

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket No. 96-123-EA**
SYRIT Computer School Systems
(a.k.a. SYRIT College), Emergency Action
Respondent. Show Cause Proceeding

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

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

Before: Frank K. Krueger, Jr., Administrative Judge

DECISION

On November 14, 1996, I issued an order as the show cause official in this case, pursuant to 34 C.F.R. § 668.83(e)(5) (1995), revoking the emergency action. This decision is issued in support of that order.

Introduction:

By letter dated July 9, 1996, from David L. Morgan, Director, Compliance and Enforcement Division, the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), notified the Respondent that ED had imposed an emergency action withdrawing the authority of the Respondent to obligate funds under Title IV of the Higher Education Act of 1965, as amended. By letter dated October 17, 1996, from Rabbi Elliot Amsel, Respondent's President, the Respondent requested an opportunity to show cause that the emergency action is unwarranted. Accordingly, a hearing was held on November 6, 1996, in Washington, D.C. in which evidence and oral argument were presented by both parties in support of their respective positions. SFAP initiated a collateral proceeding to terminate Respondent's eligibility to participate in the Title IV programs which is pending before another judge (Docket No. 96-104- ST).

Findings of Fact:

The Respondent, doing business as SYRIT Computer Systems, operated from 1971 until March 1996 as a private, not-for-profit, non-degree school offering vocational programs at its current location in Brooklyn, N.Y. Respondent was accredited by the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT). The school has participated in the Title IV programs since 1979. The school currently has approximately 1,000 students and 100 faculty and staff.

In January, 1992, Respondent submitted an application and proposal to the New York State Board of Regents seeking a charter and accreditation to operate as a degree-granting institution under the name of SYRIT College at its current location. The New York State Board of Regents is a nationally-recognized accrediting agency recognized by ED. In New York State, the only way a school can grant degrees is to be chartered and accredited by the New York State Board of Regents. Testimony of Rabbi Elliot Amsel, tr. at 33; testimony of Byron Connell, [See footnote 1¹](#) tr. at 103-104, 176-177. The process of seeking a college charter is quite extensive, normally taking four years. Every aspect of an

applicant's operation and administration is reviewed. Testimony of Byron Connell, tr. at 106-111; testimony of Rabbi Amsel, tr. at 36-38. If an applicant is successful, it will be awarded a provisional charter valid for five years. Testimony of Byron Connell, tr at 105. When an applicant is awarded a provisional charter, it is also registered for a period of one academic year covering specific programs. [See footnote 2²](#) The registration is automatically renewed, unless formal action is taken by the Board of Regents to deny or limit the registration. Testimony of Byron Connell, tr. at 116, 122-124.

Since its accreditation with ACCSCT was about to expire, and it had not yet been issued a charter and registration by the Board of Regents, in November 1994 Respondent sought reaccreditation by ACCSCT. On September 15, 1995, Respondent submitted an application to SFAP to be recertified for participation in the Title IV programs. In the application for recertification, Respondent represented that it was accredited by ACCSCT. In December, 1995, ACCSCT notified Respondent that, at its October 1995 meeting, it had deferred consideration of its application for reaccreditation until its April 1996 meeting and conducted an unannounced on- site review. By letter dated December 29, 1995, ACCSCT provided a report to Respondent in which some problems were identified; the most significant dealt with Respondent's English-as-a- second-language (ESL) program. Respondent kept the New York State Board of Regents informed of the ACCSCT review, but did not notify ED. Testimony of Rabbi Amsel, tr. at 39, 54; testimony of Lois Moore, tr. at 145-146.

On March 13, 1996, Respondent received its charter and registration from the New York State Board of Regents to operate as a degree-granting college offering programs leading to an Associate Degree. The review conducted by the New York State Board of Regents leading to its charter and registration was extremely thorough and specifically covered the problems raised by ACCSCT. Testimony of Rabbi Amsel, tr. at 39; SYRIT Exhibit 3. In fact, Respondent's registration contains specific provisions dealing with ESL, requiring Respondent to impose a fairly high English proficiency standard for admission and to submit annual reports concerning the academic progress of its ESL students. ED Exhibit 15; testimony of Rabbi Amsel, tr. at 77- 87; testimony of Byron Connell, tr. at 111-112.

Since SFAP took no action on its application for Title IV recertification filed in September, 1995, Respondent filed a revised application on March 31, 1996, indicating that it was now accredited as a degree-granting institution by the New York State Board of Regents rather than ACCSCT. Although Respondent's revised application attached a copy of the charter issued by the New York State Board of Regents, it failed to attach a copy of the letter from the Board of Regents dealing with registration. It is impossible for a degree-granting institution in New York State to be awarded a first-time charter without being registered. Testimony of Byron Connell, tr. at 124. Respondent's revised application made no mention of the deferral of its application for reaccreditation by ACCSCT.

