

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

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In the Matter of

**Docket No. 94-15-ST**

**JESODE HATORAH,**  
Proceeding  
Respondent.

Student Financial

Assistance

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Appearances: Richard A. Finkel, Esq., and George S. Meissner, Esq., Meissner, Kleinberg & Finkel, New York, New York, for Jesode Hatorah.

Russell B. Wolff, Esq., and Carol S. Benge, 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**

Jesode Hatorah, the respondent in this proceeding, is a former postsecondary educational institution located in Brooklyn, New York, which offered certificates in Judaic studies. On December 30, 1993, the Compliance and Enforcement Division of the office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED) issued a notice of intent to terminate the eligibility of Jesode Hatorah to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.*, and to fine Jesode Hatorah \$1,137,500. This termination and fine notification followed an emergency action brought by ED against Jesode Hatorah on December 3, 1993.

Jesode Hatorah filed a request for hearing on January 13, 1994. The hearing was conducted on March 10 and 11, 1994, and on May 9, 10, 11, and 12, 1994, by Administrative Law Judge Paul Cross. Judge Cross retired before issuing a decision on this matter; therefore, this case was assigned to the undersigned on October 18, 1994. On December 6, 1994, relying on the precedent established by the Secretary of Education in *In re Bliss College*, Dkt. No. 93-15- ST, U.S. Dep't of Educ. (Decision of the Secretary) (February 23, 1994), I dismissed the proceeding as moot because Jesode Hatorah had notified ED that it had ceased operations and was closed. The Secretary vacated this dismissal on July 28, 1995, and remanded the case to the Office of Hearings and Appeals for a full adjudication.

SFAP initiated this termination of eligibility and fine proceeding against Jesode Hatorah based on the following alleged violations:

- A. Jesode Hatorah denied ED program review specialists access to its school records.
- B. Jesode Hatorah failed to follow the applicable rules for awarding and disbursing Pell Grants by:
  - 1. paying Pell Grants to individuals who were not bona fide regular students studying for a certificate to prepare them for gainful employment in a recognized occupation,
  - 2. awarding and paying Pell Grants to individuals who were not eligible to receive them because they were receiving Pell Grants at other institutions, and
  - 3. failing to properly determine whether students previously attended other institutions and failing to request financial aid transcripts in accordance with Title IV, HEA regulations.
- C. Jesode Hatorah established and maintained false or inaccurate information in student files.
- D. Jesode Hatorah failed to properly conduct verification.

I find there is sufficient evidence of misconduct by Jesode Hatorah to warrant a termination of their eligibility, but the evidence does not support fines in the amounts ED requested.

#### DENIAL OF ACCESS TO RECORDS

All institutions which are eligible to disburse Title IV student financial aid have both regulatory and contractual obligations to provide ED personnel with any and all institutional and student records these representatives believe are essential to the conduct of their examination or audit functions. This includes the requirement that access to required records be timely. 34 C.F.R. § 668.23. The regulations specifically exclude any right of refusal. 34 C.F.R. § 668.23(b)(3)(ii). For institutions which disburse Pell Grants, such as Jesode Hatorah, the student records which must be maintained and made available to reviewers include such information as the student's name, social security number, the amount and date of each payment to the student, the cost of attendance, the student's enrollment status, and the dates of enrollment. 34 C.F.R. § 690.82. In addition to these regulatory provisions, each institution also has a contractual requirement to make student records available to ED reviewers, and this obligation is found in the program participation agreement between the institution and ED prior to its participation in federal student financial aid programs.

In the spring of 1993, institutional review specialists from ED's Region II office in New York visited Jesode Hatorah, as well as a number of other Judaic studies schools in the New York vicinity. The purpose of these visits was to obtain copies of school records for students for whom ED had evidence showing they had received Pell Grants from at least two of the schools within the group of approximately 15 schools under ED review. At each school the institutional review specialists copied Student Aid Reports, financial aid transcripts, school admissions applications, verification worksheets, grade transcripts, and any other documents containing the students' signatures. It was during the document acquisition phase that the institutional review specialists encountered difficulties with Jesode Hatorah.

