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

In the Matter of **Docket No. 96-77-SP**

BETH JACOB HEBREW TEACHERS COLLEGE, Respondent.

Student Financial Assistance Proceeding

PRCN: 199620212347

Appearances: Nahal Motamed, Esq., George Shebitz & Associates, P.C., New York, New York, for Beth Jacob Hebrew Teachers College.

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

Before: Judge Richard I. Slippen

DECISION

On April 19, 1996, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final program review determination (FPRD) finding that Beth Jacob Hebrew Teachers College (Beth Jacob) violated several regulations promulgated pursuant to 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*.

The FPRD resulted from this tribunal's finding that Beth Jacob's Jewish Culture Program did not meet the requirements for an eligible educational program. *In Re Beth Jacob Hebrew Teachers College*, Docket Nos. 94-43-ST and 94-80-ST, U.S. Dep't of Educ. (July 9, 1996). In the FPRD, SFAP ordered that Beth Jacob repay all Federal Pell Grant (Pell) funds disbursed to or on behalf of students enrolled in this program. In the February 20, 1996, program review report, SFAP requested that Beth Jacob identify the recipients and the award amounts disbursed to the students enrolled in the Jewish Culture Program. Beth Jacob did not submit this information. Due to Beth Jacob's failure to submit this information, SFAP stated that it was unable to assess liability for the finding contained in the FPRD. Therefore, SFAP found that Beth Jacob was liable for all Pell funds disbursed during the 1990-1991 through the 1994-1995 award years.

To be eligible to participate in the Title IV programs, a postsecondary vocational institution must offer a program of training that prepares students for gainful employment in a recognized occupation. 20 U.S.C. §§ 1141(a) and 1088(c). Beth Jacob offered two courses of study: the Religious Education Program and the Jewish Culture Program. In the termination action against Beth Jacob, the judge found that Beth Jacob's Jewish Culture Program was not an eligible program because it did not train students for gainful employment in a recognized occupation. *In Re Beth Jacob Hebrew Teachers College*, Docket Nos. 94-43-ST and 94-80-ST at 7. The judge did not, however, terminate Beth Jacob's eligibility to participate in the Title IV programs because the institution's Religious Education Program satisfied the relevant statutory and regulatory definitions of an eligible program under the HEA. *Id*. at 7.

SFAP argues that this tribunal's finding that the Jewish Culture Program does not prepare students for gainful employment in a recognized occupation was not appealed by Beth Jacob and is, therefore, *res judicata*. SFAP also argues that case law firmly establishes that an institution must return Title IV funds received while the institution or one of its programs is ineligible. *See In Re Institute for Jewish Culture and Heritage*, Docket No. 94-218-SP (March 25, 1996); *In Re Molloy College*, Docket No. 94-63-SP, U.S. Dep't of Educ. (March 1, 1995); *In Re Phillips Colleges, Inc.*,

Docket No. 93-48-SP, U.S. Dep't of Educ. (August 23, 1994); *In Re United Education Institute*, Docket No. 93-59-SP, U.S. Dep't of Educ. (Decision of the Secretary) (May 18, 1995); *In Re Pan American School*, Docket No. 91-94-SA, U.S. Dep't of Educ. (Decision of the Secretary) (January 12, 1995); *In Re Commercial Training Services, Inc.*, Docket No. 92- 128-SP, U.S. Dep't of Educ. (August 4, 1993). SFAP further argues that the determination that the Jewish Culture Program was not an eligible program was not a new interpretation of the eligibility requirement contained in 20 U.S.C. §§ 1141(a) and 1088(c). Additionally, SFAP argues that the FPRD is not an attempt to make this finding retroactive simply because it was made after Beth Jacob already expended the funds in an ineligible program. Finally, SFAP asserts that the government cannot be estopped in this matter from collecting misspent Title IV funds.

Beth Jacob again argues that the Jewish Culture Program prepares students for gainful employment. Beth Jacob further argues that SFAP's interpretation of the statute requiring that the training prepare students for specific employment circumvents due process by abandoning the plain meaning of the statute. Additionally, Beth Jacob asserts that since this is a "new" interpretation of the statute, it cannot be applied retroactively to funds expended before the initiation of the emergency and termination actions. Finally, Beth Jacob asserts that the doctrine of equitable estoppel should apply in the instant case.

Beth Jacob's Jewish Culture Program already has been determined to be an ineligible program because it only trains students to be familiar with Jewish Culture. *In Re Beth Jacob Hebrew Teachers College*, Docket Nos. 94-43-ST and 94-80-ST at 7. The program only incidentally prepares students for gainful employment. *Id*. It is designed to promote the intellectual, social, and personal growth of its largely immigrant student body. *Id*. Once that knowledge is gained, students are expected to apply their own past work experiences to finding employment. *Id*. "This is insufficient to satisfy the regulatory definition of an eligible program."

