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In the Matter of SEMINAR L'MOROS BAIS YAAKOV,  
Respondent.

Student Financial Assistance Proceeding  
Emergency Action  
Docket No. 94-37-EA

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## DECISION

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 Seminar L'Moros Bais Yaakov (Seminar) of Brooklyn, New York, in accordance with the provisions of 20 U.S.C. §1094(c)(1)(G) and 34 C.F.R. §§600.41 and 668.83. In response to that notice, on February 7, 1994, counsel for Seminar requested an opportunity to show cause why the emergency action is unwarranted.

Pursuant to the Delegation of Authority from the Secretary to me 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 in Washington, D.C., on March 7-8, 1994. At the hearing, the institution was represented by Thomas Hylden, Esq., of Baker & Hostetler, Washington, D.C., while SFAP was represented by Carol Bengele, Esq., from the ED Office of the General Counsel. The proceeding was transcribed by a Court Reporter.

According to the ED notice, the emergency action was based upon Seminar's failure to satisfy either the definition of an institution of higher education, as set forth at 20 U.S.C. § 1141(a) and 34 C.F.R. §600.4(a), or the definition of a postsecondary vocational school, as set forth at 20 U.S.C. § 1088(c) and 34 C.F.R. §600.6. Satisfaction of one of these definitions is a prerequisite for participation 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. To satisfy either of these definitions, an institution must be, among other things, accredited by a nationally

recognized accrediting association or agency or must 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). Noting that Seminar, while accredited by the Accrediting Commission for Continuing Education and Training (ACCET), maintained only what ACCET termed avocational accreditation, ED determined that such accreditation did not satisfy the HEA accreditation requirement because it had no nexus with the offering of any HEA-eligible programs, i.e. a program with an occupational objective. ED further argued that factually Seminar did not offer any program with an occupational objective and, therefore, did not offer an eligible program under 20 U.S.C. § 1088(c).

The basic facts are not in dispute. Those facts in dispute, however, were determined by me during the hearing so as to concentrate argument upon the principal legal issue. My findings are as follows: First, Seminar has programs which have a major, co-equal purpose of training students to become teachers in Jewish schools, while enriching its students in religion-based, personal values and knowledge so as to permit them to reflect the religion's ideals by example. (Only students enrolled in these programs are receiving HEA funds.) Second, Seminar offers educational programs which train teachers, consistent with the above-stated purpose. Third, Seminar has, in fact, successfully trained many students to be teachers and a large majority of these students have gained employment as teachers. In sum, I find that Seminar provides not less than a one year program of training to prepare students for gainful employment in a recognized occupation, as envisioned in 20 U.S.C. §§ 1088 and 1141.

The facts which focus our attention on the legal issue involved are: Seminar is accredited by ACCET. ACCET, however, unlike most accrediting agencies, breaks down its designations into two categories: vocational and avocational. A list of its institutions by category is available but, until recently, was not routinely proffered to ED. Testimony demonstrated that this distinction was meant to be an internal designation by ACCET and was not contemplated to have any impact on HEA program consideration. Moreover, unrebutted testimony showed that, given the ACCET requirement that a school designate itself as either vocational or avocational, Seminar opted for avocational. Seminar explained that, forced to choose between the two, it opted for the "avocational" label due to what it described as a religious seminary's necessarily "higher calling" than that of a trade school. This selection was not contested by ACCET, which knew the content of Seminar's curriculum.

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Pursuant to 20 U.S.C. § 1099c, an institution, in order to be eligible to participate within the Title IV programs, must pass muster under a statutory three-pronged gatekeeping requirement. First, an institution must be licensed by the State. That prong is satisfied here inasmuch as New York State law exempts from licensure religious institutions of learning. This criteria was not contested at hearing. Second, an institution must be accredited by a nationally recognized accrediting agency. Third, an institution must be certified as eligible by ED. It is Seminar's accreditation, inasmuch as it impacts HEA program eligibility, that is in dispute.

