

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

In the Matter of

Docket No. 99-77-EA

US SCHOOLS,

Emergency Action
Show-Cause Proceeding

Respondent.

Appearances: Keith D. Diamond, Esq., of Miami, Florida, for US Schools.

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

Before: Judge Ernest C. Canellos

DECISION

On November 16, 1999, the United States Department of Education (ED) Office of Student Financial Assistance Programs (SFAP) imposed an emergency action against US Schools of Miami, Florida, (Respondent) in accordance with 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. § 668.83. In response to the notice imposing the emergency action, on December 3, 1999, counsel for Respondent requested an opportunity to show cause why the emergency action is unwarranted.

Pursuant to the 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 December 13, 1999. According to the notice in this case, the emergency action was based upon SFAP's finding, subsequent to a program review conducted at Respondent's institution, that Respondent had "*completely abandoned its fiduciary duty by failing to...provide documentation to reviewers to support any of its drawdown requests for the three award years examined*" during the program review, and that the records eventually made available to SFAP revealed that Respondent had routinely requested Pell grant payments from the Department in excess of its needs. (Emphasis in original.)^[1] In this regard, SFAP alleges that from July 1, 1996 to May 7, 1999, Respondent could not provide credible documentation for its expenditure of \$1,124,289 in Pell grant funds. The additional grounds warranting imposition of the emergency action, according to the notice, include, Respondent's failure to calculate properly tuition refunds, failure to pay tuition refunds, failure to maintain accurate records, and Respondent's demonstrated a lack of administrative capability.

In response to the allegations in the notice, Respondent argues that SFAP's review of the institution's records contains significant inaccuracies. According to Respondent, if given sufficient time, it would be able to reconcile SFAP's review with its own review and, thereby, reduce the amount of funds unaccounted for by a substantial amount. In addition, Respondent argues that it has met its show-cause burden in the emergency action by showing that, even assuming that it has misused substantial Pell grant funds in the past three award years, the likelihood of future loss of

Federal funds does not outweigh the importance of awaiting completion of the Subpart G, Termination and Fine proceeding, which accompanies this emergency action, since the Department's interests are suitably protected from loss by the "reimbursement" system imposed upon Respondent in May 1999

In this show cause proceeding, the institution has the burden of persuading me that the emergency action is unwarranted. See 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 violated any provision of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of financial loss from the misuse of funds outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions. Examples of violations that would warrant the imposition of an emergency action include the grounds charged in the notice.^[2] Furthermore, under 34 C.F.R. § 668.83(e)(4) Respondent has the burden of persuading me that the emergency action is unwarranted because the grounds stated in the notice did not or no longer exists, or the grounds will not cause loss or misuse of Title IV funds, or that the institution will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

The Respondent has not persuaded me that the grounds did not or no longer exists, nor that the grounds would not cause loss or misuse of Title IV funds.^[3] Given the serious and comprehensive nature of the grounds charged in the Notice, I am not convinced that the procedures implemented, the reimbursement system, would reliably eliminate the risk of loss. The reimbursement system does somewhat reduce the risk of loss to Federal funds because institutions on that system must submit qualifying documentation supporting requests for Title IV financial assistance to the Department prior to, rather than subsequent to, receiving Title IV funds. However, the reimbursement system would obviously not eliminate the risk of loss regarding refund calculations and other recordkeeping requirements that demonstrate administrative capability.^[4] Therefore, I find that Respondent failed to meet its burden showing that the imposition of an emergency action against Respondent is not warranted. In light of my determination that Respondent has failed to meet its burden of showing that the institution's procedures would reliably eliminate a risk of loss of Federal funds, it is clear that the likelihood of financial loss of Federal funds clearly outweighs the importance of awaiting completion of a proceeding to limit, suspend, or terminate the participation of Respondent in HEA programs.

Having found that the three-pronged test for imposition of an emergency action has been met, **I AFFIRM** the emergency action.

Ernest C. Canellos
Chief Judge

Issued: December 14, 1999
Washington, D.C.

SERVICE

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

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^[1] On May 10, 1999, Respondent provided SFAP with a report that listed all Pell Grant disbursements paid to students during the award years at issue: 1996-97, 1997-98, and 1998-99. According to SFAP, these reports do not sufficiently account for Respondents Pell Grant disbursements because the reports do not reconcile with the cumulative expenditure amounts identified in the Department's automated processing system (EDCAPS) for grants and payments (GAPS).

^[2] 34 C.F.R. § 668.83(c)(2)(ii) (fiduciary duty, administrative capability).

^[3] Further, because the ultimate decision on the facts at issue will be made at the termination hearing, and given that Federal funds have been cut-off during the pendency of that action, I will give favorable consideration to any request by the Respondent for establishment of an immediate hearing date or otherwise accelerating the hearing process.

^[4] *See, e.g.*, 34 C.F.R. § 668.162 (setting forth the reimbursement payment method).