

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

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In the Matter of

**Docket No. 97-156-EA**

**ESCUELA AUTONOMA DE CIENCIAS MEDICAS**

Emergency Action

**DE CENTRO AMERICA,**

Show Cause Proceeding

Respondent.

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Appearances: Silvia Pacheco A., Esq., Facio & Canas, San José, Costa Rica , for Respondent.

Howard D. Sorensen, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Frank K. Krueger, Jr., Administrative Judge

**DECISION**

Respondent is a medical school located in Costa Rica which has approximately eighty students receiving financial assistance under the Federal Family Education Loan (FFEL) program authorized under Title IV of the Higher Education Act of 1965, as amended. By letter dated July 23, 1997, the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), notified Respondent that it had initiated an administrative proceeding to terminate Respondent's eligibility to participate in the student financial assistance programs authorized under Title IV, and that ED had imposed an emergency action immediately withdrawing the authority of the Respondent to obligate funds under Title IV pending the outcome of the termination proceeding. Under the terms of the emergency action, students enrolled and receiving FFELs on July 23, 1997, could continue to receive FFELs for the remainder of the then current academic year and for the subsequent academic year. Respondent requested an opportunity to show cause that the emergency action is unwarranted or should be modified. On November 18, 1997, I was designated as the show cause official. The parties submitted briefs and exhibits in support of their positions and Respondent requested that I decide the case on the basis of the written record.[See footnote 1<sup>1</sup>](#)

U.S. students enrolled in a foreign medical school may receive FFELs if the medical school meets the accreditation standards of the country in which the school is located, and those standards are comparable to the accreditation standards applied to medical schools in the United States, or the foreign medical school is accredited by a nationally recognized accrediting agency approved by the Secretary of Education. The determination as to whether the accreditation standards for a foreign county are comparable with those applied to medical school in the United States is

made by the National Committee on Foreign Medical Education and Accreditation (NCFMEA), a panel of experts appointed by the Secretary of Education. *See* 34 C.F.R. § 600.55(a)(4)(i) (1997). On July 21, 1997, NCFMEA determined that Costa Rica did not have accreditation standards comparable with those in the United States. Since Respondent is not accredited by a nationally recognized accrediting agency approved by the Secretary, SFAP determined that Respondent was no longer eligible to participate in the FFEL program, imposed the emergency action, and notified Respondent of its intent to terminate its participation in the Title IV programs.

NCFMEA made its decision of non-comparability based on a lack of information from the Costa Rican government, apparently because the request for the information was addressed to Mr. Rodolfo Silva, Minister of Health, who is actually the Minister of Transportation. The necessary information has now been provided to NCFMEA which will meet, according to its Acting Executive Director, on March 12, 1998, and reconsider its determination concerning Costa Rica. At the request of the parties, the termination proceeding, which is before Administrative Judge Richard O'Hair, has been continued pending the outcome of the NCFMEA's meeting on March 12, 1998.

SFAP argues that Respondent does not meet the definition of an institution of higher education under the Higher Education Act because of the determination by NCFMEA and that its students are not eligible for funds under Title IV and that I lack any authority to substitute my judgement for that of NCFMEA. Respondent argues that the determination is a mistake and that the necessary information for NCFMEA to make a determination on the merits, rather than on the basis of a lack of information, has now been provided to NCFMEA. Given that NCFMEA is scheduled to reconsider its determination concerning Costa Rica in the next several weeks, and that the emergency action does not have an immediate effect on students who were receiving FFELs when the emergency action was imposed, at this point the emergency action has little impact. If NCFMEA decides that the accreditation standards for Costa Rico are comparable to those of the United States, then SFAP will have to dismiss the termination proceeding and lift the emergency action. On the other hand, if NCFMEA decides to affirm its earlier determination of non-comparability, then Judge O'Hair will have little discretion but to order termination. Given the apparent lack of authority and expertise by this tribunal to make any substantive determination concerning comparability of accreditation standards, the present limited impact of the emergency action, and the fact that NCFMEA will soon reconsider its earlier decision, I conclude that the risk of possible loss of Federal funds, although slight, outweighs the importance of awaiting the completion of the termination proceeding. *See* 34 C.F.R. § 668.83 (1997). The Emergency Action will remain in place.

Date: February 27, 1998

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Frank K. Krueger, Jr.  
Administrative Judge

SERVICE

A copy of the attached decision was sent by FAX and certified mail to the following:

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[Footnote: 1](#) <sup>1</sup> Respondent appealed the termination action by letter dated August 11, 1997. Apparently at Respondent's request, while it consulted with the Costa Rican government, the appeal was not forwarded to the Office of Hearings and Appeals until November 3, 1997. My consideration of the emergency action was further delayed because of ambiguity in Respondent's August 11, 1997, letter as to whether Respondent intended to not only appeal the termination action but also to show cause that the emergency action was unwarranted or should be modified. Respondent's brief in the show cause proceeding was filed on January 9, 1998. SFAP's brief, originally due on January 30, 1998, was delayed until February 6, 1998, since Respondent failed to timely serve SFAP with a copy of its brief. Respondent's reply brief was due on February 27, 1998, but on February 25, 1998, Respondent notified me that it would not file a reply brief.

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