I found at the hearing that Seminar clearly possesses viable teacher training programs which lead to an "occupational objective." Moreover, I found that Seminar is accredited by ACCET. Therefore, discussion must ensue to examine ED's argument that the kind of accreditation held by Seminar is not the sort contemplated by the HEA. Clearly, Seminar has, at least facially, satisfied the accreditation requirement by its accreditation by ACCET. ED, however, argues that Seminar is not effectively accredited for Title IV purposes based upon its newly announced interpretation utilizing the terms avocational and vocational, and applying them to the statute.

ED asserts that Seminar can only meet the Title IV accreditation requirement if it "provides not less than a one year program of training [and] to prepare students for gainful employment in a recognized occupation...." 20 U.S.C. § 1141(a) (emphasis added). This gives rise to the origin of

what ED now interprets to constitute a "vocational" school, a term neither used nor defined in 20 U.S.C. § 1141(a), nor defined as such in 20 U.S.C. § 1088. At hearing, ED firmly asserted its contention that "vocational," by definition, must connote instruction strictly limited to career preparation, seemingly without any personal or religious enrichment. Moreover, by inference, ED defines "avocational" as being that which, by definition, is antithetical of "vocational." ED then notes that ACCET's criteria for accreditation necessitates a selection between two labels by the school: "vocational" or "avocational." ACCET defines "vocational," however, as a school that offers at least one program that is designed for an occupational objective and that usually would be at least 100 clock hours or its credit-hour equivalent in length. ACCET qualifies the phrase "designed for an occupational objective" to mean that training will aid a student in obtaining a new occupation, as opposed to a program that will enhance one's knowledge/skills in one's current occupation. "Avocational," as defined by ACCET, means programs designed for personal or professional development and enhancement; nominally short-term instruction of less than 100 clock hours or equivalent credits.

Seminar showed that its teacher's program is in excess of one year of training and does, in fact, prepare students for gainful employment as teachers, a "recognized occupation." Thus, Seminar asserts that it meets ED's statute-based definition of a vocational school. I agree.

Moreover, Seminar showed that it did not fit neatly within either of ACCET's two compulsory categories. While Seminar believes its teacher's program, indeed, its institution, is "designed for personal or professional development," it showed that its program is not a "nominally short-term instruction of less than 100 clock hours or equivalent credits." Hence, Seminar notes that its teacher's program is not clearly "avocational," as defined by ACCET. Seminar, however, did not believe that a Jewish school which provided for the education of young women as members of the Jewish Community in areas ranging from teachers to mothers, as well as academic and civic role models, was "vocational," i.e. designed for an occupational objective, as defined by ACCET. Such "vocational" training, Seminar argued, connoted a school more along the lines of a trade school or the like. Choosing not to be confused in its higher mission with trade schools, in the absence of a third or hybrid category within the ACCET process which described a school with similar goals and missions, and in light of the ACCET requirement that a category had to be selected, Seminar opted to be classified as "avocational."

I have determined that Seminar's teachers programs clearly prepare students for gainful employment in a recognized occupation and consist of over one year of training. As such, I find that Seminar's program fits within the definition of an "institution of higher education" as contemplated under 20 U.S.C. § 1141(a) and as a "postsecondary vocational institution" as described at 20 U.S.C. §1088(c). Moreover, given the limited choice of labels by ACCET, Seminar's option to chose to be accredited as avocational for ACCET purposes seems rational and not unreasonable. This finding is further bolstered by the absence of any allegation of fraud or other violation. Additionally, I note that ACCET agreed that it knew of Seminar's teaching program, but did not object to the selection of the avocational label.

