

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

In the Matter of **Docket No. 94-39-ST**

**BNOS RESEARCH INSTITUTE
FOR TRAINING AND EDUCATION (BRITE),** Student Financial Assistance
Proceeding

Respondent.

ORDER OF DISMISSAL

On February 11, 1994, the United States Department of Education Office of Student Financial Assistance Programs (SFAP) issued a notice of intent to terminate the eligibility of Bnos Research Institute for Training and Education (BRITE) from participation in programs authorized under Title IV of the Higher Education Act of 1965, as amended. Thereafter, BRITE requested a hearing to challenge the findings of the notice.

On November 30, 1995, SFAP filed a Motion To Dismiss on the basis that the resolution of SFAP's termination action is now moot. According to SFAP, as a result of BRITE's failure to apply for recertification for eligibility to participate in Title IV programs, BRITE lost its eligibility for participation in Title IV programs on September 30, 1995, the date the institution's program participation agreement expired. In SFAP's view, its motion to dismiss "effectively withdraw[s]" its termination action against BRITE.

BRITE opposes SFAP's motion and renews its request for a hearing to adjudicate the allegations in the notice. BRITE argues that any effort to obtain recertification prior to final action by ACCET on its request to reaccredit the institution's program as a vocational program would have been futile. In this respect, BRITE argues that under the circumstances, it should not be penalized for failing to avail itself of SFAP's recertification process. In response, SFAP argues that although the dismissal of the above-captioned proceeding does not preclude BRITE from applying for recertification for participation in Title IV programs in the future, the fact that BRITE lost its eligibility to participate in Title IV programs on September 30, 1995 and has not subsequently reestablished its eligibility conclusively renders an action seeking to terminate the school's eligibility moot.

It is uncontrovertible that I have limited jurisdiction to adjudicate an institution's appeal of a notice to terminate. In this regard, I have consistently recognized that my power and authority to

conduct a hearing does not persist beyond SFAP's withdrawal of its notice. Undoubtedly, an institution's request for a hearing, without an existing underlying adverse

action, is insufficient, by itself, to confer jurisdiction. In that respect, I find that as a result of SFAP's effective withdrawal of the notice, I no longer have jurisdiction over this case. My order dismissing this case rests solely on the fact that as of September 30, 1995, BRITE ceased being eligible to participate in Title IV programs and, thereby, rendered any determination on the issues in the notice of no consequence or practical effect.

The aforementioned notwithstanding, I decline to rule on SFAP's request that I dismiss this case *without prejudice*. The issue of whether the rights of either party to this action may be considered waived or lost by my order dismissing this case is not properly before me. In this proceeding, it would be inappropriate for me to rule on whether the dismissal of this action bars subsequent attempts by SFAP to institute an action on the same basis as alleged in the notice. My task is necessarily limited to simply deciding whether this action may go forward.

ACCORDINGLY, IT IS ORDERED, that the above-captioned proceeding be DISMISSED.

Ernest C. Canellos
Chief Judge

Issued: January 30, 1996
Washington, D.C.

SERVICE

A copy of the attached document was sent to the following:

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