

In the Matter of

BETH MEDRASH EYUAN HATALMUD

Respondent.

Docket No. 94-45-ST

Student Financial
Assistance Proceeding

Appearances: Leigh M. Manasevit, Esq., and Diane L. Vogel, Esq., Brustein & Manasevit,
Washington, D.C., for Respondent.

Renee Brooker, Esq., Office of General Counsel, United States Department of
Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Richard I. Slippen

DECISION

On February 11, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Notice of Intent to Terminate (the Notice) the eligibility of Beth Medrash Eeyun Hatalmud (BMEH) 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. This termination notification was preceded by an emergency action which was initiated by the Department against BMEH on June 10, 1993, in accordance with 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. § 668.83. This emergency action was dismissed on July 28, 1993, following a hearing before Judge Ernest C. Canellos. Subsequent to the filing of the Notice, another emergency action was initiated against BMEH on May 10, 1995, which again was dismissed by Judge Canellos on May 25, 1995. An evidentiary hearing in this termination proceeding was held before me on August 15-17, 1995, in New York.

This termination proceeding is based on the alleged failure of BMEH to satisfy the relevant statutory and regulatory definitions of an eligible institution under the HEA. In order for an institution such as BMEH to meet the definition of either an institution of higher education or a postsecondary vocational institution, the school must satisfy two criteria. The first criterion is that the institution must be accredited by a nationally recognized accrediting agency or association which is also recognized by the Secretary of Education. The satisfaction of the second criterion depends upon the type of institution being considered for eligibility. An institution of higher education must offer at least one program which either: 1) leads to an associate, baccalaureate, graduate, or professional degree; 2) is at least a two-year program that is acceptable for full credit toward a bachelor's degree; or, 3) is at least a one-year training program leading to a certificate or degree that prepares students for gainful employment in a recognized occupation. [See footnote 1 /](#) A post-secondary vocational institution such as BMEH must offer at least a six- month training program leading to a certificate or degree that prepares students for gainful employment in a recognized occupation. [See footnote 2 2](#)

Despite its inclusion in the Notice and extensive argument in the pre-hearing briefs, the issue of BMEH's accreditation by the Accrediting Commission for Continuing Education and Training (ACCET), a nationally recognized accrediting association, counsel for SFAP informed counsel for BMEH and this tribunal on August 1, 1995, that it would not present evidence at the hearing relative to the accreditation claim. Additionally, SFAP made it clear that it would no longer pursue the question of BMEH's proper accreditation. Thus, the only issue addressed at the evidentiary hearing and the single issue that both parties agree remains to be resolved is whether BMEH meets the eligibility criteria of the HEA by providing its students with "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). Both parties also agree that the recognized occupation relevant here is teaching; specifically what must be decided is whether or not BMEH's three programs, the First Rabbis, the Second Rabbis, and the Judaic Studies program taught at both its New York and Israel campuses prepare students for gainful employment as teachers.[See footnote 3 3](#)

SFAP presents numerous arguments as to why BMEH's programs cannot meet the criteria established by this tribunal for what constitutes an eligible teaching training program. *See In Re Seminar L'Moros Bais Yaakov*, Dkt. No. 94-37-EA, U.S. Dep't of Educ. (March 21, 1994); *In Re Academy for Jewish Education*, Dkt. No. 94-11-EA, U.S. Dep't of Educ. (March 23, 1994); *In Re Academy for Jewish Education*, Dkt. No. 94-51-ST, U.S. Dep't of Educ. (August 1, 1995). SFAP argues that BMEH's curriculum is neither designed nor intended to prepare students for gainful employment as teachers. SFAP presented extensive testimony that the absence of courses in educational methodology and educational psychology in BMEH's programs and its failure to include any field training in the form of some sort of internship that would provide an opportunity to practice teaching methods and interact with students in an actual school setting indicates that BMEH does not provide a program that trains teachers.

