



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

In the Matter of

Docket No. 11-49-SP

ANAMARC COLLEGE,

Federal Student Aid Proceeding

Respondent.

PRCN: 201020627162

Appearances: Dr. Ana Maria Piña Houdi, President, for Anamarc College

Russell B. Wolff, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Federal Student Aid

Before: Judge Ernest C. Canellos

DECISION AND ORDER

Anamarc College (Anamarc) is a proprietary institution of higher education located in El Paso, Texas, offering a variety of programs leading up to an Associate's degree. Anamarc's programs are accredited by the Accrediting Council for Independent Colleges and Schools, and are eligible to participate in the various federal student assistance programs that are authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV) 20 U.S.C. §§1070 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that is charged with oversight over these programs.

From March 29 to April 1, 2010, FSA reviewers from its Dallas School Participation Team conducted an on-site program review of Anamarc's compliance with the statutes and federal regulations governing administration of its Title IV responsibilities for the 2008-09 and 2009-10 award years. A program review report was issued on July 2, 2010, which detailed a number of violations of Title IV program regulations. After considering Anamarc's response to the program review report, on May 13, 2011, the Area Case Director issued a Final Program Review Determination (FPRD) accepting Anamarc's corrective action as to ten of the findings of

the program review but affirming four of the adverse findings in that review. Subsequently, on June 30, 2011, Anamarc's President filed a written Request for Review contesting only one of the affirmed findings of the FPRD while asserting that the other liabilities had been paid. In due course, the parties submitted their respective briefs and proposed evidentiary matter.

The facts relative to this issue on appeal do not appear to be in dispute. Anamarc labeled its Vocational Nursing Program as consisting of two "semesters" totaling 24 credit hours and 48 weeks of instructional time. The first semester was further broken down into two terms. The first consisting of five credit hours in 16 weeks of instruction with the second consisting of seven credit hours in 16 weeks of instruction. The second semester consisted of 12 credit hours in 16 weeks of instruction. The unresolved dispute between the parties involves the alleged improper proration of Pell Grant awards to students attending the Vocational Nursing Program. Anamarc provided these students with federal student aid as full-time students while FSA claims that they were over-awarded Title IV aid because they did not qualify as full-time students. Rather, FSA asserts that such students were either less than half-time students and half-time students during the two terms of the first "semester" of their training. Consequently, and on the basis of the information provided by Anamarc from a full-file review, the FPRD determined that such students were over-awarded Title IV aid in the amount of \$7,041.00 for the 2008-09 award year and \$25,589.00 for the 2009-10 award year. FSA's total demand for the return of \$32,630.00, plus interest is, therefore, the subject of this proceeding.

The critical factor in this case is that students in Anamarc's Vocational Nursing Program took twice as long to complete the first "semester" of the program as they did the second "semester" even though they were rated as being of equal credit hour value. Also, during the first semester the first module was rated as five credit hours while the second module was rated at seven credits hours, however, they both required a similar 16 weeks of instruction to complete. Despite these time differentials, Anamarc used only credit hours in calculating the entitlement to Pell Grant awards, resulting in the categorization of the students as full-time. However, under the circumstances, it was also required to use the number of weeks of instruction in the term to determine enrollment status. In an attempt to defend its actions, Anamarc asserts that it implemented the structure of the Vocational Nursing Program to accommodate its students and to satisfy the requirements of the Nursing Boards in Texas and New Mexico. Without any additional amplification, it claims that such requirements include the sequential completion of a five credit hour module, then a seven credit hour module, then a twelve credit hour module. Despite that fact, the entitlement to and the rules applicable to the administration of the Pell Grant Program are governed by federal law and regulations. In the context of this case, once the violation of these regulatory requirements is established, a Respondent is liable for the return of all the excess Title IV funds it disbursed to students.

Just as the facts in this case are abundantly clear, so is the law applicable to those facts. 34 C.F.R. §§ 668.4(a) and 690.63(d) are the implicated operative regulatory authorities over the area of the proper calculation of Federal Pell Grant awards for programs similar to the Anamarc Vocational Nursing Program. In applying those authorities to this case, it must be first recognized that although Anamarc asserts that there are two semesters in their Vocational

Nursing Program, because its terms are non-standard in which an unequal number of credits are offered and the number of weeks of instruction is different, these terms cannot be considered as semesters for purposes of calculating Pell Grant awards. To properly have calculated Pell Grant awards, Anamarc should have applied the formulation contained in 34 C.F.R. § 690.63(d) (1) (ii) (A), (B), and (C). Thereunder, for a student enrolled in a term other than a semester, trimester, or quarter, determining a student's enrollment status is a three-step process. First, you divide the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year. Second, you then multiply this amount by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student. Third, you compare the number of hours in which the student enrolls in the term to the number of hours required, to be considered full-time.

In attempting to apply this formulation in this case, I make two observations. First, the official case file indicates that FSA did not fully delineate the above mentioned three-step process -- both in the FPRD as well as in the FSA brief, only the final step is laid out. Second, it appears that FSA used 32 weeks of instructional time as the length of the academic year. By utilizing that as the standard, FSA determined those students to be less than half-time and half-time, respectively for the first and second terms in the first semester. However, as indicated above, the record clearly indicates that the parties do not dispute the following facts: the program consisted of two "semesters," 24 credit hours and 48 weeks of instructional time. The first "semester" was divided into two terms consisting of five credit hours in 16 weeks and seven credit hours over the next 16 weeks. The second "semester" consisted of 12 credit hours over 16 weeks of instruction. Further, in its brief and exhibits, Anamarc identifies 48 weeks as its academic year while FSA does not dispute that assertion in any of its presentations. That being the case, FSA should have used 48 weeks of instruction not 32 when it determined the status of the students in the program as less than half-time and half-time. It appears, therefore, that by utilizing a 48 week academic year factor, the students should have been determined to be half-time and three-quarter time during the two terms of the first "semester," and I so find.

Further, my review of the entire case file leads me to conclude the correct liability for this finding cannot be calculated by me for two reasons. First, the Pell payment schedule for the award years in issue is not in evidence. Second, and more importantly, it is not possible to determine the exact liability for each student. The amounts included in the Appendix of the FPRD do not always correspond to the amounts that FSA identifies as what students were eligible to receive. Thus, even if I obtain the payment schedule it is unclear how certain additional adjustments were made for particular students.

This proceeding is governed by regulations enumerated in 34 C.F.R. Subpart H, wherein, it is well-established that in an audit and program review proceeding, the Respondent institution carries the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. In accordance with 34 C.F.R. § 116(d), to sustain its burden, an institution must establish through the submission of relevant and credible evidence, that (1) the questioned expenditures were proper, and (2) the institution complied with program requirements. I hereby affirm that Anamarc did not properly prorate its Pell Grant awards for the

students at issue for the 2008-09 and 2009-10 award years. However, it also appears, as delineated above, that FSA's calculation of liability does not utilize the appropriate enrollment status for those students. Consequently, I am unable to affirm FSA's calculation of liability. Liability for the aforementioned violation must be recalculated consistent with my below Order.

ORDER

On the basis of the foregoing, it is ORDERED that the parties shall consult and determine the amounts of Title IV aid that students were entitled to receive as half time and three-quarter time, as enumerated above. After such consultation, it is further ORDERED that Anamarc College pay to the United States Department of Education the total of the excess Title IV aid each of such students had received improperly.

Ernest C. Canellos
Chief Judge

Dated: April 5, 2012

SERVICE

A copy of the attached decision was sent Certified U.S. Mail, return receipt requested to the following:

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