Reviewers had no difficulty obtaining and copying records of approximately 200 students at Jesode Hatorah in May, 1993. However, on November 22, 1993, when an ED employee

telephoned the school and informed a school employee that a reviewer would be going to the school later that day to copy somewhere between three to six student records, the school employee informed the caller that the school was closed and the caller would have to contact the school's attorney to obtain any additional school records. On the following day, several reviewers went to the address listed for Jesode Hatorah's administrative office to copy the student records. A gentleman at that location refused to acknowledge that this was the location of Jesode Hatorah's administrative office, but told them to return later in the day because someone from the school would meet with them. The employees then went to the school's address of record, but they were unsuccessful in obtaining any assistance. They returned to the school's administrative office where they were again frustrated by persons who either refused to speak with them or professed to know nothing about the school or how one might obtain copies of any school records. Finally a gentleman handed the reviewers a note which stated that "no information is to be handed out" and that they should contact Jesode Hatorah's attorney. Later that day an ED employee spoke to Jesode Hatorah's legal counsel, Mr. Finkel. He explained that the school would not provide the records until they were first reviewed by counsel, and this required that the documents be identified in advance so he could review them. He announced this procedure even after having been informed that this response was viewed as a denial of access to school records and was inconsistent with Jesode Hatorah's duties to ED under applicable regulations.

I find there is no merit to Jesode Hatorah's reply argument that because ED reviewers had previously obtained the majority of the pertinent files in May of 1993, the failure to obtain the additional three to six student files amounted to a *de minimis* violation which should be disregarded in this proceeding. Neither the regulations nor the program participation agreement provide a safe haven for those institutions which satisfy 'most' or a 'large percentage' of the reviewers' requests for student files. The cooperation requirement can be read as demanding nothing short of 100 per cent compliance with departmental requests for access to any and all institutional and student files. I find that Jesode Hatorah failed to meet that standard of cooperation in this instance by refusing to provide ED reviewers access to its student files in November 1993, and that such refusal amounted to violations of the regulations, as well as Jesode Hatorah's program participation agreement with ED. SFAP has assessed a fine of \$25,000 for this violation, and I agree this is an appropriate amount for Jesode Hatorah's deliberate refusal to permit ED reviewers unconditional access to its student files.

#### PAYMENT OF PELL GRANTS TO INDIVIDUALS WHO WERE NOT BONA FIDE REGULAR STUDENTS

One of the key provisions in the regulations which govern the disbursement of federal student financial aid is that the recipient must be a "regular student" and this term is defined as one who, after meeting other criteria not relevant here, is enrolled in an eligible program. An eligible program at an institution of higher education must either lead to a two or four year degree, or provide a training program which leads to a certificate or degree and trains students for gainful employment in a recognized occupation. 34 C.F.R. § 668.8. Since Jesode Hatorah did not offer a two or four year degree, the only means by which its students could qualify as regular students would be if they were pursuing certificates in a training program which prepared them for gainful employment in a recognized occupation. SFAP asserts that Jesode Hatorah awarded and paid Pell Grants to 46 students who were not bona fide regular students because they were not

studying for certificates in this type of training program. SFAP supports this allegation with copies of student transcripts which show that these students attended one or more other institutions, either before or after attending Jesode Hatorah, where they completed courses, all of which were religious courses, with the same or similar names or titles as those in which they were enrolled at Jesode Hatorah. Further support for SFAP's position that these students were not bona fide regular students is that many of them took these courses from other institutions for several years without receiving a certificate and none of them were granted any transfer credit by Jesode Hatorah for these completed courses. From these facts SFAP infers that these students were not enrolled in eligible programs, but rather were taking these classes solely for purposes of intellectual enrichment. SFAP asserts Jesode Hatorah was aware of this activity and, therefore, Jesode Hatorah erred by awarding and paying Pell Grants to students who were not bona fide regular students.

Jesode Hatorah denies that its students were not bona fide regular students, and it characterizes SFAP's position on this issue to be that "multiple enrollments constitute *per se* proof that a student does not qualify as a regular student." In rebutting the allegation, the institution first challenges the validity of using records from other institutions, particularly some that previously refused to cooperate with efforts by SFAP to obtain these and other student records. It also challenges the use of transcripts from these institutions on two other grounds. First, it points out that these transcripts contain an admonition that they are not valid without an authorized signature or the official seal of that institution and the transcripts should be given no weight because none of them contain such a signature or seal. Secondly, it argues that SFAP is discrediting Jesode Hatorah's records and transcripts in all instances where they are inconsistent with those from other institutions, even those against which SFAP was pursuing similar adverse administrative proceedings. Jesode Hatorah also raised the specter of an alleged prejudice by SFAP against Jewish institutions because SFAP purportedly accepted, without question in this proceeding, all documents from a non-Jewish school as being truthful and accurate, whereas SFAP accepted documents from Jewish schools as credible only after selective individual evaluation.

