

U.S. Department of Education

**Staff Report
to the
Senior Department Official
on
Recognition Compliance Issues**

RECOMMENDATION PAGE

1. **Agency:** Association of Advanced Rabbinical and Talmudic Schools (1974/2007)

(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)

2. **Action Item:** Petition for Continued Recognition

3. **Current Scope of Recognition:** The accreditation and pre-accreditation ("Correspondent" and "Candidate") within the United States of advanced rabbinical and Talmudic schools.

4. **Requested Scope of Recognition:** Same.

5. **Date of Advisory Committee Meeting:** June, 2013

6. **Staff Recommendation:** Continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified below.

7. **Issues or Problems:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section.

-- The agency needs to ensure that its written policies provide institutions with a reasonable period of time to respond to site visit reports. [§602.17(d)]

-- The agency needs to provide documentation that when an institution is found out of compliance with any agency standard, that AARTS takes immediate adverse action, or else clearly requires the institution to come

into compliance within the maximum timeframe permitted by the criteria. In addition, that documentation should be relatively recent; it should clearly focus on the actions of the decision-makers; and it should be sufficient to demonstrate that the AARTS accreditation actions regarding noncompliance consistently fall within the enforcement timelines required by this criterion. [§602.20(a)]

-- The agency needs to provide clear evidence that its written policies and actions regarding extensions for good cause ensure that they are adequately justified and strictly limited in length. [§602.20(b)]

-- The agency needs to provide evidence that it thoroughly reviewed, and granted prior approval, of the identified substantive change (an institution's substantive educational contract with a non-Title IV entity) following the relevant AARTS written policies. [§602.22(a)(2)(i-vii)]

-- The agency needs to provide documentation that it follows its written policies regarding the complete disposition of appeals under the circumstances cited by the Secretary's criteria. In addition, the agency needs to demonstrate that the Appeals Board identifies specific issues that the Commission must address, when the Appeals Board amends, reverses or remands the adverse action to the Commission for further action, or to attest these occasions have never arisen. [§602.25(f)]

-- The agency needs to provide documentation that AARTS notifies the institution in writing of the result of its appeal, together with the reasons or basis for that result, in a timely manner. [§602.25(g)]

-- The agency needs to provide documentation regarding its new policies and procedures that will ensure that the public is notified by AARTS within 24 hours of the agency's notification to the institution of a final adverse decision. [§602.26(c)]

EXECUTIVE SUMMARY

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (AARTS) accredits advanced rabbinical and Talmudic institutions that grant postsecondary degrees such as the baccalaureate, master's, doctorate, first rabbinic and first Talmudic degrees.

AARTS-accredited schools offer a program of Talmud and related studies. ("Talmud" is the collection of Rabbinic writings that date back to the third century whose writings form the basis of religious authority for traditional Judaism.)

The enrollment at AARTS-accredited institutions, with the exception of a few larger schools, is approximately 100 students. Of the 71 institutions currently accredited and preaccredited by the agency, the majority are located within the New York metropolitan area. In addition, AARTS schools are located in California, Colorado, Connecticut, Florida, Illinois, Maryland, Michigan, New Jersey, New York, Ohio and Pennsylvania.

The agency's recognition enables its institutions to establish eligibility to receive Federal student assistance funding under Title IV of the Higher Education Act of 1965, as amended (Title IV). The agency serves as the Title IV gatekeeper for almost all of the institutions it accredits. Consequently, the agency must meet the Secretary's separate and independent requirements.

Recognition History

AARTS is a national institutional accreditor. The agency's scope of recognition is for the accreditation and preaccreditation ("Correspondent" and "Candidate") of advanced rabbinical and Talmudic schools. AARTS was first added to the list of nationally recognized accrediting agencies in 1974. Since that time, the Secretary periodically reviewed the agency and has granted continued recognition.

The last full review of AARTS took place at the May 2007 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). After that review the Secretary renewed the agency's recognition for five years, and requested a report on agency compliance with four criteria. That report was subsequently accepted by the Secretary.

In conjunction with the current review of the agency's petition and supporting documentation, Department staff observed an on-site evaluation conducted by the agency in Far Rockaway, New York on Jan. 12-13, 2013. The Department received no third-party comments in connection with the agency's petition for continued recognition.

PART II: SUMMARY OF FINDINGS

§602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it--

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

AARTS sends a copy of the evaluation report to the institution inviting it to respond to the report in writing. The sample letters provided with the petition indicate that the institution may be given approximately one to two weeks to get its response back to AARTS.

The institution then submits an explanation describing any institutional changes made to correct areas of non-compliance. The final report and the institution's formal written response, if any, are then reviewed in the agency's decision-making process.

Department staff has found, however, that written agency policy does not require AARTS to give a reasonable amount of time for institutions to respond to site visit reports. The agency's written policy simply invites a response to the team's evaluation report. Since there is no minimum response time provided for an institution to respond within the policy, and since some site visit reports may contain numerous citations, it is not possible to ensure that sufficient time is consistently given in this particular matter of crucial importance to an institution. Although the narrative states that an institution may request being placed on a subsequent decision-meeting agenda when little time to respond is given, AARTS nonetheless needs to ensure that its written policies provide institutions with a reasonable period of time to respond to site visit reports. Until it does so, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to ensure that its written policies provide institutions with a reasonable period of time to respond to site visit reports.

