



UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

In the Matters of	Audit Control Numbers
PENNSYLVANIA COLLEGE OF STRAIGHT CHIROPRACTIC,	03-4-81
DERECH AYSON RABBINICAL SEMINARY,	02-50504
RABBINICAL SEMINARY OF MUNKACS,	02-50505
BNOS JERUSALEM SEMINARY, and	02-50506
SARAH SCHENIRER TEACHERS SEMINARY	02-40082
Respondents.	

DECISION OF THE SECRETARY

These matters involve the U. S. Department of Education's (ED) separate demand against the five above listed institutions for the return of federal funds granted under the student financial assistance program. The central issue is the same as to all Respondents. That issue is whether these postsecondary schools were qualified to participate in federal financial assistance programs for their students.

Under Title IV of the Higher Education Act of 1965, as amended, schools may participate in these programs if they are either accredited in their own right, or if unaccredited, their "credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited..." 20 U.S.C. § 1141(a)(5)(B). This alternate qualification procedure is commonly called, "Three Institutional Certification" or "3-IC".

In the course of the present proceeding, each of the five Respondents was served with a Final Determination Letter which found that each of the schools did not qualify to participate in federal financial assistance programs. In each case, the schools were unaccredited, but had sought certification under the "3-IC" option. Based on their individual submissions, ED certified each of the institutions as eligible to participate in the student financial assistance programs, and federal funds were provided.

Subsequent program reviews determined that the certifications were erroneous and, as a result, the certifications were withdrawn and the Respondents were directed to return the funds that had been disbursed to them under this program. In due course, the Respondents appealed; an Administrative Law Judge (ALJ) was appointed to preside over a hearing; and, the ALJ issued his decision.

The ALJ found that one Respondent, the Pennsylvania College of Straight Chiropractic (PCSC), failed to establish that it was qualified under the "3-IC" program and therefore was not eligible to participate in the federal program. He, therefore, affirmed ED's demand for the return of \$4,294,091. The ALJ also found that the other four Respondents, Derech Ayson Rabbinical Seminary (Derech Ayson), Rabbinical Seminary of Munkacs (Munkacs), Bnos Jerusalem Seminary (Bnos), and Sarah Schenirer Teachers Seminary (Sarah Schenirer), proved that they were qualified under the "3-IC" program and, therefore, were eligible to participate in the program. As a result, he rejected ED's demands against those four Respondents.

The regulatory scheme establishing the finality of decisions of an ALJ in this type of case is found in 34 C.F.R. § 668.121. Basically, the Initial Decision of an ALJ will become the Final Decision of the Department unless a timely appeal is filed with the Secretary. In such case, the Secretary's Decision will constitute the Final Decision of the Department when it is issued. To be timely, a party wishing to appeal must "submit" an appeal to the Secretary within fifteen days of its receipt of the Initial Decision. 34 C.F.R. § 668.119. The appeal may be hand carried or mailed. If mailed, the date of the appeal is the date of receipt indicated on the U.S. Postal Service return receipt. 34 C.F.R. § 668.122(c).

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The Initial Decision of the ALJ was mailed to Counsel for all parties on February 26, 1990. On February 28, 1990, that Decision was received by Counsel for ED. Counsel for ED mailed an appeal of the Decision as it relates to Derech Ayson, Munkacs, Bnos and Sarah Schenirer on March 15, 1990. That appeal was received by the Office of Hearings and Appeals (OHA) on March 19, 1990. Counsel for Respondents has moved to dismiss this appeal as untimely.

For ED's appeal to be considered timely, it must have been submitted by March 15, 1990, fifteen days after receipt of the Initial Decision. Applying the applicable law to the facts, I find that ED's appeal is untimely in that it was not operative until March 19, 1990, the date it was received by OHA. Therefore, I GRANT Respondents' Motion to Dismiss ED's appeal.

Derech Ayson, Munkacs and Bnos' joint appeal was filed in anticipation of ED's appeal, however, since ED's appeal has been determined to be untimely and, as a result, ED's demand has been rejected, the appeal of these three Respondents is now moot.

Because of my dismissal of ED's appeal as untimely, I do not reach the merits of the ALJ's determinations as to these Respondents. Specifically, I do not decide whether such decision is in consonance with the holding of the Court in the case of Beth Rochel Seminary v. William J. Bennett, 825 F.2d 478 (D.C. Cir. 1987).

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The ALJ found against PCSC, the remaining Respondent, and affirmed ED's demand. PCSC filed a timely appeal. In its appeal, PCSC does not question the findings of the ALJ, but does assert that the decision disregards justice and has an "amoral" impact because of the negative effect it has on future students of the school.

PCSC's position on appeal raises what can best be described as equitable considerations. These include: the matter occurred a number of years ago and involved its predecessor in interest; the federal funds were awarded to matriculated students; none of the principals are currently associated with PCSC; PCSC is a struggling, non-profit college which cannot maintain solvency if forced to pay the amount demanded; and, the demand constitutes a punitive measure.

In rebuttal, ED asserts that the school knew or should have known that the information upon which ED made its original determination as to eligibility was erroneous and, therefore, should have known that they were ineligible to participate in the federal student financial assistance program. ED also points out that an institution participates in these federal programs as a fiduciary and, as a result, must exercise the highest degree of care in administering the program and accounting for the funds.

Clearly, ED may reconsider its approval. Our regulations provide: "If the Secretary designates an institution as an eligible institution on the basis of inaccurate information or documentation, the Secretary's designation is void from the date it was made and the institution never qualified as an eligible institution." 34 C.F.R. § 600.32 (b).

I find that the ALJ properly considered all the information before him and issued a decision consistent with the law and the facts in so far as it relates to PCSC. I find no "good cause" to overturn that decision, therefore I AFFIRM.

This DECISION signed this 21st day of May 1990.

A handwritten signature in cursive script, reading "Lauro F. Cavazos", is written over a horizontal line.

Lauro F. Cavazos

Washington, DC