I do not share Jesode Hatorah's low opinion of the validity of SFAP's documentary evidence. For purposes of evaluating this and the other SFAP allegations of misconduct in this proceeding, I do not find any shortcoming in the use of school transcripts which do not contain a seal or other notation by a school official; their absence does not affect their admissibility, only their weight. Seals or signatures are placed on student transcripts for the benefit of students who wish to present the transcripts to others as evidence of course completion. This seal or signature assures the recipients that the transcript is authentic and has not been favorably altered by the student. In the case before me, SFAP is not concerned that the student documents it personally obtained from institutional files have been altered by the respective students, thus obviating the need for any other guarantee of authenticity. As for the weight to be accorded to transcripts from other institutions which may be the subject of SFAP eligibility challenges, SFAP presented sufficient credible evidence from all of the institutions to allow me to conclude that the 46 Jesode Hatorah students in question were enrolled in one or more other Judaic studies schools during the relevant times. [See footnote 1 /](#)

Jesode Hatorah next challenges the allegation that these 46 students took courses at Jesode Hatorah which they previously had completed at other institutions, but for which they received no credit at Jesode Hatorah. In support of its position, SFAP presented evidence of transcripts from Jesode Hatorah and other institutions which indicated that these students completed courses at Jesode Hatorah which were duplicates of courses taken elsewhere. Jesode Hatorah disagreed with this conclusion on the basis that the names or titles of some of the alleged duplicate courses taken at Jesode Hatorah were spelled differently at some of these other institutions and, therefore, the courses could not have been identical. Indeed, I agree that some of the Jesode Hatorah course names were spelled differently at other locations, such as: "Joshua" and "Jushua", "Mishne Brura" and "Mishnah Brurah", "Pirke Avos" and "Pirke Avot." However, the names of the majority of these duplicate courses were spelled identically in all transcripts. Additionally, the brief course descriptions in the school catalogs for all of these duplicate courses were nearly identical, whether the names were spelled the same or with a minor alteration.

Jesode Hatorah presented an expert witness who testified that, without having examined the materials and assignments for these alleged duplicate courses, he could not say with certainty that they were different. However, relying on his extensive religious educational experience he explained that each of the other institutions attended by these Jesode Hatorah students were operated by different sects of the Jewish religion. Since each of these sects maintains a different perspective on each book of the Talmud which is the subject of a separate course, it was his opinion that each institution's courses with the same title would naturally reflect the distinct philosophy of that institution's sect. For that reason, he did not believe that even though the courses may have the same or similar title or course name, they would not be duplicate courses. In refuting SFAP's allegation that these students were taking courses for general education purposes, he explained that completing courses on the same subject or with the same name, but offered by institutions representing different sects, would be of very great intellectual interest to the serious, devout student of Judaic studies. Therefore, it was his opinion that these courses with the same or similar titles would not be duplicates because each would differ from the others in that they would reflect the unique philosophy of the particular sect which supported and operated the institution.

I agree with the expert witness' observations that there may be philosophical differences between these courses with the same name; nonetheless, I am convinced that for student aid purposes these courses were duplicate classes and that students who took them at more than one institution were not bona fide regular students. Therefore, I do not accept Jesode Hatorah's theory that a course with the same name is not a duplicate if it is offered by another institution which may have a different religious philosophy than Jesode Hatorah. This situation does not differ much from one where two Introduction to Economics courses are offered to freshmen at two different colleges. Although the course names are identical and they may use the same text materials, since they are taught by two different professors, they may differ remarkably because they unavoidably reflect the philosophy of the professors who teach them. This phenomena, however, does not, in most instances, prevent either institution from granting a student credit for having completed this course at the other institution. Jesode Hatorah properly points out that the granting of credit is a subjective, discretionary operation and there is no ED requirement that credit be automatically granted. However, the real issue here is not whether Jesode Hatorah should have granted credit for these courses, but whether its students were taking courses only

for the sake of general education, rather than taking courses in pursuit of a degree or certification. In the absence of any other relevant evidence to the contrary, I am convinced that these 46 students were taking courses at Jesode Hatorah which were duplicates of those taken elsewhere and these students were taking courses solely for purposes of general education. If Jesode Hatorah had granted credit for previous courses this would have obviated the need for its students to enroll in these same courses again at Jesode Hatorah. The absence of the granting of credit for these course completions further supports my conclusion that the students were not bona fide regular students pursuing a certificate of training in a recognized occupation.

