

UNITED STATES DEPARTMENT OF EDUCATION
FEDERAL STUDENT AID
SCHOOLS CHANNEL
WASHINGTON, DC 20202-5340

APR 29 2003

Dr. David H. Weaver
President and Chief Financial Officer
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35 Center Street
Unit 18
Wolfeboro Falls, NH 03896-1080

REF: Berne University - St. Kitts

OPEID # 033493

Federal Express Overnight Delivery

Dear Dr. Weaver:

We have reviewed your materials seeking reconsideration of our decision not to renew your institution's provisional certification. Based on that review, the Foreign Schools Team's final decision on your request is to deny reconsideration and to deny recertification of your school to participate in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§1070 et seq.

Your application does not demonstrate that your school meets the eligibility requirements for participation in the Title IV, HEA programs. You do not indicate that your school has legal authorization from a State, or accreditation from a nationally-recognized accrediting agency, as would be required for your school to establish eligibility to participate as a domestic school. See 20 U.S.C. § 1001.

Moreover, to establish eligibility to participate as a foreign school, your institution would need to be physically located in a country outside the United States that provides legal authorization for the postsecondary degree programs your school supplies. 20 U.S.C. §§1002(a)(1)(C), 1002(a)(2)(A); 34 C.F.R. §§ 600.2, 600.3, 600.52, 600.54(b), (c). Furthermore, the educational programs alleged to be authorized, which you identify as master's and doctoral programs, would need to qualify as the equivalent of a program for which a graduate degree would be awarded in the United States. While you claim that your institution is physically located in St. Kitts, your materials indicate that, for all of your school's programs, only two to four weeks are taken on the St. Kitts "campus." The two to four weeks of instruction that physically take place in St. Kitts - and that are therefore subject to legal authorization by St. Kitts for Title IV purposes - are not equivalent to a program that would result in award of a graduate degree in the United States.

While you do indicate that your institution's programs include additional instruction which you describe as mentored/independent study, you do not show, or allege, that this additional instruction takes place on St. Kitts, or that you present your programs in their entirety on St. Kitts. Indeed, your catalog indicates that only 9 out of the 36 credits required for the Master's degree programs, and only 18 out of the 60 to 63 credits required for the doctoral level programs, are provided on St. Kitts. By way of comparison, note that, given the small portion of your program that is offered on St. Kitts, your operations in St. Kitts are not substantial enough in terms of your overall operations to require notice to the Secretary in the first instance that the St. Kitts campus/location exists. See 34 C.F.R. §§ 600.20(c); 600.21.

In addition, we know of no domestic institution, graduate or undergraduate that is able to offer nine credit hours of instruction in two weeks, or 18 credit hours of instruction in four weeks. Based on the information in your catalog indicating that your semesters are 15 weeks long and that you use traditional units of credit, and accordingly following the traditional rule that one semester hour equals three hours of work in and out of class per week, your master's degree students would need to be studying independently or in class for 405 hours within a two week period - a physical impossibility.

In authorizing loans to be made under the Federal Family Education Program to students enrolling in foreign institutions, Congress's intent was to afford interested students an opportunity to *attend* school abroad - i.e., a school located "outside the United States." See 20 U.S.C. §1002(a)(1)(C); see also, e.g., S. Rep. 102-630, 2d Cong., 2d Sess. (July 29, 1992) at 471. In contrast, schools whose programs are non-residential, and consist instead of independent study, telecommunications or correspondence instruction provided to students residing in the United States, are offering a domestic education. Compare 34 C.F.R. § 600.52(b)(defining "foreign institution" as an institution that is "not located in a State"). Such schools need to qualify for participation in the Title IV programs under the distinct set of eligibility requirements that apply to all other domestic institutions. See 20 U.S.C. §§ 1001, 1002 (a)(1)(A), (a)(1)(B).

Thus, you have provided us with no basis for determining that your school is located outside the United States, or that your programs are legally authorized by St. Kitts within the meaning of Title IV, nor have you provided the information necessary to establish Berne University's eligibility as a domestic institution.

In seeking reconsideration, you state that the length of time of the St. Kitts residency was "clearly indicated in our initial application for provisional approval." However, for present purposes, it is not relevant whether Departmental personnel who reviewed your application made an error, or whether instead the nature of your operations was not evident from your application. In either event, your current application would need to establish that your school is eligible, which, for the reasons stated, it has not. Accordingly, we must deny your request for reconsideration.

You also allege that compliance audits demonstrate that borrowers enrolled at Berne are resident in St. Kitts during the "residency part of the program." Again, that is not in issue. You have not shown that programs equivalent to a program leading to a graduate degree in the United States are offered in their entirety on St. Kitts so as to be within the scope of a grant of legal authorization by St. Kitts, nor has your school, therefore established that it is physically located outside the United States.

In addition, although you state that your New Hampshire administrative office "is not licensed or registered as an educational facility," that fact unfortunately does not bear on whether your school qualifies as an eligible foreign institution. At most, your allegation means only that your school *cannot* be certified as an eligible domestic institution.

