UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

ACADEMY FOR JEWISH EDUCATION,

Respondent.

Docket Number 96-29-SP

Student Financial Assistance Proceeding

DECISION OF THE SECRETARY

Background

The Academy for Jewish Education, (Academy), a not-for-profit institution, was founded in 1986. This institution sought to facilitate the entry of Russian immigrants into the United States' Jewish lifestyle. In 1987, Respondent, Academy, applied to the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education, for financial assistance awards under Title IV of the Higher Education Act of 1965, as amended. For approximately seven years following its initial application, Respondent received Title IV funding.

Procedure and Issue

On January 13, 1994, SFAP imposed an emergency action against Academy contending that Academy did not satisfy the relevant statutory and regulatory definitions of an eligible institution under the Higher Education Act. Specifically, SFAP alleged that Academy, as a non-degree granting institution, was not eligible to receive Title IV funds since it did not offer a program of training to prepare students for gainful employment in a recognized occupation.[1] 20 U.S.C. §§ 1088(c), and 1141(a). Judge Canellos upheld the emergency action finding the applicable statute required Academy to prepare students for a specific occupation. Within thirty days of the emergency action, as required by law, Academy received a termination letter dated February 10, 1994. A termination hearing before Judge O'Hair followed in which he affirmed Judge Canellos' finding that an eligible institution must provide training in a specifically identifiable occupation. On November 22, 1995, the Initial Decision was certified by the Secretary as the final decision of the U.S. Department of Education. In re Academy for Jewish Education, Docket No. 94-11-EA, U.S. Dept. of Education (March 23, 1994); In re Academy for Jewish Education, Docket No. 94-51-ST, U.S. Dept. of Education (Aug. 1, 1995), certified by the Secretary (Nov. 22, 1995).

[1]SFAP also alleged that Academy was not properly accredited. This issue was decided in favor of Academy and affirmed by the Secretary. See In the Matter of Academy for Jewish Education, Decision, Docket No. 94-51-ST (Aug. 1, 1995) aff'd (Nov. 22, 1995).

On January 12, 1995, an Expedited Determination Letter was issued requiring repayment of all funds disbursed to Academy since 1987. Academy appealed, contending that SFAP's attempt to recoup the funds disbursed was grossly unfair and an abuse of discretion. In his decision, dated August 23, 1996, Judge Krueger held that Academy disbursed Title IV funds in full compliance with the law until SFAP imposed the emergency action on January 13, 1994. The Court stated that the evolving statutory interpretation of the term "gainful employment" was open to a good faith debate over its meaning. The Court precluded SFAP from recouping assistance disbursed since Academy acted in full reliance upon SFAP's declaration of eligibility. Finally, the Court stated that requiring Academy to return funds would impose "an undue financial hardship on the institution and constitute an abuse of discretion." In the Matter of Academy for Jewish Education, Docket No. 96-29-SP, U.S. Dept. of Ed., p 2. (August 23, 1996).

Although Academy attempted to re-litigate the issue of its eligibility, my certification of the Initial Decision addressing termination is final. 34 C.F.R. § 668.120. Thus, the finding that Academy does not provide a program of training preparing students for gainful employment in a recognized occupation is *res judicata.*[2] Accordingly, the decision affirming termination is also *res judicata.* The only remaining issue is whether Academy is required to return the Title IV assistance awarded by SFAP for ineligible programs.

Rule of Law & Respondent's Argument

The applicable statutes provide in pertinent part that:

> Postsecondary vocational institution. For the purpose of this section, the term 'postsecondary vocational institution' means a school (1) which provides an eligible program of training to prepare students for gainful employment in a recognized occupation ....
> 20 U.S.C. § 1088)(c)(1997)

> The term "institution of higher education' means an educational institution in any State which ... provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation ....
> 20 U.S.C. § 1141(a) (1997)

The applicable regulation, 34 C.F.R. § 600.2, provides that a recognized occupation is defined as:

[2] It was also decided by Judge O'Hair, and later certified by the Secretary, that Academy was properly accredited by a nationally recognized accrediting agency. This issue is also *res judicata.*

> [A]n occupation that is: (1) Listed in an 'occupational division' of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor; or (2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

On appeal, Respondent argues that 20 U.S.C. §§ 1088(c) and 1141(a) require an eligible program to generally prepare students for gainful employment, without compelling the program's training to prepare students for employment in a specific occupation. Academy's Appeal Brief, p. 12. Respondent further contends that these statutes have been newly interpreted to include a specificity requirement and that this new requirement was retroactively applied in the instant case. Therefore, Respondent asserts that it may not be held liable for the Pell Grants it disbursed.

Findings

Under the authority of 20 U.S.C. §§ 1088(c), 1141(a), and the definition provided in 34 C.F.R. § 600.2, an eligible institution must provide training in a specifically identifiable occupation. An eligible program may not merely provide training that may generally improve the employability of its students. *See* Sara Schenirer Teachers Seminary, Docket. No. 94-49-ST (June 21, 1995), aff'd (Sept. 14, 1995). Although Respondent presented plausible arguments, to affirm its position could compromise the integrity of federally funded postsecondary vocational education. Therefore, I agree that Respondent's programs do not meet the standard of an eligible vocational training. The specific facts of this case, however, do not warrant the imposition of financial liability. Thus, in accordance with my discretionary authority, I hereby reverse the finding of financial liability and impose a ***fine*** in the amount of $50,000.00.

Washington, DC
October 13, 1998

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