In the matter of

CAMDEN COUNTY COLLEGE,

Respondent.

Docket No. 13-54-SP
Federal Student Aid Proceeding

DECISION OF THE SECRETARY

This matter comes before me on appeal by Camden County College (Camden) of the Initial Decision by Chief Administrative Judge (CAJ) Ernest C. Canellos.[1] On January 29, 2014, Judge Canellos issued an Initial Decision upholding Finding One of the Final Program Review Determination (FPRD) letter issued on July 1, 2013, by the office of Federal Student Aid (FSA) of the U.S. Department of Education (Department).[2] As a result, Camden was ordered to pay $1,721,027.04 to the Department for the liability resulting from funds disbursed to ineligible students.[3] Camden has appealed the CAJ's ruling. Based on the following analysis, I affirm the decision.

I. Background

Camden is a public institution of higher education in Blackwood, New Jersey. It offers programs leading up to an Associate Degree.[4] Among its programs, Camden offers an "Associate in Science Nursing Program" in conjunction with the Helene Fuld School of Nursing (Helene Fuld).[5] While Camden is otherwise eligible to disburse Title IV funds, Helene Fuld is not.[6]

For the nursing program, Camden provided 34 general education credits while Helene Fuld provided 41 nursing credits.[7] Camden disbursed Title IV money for the entire 75 credit program.[8] At the conclusion of the program, a graduating student would receive an Associate in

[1] Judge Canellos acted as the hearing official appointed under 34 C.F.R. § 668.114(a).
[2] Initial Decision, p. 1.
[3] 34 C.F.R. § 682.609.
[4] FPRD, p. 6.
[5] *Id.*, p. 8.
[6] *Id.*
[7] *Id.*
[8] *Id.*

Science degree from Camden and a diploma in nursing from Helene Fuld.[9] The institutions laid out these and other particulars of their arrangement through a document titled "Consortium Agreement Between Helene Fuld School of Nursing and Camden County College."[10]

FSA conducted a program review on November 15–19, 2010. FSA made three findings and Camden appealed two of them. Only one of those two findings remains on appeal before the Secretary: FSA determined that, because Helene Fuld provided 41 of the 75 credits, or more than 50% of the credits, the program could not qualify for Title IV funds.

A. Eligibility for Title IV Funds in a Shared Program

An institution that disburses Title IV funds is a fiduciary of the Department and is held to the highest standard of care and diligence.[11] The institution bears the burden of demonstrating that it properly spent all disbursed funds on behalf of the intended beneficiary.[12]

Normally, Title IV funds can only be disbursed for educational programs run by eligible institutions. However, 34 C.F.R. § 668.5(c) provides an exception to that rule, allowing students to receive Title IV funds in certain educational programs run jointly by both an eligible institution and an ineligible institution. Generally under this exception (e.g., absent a waiver), the ineligible institution can only provide 25% or less of the program.[13] A further exception allows the ineligible institution to provide more than 25% (but less than 50%) of the program if the two institutions are not owned or controlled by the same entity, and the institution's accrediting agency determines the contractual arrangement meets their standards for contracting out of educational services.[14]

B. The CAJ's Initial Decision

The CAJ could find no authority expressly describing how to determine the percentage of relative contributions under an agreement like the one in this case.[15] However, the CAJ pointed out that the regulations clearly make it an exception for an ineligible institution to provide part of a program, and they make providing more than 25% (up to 50%) a further exception.[16] The CAJ noted that "the regulations look at agreements with ineligible institutions with some degree of caution."[17]

The burden of proof was on Camden to demonstrate an error in the FPRD, and the CAJ was unpersuaded by the evidence Camden presented. First, the CAJ was unpersuaded that Camden and Helene Fuld qualified for the exception noted above allowing the ineligible

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[9] *Id.*
[10] Camden County College Appeal to the Secretary (Camden Brief), Ex. R-2.
[11] 34 C.F.R. § 668.82(b)(1).
[12] *Id.* § 668.82(a); *In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008), at 3.
[13] 34 C.F.R. § 668.5(c)(3)(i).
[14] *Id.* § 668.5(c)(3)(ii).
[15] Initial Decision, p. 3.
[16] *Id.*
[17] *Id.*

institution to provide up to 50% of the program.[18] Second, despite Camden's assertion that it added value to the program beyond the credit hours it offered, the CAJ found that Camden "offers no evidence of the relative value" of its non-classroom contribution to the program.[19] Finally, in any event, the CAJ concluded that Helene Fuld provided more than 50% of the program and therefore the program did not qualify for Title IV funds.[20]

Camden has appealed the CAJ's decision to me.

II. Analysis

Camden bears the burden of demonstrating, by a preponderance of the evidence, that the CAJ erred in his findings.[21] On appeal, Camden argues that it did offer a rational measurement of the relative contributions, and using that measurement, Camden provided over 50% of the program, thus qualifying under the most generous exception.[22] Based on the following analysis, I reject Camden's argument and uphold the CAJ's ruling.