You further allege that "the mainstay of our graduate program is consistent with graduate programs at other universities that offer Title IV" and that "our administration, faculty, academic programs and facilities are all located in St Kitts." Regarding the first point, be assured that to our knowledge there is no university certified to participate in the Title IV programs as a foreign institution based on its conduct outside of the United States of two or four week residency courses. Regarding the second point, much of your administration, according to your documentation, is located in the United States. Furthermore, as discussed above, neither your faculty, academic programs nor facilities have been shown to be physically located in St. Kitts. Indeed, of the seven faculty resumes you submitted, less than half listed a St Kitts address. Only one of the seven is listed on the Berne payroll you submitted, and that individual resides in Ohio. Regarding the payroll documents, your school appears to pay U.S. and state payroll taxes and to maintain its accounts in U.S. dollars and U.S. banks.

Moreover, our findings as to the minimal nature of your operations on St. Kitts appear consistent with a document you provided under the heading "Berne University Graduate Curriculum Vitae." This document consists of a form letter, apparently prepared by then-student [REDACTED], stating as follows:

Berne University, an accredited international graduate school in which I have matriculated and gained doctoral candidate status, offers a Business doctorate program based on competency and performance not time. A CEO or senior executive can earn a doctoral degree in Business within one to one and a half years at a cost of about \$10,000.00 without sacrificing full-time employment and family and personal responsibilities. Further, some of my courses are through distance learning. A one month, one time only RESIDENCY on campus in the Caribbean with full-time faculty and dissertation advisors is mandatory. The RESIDENCY occurs at a convenient time during the last two weeks of July and the first two weeks of August. The dissertation phase of the program is with a mentor who is geographic proximity to your residence.

We are also in receipt of your letter dated April 17, 2003. A copy of the Government Accounting Office material referred to herein and in our letter of March 21, 2003 is enclosed.

With regard to the concerns we raised based on the GAO audit, and in an effort to demonstrate financial responsibility and administrative capability, you submitted two three page documents and one four page document entitled "Berne University, Inc. Check Register" for the periods 01/01/2000-12/31/2000, 01/01/2001-12/31/2001, and 01/01/2002-12/31/2002. While you assert that these documents refute the GAO's report that Berne University has on at least two occasions not met its payroll, you have not explained who prepared these three "Check Register" documents, how they were prepared or what they are thought to demonstrate. As mentioned, six of the seven faculty members whose resumes were included in your materials submitted on reconsideration are not listed on these documents as having received any pay during the three years mentioned.

Beyond that, only approximately twenty check recipients are listed. These do not include the personnel listed as "Academic Faculty" in the catalog you submitted, nor do they include several of the individuals listed in that catalog under the heading "Berne University Administration." In addition, they do not appear to include the "mentors" whom Mr. [REDACTED] indicated are located "in geographic proximity" to student residences rather residing in St. Kitts. Check number sequences do not correlate with check dates, particularly for the year 01/01/01 -12/01/01. Several check numbers are missing; several are listed twice in different amounts for different individuals; and several list an amount of "0.00." Your materials do not refute the concerns we spoke of in our denial letter that were raised by the GAO audit as to Berne's financial responsibility and administrative capability. See 34 CFR §§ 668.16(j); 668.16(b)(3); 668.171(a)(3), (b)(4).

You also suggest that the questions raised by the GAO as to the accuracy of your marketing materials and oral representations may have originated with two disgruntled mentors who formerly worked with Berne. We cannot follow up on that suggestion without further details. Regarding the GAO report, however, and in connection with our concerns about the accuracy of the representations in your catalog; we have reviewed the materials you supplied regarding Berne University Graduate Curriculum Vitae. As submitted, the materials regarding Msrs. [REDACTED] and [REDACTED] do not provide information about your school. Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] appear to have applied for admission to Berne, but it is unclear whether they pursued this and what bearing their resumes have on the concerns raised in the GAO report as to the accuracy of your marketing materials. While a document asserts that [REDACTED] received a promotion from GS-14 to GS-15, and a position as an adjunct faculty member at Strayer University, as a result of having earned a Ph.D. in 1999 from Berne, the document is unsigned and it is not clear how, why or by whom the document was prepared. The testimonial from [REDACTED] quoted above, which likewise is unsigned, appears to focus primarily on convenience factors, rather than on the success of Berne graduates, and indicates that [REDACTED] himself had not yet completed his program. Finally, Dr. [REDACTED]'s resume is somewhat puzzling, since it indicates on the first page that Dr. [REDACTED] attained his Ph.D. at Berne, but later suggests that it was earned at the University of Vermont. These documents do not refute the statements in the GAO report and in our denial letter as to your past marketing practices, nor do they substantiate the statements in your catalog which we identified as drawing the accuracy of your marketing into question. See 34 CFR §§668.16(j), 668.72, 668.73, 668.75(c)(2), (c)(3).

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In summary, the materials you have submitted in support of reconsideration do not establish Berne University's eligibility for participation in the Title IV, HEA programs, nor do they answer the additional questions raised in our denial decision regarding adverse audit findings, financial responsibility, administrative capability, and questionable marketing practices. Therefore, we conclude that reconsideration of the issue of recertification must be denied.

Accordingly, for the reasons stated above and in our initial letter, Berne's provisional PPA will be allowed to expire, and its recertification application is denied. The date of expiration is April 30, 2003. After that date, your school may no longer participate in any of the Title IV, HEA programs.

Sincerely,

M. Geneva Coombs, Director
Case Management Teams - Northeast/Southwest

Enclosure