On May 21, 1996, ACCSCT issued a letter to Respondent to show cause why its accreditation with ACCSCT should not be revoked. On June 5, 1996, Respondent voluntarily withdrew its accreditation by ACCSCT. Upon notification by ACCSCT of Respondent's voluntary withdrawal, SFAP notified Respondent that it was imposing an emergency action because Respondent had withdrawn its ACCSCT accreditation in the face of a show cause order in violation of 34 C.F.R. § 600.11(c)(2).

Legal Standards:

Under 34 C.F.R. § 668.83(c)(1) (1995), SFAP may impose an emergency action immediately withdrawing the authority of a participating institution to disburse student assistance under Title IV when the following conditions exists: SFAP determines, based on reliable information, that the institution is in violation of any statutory or regulatory requirement applicable to Title IV; that immediate action is necessary to prevent a misuse of Title IV funds; and that the likelihood of loss from that misuse outweighs the importance of waiting for the completion of a termination proceeding. Upon request, a participating institution subject to an emergency action is entitled to an opportunity to show cause that the emergency action is unwarranted or should be modified. *Id.* at § 668.83(e)(1) (1995). In such a show cause proceeding, the participating institution has the burden of persuasion that the emergency action is unwarranted or should be modified because the grounds stated in the notice no longer exist or will not cause a loss or misuse of funds, or that the institution will use procedures which will eliminate the risk of loss or misuse. *Id.* at § 668.83(e)(4).

Under 34 C.F.R. § 600.11(c)(2),

[a]n institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation . . . status under a show-cause or suspension order issued by an accrediting agency

Under 34 C.F.R. § 600.11(a) (1995),

the Secretary does not recognize the accreditation . . . of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary --

- (1) All materials related to its prior accreditation . . . ; and
- (2) Materials demonstrating reasonable cause for changing its accrediting agency.

The form used by SFAP for initial certification, recertification, and for providing notice of a change in accreditation is the same -- ED Form E40-34P, "Application for Institutional Participation." *See* ED Exhibit 7; testimony of Lois Moore, 150-156, 160. Although 34 C.F.R. § 600.11(a) uses the present tense, stating that "the Secretary does not recognize the accreditation" of an institution that is "in the process of changing its accrediting agency," SFAP apparently does not require that it be notified of a change in accrediting agencies until after the new accreditation has been secured. *See* testimony of Lois Moore, tr. at 151. The section of the application dealing with accreditation is "Schedule A" and simply requires the applicant to name its accrediting agency, the date when the accreditation was first conferred, and the date when the current accreditation began and ends. The form asks a series of questions requiring "yes" or "no" answers. The most pertinent question concerning this case is as follows:

During the past 24 months, has the Institution, or any location of the Institution, or any educational program provided by the Institution, had its accreditation withdrawn, revoked or terminated for cause by any accrediting agency, or has the Institution voluntarily relinquished its accreditation or the accreditation of any of its locations or educational programs, under a show cause or suspension order by any accrediting agency?

Attached to the application form are forty-four pages of instructions. However, the only part pertinent to a change of an accrediting agency is the following instruction appearing on page 8:

If the Institution is voluntarily changing the accreditation at the Institution or location from one agency to another and the Institution or location is currently not under a show cause or suspension order, attach all materials relating to the accreditation by the prior accrediting agency, including materials demonstrating reasonable cause for changing the accrediting agency.

Discussion:

The emergency action imposed by SFAP alleges that the Respondent is in violation of 34 C.F.R. § 600.11(c)(2), as the Respondent withdrew its accreditation from ACCSCT in the face of the ACCSCT show cause order dated May 20, 1996. Respondent argues that it was not in violation of section 600.11(c)(2), as "its" accreditation was with the New York State Board of Regents when it withdrew from ACCSCT; that its withdrawal from ACCSCT was coincidental with the culmination of a four-year process to change from a non-degree to a degree-granting institution which was completed when it received its charter from the New York State Board of Regents over one month earlier on March 13, 1996. When it received its charter to award Associate Degrees on March 13, 1996, the appropriate accrediting agency became the New York State Board of Regents, not ACCSCT, since it was no longer a trade school but a college.

I find merit to the Respondent's position. Section 600.11(c)(2) does not specifically address the situation in this case. SFAP argues that the purpose of section 600.11(c)(2) is to prevent participating institutions from "forum" shopping in the face of problems uncovered by accrediting agencies. Although that may be the purpose of section 600.11(c)(2), the evidence presented by the Respondent indicates that Respondent was not forum shopping. The Respondent initiated its efforts to become a degree-granting institution in 1992, long before problems were identified by ACCSCT in the fall of 1995. And, the evidence indicates that the New York State Board of Regents was aware of the problems uncovered by ACCSCT and dealt with the problems during the course of its extensive review of the Respondent. Respondent **may** be in violation of section 600.11(c)(2); but it is at least arguable that it is not. That is a question to be decided in the termination action. But, given the obtuse nature of the alleged violation, the fact that Respondent is fully accredited by the New York State Board of Regents, which considered and dealt with the problems identified by ACCSCT, I must

conclude that there is no threat of loss or immediate misuse of Title IV funds. The legal issue of whether Respondent is in violation of section 600.11(c)(2) can await the outcome of the termination proceeding.