That leaves the question of what impact the ACCET designation of "avocational" has upon Seminar's Title IV accreditation. A nationally recognized accrediting agency is relied upon by the Secretary to be a reliable authority as to the quality of training offered by an institution of

higher learning. 20 U.S.C. §1141(a). ACCET's President testified that its quality assessment of both avocational and vocational schools is virtually identical, except that vocational-labelled institutions must submit placement statistics and that random employer follow-up interviews are conducted. However, he noted that such information is generally amassed and examined, and that there is no standard against which such statistics are qualified. At the hearing, Seminar provided exhaustive, unrebutted evidence that a vast majority of its students pursued and obtained employment as educators. Furthermore, evidence was presented that such information was made available to ACCET. While employer follow-up interviews were not contemporaneously conducted, evidence was presented and testimony was made that the Jewish employment community was pleased with the quality of Seminar's graduates. Moreover, testimony by the principal of a Jewish primary school indicated that Seminar is considered one of the finest schools of its type and that its graduates are sought after as teachers. In light of the foregoing, I find that Seminar could easily have satisfied ACCET's criteria for the vocational label had ACCET so required.

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Having determined that Seminar offers valid teaching programs and that its ACCET accreditation satisfies the HEA requirements, I must turn to the emergency action, itself. The standard found at 34 C.F.R. § 668.83(c) provides that this emergency action must be upheld if 1) there is reliable information that Seminar violated provisions of Title IV of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of financial loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions.

The emergency action notice cites Seminar for violations of various provisions of Title IV of the HEA for the following reasons: (1) failure to provide a program of study that leads to a degree certificate, or other recognized educational credential and failure to prepare students for gainful employment in a recognized occupation; (2) maintaining an avocational program designed for personal development and maintaining a program which consists of less than 100 clock hours or equivalent credit; (3) because its accreditation is limited to non-HEA eligible programs, its accreditation has no bearing on the quality of HEA- eligible programs and is irrelevant to HEA eligibility; (4) failure of ACCET avocational accreditation to satisfy the HEA accreditation requirement because it has no nexus with the offering of any HEA-eligible programs; and (5) failure to qualify as an eligible institution for purposes of HEA program participation.

First, I found that Seminar's teacher training programs did prepare its students for employment as teachers, are not designed for mere personal development, and are in surplusage of 100 clock hours or equivalent credit. Second, ACCET accreditation included the teacher training programs, that any lessening of ACCET scrutiny due to its avocational designation was not significantly qualitative and, upon our review, was shown that it could pass muster as a vocational-labelled school. Third, as applied to this particular institution and under these facts, ACCET accreditation satisfies the HEA accreditation requirement in its nexus with the teacher training programs. Finally, Seminar qualifies as an eligible institution for purposes of HEA program participation. As such, I find that Seminar met its burden of proof. Moreover, I cannot help but note that Seminar faces no claims of fraud or wrong doing

and the evidence and testimony reflect a school of quality. Its graduates are well regarded and its placement statistics are impressive. Significantly, its Title IV receipts appear to only account for about 30% of its total funding; this is no "Pell mill." Therefore, I find no reliable information upon which to base this emergency action.

The crux of the instant controversy seems to arise from ACCET's internal distinction between vocational and avocational, and the relatively non-qualitative distinction between the differing submission requirements of the two categories. By blindly adhering to this distinction, in the face of testimony from the ACCET President that the difference was not intended to have any HEA application, ED has ascribed a significance to ACCET's action which ACCET, itself, never intended. Moreover, ED's new interpretation, constructively a new requirement, was put into action without prior warning and without an opportunity for the schools to cure what is now viewed as a defect.

I am convinced that Seminar is an eligible institution for purposes of Title IV participation; that the misleading characterization of Seminar as avocational rather than vocational can be resolved with ACCET, and that fairness dictates that Seminar be given the opportunity to do so within a reasonable time. Consistent with the above, I hereby DISAPPROVE and SET ASIDE this emergency action.

SO ORDERED:

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Judge Ernest C. Canellos

Issued: March 21, 1994  
Washington, D.C.