

---

IN THE MATTER OF BNOS RESEARCH      Docket No. 94-120-EA  
INSTITUTE FOR TRAINING &      Student Financial  
EDUCATION,      Assistance Proceeding  
                     Respondent.      Emergency Action

---

## DECISION

Appearances:      Rabbi Abraham Tenenbaum, Dean, for Bnos Research Institute For Training & Education.

                         Howard D. Sorensen, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before:      Judge Richard F. O'Hair

## BACKGROUND

On January 14, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) imposed an emergency action against the Bnos Research Institute for Training & Education (BRITE) of Brooklyn, New York, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 C.F.R. §§600.41 and 668.83. Although BRITE could have exercised its right to have a show cause hearing immediately following its emergency action notification, it postponed the election for such a hearing until August 10, 1994.

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 in Washington, D.C., on August 19, 1994. At the hearing, the institution represented itself through its Dean, Rabbi Abraham Tenenbaum, while SFAP was represented by Howard D. Sorenson, Esq., from the ED Office of the General Counsel. The proceeding was transcribed by a court reporter.

The emergency action was initiated because of BRITE's alleged failure to qualify as an eligible institution for purposes of the programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). More specifically, BRITE failed to satisfy the definition of either an institution of higher education, as set forth at 20 U.S.C. §1141(a) and 34 C.F.R. §600.4(a), or a postsecondary vocational school, as set forth at 20 U.S.C. §1088(c) and 34 C.F.R. §600.6.

This proceeding is one of a series of similar cases this tribunal has addressed in the past nine months. See *In the Matter of Seminar L'Moros Bais Yaakov*, Docket No. 94-37-EA, U.S. Dept. of Education (March 21, 1994), hereinafter referred to as *Seminar L'Moros*; *In the Matter of Academy for Jewish Education*, Docket No. 94-11-EA, U.S. Dept. of Education (March 23, 1994); *In the Matter of Beth Jacob Hebrew Teachers College*, Docket No. 94-10-EA, U.S. Dept. of Education (March 25, 1994); *In the Matter of Sara Schenirer Teachers Seminary*, Docket No. 94-8-EA, U.S. Dept. of Education (March 25, 1994); *In the Matter of Bnai Arugath Habosem*, Docket No. 94-73-EA, U.S. Dept. of Education (June 16, 1994). In all of these emergency actions, the bases ED utilized for the proceeding against these institutions are identical to those used in its case against BRITE: 1) the institutions are accredited as avocational institutions and, therefore, there is an absence of a nexus between their accreditation and the offering of any HEA-eligible programs, thus invalidating their accreditation; and 2) the institutions do not satisfy the statutory definition of either an institution of higher education or a postsecondary vocational institution because they do not provide training that prepares students for gainful employment in a recognized occupation.

For the first criteria, ED explains that an institution must be accredited by a nationally recognized accrediting agency or have been granted preaccreditation status. See HEA §1201(a), 20 U.S.C. §1141(a); HEA §435(a), 20 U.S.C. §1085(a); and HEA §481(c), 20 U.S.C. §1088(c). It is undisputed that BRITE received only an avocational accreditation by the Accrediting Commission for Continuing Education and Training (ACCET), a nationally recognized accrediting agency. ACCET considers an institution as avocational if its programs are designed for personal or professional development and enhancement. See ACCET Document 13. Programs for personal development are not eligible for HEA funding. Therefore, ED determined the maintenance of an ACCET avocational accreditation did not satisfy the HEA definition because this type of accreditation had no nexus with the offering of any HEA-eligible programs.

To meet the second criteria and thus qualify as an institution of higher education, the institution must provide an educational program for which it awards a bachelor's degree or a two-year program which can be credited toward a bachelor's degree, or provide "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). Whereas a postsecondary vocational institution need only provide "at least a six-month training program to prepare students for gainful employment in a recognized occupation." 20 U.S.C. 1088(c). ED determined that BRITE failed to satisfy the definition of either an institution of higher education or a postsecondary vocational institution because BRITE did not award a proper degree or offer appropriate training to its students.

## ACCREDITATION

BRITE, which is similar in function to a number of other postsecondary educational institutions operated by and for a large Orthodox Jewish population in eastern New York, was found to be eligible for Title IV, HEA Programs on January 31, 1992. Prior to obtaining this eligibility BRITE sought and received accreditation status from the predecessor agency of what is now ACCET. At the time of their accreditation application, among other information, BRITE was asked to classify itself as either a vocational or an avocational institution. [See footnote 1 /](#)

This created a dilemma for BRITE's Board of Directors because their programs did not neatly fall within the ACCET definitions of either vocational or avocational. BRITE ultimately selected neither of these categories to describe its operational mission. At the hearing, BRITE explained that its rationale was that it believed it could not classify itself as avocational because it maintained a valid teacher training program. On the other hand, it firmly believed it was denigrating to label themselves as vocational. It was of the opinion its five-year General Jewish Studies and seven-year Rabbinics programs, which were designed to "provide the adult population of the New York Metropolitan area with the means to pursue their Jewish education via a variety of self-study programs", were on a much higher educational plane than an avocational program, one which provides only personal or professional development and enhancement. ACCET was then forced to make a selection for BRITE and ACCET chose to classify the institution as avocational. As explained by the ACCET President, Mr. Williams, ACCET did not consider this selection to have any real significance since the accreditation process for both vocational and avocational schools differs only slightly. That difference being, for vocational, but not avocational, institutions the commission must look at employer satisfaction with the graduates of the institution and they must look at the institution's graduate placement program. Because ACCET treated BRITE as an avocational institution, these areas were not pursued in the accreditation process.