Jesode Hatorah denies having any knowledge of course duplications and asks that it not be penalized when its students did not inform it that they had been enrolled at other postsecondary institutions where they had completed courses which they were taking again with Jesode Hatorah. Absent a showing that Jesode Hatorah knew, or should have known, of this prior completion of duplicate courses, I agree. After my review of the evidence of record, however, I find that Jesode Hatorah knew, or should have known, that 12 of the 46 students identified by SFAP [See footnote 2 2](#) were not bona fide regular students. In each instance these 12 students noted on their admissions applications that after high school they had attended the listed postsecondary institution. For these students Jesode Hatorah should have obtained a financial aid transcript from the listed institution which would have alerted Jesode Hatorah to the possibility that these students were enrolled in duplicate courses and, therefore, were not bona fide regular students. [See footnote 3 3](#) Aside from these 12 students, SFAP presented no direct evidence to support its theory that Jesode Hatorah knew, or should have known, of the existence of duplicate course completions by the remaining 34 students. Twenty-five students of this group of 34 took courses at Jesode Hatorah which were duplicates of earlier courses they had completed, but the students did not list prior postsecondary education institutions they had attended on their applications for admission. Eight of the group took duplicate courses at other institutions subsequent to their study at Jesode Hatorah, and Jesode Hatorah should not be responsible for the conduct of these eight. There is no Jesode Hatorah transcript in the evidence for the remaining student of the group of 35, ED Exhibit 55, so there is no evidence of duplicate courses for that student.

From the evidence before me, one may surmise that the 25 students who attended prior postsecondary institutions but did not list them on their applications for admission to Jesode Hatorah made independent decisions not to inform Jesode Hatorah of all aspects of their postsecondary education. Any suggestion by SFAP that Jesode Hatorah advised all of their student applicants not to include this information is not supported by evidence, particularly since 12 student files discussed above appropriately documented some of their former education. Therefore, I find these 12 Jesode Hatorah students who, because they enrolled in courses at Jesode Hatorah which were duplicates of courses they had completed previously, cannot be considered as bona fide regular students and it was improper for Jesode Hatorah to award and pay them Pell Grants. [See footnote 4 4](#) SFAP seeks to impose a fine of \$10,000 for each of the alleged 46 violations. For these 12 violations, I believe a fine of \$10,000 for each violation, or a total of \$120,000, is appropriate.

## PAYMENT OF PELL GRANTS TO STUDENTS WHO WERE CONTEMPORANEOUSLY RECEIVING THEM AT OTHER INSTITUTIONS

During its examination of Student Payment Summaries for the award years under review, SFAP discovered that Jesode Hatorah awarded Pell Grants to five of its students who were simultaneously receiving Pell Grants from other postsecondary institutions. This double award of Pell Grants violates 34 C.F.R. § 690.11 which forbids a student from receiving Pell Grant payments concurrently from more than one institution.

Jesode Hatorah does not dispute the evidence of these concurrent payments, but vehemently denies any knowledge of their existence at the time they made Pell Grant awards to these five students. The institution also points out that the only method whereby an institution would become aware of simultaneous payments, other than from the students themselves, is from the Student Payment Summaries. They claim these are not helpful because ED does not generate them until well after the award year in question and it does not send copies of these documents to all of the eligible institutions. In this instance, ED did not notify Jesode Hatorah until more than three years after the school years in question. Therefore, Jesode Hatorah persuasively argues that in the absence of evidence it knew, or should have known, of these concurrent payments, it should not be penalized for the misconduct of these students. It emphasizes that none of the students informed it that they were simultaneously enrolled in another institution. However, one of these five students, found at ED Exhibit 59, did inform Jesode Hatorah on his admissions application that he previously had attended another institution following his completion of high school. If Jesode Hatorah had sent that institution a request for a financial aid transcript, Jesode Hatorah would have been alerted to the potential for a double Pell Grant payment. Since none of the other four students provided any information about other institutions, Jesode Hatorah had no obligation to request a financial aid transcript from another institution and it should not be penalized for unknowingly making simultaneous Pell Grant payments. For the one student who listed a prior postsecondary institution and constructively put Jesode Hatorah on notice, I assess a fine of \$5,000.

