
IN THE MATTER OF SARA SCHENIRER Docket No. 94-49-ST
TEACHERS SEMINARY, Docket No. 94-87-ST
 Student Financial
Respondent. Assistance Proceeding

DECISION

Appearances: Yolanda Gallegos, Esq., Dow, Lohnes & Albertson, for Sara Schenirer
Teachers Seminary.

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

Before: Judge Richard F. O'Hair

On February 10, 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 eligibility of Sara Schenirer Teachers Seminary (SSTS) 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 followed an emergency action which was initiated by the Department against SSTS on January 13, 1994, and which, following a hearing, was set aside on March 25, 1994. On April 26, 1994, SFAP initiated a similar notice of intent to terminate the eligibility of SSTS as to its Immigrant Culture Program to participate in student financial assistance programs. An emergency action was imposed against this particular program on March 29, 1994, and it remains in effect. SSTS appealed both termination proceedings and they were assigned to this tribunal. At the request of the parties, these two proceedings were joined at this level and thereafter have been treated as one proceeding, although the two programs offered by SSTS, a teacher training program (Judaic Studies) and an Immigrant Culture Program, will be addressed independently herein.

These termination proceedings are based on the alleged failure of SSTS to satisfy the relevant statutory and regulatory definitions of an eligible institution under the HEA. In order for the institution to meet the definition of either an institution of higher education or a postsecondary vocational institution, it must satisfy two criteria. First, the institution must be accredited by a nationally recognized accrediting agency or association which is also recognized by the Secretary of Education (Secretary). The second element of this definition depends on the

type of institution. 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, on the other hand, 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](#)

The Department maintains that SSTS does not satisfy any of these statutory definitions because SSTS is not properly accredited and neither of its two programs leads 1) to an associate, baccalaureate, graduate, or professional degree; 2) is a two year program that is acceptable for full credit toward a bachelor's degree; or, 3) prepares students for gainful employment in a recognized occupation. SSTS disagrees on all counts by averring that it maintains accreditation with the Accrediting Commission for Continuing Education and Training (ACCET), a nationally recognized accrediting association, and that both of its programs, its teacher training program and its Immigrant Culture Program, prepare students for gainful employment in a recognized occupation.

Accreditation

Looking first at the issue of accreditation, the Department's theory has been that SSTS is not properly accredited by ACCET because ACCET has categorized SSTS as an avocational, rather than a vocational, educational institution. The Department maintains that such an accreditation has no nexus with the offering of any HEA-eligible programs and, therefore, cannot be afforded recognition as "accredited" in order to qualify for Title IV funding. It is undisputed that SSTS elected to maintain an avocational accreditation with ACCET, but as has been explained in the submissions, that election was a volitional act by SSTS because it had difficulty identifying with either of ACCET's two categories, vocational or avocational. ACCET defines its vocational programs as those designed for professional development, and it explains that avocational programs are those designed for either personal or professional development. SSTS was asked to align itself with one of those two categories and it selected the avocational classification for ACCET's purposes. SSTS's rationale for this selection was that its programs provide both personal and professional development for its students. At the time of this election SSTS had no idea that this would have a later impact on its eligibility to participate in Title IV programs.

The Department initially argued that accreditation as an avocational institution does not satisfy the statute or the regulations. Subsequently, on June 2, 1995, the Department provided

this tribunal with a copy of a February 9, 1995, letter from the Secretary to ACCET which informed the latter that the Secretary "re-recognized" ACCET as an accrediting agency for an additional three year period. The letter explained that this recognition

limits ACCET's scope of recognition to its accreditation of continuing education "vocational" programs in the institutions of higher education it accredits. Consequently, if an educational institution provides only non-collegiate continuing education "avocational" programs and is accredited solely by ACCET, it does not qualify as an eligible institution of higher education under the HEA.

In the Department's view, with which I agree, this correspondence eliminates any doubt that any ACCET accreditation of an institution as avocational after February 9, 1995, will not satisfy the first prong of the definition of a Title IV eligible institution. The unanswered question, however, is how this new qualified recognition of ACCET accreditation affects an institution which has a pre-February 9 accreditation from ACCET. SSTS's position on this issue, and one which I adopt, is that the Secretary's February 9 recognition is an after-the-fact limitation on future accreditations and, therefore, has no bearing on SSTS's current accreditation. Clearly, any future accreditation will be limited by this correspondence, but it would appear that SSTS's current accreditation is valid until such time as it expires.