The ACCET internal vocational/avocational classification was of no consequence until sometime in mid-1993 when ED became apprised of these distinctions. ED responded to this revelation by means of this emergency action which is premised on the grounds that BRITE is an ineligible institution and it is a misuse of federal funds to continue their eligibility status.

I disagree with ED's reasoning on the matter of accreditation and I find the status accorded to BRITE by ACCET satisfies the statutory requirement. ACCET is one of many such agencies which have been appropriately recognized by ED as competent to assess the quality of

the educational programs of institutions seeking Title IV-HEA program eligibility. That quality assessment is ACCET's only obligation and if, in performing this role, ACCET wishes to create internally two sub-categories (vocational and avocational) to assist the agency in knowing what subject areas need to be addressed during their review, that should be of no consequence to ED. [See footnote 2 2](#) As mentioned previously, for their purposes the primary difference between the two sub- categories is that, for avocational institutions, ACCET does not make an inquiry as to the satisfaction of employers of recent graduates with the training those graduates received, and does not require the institution to have a student placement office. In all other respects the ACCET evaluation of the quality of education provided by both avocational and vocational schools is identical. ACCET considers BRITE to be a fully accredited institution and I agree. The accreditation agency's purpose is to assess whether the institution is providing a quality program of education, without regard to whether it is vocational or avocational. Mr. Williams related that the accreditation process is clearly a separate process from the determination of Title IV, HEA program eligibility for which the Department of Education has sole responsibility. ED Ex. 26 at 159, 166 & 177.

SFAP has not provided compelling reasons why I should disregard this rationale and precedent set by Judge Canellos in Seminar L'Moros, supra. Accordingly, I hold that BRITE has satisfied its burden before me to prove that it is properly accredited, thereby satisfying one of the definitional criteria of both an institution of higher education, and a postsecondary vocational school.

#### GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION

The second common issue in these emergency action proceedings regarding schools similar to BRITE is determining whether the institution satisfies the pertinent definitions which require it to prepare students for gainful employment in a recognized occupation. It is ED's position that BRITE does not meet the definition of either an institution of higher education or a postsecondary vocational school because it does not prepare students for employment, and therefore is an ineligible institution. In support of this argument SFAP presented documents which allege that from the date of its application for accreditation and Title IV-HEA eligibility, BRITE has consistently represented itself as nothing more than an adult education program designed to fulfill the ambition of all Orthodox Jews to pursue the study of their religion on a lifelong basis. Illustrative of this goal is the mission statement set forth in BRITE's 1991-1992 and 1992-1993 School Bulletins:

#### MISSION

With its centuries old tradition stretching back to the days of its founding under the Austro-Hungarian Empire, the purpose of BRITE is to provide the adult population of the New York Metropolitan and surrounding area with the means to pursue their Jewish education via a variety of self-study programs.

\* \* \*

Our goal is to impart to them:

1. essential Judaic knowledge
2. basic language and textual skills
3. the commitment to continue their studies even after graduation.

ED Ex. 11 & 12.

In a later section within the 1991-1992 School Bulletin entitled Independent Study Program, the text states: "[T]here is no doubt that graduates of the program will be better equipped to pursue careers in the clergy, education or Jewish law should they so desire."

ED Ex. 11 at 6.

This same rhetoric is repeated in BRITE's 1991 Analytic Self-Evaluation Report (ASER) which was prepared in conjunction with their application for accreditation. ED Ex. 9. From this document SFAP identifies additional language which further supports their position that BRITE traditionally has not been primarily concerned with training persons for gainful employment.

As mentioned previously, the program is interested in promoting knowledge, culture and ethical improvement. Accordingly, it does not seek to establish any relationship to current industry or employment needs.

ED Ex. 9 at 7.

The next two sentences in that paragraph, however, belie SFAP's position:

However, there is no doubt that the rapid population growth of the Orthodox Jewish community in America has and will continue to create a need for larger numbers of educators. This is a role which BRITE graduates will be capable of filling.

Id. at 8.

The ASER contains several other references to the fact that there is currently a shortage of certified Judaic Studies teachers in their community and BRITE students who earn a certificate of completion will be qualified to pursue these teacher vacancies.

