

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

In the Matter of **Docket No. 94-122-SP**

PATTEN COLLEGE, Student Financial
Respondent.

Assistance Proceeding

Appearances: Elizabeth B. Heffernan, Esq., and Suzanne M. Bonnet, Esq., Hogan & Hartson, Washington, D.C. , for Patten College.

Stephen M. Kraut, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

Patten College (Patten), located in Oakland, California, is a private, non-profit, coeducational degree-granting college, offering a liberal arts curriculum with an emphasis on biblical studies. It is accredited by the Western Association of Schools and Colleges (WASC). The college is and was during the period covered by the program review an eligible institution for purposes of participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV). 20 U.S.C. §1070 *et seq.*

In 1988, Patten began offering weekend science courses at two separate locations, the Cleveland Chiropractic College of Los Angeles and the Palmer College of Chiropractic-West in Sunnyvale, California. It described the courses in a brochure as "appropriate for students who lack the prerequisites for entering chiropractic and other health care professional degree programs." Furthermore, Patten's Self-Study, used in support of its Application for Reaffirmation of Accreditation, describes the weekend science program as "academically rigorous. . . appropriate for those who lack the pre-requisites for entering the chiropractic and other health care professional degree programs and for students in the science and engineering fields." Also, that application states that the courses may be applied toward meeting the science requirement for

Patten's B.A. degree program.

From December 2-6, 1991, Institutional Review Specialists from the Department of Education's (ED) Institutional Review Branch, Region IX, conducted a program review of Patten's Title IV

compliance for the award years 1989-1990 and 1990-1991. A program review report was issued on January 20, 1993, and contained sixteen adverse findings. The major finding was that Patten disbursed Title IV funds to students enrolled in the weekend science courses held at two previously unidentified campuses. ED issued a Final Program Review Determination (FPRD) on June 3, 1994, affirming this and two other findings and noting that Patten satisfactorily resolved the remaining findings. For the three findings which were affirmed, ED sought repayment of \$325,052.00. Patten timely appealed only the finding relative to the ineligible class locations. [See footnote 1 /](#)

Patten's contested liability includes: \$136,130.00 in Pell Grant funds, \$4,000.00 in Perkins Loans, and \$171,397.00 in Stafford and SLS payments, disbursed to approximately 200 weekend science course students. Patten, disputing this liability, argues that its series of weekend science courses does not constitute a complete education program and, therefore, the additional sites were not required to be separately certified to receive Title IV funds. The present action is governed under 34 C.F.R. § 668.116(d). Patten, therefore, carries the burden of showing the following: (1) that the questioned expenditures were proper; and (2) that the institution complied with program requirements.

I.

My review of Patten's alleged violation of ED regulations involves two inquiries. First, whether the series of weekend science courses constitute "an educational program" pursuant to 34 C.F.R. § 600.2. Second, whether Patten's disbursement of student financial assistance to individuals participating in a series of weekend science courses overreaches the breadth of its original Title IV certification because the school was only certified to disburse funds to students enrolled at the main campus. The issue of location eligibility is intertwined with the regulatory definition of an educational program. 34 C.F.R. §600.10(b)(1) provides that "the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this subpart." Pursuant to 34 C.F.R. § 600.2(c), an educational program is a "program of organized instruction or study which leads to an academic, vocational or professional degree or certificate." 34 C.F.R. 600.2(c)(1986). Patten argues that it did not need to seek additional certification because the weekend science courses constitute credit hours that are applicable to existing educational programs. Patten points out that the weekend science courses constitute only twenty-four credits of the 125-131 units required for its bachelor's degree program and 60-66 units required for the associate degree program. Additionally, Patten argues

that its Weekend Science Program certificate was not an academic or professional degree, a vocational certificate, or other recognized educational credential. Patten claims that the certificate's purpose is to denote that an individual has completed a series of science courses. The certificate does not serve as a diploma, which functions to demonstrate an individual's academic credentials in accordance with his or her academic degree and does not signify graduation from an academic or professional degree vocational certificate program, but only acknowledges completion of certain science courses required as prerequisites for chiropractic and other professional schools. Patten maintains that because its weekend science curriculum does not constitute an academic credential recognized by WASC or the State of California that it is a *non*

sequitur for ED to view these courses as anything other than part of Patten's existing and eligible programs.