Camden argues that the respective contribution of academic credits is not the appropriate measure of how much each institution contributed to the program. Rather, Camden argues that a measurement of "the program" should include non-classroom services. For instance, under the consortium agreement, Camden provided the curriculum, allowed the teachers of the program's courses to hold faculty rank at Camden, provided the classroom space, housekeeping and maintenance for the nursing classes, conducted all recruitment and advertising, set the tuition, and employed a librarian dedicated to the nursing program.[23] According to Camden, "the sheer volume and breadth of Camden's services and oversight" clearly demonstrate it contributed more than 50% of the program.[24] Camden also argues that the exact figure is not "left to sheer guesswork," as concluded by the CAJ, because the consortium agreement between Camden and Helene Fuld established the "agreed-upon payment of 15 percent of the tuition costs charged for HFSN-taught nursing courses to compensate Camden for the general services."[25] Therefore, Camden asserts it provided the equivalent of 15% of the 41 credits, or 6.15 credits, taught at Helene Fuld with this payment.[26] Those 6.15 credits, added to the 34 taught at Camden, bring Camden's total to 40.15 credits worth of contribution, or 53.5% of the program.[27]

Camden further asserts that departmental precedent is to treat a program as eligible "despite a technical violation of the regulations, because the contract arrangement between the

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[18] *Id.*, p. 4.
[19] *Id.*, p. 3.
[20] *Id.*
[21] *Central State University*, Dkt. No. 12-32-SA, U.S. Dep't of Educ. (Sept. 2, 2014) (Decision of the Secretary), at 1 (citing 34 C.F.R. § 668.116(d)).
[22] Camden also argued that the AJ erred by finding that Camden did not demonstrate it qualified for the narrower 50% exception. In particular, Camden argued that the question of whether it qualified for the narrower exception cannot be resolved in this appeal because FSA failed to make a prima facie case on that issue. In light of the resolution of this case on other grounds, I need not address this issue.
[23] Camden Brief, p. 5.
[24] *Id.*
[25] *Id.*
[26] *Id.*, p. 6.
[27] *Id.*

eligible and ineligible institutions was one that 'could have been qualified under the regulations.'"[28] Thus, the substance of the relationship between the institutions informs the analysis of whether a program should be eligible, rather than "blind reliance on the listing of credit hours."[29]

Counsel for FSA argues that the application of the 50% exception should be narrowly construed.[30] FSA argues that the plain language of the regulation indicates that the percentage an institution "provides" is the percentage of credits taught by that institution.[31] In this case, FSA argues, "[t]he breakdown of the credits clearly establishes that Helene Fuld provided more than 50% of the program."[32] Counsel for FSA asserts that payment of overhead expenses does not constitute providing a portion of the program.[33]

As an initial matter, I disagree with Camden's assertion regarding departmental precedent. The case Camden cites, *In re Mary Holmes College*, does not stand for the principle that an ineligible program should be considered eligible because it *could have been* structured in a way to make it eligible. In that case, a private, nonprofit Historically Black College offered an Entrepreneurial/Truck Driving Program through two contractors who were not eligible to distribute Title IV funds. In the cited portion of the opinion, the judge considered whether the college's failure to report the contracting arrangement (a regulatory requirement) should result in any sanction. The judge found, based on the evidence in the record, that the contractors contributed less than 25% of the program, an arrangement that would otherwise be eligible for Title IV funds. Therefore, the failure to report did not, by itself, warrant the harsh sanction of declaring the entire program ineligible. The case before me is distinguishable, because the issue here is how to calculate the respective contributions to the program of the eligible and ineligible institutions, which was not at issue in *Mary Holmes College*. This calculation goes to the heart of the matter; failure to comply with this requirement is in no way a "technical violation" of the regulations.

I agree with FSA's interpretation of the rule. The regulations define "educational program" as, among other things, a "legally authorized postsecondary program of organized instruction or study" that leads to a degree and includes instruction from the providing institution, rather than instruction from other institutions, direct assessments, or other accomplishments such as "life experience."[34] At the core of this definition is the organized instruction leading to a degree. I see no reason to redefine "educational program" to include an estimated percentage of an institution's overhead that supported the organized instruction. When the Department promulgated the rules at issue, one of its specific goals was "to simplify the title IV regulations."[35] Asking FSA to engage in the complex estimation urged by Camden would not serve the goal of the rule.

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[28] *Id.*, p. 6 (citing *In re Mary Holmes College*, Dkt. No. 94-32-SP, U.S. Dep't of Educ. (Sept. 18, 1995)).
[29] *Id.*
[30] Appeal Response of Federal Student Aid, p. 8.
[31] *Id.*, p. 6.
[32] *Id.*
[33] *Id.*, p. 7.
[34] 34 C.F.R. § 600.2 *Educational program.*
[35] 65 Fed. Reg. 49,134, 49,142 (Aug. 10, 2000).

Furthermore, the amendment of the rules in 2010 clearly intended to narrow the use of these exceptions. Specifically, the amendment added additional circumstances that would prohibit written agreements between eligible and ineligible institutions.[36] I recognize the intent of the amendment to be an overall reduction of joint programs with ineligible institutions.

After reviewing the history of the regulation, I agree with the CAJ's assessment that the regulations look at written arrangements "with some degree of caution."[37] FSA's interpretation of the rule as it applies to Camden, measuring the contribution of each institution to the program only by its respective number of offered credits, and not also including estimated administrative contributions, was reasonable and appropriate.

ORDER

ACCORDINGLY, the Initial Decision by Chief Administrative Judge Ernest C. Canellos is HEREBY AFFIRMED as the Final Decision of the Department. Respondent is ordered to pay $1,721,027.04 to the Department.

So ordered this 8th day of March 2016.

John B. King, Jr.
Acting Secretary

Washington, D.C.

[36] 75 Fed. Reg. 34,806, 34,815 (June 18, 2010); 75 Fed. Reg. 66,832, 66,871 (Oct. 29, 2010).
[37] Initial Decision, p. 3.

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