
IN THE MATTER OF DERECH AYSON Docket No. 94-50-ST
RABBINICAL SEMINARY,
 Student Financial
 Respondent. Assistance Proceeding

DECISION

Appearances: Yolanda R. Gallegos, Esq., Dow, Lohnes & Albertson, for Derech Ayson Rabbinical 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

BACKGROUND

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 eligibility of Derech Ayson Rabbinical Seminary (DARS) 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 action followed an emergency action imposed by the Department against DARS on January 14, 1994.

DARS filed a request for hearing on March 4, 1994. A briefing schedule was issued to the parties, who have filed briefs and exhibits. [See footnote 1 /](#) On August 1, 1994, this proceeding was reassigned to the undersigned.

DISCUSSION

SFAP contends that DARS does not qualify as either an "institution of higher education" or a "postsecondary vocational school" for two reasons: 1) DARS is only "nominally" accredited because it is accredited as an avocational institution, and 2) DARS does not offer a program of training that prepares students for gainful employment in a recognized occupation. DARS responds that 1) it is in fact accredited, and thus satisfies the requirements of Title IV, and 2) DARS's programs do prepare students for gainful employment in recognized occupations.

Accreditation

To be an eligible institution under Title IV, an institution must be an institution of higher education or an eligible institution as that term is defined for the purpose of that program. 20

U.S.C. § 1094(a) (1988). Both an "institution of higher education" and a "postsecondary vocational institution" must be accredited by a nationally recognized accrediting agency or association. [See footnote 2 2](#) 20 U.S.C. §§ 1141(a)(5) and 1088(c) (1988).

SFAP does not dispute that DARS is accredited by the Accrediting Council for Continuing Education and Training (ACCET). SFAP Initial Br. at 5, 10. Nor does SFAP appear to dispute that ACCET is a nationally recognized accrediting agency. *See* Ex. R-2 at 3. Therefore, DARS satisfies the plain meaning of the statute because it is accredited by a nationally recognized accrediting agency or association.

Nevertheless, SFAP argues that because DARS is classified by ACCET as an "avocational" institution, it is only "nominally" accredited by ACCET, and, therefore, does not satisfy the accreditation requirement of 20 U.S.C. §§ 1141(a) and 1088(c). SFAP correctly observes that because DARS does not offer programs which issue degrees, [See footnote 3 3](#) DARS must provide a program of training to prepare students for gainful employment in a recognized occupation. 20 U.S.C. §§ 1141(a) and 1088(c). From this, SFAP claims that there is necessarily a nexus between these two separate statutory requirements.

Nonetheless, SFAP has provided no persuasive authority for this "nexus" theory. SFAP argues that the Secretary of Education has legal authority to recognize an accrediting agency or association only to the extent that its accreditation serves a statutory purpose. However, as discussed above, the Secretary already has recognized ACCET as a nationally recognized accrediting agency or association. Ex. R-2 at 3. In fact, the February 1992 listing of Nationally Recognized Accrediting Agencies and Associations, which includes ACCET, begins with the statement that: "[t]he following regional and national accrediting agencies and associations are

recognized by the U.S. Secretary of Education as reliable authorities concerning the quality of postsecondary education or training offered by educational institutions or programs." Ex. R-2 at 2. Therefore, the issue is not whether the Secretary should recognize ACCET or whether a statutory purpose would be served by recognizing ACCET; the Secretary already has made that decision. Moreover, the language from the Federal Register quoted by SFAP discusses the Secretary's power to retract recognition of previously listed accrediting bodies when there is currently no statutory basis for recognition of that level of accreditation. [See footnote 4 4](#) The tribunal notes that SFAP has provided no evidence indicating that the Secretary has in fact retracted recognition of ACCET.

Furthermore, the statutes themselves separately identify the accreditation and program of training requirements, as well as other requirements. The statutes do not require any "nexus" between these requirements, other than that the institution must satisfy each and all of them in order to qualify as an eligible institution. Therefore, the statutory requirement that DARS provide a program of training to prepare students for gainful employment in a recognized occupation is separate and distinct from the requirement that DARS be accredited by a nationally recognized accrediting agency or association. Regardless of whether DARS does provide a program of training to prepare students for gainful employment in a recognized occupation, which will be discussed in the next section, the tribunal is satisfied that DARS is accredited by a nationally recognized accrediting agency or association. *See also Bnos Research Institute for*

Training and Education, Dkt. No. 94-120-EA, U.S. Dep't of Educ. (Emergency Action Proceeding) (Sept. 20, 1994).