In response, the agency noted that it will need to make changes to its current policies that will require broad community input before being adopted. As well, the agency acknowledged that this input could not be obtained before AARTS appears before NACIQI in June 2013.

As a result, the agency cannot be found in compliance with the requirements of

this section at this time.

§602.20 Enforcement of standards

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must--

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed--

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

When an institution is not in compliance with the AARTS standards, the agency may exercise its options that vary based on the severity and magnitude of the identified noncompliance. The options allow the agency to take immediate adverse action against the institution or to grant the institution additional time in which to come into compliance. Furthermore, these options are included in the agency's written materials, including the two-year maximum time limit that is in conformity with the requirements of this criterion.

The agency provide documentation under this section regarding a letter sent to a school that surpassed its five-year maximum period of preaccreditation, and a letter to another school that was reminded its self-study would be due in two years. However, neither case was directly related to the conditions covered by this section. Consequently, the agency still needs to provide clear evidence that its accreditation actions regarding institutions with issues of noncompliance consistently falls within the timelines required by this criterion.

Until it does so, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide documentation that when an institution is found out of compliance with any agency standard, that AARTS takes immediate adverse action, or else clearly requires the institution to come into compliance within the maximum timeframe permitted by the criteria. More specifically, the agency had not provided clear evidence that

its accreditation actions regarding institutions with issues of noncompliance consistently falls within the timelines required by this criterion.

In response, the agency provided a 2007 site visit report excerpt regarding one finding written by the site visitors, together with a follow-up monitoring site visit report excerpt regarding that same issue written by a site visitor.

However, neither excerpt indicated what original accreditation action was taken by the AARTS decision-makers, and the date it was taken by them. In addition, the documentation did not indicate the time period given by AARTS to the institution to come into compliance, or to face an adverse action. Furthermore, the documentation did not indicate the date that the AARTS decision-makers acted to find that the institution was now in compliance with the AARTS standards.

As a result, the agency cannot be found in compliance with the requirements of this section at this time.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

The AARTS written policy suggests some potential circumstances that may merit an extension for good cause. They include, but are not limited to -- (a) loss of a key figure at a small institution with limited staff; (b) legal proceedings that prevent the required remedy; (c) conflict over the interpretation of an AARTS regulation or standard; (d) school observed to be on verge of coming into compliance; (e) major construction program that suffered a completion delay; and (f) unanticipated/unusual drop in enrollment which in small schools can be very serious.

As documentation, the agency provided an excerpt showing that the Accreditation Commission granted an extension for good cause (Exhibit 80). However, there was no reason given for the extension that might serve as evidence of the agency's compliance with the requirements of this section. Even more of an issue, however, is that the agency's cited policy does not put any limits on an extension for good cause, or whether multiple extensions could be granted.

Until it does so, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide clear evidence that its written policies and actions regarding extensions for good cause ensure that they are adequately justified and strictly limited in length.

In response, the agency noted that it will need to make changes to its current policies that will require broad community input before being adopted. As well, the agency acknowledged that this input could not be obtained before AARTS appears before NACIQI in June 2013.

As a result, the agency cannot be found in compliance with the requirements of this section at this time.

§602.22 Substantive change.

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

The agency's substantive change policy covers the various elements listed by the Secretary's criteria, including the newer elements regarding addition of a program of study at a degree or credential level different from current approved offerings, and contracts with an entity that is not Title IV-certified. In that last case, AARTS will only consider an arrangement that has a maximum limit of 25 percent on a program of study outside the home institution.

The agency provided documentation of its review of one type of substantive change (under the previous section) as evidence that it follows its published policies and procedures in practice. However, the agency's documentation is insufficient evidence of its review/approval of the types of substantive changes under this criterion. Therefore, AARTS needs to provide documentation specific to its actual evaluation of a variety of types of substantive changes.

Until it does so, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide documentation specific to its actual evaluation of a variety of types of substantive changes. More specifically, the agency had provided documentation of its review of one type of substantive change, but did not address the other types of substantive change included under this section.

In response, the agency attested that it has not had occasion to implement its substantive change requirements for the remainder of the listed substantive changes, except for one. The one exception expects an agency to have an effective mechanism for evaluating and granting prior approval before an institution enters a contract with a non-Title IV certified institution to provide more than 25 percent of the AARTS-accredited institution's educational program.

The agency provided documentation of a later step in its substantive change approval process from January 2013, after the substantive change had already been implemented since September 2012 (cf. Exhibit 110). Although the documentation mentions an earlier approval of uncertain date, AARTS provided no documentation that its Commissioners granted the approval necessary before the substantive change was implemented, and how that evaluation was conducted.

Since the substantive change in question relates to a contractual relationship with a lengthy study-abroad program, AARTS should thoroughly document how it implemented all the study-abroad policies referenced in the AARTS Handbook.