## FAILURE TO DETERMINE WHETHER STUDENTS PREVIOUSLY ATTENDED OTHER INSTITUTIONS AND FAILURE TO OBTAIN FINANCIAL AID TRANSCRIPTS

Federal regulations require an institution to determine whether a student applying for any Title IV, HEA program assistance previously attended another eligible institution. 34 C.F.R. §§ 668.19(a), 690.75(a). If a student attended another eligible institution, either the student or the current institution must request a financial aid transcript from each previous institution and these financial aid transcripts must be maintained in the student files. 34 C.F.R. §§ 668.19(a), 668.23(h). Until the financial aid transcript is received, the current institution may disburse Pell Grant funds to the student for only one payment period. 34 C.F.R. § 668.19(a).

SFAP alleges Jesode Hatorah failed to comply with these requirements by not obtaining the names of all institutions that 69 of its students previously attended and by not obtaining financial aid transcripts for these students prior to disbursing Pell Grant awards to them. SFAP presented evidence that all of these students had attended one or more institutions prior to enrolling in Jesode Hatorah courses and none of these student files contained a copy of a financial aid

transcript from any of the previously attended institutions. Jesode Hatorah disclaims any knowledge of this previous attendance. However, for 17 of these 69 students Jesode Hatorah has no excuse for not obtaining a financial aid transcript. [See footnote 5 5](#) In each of these 17 files the admissions application forms contained an entry in the location on the form where the student was asked to identify institutions attended by the student following high school. With regard to the remaining 52 student files, in four instances Jesode Hatorah received a financial aid transcript for the school listed, but not for the schools the student attended but did not list on the application form. For the remaining 48 files, no institution was listed by the students although SFAP presented evidence that they attended one or more schools and the files contained no financial aid transcripts. I accept Jesode Hatorah's explanation that it could not request a financial aid transcript for these 52 students if it did not know of previous student enrollment status. SFAP characterizes this as a "lame" excuse and asks that I overlook it and find there is sufficient circumstantial evidence to sustain its burden of persuasion that the institution failed in its duty here. SFAP argues that the sheer number of student files that did not indicate previous institutions attended, 48 files out of 78 examined, "strongly implicates Jesode Hatorah as the perpetrator." Although this argument has some appeal, I am not persuaded to find that Jesode Hatorah was guilty of perpetrating a fraud on ED without being presented with some direct evidence from students or Jesode Hatorah employees who could confirm some type of conspiracy existed whereby Jesode Hatorah knew its students were falsifying their applications for admissions, or worse yet, encouraged them to do so. Accordingly, I find Jesode Hatorah failed to obtain the necessary financial aid transcripts for 17 of its students and it should be fined \$2,500 per student, for a total of \$42,500.

#### FALSE OR INACCURATE INFORMATION IN STUDENT FILES

To become eligible to disburse Title IV, HEA funds, an institution must demonstrate it is capable of administering the student financial aid program in accordance with the standards set out in 34 C.F.R. § 668.14, which includes the responsibility for establishing and maintaining prescribed student and financial records. It goes without saying that to comply with this regulatory provision the institution's records must be accurate, complete, and reliable. *See In re Romar Beauty Schools*, Dkt. No. 90-90-ST at 7, U.S. Dep't of Educ. (Decision of the Secretary) (September 7, 1994) .

SFAP alleges that Jesode Hatorah created and maintained records which were false or inaccurate and thus did not satisfy the regulatory standard. To support this allegation, SFAP explains that during its review of Jesode Hatorah records it found false or inaccurate information in the files of 71 students. In the case of 48 of those files, they were false or inaccurate because the students did not list their previous attendance at any postsecondary institutions after high school on the admissions applications. SFAP's investigation disclosed that leaving this portion of the admissions application blank resulted in false or inaccurate information because all 48 students had previously attended one or more postsecondary institutions. In another 20 of these 71 files the student applicants listed one or more, but not all, of the institutions the students attended after high school. As SFAP points out, these omissions are important because if the institution had known of this information it would have triggered the institution's responsibility to secure financial aid transcripts from the previous institutions which would have contained important data regarding any federal student financial aid the students may have received.