Additionally, SFAP claims that BMEH's programs provide scholarly instruction for personal and professional enrichment in a strictly academic, not vocational, framework. SFAP also argues that BMEH's placement rate for its graduates as teachers indicates that they do not successfully train the vast majority of its students to become teachers. In testimony concerning the independent study format utilized by BMEH, SFAP argues that the traditional methods used to instruct students is also not consistent with a program that is designed or intended to prepare students for gainful employment as teachers.[See footnote 4 4](#) Finally, SFAP argues that BMEH's programs are identical to those found to be ineligible under the HEA in other cases before this tribunal.[See footnote 5 5](#)

BMEH argues that SFAP has failed to meet its burden of proof in accord with 34 C.F.R. §668.88(c)(2) that the institution does not provide an eligible teacher training program. Presenting extensive testimony from the faculty and staff of BMEH, members of the Ultra-Orthodox Jewish community and other witnesses, BMEH urges this tribunal to find that the school's "foremost goal has been to train its students to become teachers of religious studies in Ultra-Orthodox educational institutions." Respondent's Post-Hearing Brief at p. 1. BMEH disputes SFAP's assertion that the failure to provide courses in educational methodology and psychology and field training is compelling evidence that its program does not train teachers. The testimony presented by BMEH repeatedly asserted that such courses have no place and would be inconsistent with the centuries old Lithuanian tradition and teaching methods utilizing

mentors for its students and an independent study format employed by the institution. BMEH does agree that its programs provide scholarly training which is designed to provide personal and professional enrichment. However, BMEH argues that it has a dual mission that is not inconsistent with its vocational objectives to train teachers. "Certainly the fact that BMEH makes elevating the level of Torah scholarship and education an institutional objective as well, does not invalidate its main purpose of preparing students for positions in the field of Jewish education." *Id.* at p. 9.

BMEH also disputes the significance and interpretation placed on the placement statistics entered into evidence. SFAP relies on these statistics to support its claim that compared to the number of students who enroll in BMEH and receive Title IV funds but fail to graduate, those students who actually graduate and become teachers is alarmingly small. BMEH argues that these placement statistics should be used primarily for purposes of comparison with established benchmarks for job placement established by organizations such as ACCET. *Id.* at p. 23. Using the ACCET formula, BMEH claims that it has very impressive job placement rates. *See* BMEH Ex. 40 and 41. [See footnote 6 6](#)

Before ruling on the sole issue in this proceeding as to whether BMEH's three programs of study, First Rabbinitics, Second Rabbinitics, and Judaic Studies prepare students for gainful employment in a recognized occupation, this tribunal must address that part of SFAP's argument concerning the absence of courses in educational methodology and psychology and student teaching. A major component of SFAP's argument at the evidentiary hearing, and much of the testimony of its expert witness, attempts to impose a standard on institutions that is neither required by law nor by previous decisions of this tribunal. Although the inclusion of courses in methodology, psychology, and some sort of student teaching is probative evidence that an institution's program is a teacher training program, there is no regulatory or statutory requirement that such courses and student teaching must be available in order to train teachers and prepare students for gainful employment in a recognized occupation. 20 U.S.C. § 1141(a).

The evidence, testimony, and exhibits in this case present a definitive description of a school whose programs are exacting and comprehensive in the teaching of Torah, Talmud, classical Jewish texts, and tradition in what is known as the Lithuanian tradition. [See footnote 7 7](#) The testimony of witnesses and a review of voluminous exhibits reflects that BMEH provides an academic background that could be used to teach in an Ultra-Orthodox Jewish institution. Additionally, the evidence is clear that BMEH's reputation as an institution in the Ultra-Orthodox community is highly regarded and that prospective employers have been interested in, and have hired graduates of BMEH, for teaching and administrative positions at other Jewish schools. Nevertheless, while BMEH offers a rigorous academic course of study that would be invaluable to a person who wished to teach in an Ultra-Orthodox school, I find that the evidence in this case fails to support a finding that BMEH has as its purpose or aim the training of students to teach in the field of Jewish education.

