



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

In the Matter of

CENTRAL NURSING COLLEGE (CA)

Respondent

Docket No. 16-03-SA

Federal Student Aid Proceeding

ACN: 09-2014-53918

DECISION

Central Nursing College (CNC) is a private higher education institution located in Gardena, California. It offered educational programs, including one for vocational nursing (VN). CNC was eligible to participate in the Federal Pell Grant and the Federal Family Education Loan 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.* and 42 U.S.C. 2751 *et seq.* In the U.S. Department of Education (ED), the office having jurisdiction and oversight of these programs is the office of Federal Student Aid (FSA).

Because CNC failed to meet the minimum 75 % of graduates passing the board examination for three consecutive quarters, action was initiated by its accrediting agency, the Board of Vocational Nurses and Psychiatric Technicians (BVNPT), which resulted in CNC losing its accreditation. As a result, CNC's subsequent class enrollments were placed under numerical limitations. On December 23, 2015, the FSA office issued a Final Audit Determination (FAD) establishing the resulting liabilities of CNC due to the program closure. The FAD initially established a liability for closed school loan discharges of \$46,717 and a Pell Grant over-award liability of \$894.64. On further investigation, FSA revised the amount for the two findings to a total of \$33,934.64, which is at issue in this appeal.

As a result of the closure, students could not complete their educational programs. CNC did not arrange for the students to complete their program at another school. Under 20 U.S.C. § 1087(c), the Secretary of Education is to pay off the Title IV loan obligation of any such student and then discharge the obligations of any student who applies to ED for such discharge and certifies that they were unable to complete their education because of the closure of the school. Once a student is discharged, the Secretary, as the subrogee of the student's rights, is directed to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682.204(d)(4).

By letter dated January 12, 2016, Susie Moon, Operations Director for CNC, filed a timely written Appeal and Request for a Hearing on behalf of CNC. CNC challenged the findings presented in a Final Audit Determination, dated December 23, 2015, issued by the U.S.

Department of Education, Federal Student Aid (FSA) office. The Request was filed pursuant to 34 C.F.R. § 668.113 (a).

In any Subpart H audit and program review proceeding, the Respondent has the burden of proving, by the preponderance of the evidence, that the Title IV funds received were lawfully disbursed and earned. If it fails to establish the correctness of the expenditure of federal education funds under the criteria of the statutes and regulations, the Respondent must return the funds to the Department. 34 C.F.R. § 668.116(d).

While the Respondent has the burden of proof in this proceeding, FSA also has the burden of providing adequate notice of its demand. Here, FSA has presented sufficient information to establish a prima facie case for its demand in the FAD. A student must apply to be considered for a closed school loan discharge. Under that application, the student must swear under penalty of perjury that he or she meets the requirements for discharge. 34 C.F.R. §§ 682.402(d)(3), 685.214(c). FSA has shown that the four students at issue certified in their applications for relief that they met the requirements, did not complete their program of study at CNC because of its closure, and did not complete the program at another institution. The records provided from FSA further confirm those claims.

Instead of responding to FSA's presentation of a prima facie case with evidence, CNC details several misfortunes and downturns for the school. CNC also acknowledges its actions did not follow the "letter of the law" requirements set out by its accrediting agency, and acknowledges it was not in compliance with the minimum exam pass rates. However, CNC does not provide any evidence to contradict the findings in FSA's FAD. CNC has experienced unfortunate circumstances and financial hardships; however, none of those factors can be considered as evidence that CNC has met its burden in this appeal. And while CNC asserts it is not a "closed institution," for purposes of this FAD and the program at issue, it is closed. The program is no longer offered due to its loss of accreditation, and is closed.

FSA correctly states the law on the mitigating factors CNC has asserted. None of those mitigating factors or equitable concerns may be considered in this administrative proceeding for a FAD brought under Subpart H. To apply equitable concerns without statutory or regulatory authority would require this tribunal to waive the plain language of the above-referenced statutes and regulations. Such a waiver violates the express legal mandates of those statutes and regulations, and is therefore prohibited. While no further expression of the prohibition is necessary, it is also explicitly stated in 34 C.F.R. § 668.117(d)(1) "The hearing official is bound by all applicable statutes and regulations. The hearing official may not waive applicable statutes and regulations."

Nor is there any obligation whatsoever on the part of a student who is enrolled in a closed institution to participate in a teach-out or transfer to another school's program. The student is entitled to the relief if he or she decides not to so participate, whether that decision is for a good reason, a bad reason, or no reason at all. *College of Visual Arts*, 15-05-SP.

Conclusion

The proof provided by FSA in support of its Final Audit Determination is uncontradicted by CNC. In fact, CNC concedes several points in its brief for this appeal. CNC has failed to meet its burden of proof and persuasion. FSA has further investigated and agrees and acknowledges that it is appropriate to reduce the initial amount of the liabilities from \$46,717.00 for closed loans and \$894.64 for Pell Grant over-award liability. Based on the evidence of record in this appeal and by applying the burdens of proof discussed above, I find that CNC must pay a total of \$33,934.64 in Title IV liability for the federal student loans that were discharged and for the Pell Grant over-award liability.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Central Nursing College (CA) pay to the United States Department of Education the sum of \$33,934.64, in a manner as required by law.

Judge Layton

Date of Order: July 25, 2017