In response, ED argues that the series of weekend science courses constitute a complete educational program. ED states that students in these courses "applied directly" to the Weekend Science program and not another branch of the college. In addition, ED argues that despite Patten's contention that these courses are applicable to Patten's degree programs, no students were simultaneously enrolled and this fact underscores that the Weekend Science Program was a separate educational program, unaffiliated with Patten's other, main campus programs. Furthermore, ED argues that the courses offered at the Weekend Science Program are completely different than those offered as part of the Patten General Studies curriculum. According to ED, this lack of similarity in the General Studies Program and the weekend science courses demonstrates that each course of study is independent of the other.

ED also argues that the weekend science courses are repeatedly depicted as providing course work that might be applied toward a Patten degree granting program. ED contends that just because the courses might be so applied does not mean that students in the program were eligible to receive Title IV assistance. Furthermore, ED concludes that the weekend science courses provide a framework enabling individuals to meet specialized academic and career needs and that the "Weekend Science Program is an "educational program" within the ED's regulatory definition because students earned a Basic Science Certificate upon successful completion of the Program. ED views the certificate as precisely the sort of credential contemplated by the applicable regulations. ED concludes that the certificate symbolizes that the certificate awarded to students completing the program signaled to students that they had completed an educational program to meet specialized academic and career needs.

I find that Patten's Weekend Science courses constitute an "educational program," as envisioned by 34 C.F.R. § 600.2(c). It is a program of organized instruction or study which leads to an academic, vocational or professional degree or certificate. Despite Patten's argument that its science courses constituted an elective component to the General Studies curriculum, Patten at oral argument or on brief failed to proffer evidence to demonstrate that Patten students used this alternative as a means to satisfy general science curriculum requirements of the degree program. At oral argument, I questioned the Patten's counsel on how many students taking the weekend science courses were matriculated in Patten's degree programs. Counsel responded "[s]ome of

them were, not all." I understand that those students who were actually enrolled in a Patten degree program and who used the weekend science course to satisfy the science requirements or as additional electives would be eligible to receive federal student financial assistance. See 34 C.F.R. 600.2(b)(defining a regular student). I further questioned counsel to quantify the number of students who solely participated in the weekend science courses and those who used the weekend science courses as a means to pursue their Patten degree. Counsel responded that the great majority of Weekend Science course students were enrolled only in the Weekend Science courses. Despite my encouragement to provide the numbers of students utilizing the Weekend Science courses as a means to fulfill science course requirements for a degree, Patten did not do so. [See footnote 2 2](#) I find, therefore, Patten has failed to carry its burden of proof to show that the weekend science courses were utilized as a component of previously approved Patten programs.

The regulations define an educational program as a course of instruction that "leads to an academic or professional degree, vocational certificate, or other recognized educational credential." 34 C.F.R. § 600.2(c). Patten acknowledges and indeed advertises the Basic Sciences Certificate program in the College's Bulletin primarily as "appropriate for individuals who lack the prerequisites for entering chiropractic and other health care profession degree programs." Also, Patten notes that the courses "fulfill the laboratory science requirement for students in teaching credential preparation programs and provide a solid foundation for people in many technology- based careers." While the tribunal acknowledges Patten's argument that the certificate issued was not a "vocational certificate," the tribunal cannot overlook the fact that these programs provide the means for admission to a degree program and, therefore, constitute the type of credential envisioned in 34 C.F.R. § 600.2 .

Patten argues that legislative history of the debate regarding student eligibility during the consideration of the Higher Education Amendments of 1985, reveals that it was Congress' intent that an academic credential would be one which is "accepted by the State or by a nationally recognized accrediting agency." 131 CONG. REC. 34, 176 (1985). I find that the Patten's position is not bolstered by congressional debate on the issue of student eligibility. At most, Congress stated that to be eligible, a student must be working towards an educational credential which is acceptable to the State or accrediting agency. Although eligibility for receipt of federal student financial assistance encompasses a determination of whether an individual student is eligible, this question is not before the tribunal. The sole issue is whether Patten improperly disbursed Title IV funds at an unauthorized location.

