

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

In the Matter of

Docket No. 99-47-EA

**Bruce Rappaport Faculty of Medicine,
Technion-Israel Institute of Technology,**

Emergency Action
Show Cause Proceeding

Respondent.

Appearances: Rafael Beyar, M.D., D.Sc., Dean, Bruce Rappaport Faculty of Medicine,
Technion-Israel Institute of Technology, Haifa, Israel, for Respondent.

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

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

DECISION

Respondent is a medical school located in Haifa, Israel, which enrolls a small number of students from the United States who have, in the past, received student loans under the Federal Family Education Loan (FFEL) program authorized under Title IV of the Higher Education Act of 1965, as amended. U.S. students enrolled in a medical school located in a foreign country may receive FFELs if the medical school meets the accreditation standards of the country in which the school is located and those standards are comparable to the accreditation standards applied to medical schools in the United States, or the foreign medical school is accredited by a nationally recognized accrediting agency approved by the U.S. Secretary of Education.

The determination as to whether the accreditation standards for a foreign country are comparable with those applied to medical schools in the United States is made by the National Committee on Foreign Medical Education and Accreditation (NCFMEA), a panel of experts appointed by the Secretary of Education. *See* 34 C.F.R. ' 600.55(a)(4)(i) (1998). On October 8, 1998, NCFMEA determined that Israeli accreditation standards for medical schools are not comparable to U.S. standards. As a result of the NCFMEA determination, U.S. students enrolling as new students in Israeli medical schools became ineligible for FFELs unless their medical school was accredited by an agency approved by the U.S. Secretary of Education. U.S. students who were enrolled in Israeli medical schools at the time of the NCFMEA decision and who received an FFEL before the decision was made continued to be eligible for FFELs for the academic year then in effect and for the succeeding academic year. This information was transmitted to the Israeli

Council for Higher Education by letter from the U.S. Secretary of Education dated December 4, 1998.

By letter dated July 8, 1999, to the President of Technion-Israel Institute of Technology, SFAP notified Respondent that it was initiating an administrative proceeding to terminate the school's eligibility to participate in the FFEL program based on the NCFMEA determination; the letter also notified Respondent that the U.S. Department of Education was imposing an Emergency Action, which had the effect of immediately withdrawing the authority of the school to award FFELs to newly enrolled U.S. students. The school requested an opportunity to show cause why the Emergency Action should be revoked. On August 9, 1999, I was appointed the show cause official. On August 12, 1999, a hearing was held in Washington, DC, to consider the Respondent's arguments.

Under the regulations, 34 C.F.R. ' 668.83 (c)(1) (1998), an Emergency Action may be imposed if SFAP receives reliable information that a participating school is not meeting the standards for participation in the Title IV programs, determines that immediate action is necessary to prevent a misuse of Title IV funds, and determines that the likelihood of loss outweighs the importance of waiting for the completion of a termination proceeding. In a show cause proceeding initiated to challenge an Emergency Action, the school has the burden of proof. In a termination proceeding, SFAP has the burden of proof. An Emergency Action expires within thirty days unless SFAP also initiates a termination proceeding. Under 34 C.F.R. ' 668.83 (e)(4) (1998), the show cause official may revoke or modify the Emergency Action because the grounds stated in the notice of the Emergency Action no longer exist, the grounds stated will not cause a misuse of Title IV funds, or the institution in question will use procedures that will reliably eliminate the risk of loss of funds from the misuse described in the notice.

At the hearing, Respondent argued that the Emergency Action should be lifted since it was confident that NCFMEA will determine at its next meeting that Israel has adopted revised accreditation standards comparable with those in the U.S. The area of difference revolves around the failure of Israeli standards to require a periodic review of medical schools by an outside authority. According to representations made by Dr. Rafael Beyar, Respondent's Dean, the Israeli Council for Higher Education, the appropriate governing body for medical education in Israel, has adopted revised standards that should correct the violation, and that the revised standards have been agreed to by all of the medical schools in Israel. The NCFMEA meets on September 17, 1999, and will consider the revised Israeli standards. According to Dr. Beyar, there are approximately ten students scheduled to enroll in the medical program this fall who are clearly affected by the NCFMEA determination. There are ten additional students who are already enrolled in Respondent's medical program who may be affected, since U.S. students spend their first year studying at another institution and it is not clear whether these students will qualify as students who already have FFELs at the Respondent medical school.

SFAP had reliable information that Respondent was not in compliance with the Title IV standards since NCFMEA determined that Israel did not have comparable standards with the U.S. SFAP decided that immediate action was necessary since Respondent's students were no longer eligible for FFELs, and that the likelihood of loss from improperly awarded FFELs outweighed the importance of awaiting the outcome of the termination proceeding. I agree that SFAP complied with the legal standards and that, short of an agreement from the school not to award any additional FFELs, the risk of loss outweighs the importance of awaiting the outcome of the termination proceeding since there is no doubt that the students are ineligible. The law is clear and unambiguous, once NCFMEA made its determination, the students became ineligible. If the termination proceeding were held today, I would have to terminate Respondent's participation in the FFEL program. Since the grounds stated in the notice still exist, and I cannot determine that those grounds will not cause a misuse of FFEL funds, the Emergency Action must remain in place.

As noted above, there are few students affected by this decision. SFAP has agreed to stay the termination proceeding until after NCFMEA makes a determination concerning the revised Israeli standards at its September meeting. If those standards are found to be comparable with those in the U.S., SFAP will lift the Emergency Action and dismiss the termination proceeding. At that point, Respondent will be free to award the FFELs to its newly enrolled U.S. students. In addition, during the hearing, counsel for SFAP agreed to look into whether students about to enter their second year of the medical program, but who spent their first year at another institution, could be considered as continuing students, rather than newly enrolled students, and thus eligible for FFELs notwithstanding the Emergency Action. Finally, it should be noted that, even if I were to revoke the Emergency Action, U.S. students would still remain

ineligible for FFELs as a result of the NCFMEA determination.

For the reasons provided above, I decline to revoke or modify the Emergency Action.

Frank K. Krueger, Jr.
Administrative Judge

Dated: August 25, 1999

SERVICE

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

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