Moreover, at the emergency action hearing held on February 9, 1994, Roger Williams, President of ACCET, testified that ACCET's vocational/avocational categories were not meant to coincide with or determine Title IV eligibility. Ex. R-17 at 25-26; *see also* Ex. R-7 at 1. Mr. Williams further testified that a school classified by ACCET as avocational is just as accredited as a school classified by ACCET as vocational. Ex. E-4 at 169. SFAP has not proven that DARS maintained accreditation by an accrediting agency that did not accredit either institutions of higher education or postsecondary vocational institutions. Therefore, I agree with DARS's arguments that under the statutory and regulatory scheme, the Secretary, and not the accrediting agency, is authorized to determine whether an institution is eligible under Title IV. 20 U.S.C. § 1099c(a); 34 C.F.R. § 600.4, 600.7.

In conclusion, I find that DARS was fully accredited and that SFAP has not satisfied its burden of persuasion that DARS was not accredited by a nationally recognized accrediting agency or association.

Gainful Employment in a Recognized Occupation

In addition to the requirements noted in the above discussion on accreditation, 20 U.S.C.

§§ 1088(c)(1) also requires an eligible "postsecondary vocational institution" to provide a six month program of training to prepare students for gainful employment in a recognized occupation. In order to be an eligible "institution of higher education" under 20 U.S.C. § 1141(a), the school must provide not less than a one year program of training to prepare students for gainful employment in a recognized occupation. [See footnote 5 5](#)

As discussed above, ACCET has designated DARS as an "avocational" institution. As SFAP observes, ACCET accredits institutions as either "vocational" or "avocational". Ex. E-4 at 146-147. ACCET defines a vocational institution as follows:

An institution that offers at least one program that is designed for an occupational objective. That program usually would be at least 100 clock hours or its credit- hour equivalent in length. (NOTE: "Designed for an occupational objective" refers to training that will assist the student in obtaining a new occupation as opposed to training that will enhance one's knowledge/skills in his/her current occupation.)

Ex. E-12 at 4. ACCET defines an avocational institution as follows:

Programs designed for personal or professional development and enhancement; nominally short-term instruction of less than 100 clock hours or equivalent credits.

Ex. E-12 at 1.

At the emergency action hearing, Roger Williams testified that ACCET's vocational/avocational categories were not meant to coincide with or determine Title IV eligibility. Ex. R-17 at 25-26; *see also* Ex. R-7 at 1. On the other hand, as SFAP points out, ACCET collects placement statistics from vocational schools, but does not do so for avocational schools. Ex. E-4 at 150-152. SFAP also notes that ACCET requires on-site teams to examine the placement success of vocational institutions by "contacting employers to establish whether or not [students] were placed, whether or not the placement was training related, [and] whether the employer was satisfied with the knowledge and skills that the individual had obtained at the time that they were employed." Ex. E-4 at 153. This evaluation is not conducted for avocational institutions. *Id.* Based upon the institution's admission statement, its representations in its catalog, and its representations in the Analytic Self-Evaluation Report (ASER), ACCET then determined that DARS was an avocational institution. *Id.* at 147-148.

While I do not consider ACCET's designation of DARS as an avocational institution to be dispositive, I do consider it to be some evidence that DARS does not provide a program of training that prepares students for gainful employment in a recognized occupation.

Pointing out many statements made by DARS in its catalogs and at other places, SFAP argues that the school's Rabbinic studies, Judaic studies, and Judaic culture programs do not provide training to prepare students for gainful employment in a recognized occupation. As SFAP notes, DARS's 1992-1994 School Catalog describes three programs: Rabbinics, Judaic Studies, and Judaic Studies for New Arrivals. Ex. E-2, Jamroz Ex. 5 at 8. However, DARS told ACCET that as of December 31, 1992, the school offered only one course, Judaic Studies for New Arrivals. Ex. E-2, Jamroz Ex. 12 at 3.

SFAP further notes that the School Catalog did not mention preparation of students for employment in any occupation, but stated as follows:

As a postsecondary lifelong learning center for Judaic Studies, Derech Ayson Rabbinical Seminary's institutional mission is two fold:

1. To develop diversified academic opportunities for adults, designed to accommodate their needs, interests, abilities and schedules.
2. To serve the academic objectives of its students through high caliber programs, and to satisfy their needs to advance their knowledge in either Rabbinic or Judaic studies.

Ex. E-2, Jamroz Ex. 5 at 5. Nor do the descriptions of DARS's three programs at page 8 of the Catalog mention preparation for gainful employment in a recognized occupation. *Id.* at 8. In fact, the Catalog states: "Neither does [DARS] provide its students vocational training or guarantees [sic] its graduates employment or placement. Individuals intent on pursuing an employment-related program of studies should seek the guidance of an appropriate professional agency in their area of interest." *Id.* at 14.