The State of California requires certain science courses as mandatory preparatory work in order for students to qualify to pursue a degree in chiropractic or other health related fields. Pursuant to §5, License to Practice; Fee; Educational Requirements, of the California Business and

Professions Code, an applicant to the California Board of Chiropractic Examiners must demonstrate prechiropractic college credits that include each of the courses offered in Patten's Weekend Science Programs. CAL. BUS. & PROF. CODE 5 (Deering Supp. 1994). Following the *ratio legis* expressed in the congressional debate, I find that Patten's weekend science courses constitute an independent educational program. Although the program's science courses may be applied to Patten's other existing programs, they are primarily used as a vehicle for individuals interested in entering programs leading to a degree in chiropractic and other health related professions. The science program, therefore, enables its students to pursue a career otherwise unattainable.

In summary, I find that Patten's weekend science courses constitute an educational program as that term is utilized in 34 C.F.R. § 600.2(c). Patten's program primarily serves as a foundation for individuals seeking to enter a degree program that leads to an academic or vocational degree. The expenditure of federal student financial assistance to students solely enrolled in this program, therefore, was inappropriate. See *generally, In the Matter of LeMoyne-Owen College*, Docket. No. 94-171-SA (May 18, 1995). The total liability assessed is supportable, absent a showing by Patten that its degree students used the program as a means to fulfill or expand upon their general curriculum requirements.

II.

This initial finding on educational program is inextricably bound with the ultimate issue in this case, the issue of eligible locations, commonly referred to as "branch camping." [See footnote 3](#) Insofar as eligibility for Title IV purposes is concerned, the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements. 34 C.F.R. 600.10(b)(1). This determination is made, in part, by determining the eligibility of the different educational programs offered at the institution. The Secretary, therefore, determines an institution's eligibility as of the date the Secretary receives all the information necessary to make that eligibility determination. 34 C.F.R. 600.10(a). In addition, and most important, "[e]ligibility does not extend to any educational program or location that the institution establishes after it receives the eligibility designation." 34 C.F.R. 600.10(b)(3). Here, it is abundantly clear that Patten received an eligibility determination from ED and subsequently added two additional locations without seeking an extension of their eligibility from the ED. In *LeMoyné-Owens College*, supra, this issue was thoroughly reviewed. There, the court found that the Respondent provided an educational program at a site other than the one initially approved by ED and without filing for an addition to the original eligibility determination. As a result, the institution improperly disbursed federal student financial assistance to students in that program. Patten's disbursement of federal student financial assistance to the Weekend Science

Program students is similarly improper and, therefore, creates a liability for the assessed amount.

FINDINGS

Patten's liability for the misuse of federal student financial assistance is based on two grounds. First, Patten's Weekend Science courses constitute an educational program. Second, Patten overreached the breadth of its eligibility by providing educational programs at locations that were not within the scope of its original eligibility. Patten misspent \$136,130. in Pell Grant funds, \$4,000 in Perkins Loan funds, and improperly certified \$171,397 in Stafford and Supplemental Loans to Students. Patten's total liability is, therefore, \$311,527.00.

ORDER

On the basis of the foregoing findings of facts and conclusions of law and the proceedings herein, it is hereby-- ORDERED, that Patten College, repay to the United States Department of Education the sum of \$311,527.00.

Judge Ernest C. Canellos

Dated: August 15, 1995

SERVICE

On August 15, 1995, a copy of the attached decision was sent by certified mail, return receipt requested to the following:

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[Footnote: 1](#) 1 Patten did not appeal finding number three or finding number eight, which demanded the return of \$13,525.00, therefore, these findings are not before me for adjudication.

[Footnote: 2](#) 2 The tribunal has thoroughly searched the record and finds no substantiated evidence of individuals that utilized the Weekend Science courses as a means to fulfill the General Studies curriculum associated with BA or AA degree requirements

[Footnote: 3](#) 3 This term of art was recently expanded to include as authorized, additional locations at an institution. 59 Fed. Reg. 22,265 (1994). At the time of the present review, however, this change was not effective.