



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

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In the Matter of

**SOUTH FLORIDA COMMUNITY COLLEGE,**

Respondent.

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**Docket No. 07-38-SP**

Federal Student Aid  
Proceeding

PRCN: 200530424244

Appearances: Leslie H. Wiesenfelder, Esq., Dow Lohnes PLLC, Washington, D.C., for South Florida Community College.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

**DECISION**

South Florida Community College (South Florida), the respondent in these proceedings, is an institute of higher education that participates in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* The Office of Federal Student Aid (FSA), U.S. Department of Education (ED), administers these programs. On June 18, 2007, FSA issued a Final Program Review Determination (FPRD) containing two findings, and assessing a liability of \$494,885. FSA has withdrawn one of those findings, and South Florida has appealed the remaining finding of whether a specific group of students enrolled in an educational program offered by South Florida were eligible to receive Title IV funds. The amount in dispute remains at \$494,885.

The pertinent regulations on this subject specify that schools that participate in Title IV programs act as a fiduciary in the administration of those programs, and they hold these Title IV funds in trust for the intended student beneficiaries. 34 C.F. R. § 668.14, § 668.82(a) and (b). When the disbursement of these funds is questioned by ED, the schools have the burden of establishing that the Title IV funds were properly spent. 34 C.F. R. § 668.116(d). To prove that a student was eligible to receive Title IV funds, the school must show that the student was

enrolled in an eligible program at an eligible school. 34 C.F. R. § 668.32. An eligible program is one that leads to an associate's, bachelor's, professional, or graduate degree; a two-year program that is accepted for full credit towards a bachelor's degree; or a one-year training program that leads to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation. 34 C.F. R. § 668.8(a), (b), and (c). Furthermore, the standards for program eligibility require that both the school's accrediting body and the state licensing agency approve its educational programs. 34 C.F. R. § 600.4(a)(5).

The finding before me was derived from a program review conducted at South Florida from May 23-27, 2005, by FSA's Atlanta Case Management Team, for the 2001-2002 through 2003-2004 award years. The team asserts that in 2001 South Florida entered an agreement (later referred to by FSA as an "arrangement") with the Florida Civil Commitment Center (Center) whereby South Florida would provide an educational program for the residents of that facility. In separate proceedings those residents previously had been determined to be sexually violent predators under Florida law and then involuntarily civilly committed to the Center; this is an open-ended treatment program from which a resident may be released upon a showing that he is no longer dangerous or mentally impaired. The FPRD explains that pursuant to an agreement between South Florida and the Center, the residents were allowed to enroll in South Florida's two-year Associate in Arts Degree Program. The school had approval from both the state licensing body and its accrediting agency to offer associate's degree programs, and ED approved of the programs as Title IV eligible. These approvals preceded the time when this program was offered at the Center.

During the review, team members discovered that none of the enrolled residents were able to complete the program and earn a degree because of logistical problems. In addition to the residents being limited to completing their course work only by means of video-taped instruction, called telecourses, the program also required that they take computer courses and perform work in computer labs, including using the Internet. The team members found that these latter obligations could not be met because the residents did not have access to computer labs or the Internet. The FPRD concluded that even if the residents completed all of the telecourses, this would not lead to them receiving a degree, a certificate, or other educational credential that prepares a student for gainful employment in a recognized occupation. As such, it found that the two-year program South Florida offered to the residents did not meet the Title IV definition of an eligible program and, therefore, the residents were not eligible for the Title IV funds they received.

In its brief, FSA argues that the program of studies offered to the residents of the Center was an ineligible program because it was clear to all parties at the inception that without access to computers and the Internet, the residents could not take all of the required classes and thus, they were unable to complete the required course work for the degree program. Since the classes taken by the residents could not lead to a degree, a certificate, or other educational credential that prepares students for employment in a recognized occupation, FSA insists that the classes did not meet the Title IV definition of an eligible program and the Title IV funds South Florida disbursed to these residents must be returned to ED.

South Florida contends that the two-year degree programs offered to the Center's residents were identical to the programs it offered to all of its other students, and, therefore, those residents were eligible beneficiaries of Title IV aid. South Florida describes itself as an open-admission institution that may be attended by any student that meets Florida's post-secondary public school eligibility standards. It offers degrees in Associate in Science (A.S.) or Associate in Applied Science (A.A.S.) and its programs are offered in four different delivery modalities: (1) traditional classroom instruction; (2) two-way interactive televised courses delivered live into its classrooms and centers on and off campus; (3) asynchronous online learning which requires Internet access; and (4) telecourses which are commercially produced versions of its required and elective course instruction which are available as video cassettes, CDs, DVDs, closed circuit or local access cable television.

South Florida explained that some of its required courses were not available as telecourses, but were available in the other three modalities. It knew that the Center did not permit its residents to participate in the two-way interactive television courses or to attend live courses at one of South Florida's campuses because of cost and security issues. Additionally, South Florida said the residents could not take advantage of the asynchronous online classes because the Center eliminated Internet access to its residents during this period. However, South Florida thought that the Center would eventually allow students to use the other modalities, but this did not happen. As a result, the Center's residents were limited to receiving instruction only through telecourses. Because of the limited number of courses available through this modality, the residents were prevented from taking all of the courses required for graduation. South Florida, though, stresses that upon release from the Center the residents could resume their studies with South Florida or transfer the earned credits to another institution. Whichever method they chose would permit them the opportunity to obtain the desired associate's degree.