Until clear documentation is received, a finding of compliance cannot be made.

§602.25 Due process

(f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final.

(1) The appeal must take place at a hearing before an appeals panel that--

(i) May not include current members of the agency's decision-making body that took the initial adverse action;

(ii) Is subject to a conflict of interest policy;

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, or reverse adverse actions of the original decision-making body; and

(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel's decisions or instructions.

(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.

AARTS written policy is to give its institutions the opportunity to appeal, upon written request, prior to the adverse action becoming final. AARTS creates a special Appeals Board of three persons to hear appeals on an as-needed basis. As previously noted, each Appeals Board consists of an academic, an administrator, and a public member chosen from trained site visitors and former commissioners.

The agency's written policy affirms that the Appeals Board does not include current members of the Accreditation Commission, that the Appeals Board is subject to the AARTS conflict of interest policies, and that the agency recognizes the right of the institution to employ counsel. In addition, the Appeals Board has the authority to affirm, amend, reverse, or remand the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the Commission. Furthermore, when there is a decision to remand the adverse action to the Commission for further consideration, the appeals panel must identify specific issues that the Commission must address.

AARTS has submitted evidence documenting its compliance with a few of the initial aspects of these requirements (cf. Exhibits 72 & 73), such as notifying a school of its right to appeal, and thanking someone for agreeing to serve on an Appeals Board. However, the agency provided no documentation of what actually happens during and after an actual appeal is conducted.

For example, the agency did not document how it implements its policies when the original decision of the Accreditation Commission has been amended or reversed by the Appeals Board and then remanded to the Commission for discussion and final action. In particular, there was no documentation that the Appeals Board identifies specific issues that the Commission must address, when the Appeals Board remands the adverse action to the Commission for further consideration.

In summary, AARTS presented no documentation regarding how it processed any appeals beyond the preliminaries. Department staff realizes that AARTS may not have had occasion to process certain types of appeals. It is possible that every Appeals Panel may have agreed with every original adverse finding of the Accreditation Commission. Nonetheless, AARTS still needs to provide documentation regarding the types of appeals that it has fully processed. In addition, the agency may be able to attest that an Appeals Panel has never had occasion to amend, reverse or remand an adverse action of the Accreditation Commission.

Until appropriate evidence is provided, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide documentation that it follows its written policies regarding the complete disposition of appeals under the circumstances cited by the Secretary's criteria. In addition, the agency needs to demonstrate that the Appeals Board identifies specific issues that the Commission must address, when the Appeals Board amends, reverses or remands the adverse action to the Commission for further action, or to attest these occasions have never arisen.

In partial response, the agency stated that "the Appeals Board Protocol language will be modified to ensure this concern is complied with." However, the agency also will need to provide documentation demonstrating its compliance with all the requirements of this section, as appropriate, as was noted in the draft staff analysis.

Until it does so, the agency cannot be found in compliance with the requirements of this section.

(g) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

AARTS has a written policy stating that the institution will be notified in writing of the result of its appeal, together with the basis for that result. However, the agency provided no evidence that it actually implements this policy in practice.

Furthermore, the policy does not state when the institution would be informed, or what time limit is placed on when that notification must go out to the school. As well, it is unclear that the agency cites the standards that the school was still found to be in noncompliance, and why the adverse action was being upheld, revised or overturned.

Until these matters are addressed, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide documentation that AARTS notifies the institution in writing of the result of its appeal, together with the reasons or basis for that result, in a timely manner.

In partial response, the agency stated that “the Appeals Board Protocol language will be modified to ensure this concern is complied with.” However, the agency also will need to provide documentation demonstrating its compliance with the requirements of this section, as was noted in the draft staff analysis.

Until it does so, the agency cannot be found in compliance with the requirements of this section.

§602.26 Notification of accrediting decisions

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures--

- (c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), (b)(2) and (b)(3) of this section within 24 hours of its notice to the institution or program;**
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The agency's written policies cover the public notification requirements. However, the documentation did not indicate when the institution was first notified regarding the final adverse action, nor did it indicate when the public received the AARTS notification. Therefore, it was not possible to determine from the documentation provided that AARTS complies with the requirements of this section in practice.

Until this matter is addressed, a finding of compliance cannot be made.

Analyst Remarks to Response:

The draft staff analysis found that the agency needs to provide documentation that the public is notified by AARTS within 24 hours of the agency's notification to the institution of a final adverse decision.

In response, the agency said it misunderstood its responsibilities, and will be taking steps to ensure full compliance should the situation arise in the future. However, the agency did not elaborate on the steps that will be taken to ensure full compliance. As well, any discussion of the new policies and procedures to be established by AARTS will necessarily need to be accompanied with clear documentation. Furthermore, should no occasion occur in the near future to trigger those new policies and procedures, the agency can attest to that fact.

As a result, the agency cannot be found in compliance with the requirements of this section at this time.

PART III: THIRD PARTY COMMENTS

The Department did not receive any written third-party comments regarding this agency.