In 19 student files SFAP found false or inaccurate data where the admissions applications contained incorrect data regarding the name of the high school attended, the date of graduation, or both. SFAP also found three files containing incorrect birth dates, four files with inaccurate Student Aid Reports, five files with inaccurate verification worksheets, and one student file which was wholly fictitious because the student never attended Jesode Hatorah.

Jesode Hatorah contends, once again, that it is the innocent victim here because the student information contained in these files was provided by the students and, in most instances, Jesode Hatorah was without the knowledge of any inaccuracies or falsehoods. Accordingly, if the students failed to list other postsecondary institutions they had attended, or they provided Jesode Hatorah with any other erroneous personal information, the institution believes it should not be penalized for its applicants' oversights. Jesode Hatorah also maintains that SFAP's allegations are without support because it relies on untrustworthy evidence found in student files from other institutions. The institution's argument here is twofold. First, this evidence lacks credibility because it comes from institutions whose Title IV eligibility is being challenged by SFAP for the identical reasons as it is challenging Jesode Hatorah. Second, the evidence from the student files from other institutions consists primarily of *unofficial* transcripts which are not credible because they do not bear the requisite signature or seal of the preparing institution.

As I explained earlier, I am not willing to assess fines against Jesode Hatorah based on allegedly false or inaccurate information in student files unless SFAP meets its burden of persuading me by a preponderance of the evidence that Jesode Hatorah either knew, or should have known, that the information was false or inaccurate. 34 C.F.R. § 668.88. I find that SFAP has not met that burden of persuasion that Jesode Hatorah either knew, or should have known, that 48 of its students were untruthful when they indicated no previous postsecondary school attendance on their applications for admission when in fact they had attended such schools. With regard to the next group of 20 students who listed only one, but not all, of their postsecondary schools, I find that Jesode Hatorah either knew, or should have known, of the existence of the additional schools for six of these students. [See footnote 6 6](#) In each of these cases information regarding the additional institutions was either in the file, or its request for a financial aid transcript from the listed institution would have supplied Jesode Hatorah with this additional data. For this omission I find a fine of \$2,500 per false file, or a total of \$15,000, is appropriate.

With respect to the 19 Jesode Hatorah files which SFAP alleges contained inaccurate data regarding the name of the high school and/or the year of graduation, I find only two instances, ED Exhibits 58 and 82, where the files contained documents with inconsistent data which Jesode Hatorah should have detected and verified. In the remaining 17 files, Jesode Hatorah did not have the inconsistent data in their own files and they could not have been expected to know that there were any inconsistencies. In the several instances where SFAP found files containing inconsistent information on the two admissions application forms for the same student, but where only one of the application forms was signed by the student and a school representative, I decline to find violations. For the two files with inaccurate data, I find a fine of \$5,000 per false file, or \$10,000, is appropriate.

Of the three files with alleged inaccurate birth dates, I find Jesode Hatorah either knew, or should have known, of and corrected the error in only one file, ED Exhibit 22. That file

contained two different birth dates for the student which should have prompted Jesode Hatorah to resolve the inconsistency. As Jesode Hatorah was not aware the student had attended any previous postsecondary institutions, it was under no obligation to request a Financial Aid Transcript which may have alerted them to the problem with the birth date. A fine of \$5,000 is appropriate.

SFAP identified four files with inaccurate Student Aid Reports, but I find Jesode Hatorah either knew, or should have known, of the inaccuracy in only one of them, ED Exhibit 67. Jesode Hatorah's file for this student contained two Student Aid Reports, each containing conflicting information regarding the number of members in the student's family. The institution should have resolved this discrepancy. The inaccurate Student Aid Reports in the remaining three could have been detected only if Jesode Hatorah had known of the existence of previous postsecondary schools attended by the students. A fine of \$5,000 is appropriate here.

For the five alleged inaccurate verification worksheets, I find Jesode Hatorah is responsible for only three, ED Exhibits 21, 50, and 71, because, once again, the inconsistency was obvious from an examination of the documents in the respective Jesode Hatorah files. I will not hold Jesode Hatorah responsible for information in other institutional files of which it was not aware. For the three inaccurate verification worksheets a fine of \$5,000 per false file, or \$15,000, is appropriate.