The programs at BMEH train its students to become scholars with in depth knowledge of classical Jewish texts and religious traditions. These scholars, some of whom have become teachers and administrators in other Ultra-Orthodox schools, are trained in a tradition that equips them to be leaders and role models in the Jewish community. As leaders and role models, these

scholars are expected to use their knowledge and inspire others to study and contemplate classical Jewish texts and traditions. Additionally, many of BMEH's students and graduates are already employed in established professions and are seeking the benefit of a scholarly academic course of study for personal and spiritual growth, as well as enrichment not for the purpose of changing professions or embarking upon a new career path.

Despite the fact that some students and graduates have subsequently obtained teaching positions, I find that this is an incidental benefit of BMEH's programs. As the Judge said in *In Re Academy for Jewish Education*, Dkt. No. 94-11-EA, U.S. Dep't of Educ. (March 23, 1994) at 3-4:

[I]t is implicit that the statutorily intended goal or result of such a program be preparation for gainful employment in such an occupation; not that such a goal or result be potentially derived or incidentally available at the conclusion of the program. In short, a program of preparation should build toward a specific, employment oriented goal. Here, the programs are not driven toward a particular type of occupation.

An examination of the history of this institution, its own statements in catalogues and reports to accrediting agencies, the backgrounds of its student population, and its centuries old tradition of instruction, persuades this tribunal that BMEH offers an admirable academic program not a program of study that has as its primary goal the training of students in preparation of gainful employment in a recognized occupation as required by 20 U.S.C. § 1141(a).

ORDER

On the basis of the foregoing, it is hereby ordered that the eligibility of Beth Medrash Eeyun Hatalmud to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated.

Judge Richard I. Slippen

Dated: April 23, 1996
Washington, D.C.

[Footnote: 1](#) 1 20 U.S.C. § 1141(a), 34 C.F.R. § 600.4(a)(4)(I)-(iii)(1994).

[Footnote: 2](#) 2 20 U.S.C. § 1088(c)(1), 34 C.F.R. § 600.6(a)(4)(1994).

[Footnote: 3](#) 3 *There is no dispute as to whether BMEH's programs differ at the two locations. There was no evidence at the hearing concerning any distinctions between the courses of study at the two campuses and any findings and conclusions reached in this decision shall apply to both the New York and Israel locations of BMEH.*

Footnote: 4 4 Professor Emeritus Abraham J. Tannenbaum testified on behalf of SFAP and much of the Department's case as to BMEHs failure to provide a program that trains teachers rests upon his testimony. Tr. At 18-183.

Footnote: 5 5 See, e.g., *In Re Derech Ayson Rabbinical Seminary*, Dkt. No. 94-50-ST, U.S. Dep't of Educ. (Oct. 4, 1994); *In Re Bnai Arugath Habosem*, Dkt No. 94-73-EA, U.S. Dep't of Educ. (June 16, 1994); *In Re Bnos Research Institute for Training and Education*, Dkt. No. 94-120-EA, U.S. Dep't of Educ. (Sept 20, 1994); *In Re Sara Schenirer*, Dkt. No. 94-49-ST, 94-87-ST, U.S. Dep't of Educ. (June 21, 1995) ; *In Re Academy for Jewish Education*, Dkt. No. 94-51-ST, U.S. Dep't Educ. (August 1, 1995)

Footnote: 6 6 In its Post-Hearing Brief at p. 26, BMEH moves to exclude ED Exhibit 81 entitled "Summary of BMEH's Graduation and Placement Figures" which is a summary of BMEH's own statistics taken from documents submitted to its accrediting agency. BMEH characterizes this exhibit as misleading and having been prepared solely for the hearing record. This motion is denied. There is nothing improper in preparing an exhibit for trial that offers a party's reasonable interpretation of and conclusions drawn from evidence already a part of the record in this proceeding.

Footnote: 7 7 The Lituhanian tradition employed by BMEH is a course of study utilizing the methods of the first Lithuanian yeshiva of Volozhin. There was extensive testimony explaining this tradition and methodology and how BMEH's courses of study are structured by it. See, e.g., testimony of Rabbi Malinowitz at Tr. 642-645, Rabbi Wolpin 455-458.