In 2005, South Florida removed all fire hazards from the Center, and this included personal electrical and electronic devices from the rooms. Following a protest of this action by the residents, the Center's administrative staff temporarily withheld residents' access to telecourses and other educational materials. This inability to provide the necessary resources to the students, in conjunction with the pre-existing limitation on the residents' access to classes, prompted South Florida to decide to stop offering the programs to the Center residents.

South Florida argues that there is no Title IV requirement that an institution must guarantee that every "temporarily place-bound student", such as a resident of the Center, who enrolls in one of its degree programs will have access to every course necessary for the student to complete the program. It also states that it had no formal agreement with the Center to offer a special program to its residents, but rather, it only agreed to offer to the Center's residents the same courses it offered to every other Florida resident. Furthermore, the Center's residents were not separately labeled, so they were indistinguishable from the other students. South Florida says it had only individual agreements with each interested Center resident who entered the degree program with an application that indicated that their intended degree was either the A.A. or A.A.S. degree. None of the residents enrolled in any of several non-degree seeking categories. South Florida points out that as the Center's residents completed their open-ended

involuntary civil commitment, they had the opportunity to continue and complete their degree programs with South Florida or another community college. In support of this South Florida points out that some of the former residents requested copies of their transcripts from South Florida and did continue their education elsewhere.

South Florida turns to *In the Matter of Parks College*, Dkt. No. 95-92-SP, U.S. Dep't of Educ. (Nov. 7, 1995) for support of its proposition that the residents were participating in an eligible program and were proper recipients of Title IV aid. In *Parks*, SFAP (a predecessor of FSA) challenged the award of federal student aid to students who enrolled in Parks' Associate of Science Business Administration program with the specific, stated intent of completing only six courses of the program. These courses were needed to provide them with enough college credit for acceptance in the armed forces without presenting a high school diploma or its equivalent. SFAP contended that this was a separate, ineligible program that was not approved by either the accrediting agency or ED. In approving the questioned disbursements, the Tribunal found that the students were taking regular courses, and upon the completion of these six the students could either continue as students and earn their degree, or enter the military and apply the college credit from the six courses toward earning their degree at some later time. The Tribunal found it inconsequential that the students' files identified them as 6-BA students and that the enrollment documents obligated them to pay for only six courses. It determined that the students and their classes were indistinguishable from those of the other regular students and that Parks College was in full compliance with the regulations.

FSA rejects the argument that *Parks* is controlling here. It maintains that South Florida, pursuant to its Program Participation Agreement with ED, had the responsibility to ensure that the approved program leading to an associate's degree was actually provided to the residents at the Center. FSA insists that when South Florida began offering classes to the Center's residents, it knew that the students could not complete the program and earn a degree. On the basis of this, FSA distinguishes these two schools by the fact that the students who attended Parks had the ability to obtain a degree at a later time, whereas the "fact that a student [at the Center] may ultimately transfer to another school or complete a program at South Florida, **if** they are released from the facility at some point in the future, does not render the program actually provided to students who enrolled while at the facility eligible."

I am not persuaded by the distinctions FSA attempts to make between the students at Parks College and the resident students at the Center. I assume South Florida obtained some form of preliminary approval from the Center to enroll those residents who wished to take a course in one of its associate's degree programs, but there is no evidence South Florida created a separate program for those residents. The residents were offered the same courses as those offered to the general public and were authorized to take those courses through any of the four modalities it offered. Unfortunately for the residents, the only modality that could be accommodated by the Center involved the use of telecourses. These same telecourses were also offered to, and utilized by, other students who were not residents of the Center. Even though the students who were residing at the Center could not take all of the courses necessary for a degree at that time, when they were released they could continue the program with South Florida, or they could transfer the credits to another institution, just as could the students attending Parks

College. Despite the fact that *Parks* did not establish a requirement that the institution must actually provide evidence that the students resumed their studies after completing the initial six courses and then a military obligation, South Florida has provided evidence that a number of former residents at the Center requested transcripts of their course grades from South Florida. It also presented evidence that some of them had enrolled in other community colleges. All of this leads me to conclude that South Florida offered a degree program to the residents of the Center which was identical to that offered to the rest of the community. It is also important to note that South Florida did not assign the students at the Center to any special category or label them in a way that was different from non-resident students. The fact that the students at the Center may have been temporarily unable to complete all required course work while at the Center does not convert the courses offered to into an ineligible program. It is plausible that all of the residents would be released from the Center at some future date and could then resume their studies to earn the desired degree. I am confident that there are a number of students at South Florida, other than those who were residents of the Center, who have not completed their degree course work for any number of personal impediments, e.g. lack of transportation to class sites, no computer/internet access, or inadequate finances. I am not aware that the completion of the degree program is, or should be, a requirement for student eligibility for Title IV funds. FSA's application of 34 C.F. R. § 668.8(c) in this instance is wrong. *See also, In the Matter of Donnelly College*, Dkt. No. 98-47-SP, U.S. Dept. of Educ. (May 4, 1999).

I find that South Florida did not offer a special program to the residents of the Center, but rather it was a program offered to all eligible Florida residents. It was appropriately licensed, accredited, and offered a two-year program that is accepted for full credit towards a bachelor's degree. Accordingly, I find that this was an eligible Title IV program that provided education to eligible students at the Center. It would seem that this type of program would be one that ED would want to encourage because of the potential rehabilitative benefits to be derived by the enrolled residents and the distinct possibility it would lead to an associate's degree.

### **ORDER**

On the basis of the foregoing, it is hereby **ORDERED** that South Florida Community College is relieved of all liability assessed in the Final Program Review Determination.

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Judge Richard F. O'Hair

Dated: March 20, 2008

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

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