During the administrative hearing, Mr. Abraham Pfeifer, BRITE's administrator, elaborated on the institution's history, emphasizing its dual role: first, accommodating the need and desire of members of the community to study religion and secondly, training students to

become teachers of Talmudic and Judaic studies on a secondary and post-secondary level. Rabbi Meyer Schiller, a curriculum expert for Judaic studies, testified he had previously examined the curriculum implemented at BRITE for both the Judaic and Talmudic programs. In his opinion the materials were typical of those used in other teacher training programs. He further explained that for all two-semester courses, the first semester focuses on the basics of the particular subject matter to the students. While this continues during the second, or succeeding, semester, the skills of teaching methodology are introduced at that time.

Evidence of this introduction of "teaching methodologies" is also located in the copies of a Syllabus, Learning Contract and a Study Guide for a course labelled "Genesis II". BRITE Ex. 5, 6, & 7. This was the only documentary evidence introduced by BRITE which suggested that the students received any training or instruction on the basics of how to become teachers. According to SFAP's counsel, no similar documents had been previously supplied to ED. These three exhibits list reference reading materials for the students, but there are no materials listed which are obvious texts designed to train the students to be teachers. A further deficiency in the teacher training aspect of BRITE's self-study program, and one which I find quite significant, is that the Bulletin lists no separate courses offered to students which are designed to train teachers in the various responsibilities of such an occupation.

Mr. Pfeifer testified that there were 13 graduates of their two programs in 1993 and that ten of the graduates have obtained employment. We know that at least five of them are satisfactorily employed as teachers, or are in an education related field, as evidenced by employers who have written letters of commendation to BRITE for the excellent training their respective employees received as students at BRITE.

After viewing the evidence and listening to the witnesses, I must conclude that BRITE has not satisfied its burden of persuasion that they have established a program whose specific goal is to train students for a recognized occupation, in this case, as teachers. BRITE maintains a sound academic program of self-study which relies on student discipline to read, study, write, and be periodically examined on a very wide range of Jewish religious history, laws and traditions. The one deficiency of this learning program, as has been presented to ED and to ACCET, is that it has not established a series of classes specifically and unequivocally designed to fulfill its purported mission to train new teachers. I recognize that many of its recent graduates have been employed as teachers in other Jewish schools, however, I believe they obtained this employment primarily because of the outstanding religious education they received at BRITE. It goes without saying that the more educated a person becomes in a particular field, the more qualified that person becomes to impart that knowledge to others. That has been the premise upon which BRITE and most of the other Jewish schools have been operating, and that is the reason they have been unsuccessful in these emergency action proceedings. Now that the "vocational/avocational" issue has arisen and they have recognized their predicament, the schools are re-examining their mission statements and amending their curricula to insure they contain appropriate occupational training statements and programs. The success of these efforts is currently being evaluated by ACCET.

For the time being, however, I find that the educational program offered by BRITE is very similar to that found in Bnai Arugath Habosem, *supra*. There, Judge Canellos found that although many of the graduates were hired as teachers, this employment qualification was only incidental to the training the graduates received at the institution. BRITE's mission has been to impart to its students essential Judaic knowledge, basic language and textual skills, and a commitment to continue their studies after graduation. As admirable as these qualities are, I find that BRITE failed to persuade me that ED did not have a proper basis for deciding that BRITE did not satisfy the definition of an institution of higher education or a postsecondary vocational institution.

An emergency action must be upheld if: 1) there is reliable information that BRITE violated provisions of Title IV of HEA; 2) immediate action is necessary to prevent misuse of federal funds; and 3) the likelihood of financial loss outweighs the importance of awaiting completion of proceedings for limitation, suspension, or termination actions. 34 C.F.R. §668.83(c). At the present time, BRITE has not provided sufficient evidence to overcome the finding that it does not currently satisfy the statutory definition of an eligible program. When Title IV-HEA funds are distributed to an ineligible institution, the loss of federal funds outweighs the importance of competing efforts to limit, suspend or terminate BRITE's participation in Title IV- HEA programs.

Accordingly, I find SFAP had a proper basis to initiate immediate action to prevent the misuse of federal funds. The emergency action is affirmed.

SO ORDERED.

---

Judge Richard F. O'Hair  
Designated Deciding Official

Issued: September 20, 1994  
Washington, D.C.

---

---

S E R V I C E

---

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

Rabbi Abraham Tenenbaum  
Dean  
Bnos Research Institute for Training & Education  
638 Bedford Avenue  
Brooklyn, NY 11211

Howard D. Sorensen, Esq.  
Office of the General Counsel  
U.S. Department of Education  
600 Independence Avenue, S.W.  
Washington, D.C. 20202-2110

---

*Footnote: 1 1 ACCET defines these two terms in ACCET Document 13.*

*Avocational: Programs designed for personal or professional development and enhancement; nominally short-term instruction of less than 100 clock hours or equivalent credits.*

*Vocational: An institution that offers at least one program that is designed for an occupational objective. That program usually would be at least 100 clock hours or its credit-hour equivalent in length.*

---

*Footnote: 2 2 In an August 25, 1993 letter to ED, ACCET explained that its classification of an institution as vocational or avocational was created for internal purposes and ACCET never considered such a classification to be an indicator of the institution's eligibility for Title IV funding.*