In SSTS's brief, which was submitted long before the Secretary's limited recognition of ACCET as an accrediting agency, SSTS proposes several theories to explain why it was properly accredited. Its first line of defense is that it should be the beneficiary of a safe harbor doctrine which stems from the fact that it has maintained Title IV eligibility since 1974. [See footnote 3 3](#) During these many years of eligibility, SSTS and its programs have undergone scrutiny by the Department on numerous occasions. SSTS argues that because its eligibility was never questioned until October 1993 [See footnote 4 4](#), the Department should be estopped from terminating its eligibility at this point in time. I agree with the Department that this theory cannot be applied here because the Department should never be placed in a position where it would be precluded from enforcing its regulations, even though there may have been a previous lapse in such enforcement. *See In the Matter of Academia La Danza Artes del Hogar*, Docket No. 90-31-SP, U.S. Dep't of Educ. (May 19, 1992), *aff'd* by the Secretary (Aug. 20, 1992). In that case the tribunal ruled that the Department was entitled to repayment of Title IV funds from the school

even though it was the Department that was grossly negligent in erroneously determining that the school was an eligible institution. *See also In the Matter of Molloy College*, Docket No. 94-63-SP, U.S. Dep't of Educ. (March 1, 1995).

SSTS's second defense is that the Department's application of the definition of institutional eligibility with regard to schools classified as "avocational" violates the mandate of the General Education Provisions Act, 20 U.S.C. § 1232, which prescribes rulemaking procedures for the implementation of new federal regulations. I find this argument to be without merit as I do not view the Department's position in this proceeding to constitute a changing or a rewriting of its regulations or statutes, either of which would necessitate the initiation of the notice and comment procedures.

Thirdly, SSTS argues that ACCET's award of the avocational accreditation status to an institution, such as it, that maintains a Judaic studies program satisfies the HEA and the regulations which mandate that an eligible institution must be accredited by a nationally recognized accrediting agency or association. In a number of similar proceedings [See footnote 5 5](#) this tribunal has held that ACCET's only obligation as an accrediting organization is to assess the quality of the educational programs at the various educational institutions it serves; it is without authority to make the Title IV eligibility decisions which the Department is attempting to impose on it. Those decisions document that ACCET's internal development of an avocational/vocational sub- category to assist it in the performance of its evaluation function should not be a concern of the Department in its determination of an institution's eligibility for

participation in Title IV funding. In this regard, these decisions have emphasized that the only finding by ACCET which is relevant to the Department's role is the issue of whether or not the institution has been accredited as a noncollegiate continuing education institution. Whatever subcategories exist within ACCET's evaluation process should not concern us. For all accreditations issued prior to February 9, 1995, the Department should not be relying on an ACCET determination as to whether an institution maintains programs for either personal or professional development. ACCET is basically not concerned about such a categorization; it will evaluate the institution's programs and, if the institution satisfies ACCET's criteria, it will award accreditation regardless of whether the institution is categorized as avocational or vocational. Therefore, I specifically reject the Department's position that ACCET's accreditation of SSTS has no nexus with the offering of any HEA-eligible programs. I find that ACCET's pre-February 9, 1995 accreditation of SSTS satisfies that prong of the definition of an eligible institution which requires that it be

accredited by a nationally recognized accrediting agency and that this accreditation continues until it expires, at which time SSTS can submit a request for renewal. If it seeks and/or obtains accreditation as an avocational institution, it would then be unable to satisfy the statutory definition of an eligible institution.

