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 UPON REMAND

This decision is the result of a remand order by the Secretary issued on March 2, 1998. In the remand order, the Secretary ordered that this tribunal provide further explanation for its decision to impose liability upon Beth Jacob Hebrew Teachers College (Beth Jacob). In his remand, the Secretary noted that Judge Krueger rendered a contrary decision in a case involving similar facts and the same controlling statute. *See In re Academy for Jewish Education*, Docket No. 96-26-SP, U.S. Dep't of Educ. (August 23, 1996) (AJE), currently on appeal to the Secretary. In AJE, the Judge did not impose liability stating that to require the institution to return all Title IV funds it disbursed during the period in which it participated in the Title IV, HEA programsSee footnote 1[1] imposed an undue financial hardship and constituted an abuse of discretion. *In re Academy for Jewish Education* at 2.

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) assessing liability for all Federal Pell Grant (Pell) funds based on the tribunal's finding that Beth Jacob's Jewish Culture Program did not meet the requirements for an eligible educational program.See footnote 2[2] On March 17, 1997, after careful consideration of the briefs and evidence, I issued an Initial Decision finding Beth Jacob liable for all Pell funds disbursed during the program review period.See footnote 3[3]

To satisfy the relevant statutory and regulatory definition of a postsecondary vocational institution, an institution must offer at least a six-month training program leading to a certificate or degree that prepares students for gainful

employment in a recognized occupation. 20 U.S.C. § 1088(c)(1), 34 C.F.R. § 600.6(a)(4) (1994). This tribunal has consistently held that to satisfy this criteria, the intended goal or result of the institution's program must be preparation for gainful employment in a recognized occupation. *In Re Academy for Jewish Education*, Docket No. 94-51-ST, U.S. Dep't of Educ. (August 1, 1995); *In Re Sara Schenirer Teachers Seminary*, Docket Nos. 94-49-ST, 94-87-ST, U.S. Dep't of Educ. (June 21, 1995); *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, U.S. Dep't of Educ. (Decision Upon Remand) (September 25, 1996), certified by the Secretary (January 27, 1997). The interpretation of the definition of a postsecondary vocational institution has also been upheld as reasonable by the U.S. District Court for the Southern District of New York. *Beth Medrash Eeyun Hatalmud v. Riley*, 97 Civ. 2035 (RO) (S.D.N.Y. April 2, 1998) (the Court granted Department's motion for summary judgment).

In my Initial Decision, I found that there was not a change in the interpretation of the statute and regulation defining an eligible postsecondary vocational institution. An examination of the statute reveals that it is unlikely that an educational program that only incidentally or tangentially prepared its students for gainful employment, as did Beth Jacob's Jewish Culture Program, could ever have been the standard applied by the Department at the time Beth Jacob and other similar institutions were deemed eligible to participate in the Title IV, HEA programs. In fact, this tribunal has held that the meaning of the 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* at 8. Further, there was no evidence that SFAP's interpretation had changed and no one can articulate what other standard was applied. The mere fact that Beth Jacob's Jewish Culture Program and similar programs at other institutions were certified as eligible did not lead me to the conclusion that SFAP's interpretation of the statutory requirement had changed.

The AJE decision states that SFAP's attempt to collect Title IV funds was an abuse of its discretion. I do not find that to be the case. SFAP has no authority to grant an institution eligibility to participate in the Title IV programs unless it meets all the eligibility requirements. Further, if SFAP mistakenly grants eligibility to an institution, it is not an abuse of discretion to collect all Title IV funds disbursed by that institution. In fact, this tribunal has upheld the recovery of Title IV funds received by an institution when it was erroneously granted eligibility and the Department later determined that the educational program offered at the institution was ineligible. *See In re Molloy College*, Docket No. 94-63-SP, U.S. Dep't of Educ. (March 1, 1995); *In re Belzer Yeshiva*, Docket No. 95-55-SP, U.S. Dep't of Educ. (June 19, 1996). Moreover, this tribunal has upheld the collection of all Title IV funds even when the Department was negligent in enforcing its regulations. *See 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 2, 1992).

It may be unreasonable and unfair, however, to demand the return of all Title IV funds spent by an institution under an eligibility determination erroneously made by the Department in this case.[See footnote 4](#)[4] If the Secretary determines that SFAP's interpretation of the statute did change and the institution relied upon SFAP's previous interpretation, and given the absence of fraud or evidence of misconduct on the part of Beth Jacob, he may wish to determine that it is inappropriate for SFAP to demand the return of all Title IV funds. The Secretary could then, in this case, assert his full plenary authority to reduce or reject SFAP's asserted liability.

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Judge Richard I. Slippen

Dated: July 10, 1998

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]*Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070, et seq.*

Footnote: 2 [2]*See 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). The Judge, however, did not terminate Beth Jacob's eligibility to participate in the Title IV programs because the institution's Religious Education Program satisfied the relevant statutory definition of an eligible program under the HEA.*

Footnote: 3 [3]*Liability was assessed for all Pell funds received by Beth Jacob because the institution failed to document what funds were expended in its ineligible program.*

Footnote: 4 [4]*I note that in In re Beth Medrash Eeyun Hatalmud, Docket No. 97-94-SP, U.S. Dep't of Educ. (June 16, 1998), the tribunal took a approach different from AJE to arrive at a similar result.*
