



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

In Matter of

**BETH MEDRASH EEEYUN
HATALMUD**

**Docket No. 97-94-SP
Student Financial
Assistance Proceeding
PRCN: 199-32020021**

Decision of the Secretary

Procedure

Beth Medrash Eeyun Hatalmud (BMEH), a postsecondary institution in New York, offers programs of rabbinical study in Lithuanian tradition. On January 27, 1997, BMEH's eligibility to participate in the Pell Grant Program, authorized under Title IV of the Higher Education Act of 1965, was terminated. *See In the Matter of Beth Medrash Eeyund Hatalmud*, Dkt. No. 94-45-ST, Initial Decision (April 23, 1996), Decision Upon Remand (Sept. 25, 1996), Decision of the Secretary (January 27, 1997). BMEH's termination was based on the finding that the school failed to satisfy the statutory and regulatory definition of an eligible institution. Specifically, it was held that BMEH's programs in *First Rabbimics, Second Rabbimics and Judaic Studies* did not qualify as a "program of training to prepare students for gainful employment in a recognized occupation," as required by 20 U.S.C. §§ 1141 (a), 1088 (c) (1).

On May 7, 1997, the office of Student Financial Assistance Programs (SFAP), of the U.S. Department of Education (Department), issued a Final Program Review Determination (FPRD) concerning BMEH. This FPRD found BMEH's program ineligible to participate in the Pell Grant Program and required the repayment of all federal funds disbursed to participating students since 1988, totaling \$15,949,148. BMEH appealed the Department's final termination decision.

On appeal to the federal district court in New York, BMEH contended that it was the victim of an evolving interpretation of the applicable statute. In response, the Department maintained that a new principle had not been applied in this case. On April 2, 1998, the District Court granted the Department's motion for Summary Judgement. *See Beth Medrash Eeyun Hatalmud v. Richard Riley*, Memorandum Order, No. 97 Civ. 2035 (RO) (S.D.N.Y. April 2, 1988). In accordance with the applicable statute, the Court found that the Department reasonably required a qualified program to primarily prepare students for gainful employment in a recognized occupation. (Emphasis added.) The Court also held that the standard applied in this case was not a new one.

On June 16, 1998, Chief Judge Ernest C. Canellos issued a decision to address the only remaining issue of liability. Judge Canellos' decision relieved BMEH of any obligation to repay the funds it disbursed to students participating in its ineligible programs. Judge Canellos stated that "the provisions which define an eligible institution, *inter alia*, as one which provides a program which 'prepares students for gainful employment in a recognized occupation' are not so clear as to foreclose reasonable debate as to its meaning." Beth Medrash Eeyun Hatalmud, Docket No. 97-94-SP, p. 4, (June 16, 1998). In response to Judge Canellos' decision, SFAP appealed to this tribunal.

Rule of Law & Arguments

The applicable statutes provide in pertinent part that:

Postsecondary vocational institution. For the purpose of this section, the term 'postsecondary vocational institution' means a school (1) which provides an eligible program of training to prepare students for gainful employment in a recognized occupation....

20 U.S.C. § 1088(c)(1997)

The term "institution of higher education" means an educational institution in any State which ... provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation....

20 U.S.C. § 1141(a) (1997)

The applicable regulation, 34 C.F.R. § 600.2 provides that a recognized occupation is defined as:

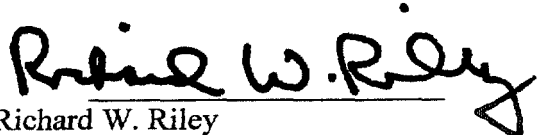
[A]n occupation that is: (1) Listed in an 'occupational division' of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor; or (2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

On appeal, BMEH argues that 20 U.S.C. §§ 1088(c) and 1141(a) require an eligible program to generally prepare students for gainful employment, without compelling the program's training to prepare students for employment in a specific occupation. BMEH's Appeal Brief to the Secretary, p.8. BMEH further contends that these statutes have been newly interpreted to include a specificity requirement and that this new requirement was retroactively applied in the instant case. Therefore, BMEH asserts that it may not be held liable for the Pell Grants disbursed under its programs. In the alternative, BMEH requests that the case be remanded for further review.

Findings

Under the authority of 20 U.S.C. §§ 1088(c), 1141(a), and the definition provided in 34 C.F.R. § 600.2, an eligible institution must provide training in a specifically identifiable occupation. An eligible program may not merely provide training that may generally improve the employability of its students. See Sara Schenirer Teachers Seminary, Docket. No. 94-49-ST (June 21, 1995), aff'd (Sept. 14, 1995). This standard is long-standing and was not newly interpreted when applied in this case. Further, it is important to note that evidence of fraud or misleading information is not necessary to establish that a given program is ineligible to receive federal funds under 20 U.S.C. §§ 1088 (c), 1141 (a). Moreover, the determination of BMEH's ineligibility concluded when the Department issued its final decision on January 27, 1997. Although BMEH has attempted to re-litigate the finding of its ineligibility, in accordance with the doctrine of res judicata, this issue may not be further reviewed. BMEH's programs do not meet the standard of an eligible vocational program, under the applicable statute. Notwithstanding BMEH's ineligibility, however, the specific facts of this case do not warrant the imposition of financial liability. Therefore, I hereby affirm Judge Canellos' decision to relieve BMEH of financial liability but impose a *fine* in the amount of \$50,000.00.

Washington, DC
April 1, 1999


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