Gainful Employment in a Recognized Occupation

Having found that SSTS meets the accreditation requirement for the remaining period of its current ACCET accreditation, I must address the second prong of the definition of an eligible institution: whether either SSTS's teacher training program or its Immigrant Culture Program is a program which prepares students for gainful employment in a recognized occupation. To be eligible to participate in Title IV programs, the institution must have at least one program which trains students for employment in a recognized occupation. Looking first at the teacher training program, SSTS has indicated in its Applications for Eligibility and its school catalogs that its mission is to train its female students to become teachers in the field of Jewish education. The teaching profession is certainly a recognized occupation within the meaning of the regulations. This same conclusion was reached in the Emergency Action proceeding brought against SSTS on January 13, 1994. *See In the Matter of Sara Schenirer Teachers Seminary*, Docket No. 94-8-EA, U.S. Dep't of Educ. (March 25, 1994). SSTS has persuaded me that its teacher training program prepares its students for participation in the teaching profession.

On the other hand, I must agree with the Department that the Immigrant Culture Program does not satisfy the test. This program primarily provides its students with a concentrated education of the laws governing the personal lifestyle of a practicing Orthodox Jew. These laws are generations old and may be quite foreign to those persons who were not raised in this lifestyle. For this reason, I do not doubt that it may take countless hours of instruction to impart all of this knowledge to the uninformed. Additionally, it is uncontested that these many requirements and restrictions on one's lifestyle would be a prerequisite for someone to gain employment in either the homes or commercial establishments located in an Orthodox Jewish community. However, I am not convinced that any of the training which is provided by the Immigrant Culture Program, in and of itself, specifically trains a student for employment in a recognized occupation. It only trains its students to be familiar with Judaic law. Once that knowledge is gained, then the

students are expected to apply their past experiences to performing jobs similar to those referenced in SSTS's brief: kosher domestic cook, home attendant, child care provider, companion, and housekeeper. I find that SSTS's instruction only incidentally prepares its students for these occupations and enhances their employability. *See Academy for Jewish Education, supra* note 5. This is insufficient to satisfy the regulatory definition of an eligible institution.

In conclusion, I find that SSTS meets the statutory requirement that it be accredited by a recognized accrediting agency or commission, at least through its current period of accreditation by ACCET. When this current period expires, its future status will be dependent upon its ability to convince ACCET that it is a vocational institution. Secondly, I find that SSTS offers at least one program, its teacher training program, which trains its students for employment in a

recognized occupation. Accordingly, SSTS satisfies the statutory requirements as currently written to qualify as either an institution of higher education or a postsecondary vocational institution.

FINDINGS

1. SSTS is accredited by a nationally recognized accrediting agency or association.
2. SSTS's teacher training program provides a program of training that prepares students for gainful employment in a recognized occupation.
3. SSTS's Immigrant Culture Program does not provide a program of training that prepares students for gainful employment in a recognized occupation.

ORDER

On the basis of the foregoing, it is hereby ordered that the eligibility of Sara Schenirer Teachers Seminary to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 not be terminated.

Judge Richard F. O'Hair

Issued: June 21, 1995
Washington, D.C.

S E R V I C E

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

Yolanda Gallegos, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

Howard D. Sorensen, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

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

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

[Footnote: 3](#) 3 *Its teacher training program has been in operation since 1968 and its Immigrant Culture Program since 1988.*

[Footnote: 4](#) 4 *The ACCET internal vocational/avocational classification was of no consequence to any parties outside of ACCET until sometime in mid-1993 when the Department became apprised of these distinctions. The Department responded to this information by initiating emergency action and termination proceedings against those institutions which carried an avocational classification on the grounds that they were ineligible institutions and it was a misuse of federal funds to continue their eligibility status.*

[Footnote: 5](#) 5 *See In the Matter of Seminar L'Moros Bais Yaakov, Docket No. 94-37-EA, U.S. Dep't of Educ. (March 21, 1994); In the Matter of Academy for Jewish Education, Docket No. 94-11- EA, U.S. Dep't of Educ. (March 23, 1994); In the Matter of Beth Jacob Hebrew Teachers College, Docket No. 94-10-EA, U.S. Dep't of Educ. (March 25, 1994); In the Matter of Sara Schenirer Teachers Seminary, Docket No. 94-8-EA, U.S. Dep't of Educ. (March 25, 1994); In the Matter of Bnai Arugath Habosem, Docket No. 94-73-EA, U.S. Dep't of Educ. (June 16, 1994); In the Matter of Bnos Research Institute for Training and Education, Docket No. 94-120- EA, U.S. Dep't of Educ. (September 20, 1994).*