SFAP observes that many of the statements made by DARS in its ASER, a report submitted to ACCET, indicate that DARS does not prepare students for employment in an occupation. For example, DARS stated as follows:

Derech Ayson Rabbinical Seminary takes pride in offering quality, non-vocational programs in Judaic and Rabbinic Studies. In providing these academic programs, Derech Ayson Rabbinical Seminary wishes to respond to the needs of students who desire to pursue advanced Judaic studies on an ongoing basis. . .

The challenge facing Derech Ayson Rabbinical Seminary is unique, since its educational frame of reference is scholarship rather than employment. In other

words, as a non-vocational institution, Derech Ayson Rabbinical Seminary is not guided by any current industry trends or employment needs. . . .

Ex. E-2, Jamroz Ex. 7 at 5-6.

Derech Ayson Rabbinical Seminary is a non-profit, non-vocational school which, as stated above, does not respond to market trends. It does not engage in licensing or in professional job placement, and does not promote its programs based on future career opportunities for its graduates.

Id. at 10.

It is difficult for Derech Ayson Rabbinical Seminary to monitor conditions which influence the demand for its program because its offerings are not employment related. In fact, students pursuing its certificates are not doing so for the purpose of advancing professionally or economically, but rather in the desire to enrich their personal and intellectual development.

Id. at 34.

Education at Derech Ayson Rabbinical Seminary is academic, not job-entry skills or industry oriented.

Id. at 100.

Derech Ayson Rabbinical Seminary does not offer vocational programs or gear its academic offerings to employment, and therefore does not maintain files of employer satisfaction and placement related statistics.

Id. at 108.

DARS's Business Plan echoed these statements as follows:

Derech Ayson Rabbinical Seminary is as [sic] non-profit non vocational school which does not respond to market trends. It does not engage in licensing or in professional job placement,

and does not promote its programs based on future career opportunities for its graduates. Its students . . . enroll at our institution and seek to meet their personal growth and development needs. . . .

Ex. E-2, Jamroz Ex. 8 at 5.

In response, DARS contends that all three of its programs prepared students for employment in a recognized occupation. DARS notes that the school's Business Plan also stated

that "[g]raduates of our Rabbinical and Judaic Studies programs have become Rabbis and lay leaders" Ex. R-16 at 2; Ex. E-2, Jamroz Ex. 8 at 4. DARS also points out that its 1988- 1989 School Catalog states that "the program offered is geared toward providing an advanced Judaic Studies education for those interested in becoming future Rabbis and communal leaders." Ex. R-24 at 7.

Relating to the Rabbinical and Judaic Studies programs, DARS contends that these programs prepare students for gainful employment in many fields, such as future rabbis, teachers of religion, and pastoral assistants. DARS further asserts that training in Talmudic law is a prerequisite to obtaining many jobs within the Orthodox Jewish community. As examples, DARS attaches at Ex. R-23 the affidavits of two of its former students who state that they could not have obtained their current positions without the training they received at DARS.

Nonetheless, while the fact that students subsequently have obtained jobs may be an incidental benefit of the program, this was not the primary goal of the program. *See In the Matter of Academy for Jewish Education*, Dkt. No. 94-11-EA, U.S. Dep't of Educ. (Emergency Action Proceeding) (March 23, 1994); *see also Bnos Research Institute for Training and Education*, Dkt. No. 94-120-EA, U.S. Dep't of Educ. (Emergency Action Proceeding) (Sept. 20, 1994). Through statements in its School Catalog, statements made to its accrediting agency, and statements made in its Business Plan, DARS consistently emphasizes that it does not offer vocational training and that its programs are not designed to promote employment opportunities for its graduates. DARS repeatedly states that its programs are strictly academic and that its students enroll with the desire to enrich their personal and intellectual development. While these are worthy goals, they do not satisfy the statutory requirement of providing a program of training that prepares students for gainful employment in a recognized occupation.

Additionally, as part of DARS' attempts to link its programs with job descriptions from the Dictionary of Occupational Titles, DARS submitted a document to ACCET in which DARS was asked to list its programs of study and correlating occupations and numbers from the Dictionary of Occupational Titles. DARS listed none, indicating only that its programs were "non-vocational." Ex. E-2, Jamroz Ex. 10 at 1.

In support of its argument that the Rabbinics program prepares students for gainful employment in a recognized occupation (the rabbinate), DARS states at page 49 of its initial brief that "the training provided by the Seminary would qualify students . . . to continue their studies toward ordination as rabbis." At page 50 of its initial brief, DARS notes that "DARS . . . provides the educational bridge between Orthodox Jewish secondary school and the advanced

study that leads to ordination as a rabbi." However, these statements and the evidence demonstrate that while the Rabbinical Studies program at DARS may provide a necessary foundation for the student to go on to pursue the advanced study that leads to ordination as a rabbi, this program does not directly train students to become gainfully employed as rabbis. Therefore, it does not satisfy the statutory mandate.