During the oral argument and in its written submissions, SFAP also argued that Respondent is in violation of 34 C.F.R. § 600.11(a) (1995), in that it never kept ED informed of its efforts to change its accreditation and did not submit “all materials related to its prior accreditation” and “[m]aterials demonstrating reasonable cause for changing its accrediting agency.” Respondent cried foul to this allegation, claiming that it is unfair to raise it since the emergency action is based solely on section 600.11(c)(2). Again, Respondent **may** be in violation of section 600.11(a), but it is not such a clear violation as to give rise to the use of an emergency action to avoid a “misuse” of Title IV funds. There is no procedure or regulatory requirement in place which literally deals with the scenario covered by section 600.11(a), that is, to keep SFAP informed during the course of the change in accreditation. When an institution changes its accrediting agency, it is instructed by SFAP to file a new Application for Institutional Participation, which is what Respondent did when it became accredited by the State of New York. Respondent completed the application correctly. Although the Respondent failed to attach the letter from the New York State Board of Regents dealing with its registration, Ms. Moore testified that SFAP, when receiving such an incomplete application, would simply call the applicant and request the missing documents.

At the time Respondent submitted the revised application on March 31, 1996, it had not yet been issued the show cause order from ACCSCT. The application instructions, however, although maladroit, suggest that Respondent should have submitted all pertinent correspondence dealing with the problems identified by ACCSCT. It appears that Rabbi Amsel, or whoever under his direction prepared the application, failed to read the instructions. But the failure of Respondent to do this is hardly grounds to conclude that an emergency action should be imposed to prevent the misuse of Title IV funds.

As noted, section 600.11(a) also requires that an applicant submit “materials demonstrating reasonable cause for changing its accrediting agency.” Again, the applicant is not told exactly what “materials” are required. The instructions to the application form simply repeat the cryptic language contained in the regulation. Notwithstanding, Respondent may have inadvertently satisfied this requirement in its cover letter to the revised application submitted on March 31, 1996, wherein Rabbi Amsel states that the purpose of changing accrediting agencies was that it was now accredited by the New York State Board of Regents as a college. *See* ED Exhibit 6-1. At any rate, the evidence submitted during the hearing of the emergency action clearly establishes that Respondent had “reasonable” cause to change its accrediting agency since it was now a college and, in New York, all colleges must be accredited by the New York State Board of Regents. The evidence also demonstrates that all of the problems identified by ACCSCT have been remedied by the Respondent to the satisfaction of the New York State Board of Regents. Thus, any technical violation of section 600.11(a) has been corrected.

In its post-hearing brief, SFAP argues that, according to the order of consolidation attached to Respondent's March 31, 1996, revised application, Respondent has undergone a change in ownership and control and, under 34 C.F.R. § 600.31(a)(1), is no longer an eligible institution. The document does not appear to support SFAP's position. The consolidation order, ED Exhibit 6-15, states that SYRIT Computer Systems, was owned by Beth Medresh L'Torah Ulmada, Ltd. The consolidation order merged Beth Medresh L'Torah Ulmada, Ltd. and Syrit College into one corporation. The consolidation order does not deal with ownership or control over the two corporations. It is entirely possible that the two corporations were owned and controlled by the same individuals. In any event, it is not appropriate that I decide this issue since this allegation was not a part of the emergency action notice and was not raised or even alluded to during the hearing. At this late point in the proceeding it would be fundamentally unfair to use this as a ground for upholding the emergency action.

Conclusion:

Based on the evidence presented at the show cause hearing, there is no basis for SFAP's conclusion under 34 C.F.R. § 668.83(c)(1) that the emergency action imposed on July 9, 1996, was necessary. The evidence demonstrates little or no threat of an immediate misuse of Title IV funds, and any threat that may exist does not outweigh the importance of awaiting the completion of the collateral proceeding initiated by SFAP to terminate Respondent's participation in the Title IV programs.

Date: November 18, 1996

Frank K. Krueger, Jr.
Administrative Judge

SERVICE

A copy of this decision was sent by regular mail to the following:

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Footnote: 1 ¹ Mr. Connell was Chief, Bureau of Post-Secondary Planning, New York Department of Education for twenty-six years. He left the New York State Department of Education in May 1996 and is presently a private consultant. In his position as Chief of the Bureau of Post- Secondary and Professional Education, Mr. Connell reviewed and made judgments concerning Respondent's application for a charter from the New York State Board of Regents. Testimony of Byron Connell, tr. at 102. Mr. Connell is thoroughly familiar with postsecondary education in the State of New York.

Footnote: 2 ² The New York State Board of Regents uses the term "registration" rather than "accreditation." The two terms have the same meaning. Testimony of Byron Connell, tr. at 122; testimony of Lois Moore, Chief, Eligibility and Administrative Analysis Branch, Institutional Participation Division, SFAP, tr. at 166.