

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

In the Matter of **Docket No. 94-218 SP**

IN THE MATTER OF Student Financial
INSTITUTE OF JEWISH CULTURE Assistance Proceeding
AND HERITAGE,
Respondent.

PRCN: 93202012

Appearances: Herbert Schlager, Administrator, for the Institute of Jewish Culture and Heritage

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

Before: Edward J. Kuhlmann, Administrative Law Judge

DECISION

On November 3, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Final Program Review Determination (FPRD) which found that respondent was not legally authorized to offer a program of postsecondary education in the State of New York, as is required by §1201 (a) of the Higher Education Act, 20 U.S.C. §1141 (a) (19), and assessed liability of \$2,678,040 for all Title IV student aid funds received by respondent. [See footnote 1 1/](#)

On May 5, 1993, The New York State Education Department wrote to respondent's attorney, George Shebitz, informing him that the respondent's catalog of courses contained a number of courses that required a state license before they could be offered. The letter noted that the materials for filing a license application were sent to Rabbi Kantor on March 1, 1993. Mr. Shebitz was told that if the respondent reduced its course offering to only religious subjects, it would be eligible for an exemption from the licensing requirement. If respondent chose to do so, respondent was told by the state that it must submit an updated catalog which would eliminate secular subjects. The respondent was given 20 days to respond. On September 7, 1993, respondent submitted a current course outline and textbooks to the state which it represented

demonstrated that the courses were strictly religious. Respondent, on the basis of that representation, was granted an exemption from state licensing on September 13, 1993.

On May 11, 1994, the respondent represented to SFAP that it "does not and has never taught any course that required state licensure." Respondent further represented that it was not currently teaching, nor had it ever taught, such courses as American Government and The Growth of America that required a state license. In its inquiry to respondent, SFAP had pointed out that the New York State Education Department had, on June 28, 1993, informed respondent that those courses would require a license. SFAP attached documentation to the FPRD that demonstrated that during 1992, contrary to respondent's representation, it did offer courses in American Government in which students enrolled, exams were administered, and results were recorded on the students' permanent records. From this documentation, SFAP concluded that the respondent did teach courses that require a state license.

Respondent was informed in the FPRD that because it was not licensed, as required by the State of New York, it could not meet the definition of an institution of higher education and was, therefore, not an eligible institution under the Higher Education Act. SFAP states in the FPRD that because respondent was ineligible to participate in federal student assistance programs, it would have to reimburse the Department for all federal funds advanced to the respondent for intended eligible student beneficiaries. Respondent received \$2,678,040. [See footnote 2 2/](#)

The respondent maintains that it was exempted from state licensure. It states as follows in its appeal from the FPRD: "When we became aware that [our] courses may have to be licensed, we applied for an exemption and were granted one The courses themselves as originally taught were never modified. The only requirement with the State Licensing Bureau was that the course descriptions be modified. We plan to take up this issue with the State and ultimately make the exemption we have retroactive." Respondent states its understanding was that even though it

taught courses that needed a license, it would be considered by the state to have been in "continued compliance and good standing" upon receiving an exemption.

SFAP argues that, under New York law, every private institution in New York State that charges tuition must be registered or licensed by the state. NY Educ. Law § 5001 (a) (Consol. 1993). Institutions are exempted under § 5001 (f) if they teach only religion. SFAP points out that while respondent was exempted, on December 10, 1991, in May of 1993, the state found courses in respondent's catalog that required a license. The state identified 16 courses that required respondent to obtain a license. Respondent then convinced the state that it had dropped the courses or did not actually offer them which resulted in the state again recognizing the respondent as an exempt institution on September 13, 1992. However, SFAP in its review of the 1991/92 and 1992/93 award years found that respondent was offering courses that the state had identified as requiring a license.

SFAP does not dispute respondent's representation that it has not been sanctioned or found by the state to have operated illegally. Instead, SFAP maintains that that does not demonstrate that respondent was "legally authorized." In fact, SFAP states, Associate Commissioner of State

Education Van Ryn found after reviewing the evidence collected by the Department that the respondent did offer courses that require a license.

Respondent has failed to meet its burden of proof that it is legally authorized to offer a program of postsecondary education in the State of New York. The State Department of Education told respondent that its courses in American government would require that it file an application for and receive a license. Respondent did not apply for and obtain a license, although its records demonstrate that it did offer courses that required one. The Higher Education Act, the statute that governs Title IV funds, requires that an institution obtain state authorization to provide a program of postsecondary education. 20 U.S.C. § 1141 (a) (1992). In the absence of legal authorization, an institution is liable for all Title IV funds received. In the Matter of Simmons School, Docket No. 93-6-SP, U.S. Dept. of Educ. (August 2, 1993), aff'd ED Secretary (Nov. 4, 1994). The finding of liability is affirmed.

FINDING

Respondent has not met its burden of proof. It has not shown that it complied with state licensing requirements or received the necessary state authorization. It, therefore, cannot be considered an eligible institution under the Higher Education Act. Because only eligible institutions may participate in federal student assistance programs, respondent must reimburse the Department for all federal funds it has been advanced, \$2,678,040 in Federal Pell Grant funds.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the respondent pay to the Department \$2,678,040.

Edward J. Kuhlmann
Administrative Law Judge

Date: March 25, 1996

SERVICE

A copy of the attached decision was sent by certified mail, return receipt requested to the following:

Herbert Schlager
Administrator
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Brooklyn, NY 11219

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[Footnote: 1](#) 1/ On January 15, 1993, respondent was terminated from participation in Title IV programs by ED. Its action was based on the enactment of the Higher Education Amendments of 1992, Public Law 102-325, which in Sections 481 (a) and 1201 (a), removed from the definition of an institution of higher education the transfer of credit provision as an alternative to accreditation, effective October 1, 1992. Respondent was not an institution of higher education that was accredited or preaccredited by a nationally recognized accrediting agency. The Department's action was affirmed. Institute of Jewish Culture and Heritage, Docket No. 93-17-SX, U.S. Dept. of Educ. (March 10, 1993)

[Footnote: 2](#) 2/ Respondent was also found by SFAP to have disbursed \$357,600 in Federal Pell Grant funds to 298 students who were ineligible to receive them. Respondent has not disputed this finding. Because the Department seeks repayment of all funds it does not affect the amount to be repaid.