Id. Beth Jacob has not submitted any new evidence in this proceeding that its Jewish Culture Program prepared students for gainful employment in a recognized occupation. Further, Beth Jacob did not appeal this tribunal's determination that its program did not satisfy the statutory and regulatory eligibility requirements. That decision became final by operation of law on August 12, 1996. Therefore, the termination decision fully resolved this issue and is *res judicata*. Consequently, I find that Beth Jacob's argument that the Jewish Culture Program is an eligible program must be rejected.

Beth Jacob then argues that SFAP's "new" interpretation of the eligibility requirements abandoned the plain meaning of the statute. The statutory requirement for eligibility contained in 20 U.S.C. §§ 1088(c) and 1141(a) states that a postsecondary vocational program must prepare students for gainful employment in a recognized occupation. A program of instruction that only incidentally prepares students for gainful employment is insufficient to satisfy the statutory definition of an eligible program. *In Re Sara Schenirer Teachers Seminary*, Docket Nos. 94-49- ST, 94-87-ST, U.S. Dep't of Educ. (June 21, 1995) at 5. This tribunal has consistently held that this statutory requirement means that the institution must be specifically intended to prepare students for gainful employment in a specific occupation.

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 participation should build toward a specific, employment oriented goal.

In Re Academy for Jewish Education, Docket No. 96-11-EA, U.S. Dep't of Educ. (March 23, 1994) at 3-4. *See also*, *In Re Seminar L'Moros Bais Yaakov*, Docket No. 94-37-EA, U.S. Dep't of Educ. (March 21, 1994); *In Re Bnos Research Institute for Training & Education*, Docket No. 94-120-EA, U.S. Dep't of Educ. (September 20, 1994); *In Re Derech Ayson Rabbinical Seminary*, Docket No. 94-50-ST, U.S. Dep't of Educ. (October 4, 1994), vacated as moot (January 12, 1995); *In Re Beth Medrash Eeyun Hatalmud*, Docket No. 94-45-ST (Decision Upon Remand) (September 25, 1996), certified by the Secretary (January 27, 1997). The requirement that a postsecondary vocational institution provide training for a specific, employment oriented goal is not a requirement that circumvents the plain meaning of the statute; rather, it is clear that the meaning of statutory requirement would be eviscerated if the educational program was not geared towards a particular type of occupation. *See In Re Derech Ayson Rabbinical Seminary*, Docket No. 94-50-ST at 8.

Beth Jacob also states that the imposition of the "new" interpretation of the statutory eligibility requirement constitutes a retroactive application of the statute. SFAP's interpretation of the statutory requirement that a postsecondary educational institution specifically prepare students for gainful employment in a recognized occupation has not changed. The only apparent change in this area has been in SFAP's interpretation of what satisfies the requirement that an

institution be accredited by a nationally recognized accrediting agency or association. 20 U.S.C. §§ 1141(a)(5) and 1088(c). In past cases, SFAP contended that accreditation by the Accrediting Commission for Continuing Education and Training (ACCET) did not satisfy statutory accreditation requirements and that ACCET's internal classification of an institution as avocational or vocational indicated whether or not the institution offered an eligible program. This tribunal has held that the an institution's accreditation by ACCET satisfies the statutory requirement that the institution be accredited. This tribunal has also repeatedly rejected SFAP's contention that ACCET's internal classification of an institution as avocational necessarily meant that the institution did not offer an eligible postsecondary vocational program. *See In Re Seminar L'Moros Bais Yaakov*, Docket No. 94-37-EA, U.S. Dep't of Educ. (March 21, 1994); *In Re Academy for Jewish Education*, Docket No. 94-11-EA, U.S. Dep't of Educ. (March 23, 1994); *In Re Bnos Research Institute for Training and Education*, Docket No. 94-120-EA, U.S. Dep't of Educ. (September 20, 1994); *In Re Beth Jacob Hebrew Teachers College*, Docket Nos. 94- 93-ST and 94-80-ST, U.S. Dep't of Educ. (July 9, 1996).

As stated by Beth Jacob, SFAP allowed a number of institutions similarly situated to Beth Jacob to participate in the Title IV programs due to either error or a failure to enforce existing statutory and regulatory requirements. This may be so, but it is well established that an institution that enters into an agreement with the Department to administer the Title IV programs takes the risk that the government official will stay within the bounds of his or her authority. *In Re 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 (August 20, 1992) at 10 (citing *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384 (1947). A government official may not, in the absence of specific statutory authority, ignore statutory requirements. *Id*. at 10 (citing *M-R-S Manufacturing Co. v. United States*, 492 F.2d 835 (Ct.Cl. 1974)). Thus, SFAP has no authority to grant an institution eligibility to participate in the Title IV programs unless and until that institution satisfies all statutory and regulatory requirements. *Id*. at 10.

