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

In the Matter of
CAMDEN COUNTY COLLEGE,
Respondent.

Docket No. 13-54-SP

Federal Student Aid Proceeding

PRCN: 201110227373

Appearances: Bonnie J. Little, Esq., and Leigh M. Manasevit, Esq., Brustein & Manasevit, PLLC, Washington, D.C., for Camden County College.

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

Before: Judge Ernest C. Canellos

DECISION

Camden County College (Camden) is a public institution of higher education located in Blackwood, New Jersey offering a variety of educational programs leading up to an Associate's Degree. Camden is eligible to participate in the various federal student aid programs that are authorized under 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 of these programs.

From November 15 – 19, 2010, FSA program reviewers conducted a review at Camden to assess its compliance with the applicable statutes and regulations that govern its administration of the federal student aid programs. The team's report of the findings of this review and the resulting exchanges of information between the parties culminated in the issuance by FSA of a Final Program Review Determination (FPRD) on July 1, 2013. By letter dated August 8, 2013, Respondent's Counsel filed a Request for Review challenging two of the three actionable findings of the FPRD. In due course, I was assigned this matter to adjudicate, I issued an order governing proceedings, and the parties complied by the timely filing of their respective briefs and evidentiary matter and, finally, by Camden's reply brief.

The major contested finding in the FPRD involves Camden's 75-credit Associate in Science Nursing Program that was operated in conjunction with the Helene Fuld School of Nursing (Helene Fuld) through a written consortium agreement. This cooperative venture apparently had been in existence since the mid-1980s, however for some unknown reason, this arrangement was not reported to ED until 2010, when Camden filed its submission to FSA for its recertification to participate as an eligible institution in the Title IV programs. Of the total 75 credits in this nursing program, Camden provided 34 general education credits while Helene Fuld provided 41 nursing credits -- Camden disbursed the students' federal student aid for the entire 75 credits through its eligibility authority. Upon successful completion of this nursing program, a student would receive an Associate in Science Degree from Camden and a diploma in nursing from Helene Fuld. The complicating fact implicated in this situation is that Helene Fuld is not a Title IV eligible institution of higher education, normally a predicate to the entitlement to Title IV funding.

34 C.F.R § 668.5 (c) does make allowance for such a written arrangement between institutions where an eligible institution enters into an agreement with an ineligible institution to provide a portion of its program. Although they can be authorized, certain limitations are imposed. The finding in the FPRD focuses in on one of the limiting factors applying to this type of situation. Although an eligible institution may enter into such arrangement, the ineligible institution can only provide a limited portion of the program in order to, otherwise, maintain the program's Title IV eligibility. 34 C.F.R. § 668.5 (c) (3). The FPRD determined that the arrangement between Camden and Helene Fund violated this provision and, as consequence, the program was ineligible and all the Title IV aid that had been disbursed to students in this program was improperly disbursed and had to be returned to ED. After a full-file review performed by Camden upon FSA's direction, FSA determined that $1,721,027.04 was the liability for the federal student aid improperly disbursed by Camden to students in the nursing program since 2007, and such amount must be returned to ED.

34 C.F.R. § 668.5 (c) (3) (i) provides that the ineligible institution can provide 25% or less of the program to satisfy eligibility requirements. However, 34 C.F.R. § 668.5 (3) (ii) (A) 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 eligible institution's accrediting agency or State agency has specifically determined that the contractual arrangement meets their standards for contracting out of educational services. The FPRD concluded that Helene Fuld provided more than 50% of the program at issue by comparing the credits taught by the respective schools. Camden taught 34 out of the 75 credits while Helene Fuld taught 41 of those 75 credits and, in FSA's view, this clearly equates to more than 50% by Helene Fuld.

In its appeal, Camden claims that in deciding what are the respective percentages provided by the two institutions, it should be given credit for a number of services outside of classroom teaching that it provided to the students of the program. Camden alludes to the Consortium Agreement and asserts that it approved the curriculum, the teachers could hold faculty rank at Camden, the nursing program was operated on Camden's campus and it provided the housekeeping and maintenance, it conducted all program recruitment and advertisement, and

it set tuition and employed a librarian dedicated to the nursing program. FSA counters that may be true, however, the regulation speaks of providing the pertinent percentage of the program and that can only mean class presentation – and cannot include other ancillary involvement.

