IN THE MATTER OF BNAI ARUGATH HABOSEM,
Respondent.

Docket No. 94-73-EA
Student Financial Assistance Proceeding
Emergency Action

DECISION

On January 13, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) imposed an emergency action against the Bnai Arugath Habosem (Bnai) of Brooklyn, New York, in accordance with 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. §§ 600.41 and 668.83. In response to the notice imposing the emergency action, on April 20, 1994, counsel for Bnai 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 May 18 - 19, 1994. At the hearing, Bnai was represented by Leigh M. Manasevit, Esq., and Diane L. Vogel, Esq., of Brustein & Manasevit, Washington, D.C., while SFAP was represented by Howard D. Sorensen, Esq., from the ED Office of the General Counsel. The proceeding was transcribed by a Court Reporter. On May 27, 1994, each party submitted a post-hearing brief.

This case is similar to a series of cases that have come before me involving the issue of whether an institution qualifies as an eligible institution for purposes of participating in student financial assistance programs. According to the notice in this case, the emergency action was based upon Bnai'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 institution, 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 to lawful participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1070 et seq. To satisfy either of these definitions, an institution must offer an eligible program under the applicable statutory provisions. ED alleges that Bnai has failed to provide such a program.

In addition, ED argues that to satisfy the statutory definition of an eligible program, an institution must be, among other things, accredited by a nationally recognized accrediting association or agency or must have been granted preaccreditation status. See 20 U.S.C. § 1141(a), 20 U.S.C. § 1085(a), and 20 U.S.C. § 1088(c). The Accrediting Commission for Continuing Education and

Training (ACCET) accredited Bnai and classified the school under the label of "avocational" institution. As a consequence, ED concluded that such accreditation fails to satisfy the HEA accreditation requirement because, according to ED, avocational accreditation has no nexus with the offering of any HEA-eligible programs, *i.e.*, a program with an occupational objective. ED's position on the significance of ACCET's labeling a school as "avocational" as opposed to "vocational" has been duly considered and rejected by me in In the Matter of Seminar L'Moros Bais Yaakov, Docket. No. 94-37-EA, U.S. Dep't of Education (March 21, 1994) and, therefore, will not be revisited here.

Pursuant to 34 C.F.R. § 668.83(e)(4), in order to prevail in this proceeding, Bnai must meet its burden of persuading me that an intended purpose or aim of its program is consistent with the statutory requirement that the focus of its program is the preparation of its students for gainful employment in a recognized occupation. To meet this burden, it is not sufficient to simply show that gainful employment in a recognized occupation is potentially *derived or incidentally available* at the completion of the school's program; it must be shown that an institution's program builds toward a specific, employment oriented goal.

From the evidence presented, I find that both programs, the Certificate in Judaic Studies program and the Certificate in Rabbinics program, are not eligible programs for HEA purposes. The programs are not driven toward a particular type of occupation. Bnai offers two rigorous programs, five to six years in length, leading to a certificate in either Judaic or Rabbinic studies. The school's programs are comprehensive and as a result, encompass the requisite education necessary for obtaining a job in the field of Jewish education. During the hearing, testimony was presented that Bnai's reputation as an institution in the community is stellar, and that prospective employers are interested in Bnai's graduates for teaching and administrative positions within Jewish education institutions. Moreover, witnesses testified that Bnai's students are particularly capable of educating others in Torah knowledge. That notwithstanding, Bnai failed to demonstrate that its programs have as their purpose or aim, the training of students to specifically teach or obtain employment in the education field. While it is obvious that Bnai's programs may assist its students in securing employment as teachers as one of the incidental effects of completing the school's programs, I do not find Bnai's programs having as their aim or focus the preparation of students specifically for employment. Indeed, Bnai's administrator, Rabbi Cheskel Grunwald, on direct examination at the hearing, stated that the school's predominate purpose is to teach its students to become better individuals through learning at a higher level of study and then having the students transmit what they have learned to others. Accordingly, consistent with my discussion In the Matter of Seminar L'Moros Bais Yaakov, supra, I find that Bnai is not an eligible institution for purposes of participation in Title IV, HEA programs.

This case is distinguishable from the cases of In the Matter of Sara Schenirer Teachers Seminary, Docket No. 94-8-EA, U.S. Dep't of Education (March 21, 1994), and In the Matter of Beth Jacob Hebrew Teachers College, Docket No. 94-10-EA, U.S. Dep't of Education (March 21, 1994), wherein I found that each of those institutions offered teachers training programs which were designed to prepare a student for gainful employment as a teacher and, therefore, were Title IV eligible programs. In each instance, the eligible program was clearly delineated by the institution as a teachers training program and, included in the curriculum, were standardized "education courses" which trained students how to teach. Here, those factors were not present.

I note, however, that this case is somewhat analogous to my decision In the Matter of Academy for Jewish Education, Docket. No. 94-11-EA, U.S. Dep't of Education (March 23, 1994), wherein I found that a program that acclimates new immigrants into the Jewish-American culture was not qualified to participate in HEA programs because the purpose and aim of the program did not provide training that prepared students for gainful employment in a recognized occupation. In the case at bar, the unrebutted testimony of the witnesses demonstrated that Bnai's programs are focused on providing an in-depth immersion into Judaic and Rabbinic studies for highly motivated adults. The purpose of the program is undoubtedly worthwhile and more extensive than one acclimating new immigrants into a particular culture. Indeed, the quality and depth of the course-work seems to be both advanced and educationally challenging. Nonetheless, the worth or value of Bnai's programs is not at issue, here. I am bound by the limited scope of the definitional provisions of the HEA and, in that regard, this institution's programs are not the type contemplated within the HEA and, therefore, are not eligible programs.See footnote 1

34 C.F.R. § 668.83(c) provides that the emergency action must be upheld if: 1) there is reliable information that Bnai 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. In light of my finding that Bnai has failed to meet its burden of showing that its programs satisfy the statutory definition of an eligible institution, I must also find that a violation of Title IV has occurred. As such, continuing to operate within the Title IV program would lead to further misuse of Federal funds. Moreover, given the fact that all Title IV aid disbursed by an ineligible institution violates the HEA, the likelihood of financial loss of Federal funds outweighs the importance of awaiting completion of a proceeding to limit, suspend, or terminate the participation of Bnai in Title IV, HEA programs.

Having found that the three-pronged test for imposition of an emergency action has been met, **I AFFIRM** the emergency action.

SO ORDERED.

Judge Ernest C. Canellos
Designated Deciding Official

Issued: June 16, 1994
Washington, D.C.

Footnote: 1 * *Of course, whether Bnai's programs should come within the HEA is an entirely different question from the one before me, and is perhaps a question more appropriately resolved through legislative means rather than in an executive agency administrative proceeding.*