Jesode Hatorah has no valid defense for the existence of a student file for a person who was never enrolled as a student. ED Exhibit 103. For this offense I believe a maximum fine of \$25,000 is appropriate.

#### FAILURE TO PERFORM VERIFICATION OF STUDENT INFORMATION

As a means of ensuring correctness of all financial information submitted to an institution in student applications for financial aid, an institution can be required to conduct a verification of the student information for up to 30 percent of its students. 34 C.F.R. § 668.54(a)(2). During this verification process, the students are required to submit documents such as federal and state income tax returns, and information pertaining to marital status, number of family members in the household and their ages, and the existence of any untaxed income. 34 C.F.R. § 668.56. Through this process a student can justify financial need by showing that their expected financial contribution toward their educational expenses is less than their calculation of their cost of attendance at the institution. An important aspect of this verification process is to identify and correct all discrepancies reflected in the materials submitted by the student. 34 C.F.R. § 668.16(f)(2). If an institution is unable to verify all student data, the student is ineligible for student financial assistance and the institution is liable for any overpayment of funds. 34 C.F.R. § 668.58.

SFAP alleges Jesode Hatorah failed to properly conduct verifications of five students because there were discrepancies in the verification worksheets for these students which should have been detected and resolved. These are the same five files identified above as having false or inaccurate verification worksheets in the student files. There, like here, I believe Jesode Hatorah is responsible only for the discrepancies which should have been obvious by examining the file documentation it had in its possession, or which it should have obtained. Therefore, I find Jesode

Hatorah abrogated its regulatory responsibilities for three student files: ED Exhibits 21, 50, and 71. A close examination of those verification worksheets and other documents in the file would have alerted it to the inconsistencies which it had an obligation to correct. Jesode Hatorah was not aware of the attendance at other institutions by the remaining two students because the students did not list any other postsecondary education on their admission applications. The discrepancies for these two files only came to light when SFAP obtained copies of the files from these other institutions. My philosophy has been not to hold Jesode Hatorah responsible for students who withheld information or supplied misinformation, absent a showing of malice on the part of Jesode Hatorah. In the previous section I assessed a fine of \$15,000 for the inaccurate data in these three files which I now find should have been detected and corrected during the verification process. Therefore, no additional fine is appropriate for this violation.

## FINDINGS

1. The breadth and seriousness of Jesode Hatorah's non-compliance with the federal statute and departmental regulations warrants the termination of its eligibility to participate in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965.
2. A fine of \$25,000 is appropriate for Jesode Hatorah's denial of access of ED personnel to its student records.
3. A fine of \$120,000 is appropriate for Jesode Hatorah's payment of Pell Grants to individuals who were not bona fide students.
4. A fine of \$5,000 is appropriate for Jesode Hatorah's payment of a Pell Grant to a student who was contemporaneously receiving one from another institution.
5. A fine of \$42,500 is appropriate for Jesode Hatorah's failure to obtain financial aid transcripts for its students.
6. A fine of \$67,500 is appropriate for Jesode Hatorah's maintenance of false or inaccurate information in student files.
7. No additional fine is appropriate for Jesode Hatorah's failure to perform verification of student information.

## ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Jesode Hatorah to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated and it should be fined \$260,000.

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Judge Richard F. O'Hair

Dated: March 5, 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 1 Jesode Hatorah's motion to strike from the record all documents from other postsecondary schools because of their alleged unreliability is denied. Its motion asking for SFAP to provide the institution with copies of all documents obtained from student files at other schools, but which were not offered as evidence in this proceeding, is similarly denied.*

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*Footnote: 2 2 Files for these 12 students are found at ED Exhibits 18, 19, 28, 29, 35, 41, 42, 54, 61, 69, 76, and 87.*

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*Footnote: 3 3 34 C.F.R. § 668.19(a).*

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*Footnote: 4 4 Even though there were 25 other Jesode Hatorah students who I consider not to be bona fide regular students because of the same duplication of courses at Jesode Hatorah, I find no liability on the part of Jesode Hatorah because of the absence of any evidence it knew, or should have known, of these course duplications.*

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*Footnote: 5 5 Files for these students are found at ED Exhibits 20, 26, 28, 35, 36, 40, 41, 42, 54, 57, 59, 61, 62, 65, 69, 76, and 87.*

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*Footnote: 6 6 Files for these students are found at ED Exhibits 35, 40, 51, 61, 62, and 76.*

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