Nor does the Judaic Studies for New Arrivals program satisfy this statutory requirement. DARS's 1992-1994 School Catalog states that "[t]he objective of this five year program [Judaic Studies for New Arrivals] is to facilitate the desire of new immigrants to increase their familiarity and understanding of their heritage, while also embellishing their language skills, and civic awareness." Ex. E-2, Jamroz Ex. 5 at 8.

DARS argues as follows:

[The Judaic Studies for New Arrivals program] is intended, among other things, to integrate the students into American society. *Id.* This certainly does not preclude the notion of employment of immigrants to a new society. Indeed, it is difficult, if not impossible, to be employed if one is not fully integrated into the society in which he or she seeks employment.

Resp. Reply Br. at 8. A review of the courses offered in the Judaic Studies for New Arrivals program indicates that, indeed, the program is designed to integrate new Jewish immigrants into American society. Ex. E-2, Jamroz Ex. 5 at 40-46. Nevertheless, while integrating immigrants into American society is a worthy goal, it does not satisfy the statutory mandate that the program prepare students for gainful employment in a recognized occupation. To state that integrating immigrants into American society satisfies this statutory mandate because it further enhances their ability to obtain employment would strip the statute of all meaning. Under such a standard, almost any educational program would potentially enhance a student's ability to obtain employment and thus qualify.

In *In the Matter of Academy for Jewish Education*, Dkt. No. 94-11-EA, the emergency action official stated as follows:

It is difficult to objectively assess what, per se, prepares one for "gainful employment in a recognized occupation." Any degree of education, benefits or enriches a student in such a way as to enhance the student's worth as an employee. . . .

The HEA requires that an institution provide training that prepares students for gainful employment in a recognized occupation. As such, it 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. Rather, they provide training that may lay the foundation for qualification toward a variety of jobs within a specific community. The goal or result here seems to be directed toward assimilation into a particular culture, not toward a specific area of employment. While I note that there is no

indication that Academy intended to circumvent the dictates of the HEA, I find that Academy's programs do not satisfy the applicable definitions at 20 U.S.C. §§ 1088(c) or 1141(a).

Id. at 3-4. While I am not bound by this decision because it was an emergency action proceeding that did not contain the same procedural safeguards afforded institutions in Subpart G proceedings, I find its reasoning to be applicable and persuasive in the instant case.

Accordingly, I find that while DARS offers a high-quality Jewish education, it does not provide a program of training that prepares students for gainful employment in a recognized occupation; thus, it does not satisfy the statutory requirements as currently written to qualify as either a "postsecondary vocational institution" or an "institution of higher education."

FINDINGS

1. SFAP has not satisfied its burden of persuasion that DARS was not accredited by a nationally recognized accrediting agency or association, and I find that the institution was so accredited.
2. DARS does not provide a program of training that prepares students for gainful employment in a recognized occupation, and thus does not satisfy the statutory requirements as currently written to qualify as either a "postsecondary vocational institution" or an "institution of higher education."

ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Derech Ayson Rabbinical Seminary to participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended, be terminated.

Judge Richard F. O'Hair

Issued: October 4, 1994
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 R. Gallegos, Esq.
Dow, Lohnes & Albertson
1255 Twenty-Third St., N.W.
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 All exhibits will be admitted, with their weight to be determined as necessary in the discussion section of this decision. See *In the Matter of Baytown Technical School, Inc.*, Dkt. No. 91-40-SP, U.S. Dep't of Educ. (Decision of the Secretary) (April 12, 1994) at 3. Respondent's exhibits will be referred to as Ex. R-1, Ex. R-2, etc. SFAP's exhibits will be referred to as Ex. E-1, Ex. E-2, etc.*

[Footnote: 2](#) 2 There are other requirements that apply if the institution is not accredited, but these are not applicable here.

[Footnote: 3](#) 3 Ex. E-2, Jamroz Ex. 5-14.

[Footnote: 4](#) 4 SFAP Initial Br. at 12-13, quoting 53 Fed. Reg. 25091-2 (July 1, 1988).

[Footnote: 5](#) 5 20 U.S.C. § 1141(a) requires this only if the institution does not offer an educational program for which it awards a bachelor's degree or at least a two-year program that is acceptable for full credit toward such a degree. According to DARS's 1992-1994 catalog, it does not grant degrees. Ex. E-2, Jamroz Ex. 5 at 14.