In reviewing the presentations of both parties, I cannot find any reference to any authority governing the factors to be considered in calculating the relative contribution of schools in consortium agreements like the one before me. I believe, however, that the wording of the applicable regulation is enlightening on this point. Primarily, the arrangement with an ineligible institution is the exception. By that I mean that there are added requirements before such an agreement can lead to an eligible program. First, the ineligible school cannot have had its eligibility terminated, or its certification denied, by the Secretary. Further, it cannot have voluntarily withdrawn from participating in the Title IV programs while under certain adverse actions taken by the Secretary, accrediting agency, state licensing authority or guaranty agency. Finally, the ineligible institution can only provide 25% or less of the program unless it satisfies the following other limitations. These include: the ownership interest of the two schools must be separate, and the accrediting agency or the state agency has specifically determined that the arrangement meets their standards for contracting out educational services. If it meets these additional requirements, then it raises the amount of the program that the ineligible institution can provide up to 50%.

I have especially reviewed the Consortium Agreement proffered by Camden in its Exhibit R-2 and at best it reveals a balanced partnership between the schools with each contributing unspecified amounts for their joint purpose. In my view, Camden's claim is generally one for overhead and it offers no evidence of the relative value to be placed on any of its claim. Consequently, I do not find that it supports a finding that Camden should be given credit for contributing more to the joint project than the amount calculated by the application of the direct percentages of classes taught.

The information provided by Camden in this proceeding is clearly not persuasive and does not satisfy its burdens of proof and persuasion. The claims for "extra credit" for its participation percentage in the nursing program are generalized and not specific -- how much credit it should get, if any, is sheer guesswork. What seems clear to me is that the regulations look at agreements with ineligible institutions with some degree of caution and, because of that, it added the above mentioned procedural safeguards to protect students. Clearly, any effort to expand the regulatory coverage, as argued by Camden, would seem inconsistent with that goal.

It is a well-established rule that in an appeal of any program review determination proceeding, the respondent has the burden of proving by the preponderance of the evidence, that the Title IV funds it received were lawfully and correctly disbursed. 34 C.F.R. § 668.116(d). If it fails to establish the correctness of any expenditure of federal education funds, it must return all such funds to ED. Further, as a corollary to the above rule, once a respondent has received adequate notice of the demand by FSA in the FPRD, the established burdens of proof enumerated above, are implemented.

Unanswered questions remain. What is the maximum contribution that Helene Fuld could have made in its consortium agreement with Camden, 25% or 50% of the entire program? FSA accepted the premise that Helene Fuld could have provided up to 50% of the Camden nursing program. However, there is no evidence in the record sufficient to convince me that the first limitation of 25% is not applicable. Impacting on that judgment is why wasn't this consortium arrangement reported to FSA for all the years that it existed? It appears that this arrangement had its genesis in the 1980s and continued when Helene Fuld lost its certification as an eligible institution participating in the Title IV programs in 1992. Why did it lose that status? Further, what was the accrediting agency or State agency determination regarding this consortium agreement. However, based upon my finding that Helene Fuld provided more than 50% of the Camden nursing program, these questions are moot and I need not, otherwise, address them. As a consequence, I find that Camden's nursing program, discussed above, was not eligible for Title IV funding and I affirm FSA's demand for the return of all funds disbursed to students in that program since the 2007 award year.

In the second contested finding, FSA determined that $166,016.96, was due and owing by Camden for imputed interest for the improper funding of the ineligible nursing program. Camden argues that this figure is excessive because it is exacerbated by FSA's undue delay in issuing the FPRD. In response, FSA points out that our tribunal has routinely ordered the payment of imputed interest as a proper element of damages flowing from the funding of any ineligible programs and further, it only claimed imputed interest through the date of the program review and not the FPRD. I find that there was no undue delay in the processing of this matter and that $166,016.96, is the appropriate amount of imputed interest for the improper funding of the nursing program. *See generally*, *West Virginia v. United States*, 479 U.S. 305 (1987). *See also, In the Matter of Puerto Rico Technology and Beauty College*, Docket No. 92-73-SA, U.S. Dept. of Educ. (August 31, 1992).

ORDER

On the basis of the foregoing findings of fact and conclusions of law, I hereby affirm the findings of the FPRD and order that Camden County College repay to the United States Department of Education the sum of $1,721,027.04. In addition, the amount demanded for the finding that was not appealed, $718.23, may be separately collected by FSA.

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Ernest C. Canellos
Chief Judge

Dated: January 29, 2014

SERVICE

A copy of the attached document was sent to the following:

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