IN THE MATTER OF BELZER YESHIVA, Respondent.

Docket No. 95-35-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Diane L. Vogel, Esq. , and Leigh M. Manasevit, Esq., Brustein & Manasevit, for Belzer Yeshiva.

Carol Bengle, 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

This case comes to the Department of Education's Office of Higher Education Appeals following an appeal to the Secretary of Education of a determination by the Department's Compliance and Enforcement Division (CED). The Secretary determined that the issue presented by the appeal is jurisdictional and, thus, should be decided by this office.

The facts serving as the basis for this appeal are not in dispute. On February 11, 1994, CED sent Belzer Yeshiva (Belzer) a letter informing the institution of the Department's intention to terminate the eligibility of Belzer to participate in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), and the reasons therefor. 20 U.S.C. §1070 et seq. and 42 U.S.C. §2751 et seq. The letter further informed Belzer that its eligibility would terminate on March 7, 1994, unless CED received by that date a request for a hearing or written material challenging the termination.

In a letter dated and mailed on February 28, 1994, Belzer formally appealed the Department's notice of intent to terminate Belzer's eligibility and requested a hearing. Belzer made a clerical error in the zip code on the envelope containing its appeal and, as a result, the appeal letter was not delivered to CED until March 21, 1994. Having not received either an oral or written appeal from Belzer by the March 7 date, CED issued a termination notice to Belzer on March 15, 1994, with an effective date of March 7, 1994. CED rejected Belzer's subsequent request to acknowledge receipt of the appeal letter and to initiate the normal appellate process. Accordingly, on April 14, 1994, Belzer submitted an appeal to the Secretary, and briefs on the issue were submitted by both Belzer and CED. On February 14, 1995, the Secretary issued an order which forwarded the matter to this office for resolution of the issue of whether Belzer's letter of February 28, 1994, perfected its right to appeal.

The federal regulations which govern the rights and obligations of both parties in a termination proceeding are found in 34 C.F.R. § 668.86 (1993) and are very clear. Sections 668.86(b)(1)(ii)

and (iii) mandate that when the Secretary informs an institution of the intent to terminate its eligibility to participate in any or all Title IV, HEA programs, this notification must:

(ii) [s]pecify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) [i]nform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

The letter from CED which notified Belzer of its intent to terminate was signed and presumably mailed on February 11, 1994, and it informed Belzer that a request for a hearing must be received by CED on or before March 7, 1994. This provided Belzer with a 24 day reply period from the date of mailing and, thus, clearly satisfied the regulatory requirements set out above. Absent an oral or written request for an extension of time within which to respond, Belzer's request for a hearing was clearly and properly due by that date. These regulations provide the Department with some flexibility in that an institution may specifically be allowed more, but never less, than 20 days to submit its request for a hearing. However, once a permissible reply date is set, that date remains determinative.

Through no fault of the Department, Belzer's request for a hearing was incorrectly addressed and, as a result thereof, was delivered later than Belzer expected. Belzer did not exercise any form of precaution by making a telephone inquiry on or before March 7, 1994, to ensure its request was timely received.

I find that the Department complied with the applicable provisions of 34 C.F.R. § 668.86 and that Belzer did not. The regulations are unambiguous in their allocation of time limitations, and I have no plenary authority to waive them.

Based on the foregoing, I find that Belzer's February 28, 1994, request for a hearing was untimely and, therefore, did not perfect the school's right to appeal the Department's notice of intent to terminate. Accordingly, CED was correct in refusing to acknowledge receipt of Belzer's appeal letter and in rejecting the request that they initiate the normal appeals process.

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Judge Richard F. O'Hair

Issued: March 28, 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:

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