of the emergency action is unwarranted or should be modified. In such a proceeding, the institution must demonstrate the following: 1) the grounds for emergency action listed in the notice no longer exist; 2) the grounds will not cause the loss or misuse of funds; or 3) the institution will implement procedures which will eliminate the risk of loss. 34 C.F.R. § 668.83(e)(4). In this instance, New Concept argues that the grounds for the emergency action no longer exist, and that the procedures it proposes to implement by means of the agreement with the Fedele firm will eliminate any future risk of loss.

There is no question that New Concept submitted false documents to ED in past reimbursement requests and subsequently improperly diverted some of those funds to students not on the reimbursement request list. This admission, however, is accompanied by a genuine effort to regain control of New Concept's student financial aid process. This includes the continued employment of Mr. Bogart, a known expert in the field, who said he will remain with New Concept until a competent full time replacement is hired. Assuming that New Concept implements the proffered secondary-level review/third-party escrow arrangement with the Fedele firm, this will further ensure that student files submitted to ED for reimbursement of Pell Grant funds are fully documented with credible data and will receive a

reconfirmation of that student eligibility upon receipt of ED reimbursement payments. By such a limitation on New Concept's ability to receive reimbursement of its student financial assistance expenditures, SFAP will be guaranteed that there will be a minimal risk of loss of ED funds and this will obviate the need for the continuation of the emergency action imposed on April 24, 1996.

## FINDINGS

1. SFAP received sufficiently reliable information to initiate an emergency action proceeding against New Concept Beauty Academy.
2. New Concept Beauty Academy has conceded that its former financial aid administrator submitted erroneous data in support of its requests for reimbursement of Title IV funds and, on occasion, credited those funds to students who were not listed on the corresponding reimbursement request to ED.
3. New Concept Beauty Academy's owner has not improperly diverted Pell Grant funds to his personal bank account.
4. New Concept Beauty Academy has made reasonable efforts to obtain additional institutional documents requested by SFAP program reviewers.
5. New Concept Beauty Academy has previously failed to comply with its fiscal responsibilities; however, it has engaged in corrective actions which will remove the threat of a misuse of Title IV funds.

## ORDER

On the basis of the foregoing, it is hereby ORDERED that, on the condition that New Concept Beauty Academy enters the proposed agreement with the Fedele firm, the details of which are described above, the emergency action imposed against New Concept Beauty Academy is vacated.

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Judge Richard F. O'Hair

Dated: June 13, 1996

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## SERVICE

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

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*Footnote: 1 Since September 1990, New Concept has been on the reimbursement system of payment of Pell Grants, as opposed to the advance payment method. Under the reimbursement method, the institution must demonstrate student eligibility and that the student's account has been properly credited with Pell Grant funds before ED will release*

*reimbursement funds to the institution. 34 C.F.R. § 668.163.*

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*[Footnote: 2](#) 2 At the hearing SFAP reduced this number to 84.*

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