Beth Jacob has asserted that the doctrine of equitable estoppel should prohibit the assessment of liability in this case. However, the doctrine of equitable estoppel does not normally lie against the government. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Community Health Services*, 467 U.S. 51, 64 (1984). There have been some inroads made in this doctrine in cases where either there is some "affirmative misconduct on the part of a government agent or when the government is acting in a proprietary, rather than a sovereign manner." *In Re 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 (August 20, 1992) at 11-12 (citing *Deltona Corp. v. Alexander*, 682 F.2d 888, 891 (1982); *Air-Sea Brokers, Inc. v. United States*, 596 F.2d 1008, 1011 (C.C.P.A. 1979)). However, the collection of misspent Title IV funds is a circumstance where the Department is clearly acting in a sovereign manner. *Id*. at 12-13.

Case law firmly supports SFAP's position that the Department cannot be estopped from recovering misspent funds after an institution has been erroneously deemed eligible and allowed to

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participate in the Title IV programs.See footnote 1 *1* In *In Re Academia La Danza Artes Del Hogar*, this tribunal held that the Department may recover funds that were received by an institution under a mistaken impression that the institution was eligible to participate in the Title IV programs. *Id*. at 10. SFAP is entitled to repayment of Title IV funds if the institution was not eligible to receive those funds regardless of the institution's good faith or lack of notice. *In Re Molloy College*, Docket No. 94-63-SP, U.S. Dep't of Educ. (March 1, 1995) at 4. In *In Re Molloy College*, the institution offered a program at several ineligible locations for a number of years before SFAP determined or discovered that these were ineligible locations. *Id*. at 2. This tribunal found that Molloy College could be held liable for all Title IV funds received for students at the ineligible locations. *Id*. at 4. Moreover, this tribunal has held that SFAP should never be precluded from enforcing its regulations, even though there may have been gross negligence or a previous lapse in such enforcement. *Id.*; *In Re 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 (August 20, 1992) at 10; *In Re Sara Schenirer Teachers Seminary*, Docket Nos. 94-49-ST,

94-87-ST, U.S. Dep't of Educ. (June 21, 1995) at 3-4. The Secretary has also ruled that the Department cannot be estopped from collecting Federal funds an institution has received while it was ineligible to participate in the Title IV programs. *In Re Pan American School*, Docket No. 91-94-SA, U.S. Dep't of Educ. (Decision of the Secretary) (January 12, 1995).

Further, this tribunal is bound by statutes and regulations and cannot waive them even in mitigating circumstances. *In Re Baton Rouge College*, Docket No. 95-147-SP, U.S. Dep't of Educ. (Decision Upon Remand) (January 14, 1997) at 3. This is the case despite SFAP's delayed enforcement of the eligibility requirements for postsecondary vocational institutions and Beth Jacob's lack of intended wrongdoing. Therefore, I find that SFAP may recover all Title IV funds expended by Beth Jacob in its ineligible Jewish Culture Program.[See footnote 2 *2*]

An institution appealing a FPRD has the burden of proving that Title IV funds were properly disbursed. 34 C.F.R. § 668.116(d). The nature of the enforcement of Title IV programs through the use of program reviews creates the need for institutions to cooperate with SFAP by providing information when it is needed to determine whether any, if not all, Title IV funds disbursed were spent contrary to statutory and regulatory requirements. *In Re Selan's System of Beauty Culture*, Docket No. 93-82-SP, U.S. Dep't of Educ. (December 19, 1994) at 5. If an institution fails to account for its Title IV expenditures, SFAP has little choice other than to require the return of all Title IV funds received during the program review period. *Id*. Beth Jacob failed to provide SFAP with a comprehensive list of the students that were enrolled in its Jewish Culture Program and the amount of Title IV funds disbursed to these students during the

program review period. Beth Jacob did submit some documentation attached as Exhibit B to its Request for Review. SFAP states that although this documentation does not appear credible, in an effort to eliminate future disagreements on this point, it accepts this documentation and has adjusted its calculation of liability accordingly. I am still, however, unable to determine a more exact liability for this finding. Accordingly, under the circumstances, I must uphold, as reasonable, SFAP's calculation of liability for all Pell funds, with the exception of the aforementioned reduction, disbursed during the program review period.

FINDINGS

1. Beth Jacob's Jewish Culture Program is not a program of training that prepares students for gainful employment in a recognized occupation.

2. Due to its failure to account for Title IV funds spent contrary to Title IV statutes and regulations, Beth Jacob remains liable for all Pell funds received during the program review period.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Beth Jacob Hebrew Teachers College pay to the U.S. Department of Education the sum of $19,927,668.

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Judge Richard I. Slippen

Dated: March 17, 1997

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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Footnote: 1 *1 But see In Re Academy of Jewish Education, Docket No. 96-26-SP, U.S. Dep't of Educ. (August 23, 1996), currently on appeal to the Secretary.*

Footnote: 2 *2 The tribunal notes, however, that the Secretary, in his final review capacity, has full plenary authority to consider whether a reduced liability would be appropriate in this matter.*
