



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202



In the Matter of

HARRISON CAREER INSTITUTE,

**Docket Nos. 05-60-ST
07-18-ST
07-55-SA
07-63-SA**

Federal Student Aid Proceedings

Respondent.

ORDER OF REMAND

These matters come before the Secretary on appeal by Harrison Career Institute of the Initial Decision (05-60-ST) issued by Chief Administrative Judge Ernest C. Canellos and the Initial Decisions (07-18-ST, 07-55-SA, 07-63-SA) issued by Administrative Judge Richard F. O'Hair.

For purposes of resolution and efficient management of the appeals in the above-captioned cases, these cases are consolidated by this order.

Respondent raises a number of arguments in each appeal marked by slightly different phrasing, but essentially regarding the same issues; namely, Respondent seeks review of the Initial Decisions because of a suspected abuse of administrative process, a failure to accord Respondent with proper due process, and the misapplication of the doctrine of *res judicata*. Regardless of the manner in which these arguments are asserted, I find none persuasive or worthy of further review. I am convinced that Respondent was provided with ample opportunities to challenge the Department's allegations in each case, and that the proceedings provided complied with the Department's regulations. Therefore, on the merits, I agree with the judges' rulings in each of the four cases before me.

Having found the judges' determinations on the merits consistent with the facts and the law, the only matter remaining is whether the amounts the Department seeks to recover from

Respondent are proper. In two cases (07-55-SA and 07-63-SA),¹ the judge adopts a calculation of liability that Respondent vigorously challenges. In Respondent's view, the judge upheld amounts of recovery in both cases that are excessive and inconsistent with procedures adopted by the Department to ensure that Respondent's disbursement of Federal funds complies with legal requirements.

More specifically, in 07-55-SA and 07-63-SA, the judge upheld the Department's recovery of \$5,113,973.28 and \$984,162.00, respectively. These amounts constitute all of the Federal student financial assistance funds received by Respondent. Ostensibly, these amounts were upheld because the judge determined that a close-out audit was not filed, and as a result, Respondent is required to return all Federal funds disbursed during the respective period that would have been covered by the audits.

Respondent concedes that it failed to file close-out audits in both cases, but contends that the appropriate remedy for this failure is not the return of all Federal funds. Rather, according to Respondent, the proper calculation of recovery is the amount of funds that remain unaccounted for by Respondent. Accordingly, Respondent argues that those funds were accounted for pursuant to a process known as Heightened Cash Monitoring 2 (or HCM2). That is, as a result of the compliance monitoring used by the Department in the HCM2 process, Respondent posits that it accounted for all of the Federal funds disbursed during the audit period for both cases.²

Judge O'Hair declined to consider the arguments concerning the HCM2 process; instead, he ruled that the HCM2 process was entirely outside of the scope of the proceeding before him. On appeal, FSA argues that the Secretary's "jurisdiction in this proceeding is similarly limited" with regard to the HCM2 process. In FSA's view, the matter on appeal is restricted to the question of whether Respondent must return all funds disbursed as a result of Respondent's "failure to account for the [Federal] funds it received" by filing a close-out audit. Assuming, without deciding, that the matter in dispute is circumscribed in the manner urged by FSA, the question remains as to whether the results of the HCM2 process account for funds disbursed by Respondent and, if so, to what extent should the Department's recovery be reduced. In other words, although this issue does not require a consideration of the merits of the HCM2 process or any matters under the purview of the HCM2 process itself, the proper calculation of recovery

¹ In both cases, the amount of recovery is based on an underlying finding that Respondent failed to file an obligatory close-out audit that would have accounted for the expenditure of Federal student financial assistance funds during the audit period.

² As a result of allegations of misuse of Federal funds, Respondent was required to use the HCM2 process. Under the HCM2, or Heightened Cash Monitoring 2 method of payment process, an institution must submit specific documentation *before* funds will be made available; usually institutions receive student aid funds in advance and subsequently account for the proper use of the funds. The record reveals that Respondent was subject to the HCM2 process as well as Judge Canellos's October 7, 2005 order, in 05-59-EA, revoking the Department's emergency action and imposing a third-party servicing agreement that "reliably eliminate[d] the risk of loss from misuse described in the emergency action notice" regarding Federal funds disbursed by Respondent after October 14, 2005.

does require a narrowly focused consideration on whether, as a result of the HCM2 process, the institution has accounted for the expenditure of Federal funds.

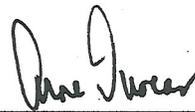
To avoid excessive recovery and in recognition that the HCM2 process may account for the lawful disbursement of funds during the period at issue, both 07-55-SA and 07-63-SA must be remanded for further proceedings. On remand, the parties shall submit a joint stipulation in both 07-55-SA and 07-63-SA to Judge O'Hair for his review to determine whether, and, if so, to what extent, the recovery sought by the Department should be reduced as a result of the HCM2 process.

ORDER

Accordingly, it is ORDERED that the Initial Decisions in 05-60-ST and 07-18-ST are HEREBY AFFIRMED.

It is further ORDERED that the Initial Decisions in 07-55-SA and 07-63-SA are HEREBY REMANDED.

So ordered this 18 day of March 2009.



Arne Duncan

Washington, D.C.

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