UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4616

In the matter of

TRI-STATE COLLEGE,

Respondent.

Docket No. 12-53-SP
Federal Student Aid Proceeding

DECISION OF THE SECRETARY

This matter comes before me on appeal by Tri-State College (Respondent or Tri-State) of the Initial Decision by Administrative Judge Ernest C. Canellos. On January 9, 2013, Judge Canellos upheld the findings of the Final Program Review Determination (FPRD) letter issued on June 14, 2012, by the Office of Federal Student Aid (FSA) of the U.S. Department of Education (Department).[1] As a result, Respondent was ordered to pay $59,803.00 to the Department.[2] On appeal, Tri-State asks that I reverse the decision below because Respondent believes that it met the requirements for a "teach-out" under 34 C.F.R. § 602.3.[3]

In the proceedings before Judge Canellos, Respondent set forth three arguments challenging the findings of the FPRD.[4] First, Tri-State claimed that three of the nine students identified in the FPRD should not be eligible for reimbursement of their student loans because they were in debt to the school at the time it closed. As a result, Tri-State submitted that it had the right to terminate each of the three students and that no loan forgiveness was appropriate. Second, Respondent urged that the amount of interest it was charged be reduced because it has acted in good faith since its closure. Finally, Tri-State argued that FSA failed to establish a

[1] FSA issued a preliminary program review report on February 2, 2012, charging Tri-State for failing to reimburse 12 students for the remaining cost of their student loans after the school closed on December 31, 2009. Based on Tri-State's response of March 5, 2012, FSA determined in the FPRD that Respondent had failed to reimburse nine of the students. FSA Brief, p. 2.

[2] The amount of liability at issue consists of $53,916.00 for the discharged student loans plus $5,886.97 in imputed interest. The final amount has been rounded up three cents for a total of $59,803.00. *See*, FPRD, p. 8 (June 14, 2012).

[3] Tri-State Appeal to the Secretary, (February 6, 2013), p. 2. The Title IV regulations define a teach-out agreement as a "written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate before all enrolled students have completed their program of study." 34 C.F.R. § 602.3.

[4] Respondent filed an initial appeal letter, *pro se*, on August 21, 2012. Subsequently, Respondent secured counsel, who filed an initial brief, which Judge Canellos accepted into the record, on October 29, 2012. The brief raised the same issues as the appeal letter.

prima facie case that the nine students did not complete their courses of study at another institution, and such completion of their studies would bar them from eligibility for a student loan discharge.

Judge Canellos addressed all three arguments in his opinion. As to the first claim, he found that "Tri-State failed to present any evidentiary matter sufficient to satisfy its burdens of proof and persuasion in the case."[5] He added that [Tri-State] "has not offered any evidence that the discharges were somehow improper."[6] Regarding the argument that the interest be waived, Judge Canellos noted that it is well-established law that the Federal government may recover interest for the loss of the use of its money and found that Respondent had failed to distinguish or rebut those precedents.[7] Finally, Judge Canellos concluded that FSA had in fact presented the requisite *prima facie* case in support of the finding of liability in the FPRD.[8]

In its appeal before me, Respondent raises one new argument. Respondent now asks that I find its efforts to offer its students the opportunity to complete their studies at another school were sufficient to discharge its duty to provide for a teach-out, which, in turn, would eliminate the school's obligation to refund the student loans. In particular, Respondent argues that it: notified students 45 days before the school's closure of the impending closure; informed its accreditation agency and the state governing agency about the closure; and arranged informational meetings for the students with four schools in the area.[9] In short, Tri-State submits that it made "every effort" to satisfy the legal standard for a teach-out.[10] Respondent, believing that it satisfied the teach-out requirements, urges me to relieve it of liability for the remaining student loans at issue.

FSA responds that Tri-State's actions simply do not satisfy the requirements for a teach-out agreement. FSA argues that the regulations require a formal agreement between the closing institution and other institutions to allow students to complete their studies. Tri-State did not meet this requirement, and therefore, FSA concludes that Tri-State's argument is without merit.[11]

I find that FSA's reading of the regulation is correct. The teach-out regulation provides that there must be a "written agreement" between the institutions to permit students to complete their courses of study.[12] As determined in the FPRD and upheld in the Initial Decision, Respondent has submitted no evidence of any agreement – written or otherwise – between Tri-

[5] Initial Decision, p. 2.
[6] *Id*.
[7] *See, In the Matter of Puerto Rico Technology and Beauty College*, Dkt. No. 92-73-SA, U.S. Dep't of Educ. (August 31, 1992).
[8] Judge Canellos properly addressed Respondent's arguments in his Initial Decision. Because Respondent did not raise these arguments in its appeal to me, Judge Canellos' decision need not be disturbed. In particular, Judge Canellos correctly noted that the Title IV regulations provide that the Respondent bears the burden of proof in proving that its expenditures at issue were proper. *See* 34 C.F.R. § 668.116(d). I agree with Judge Canellos that Tri-State has failed to meet its burden as to the arguments it raised in the Initial Decision.
[9] Tri-State Appeal, p. 2.
[10] *Id.* at 3.
[11] FSA Response, p. 5. The Department's brief carries the unlikely date of February 8, 2013, two days after the date of Tri-State's Appeal. More probably, the brief was filed on March 8, 2013, the date it was docketed by the Office of the Secretary.
[12] 34 C.F.R. § 602.3.

State and any another institution.[13] Although Respondent's efforts on behalf of the students are a step in the right direction, they are also insufficient. Accordingly, Tri-State's argument that its efforts were tantamount to a formal teach-out agreement – sufficient to satisfy its regulatory duty – must fail.

In sum, because Respondent has not provided any evidence of a written agreement between Tri-State and another institution, nor met its burden of proof as to its other arguments, I find that Tri-State must pay the full amount of $59,803.00.

ORDER

ACCORDINGLY, the Initial Decision by Administrative Judge Ernest C. Canellos is HEREBY AFFIRMED. Respondent is ordered to pay $59,803.00 to the U.S. Department of Education.

So ordered this 30th day of September 2014.

/s/
Arne Duncan

Washington, D.C.

[13] FPRD (June 14, 2012), p. 6.