



**UNITED STATES DEPARTMENT OF EDUCATION**  
OFFICE OF HEARINGS AND APPEALS  
400 MARYLAND AVENUE, S.W.  
WASHINGTON, D.C. 20202  
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In the Matter of

**Y's Hair International,**

Respondent.

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Docket No. 23-05-SA

Federal Student Aid Proceeding

ACN: 07-2021-23228

Appearances: Mitsu Sato, School President, for Y's Hair International.

Raziya Brumfield, Esq. for the Office of the General Counsel, U.S. Department of Education, Washington, DC for Federal Student Aid.

Before: Robert G. Layton, Administrative Law Judge

**DECISION**

This decision involves an appeal by Y's Hair International (YHI), a proprietary institution located in Overland Park, Kansas. YHI participates in numerous federal student aid programs authorized by Title IV of the Higher Education Act of 1965 (Title IV).<sup>1</sup> Within the U.S. Department of Education (the Department) the office having jurisdiction over, and oversight of these programs is the Office of Federal Student Aid (FSA). On December 12, 2022, FSA's Kansas City School Participation Division issued a Final Audit Determination (FAD) with four findings, of which only two had assessed liabilities. These two findings were identified as

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<sup>1</sup> 20 U.S.C. § 1070 *et seq.*

Findings #2021-002 and #2021-003. Finding #2021-002 alleged that YHI did not follow its admissions policy by admitting a student for whom the institution failed to obtain a high school diploma or its recognized equivalent before admitting the student. The liability assessed in the FAD was \$472.00. YHI did not contest this finding or its corresponding liability.<sup>2</sup> Finding #2021-003 asserted that YHI made post-withdrawal disbursements for three students in the amount of \$12,260.00<sup>3</sup> without first obtaining these three students' consent, within 30 days of their withdrawal dates, in violation of 34 C.F.R. § 668.22(a)(6)(ii)(A)(2).

Subpart H details the procedure for an institution to appeal the results of a final audit determination. On December 12, 2022, FSA's Kansas City School Participation Division issued a FAD concerning YHI's administration of its Title IV programs from January 1, 2021 through December 31, 2021.<sup>4</sup> The FAD was based on an audit report and corrective action plan prepared by YHI's certified public accountant in accordance with the Department's Office of Inspector General's audit guide for proprietary institutions.<sup>5</sup> Once an FAD is issued, the respondent has the burden of proving by the preponderance of the evidence that the Title IV funds it received were lawfully disbursed.<sup>6</sup> If the respondent does not establish that its expenditures of federal funds were correct, it has to return the funds to the Department. Once the respondent is given adequate notice of the demand by FSA in its FAD, the respondent must meet its burden.

### **ISSUE**

The single finding at issue in this proceeding is Finding 2021-003 concerns YHI's post-

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<sup>2</sup> Thus, this finding is not before the tribunal. It is not clear from the record that YHI has already returned these funds to the Department. However, in its brief, the Department does not include a demand for the return of the \$472.00 assessed for this uncontested finding.

<sup>3</sup> The liability assessed for these three students was \$12,124.00 in principal and \$136.00 in interest, for a total of \$12,260.00. *See* ED Ex. 2.

<sup>4</sup> *See* ED Ex. 1.

<sup>5</sup> *See* ED Ex. 1.

<sup>6</sup> 34 C.F.R. § 668.116(d).

withdrawal disbursement after three students withdrew without first obtaining these students' consent. The Department seeks the return of funds disbursed after these students withdrew from YHI.

The issues to be resolved in this decision are:

- 1. Has the Department presented a prima facie case for assessing liabilities under Findings 2021-003 for the post-withdrawal disbursements for three former YHI students?**
- 2. Has the Respondent met its burden of proof in demonstrating that the post-withdrawal disbursements were properly made with the students' consent in accordance with 34 C.F.R. § 668.22(a)(6)(ii)(A)(2)?**

### **SUMMARY OF DECISION**

The Department has met its burden of production for asserting that YHI disbursed Direct Loan funds after three students withdrew from the institution without first obtaining their consent. YHI's main argument is that these students gave consent at their orientations for funds to be disbursed to the institution to cover existing educational charges; however, YHI does not assert that it obtained their consent after the students withdrew, which is required by the Department's regulations. Because the required post-withdrawal consent was not obtained, YHI made post-withdrawal disbursements in violation of the federal regulations.

### **FINDINGS OF FACT**

#### **I. FSA AUDIT REVIEW**

The December 12, 2022 FAD resulted from an audit conducted by YHI's independent auditor.<sup>7</sup> The audit was prepared in accordance with the Department's Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers Administering

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<sup>7</sup> YHI retained the independent auditor Salmon Sims Thomas and Associates to perform this audit and draft a corrective action plan. *See* ED Ex. 1.

Title IV Programs (September 2016).<sup>8</sup> This audit conducted by YHI's independent auditor covered the audit period January 1, 2021 – December 31, 2021.

The audit revealed four violations, of which only one is at issue before the tribunal: Finding 2021-003. This finding alleged that YHI made post-withdrawal disbursements of federal Direct Loan funds without obtaining students' consent within 30 days of their withdrawals.<sup>9</sup>

## **II. PROCESS BEFORE OHA**

Respondent YHI submitted a request for review dated January 18, 2023. The case was assigned to the undersigned as the hearing official and on March 1, 2023, an Order Governing Proceedings was issued establishing the briefing schedule. YHI did not file anything in response to the March 1, 2023 Order. FSA filed their brief and exhibits on April 28, 2023. YHI also did not exercise its option to file a reply brief by May 15, 2023 in response to FSA's brief and exhibits. The administrative record has closed.

## **PRINCIPLES OF LAW**

While YHI has the burden of proof in this proceeding, the Department has the prima facie obligation to show that it has provided adequate notice of its demand to the school.<sup>10</sup> Part of the burden placed on the Department is that it must provide sufficient legal support for its demand. When challenging a finding in an FAD in a Subpart H proceeding, the Respondent has the burden of proving by the preponderance of the evidence that the Title IV funds received were disbursed properly and that the institution complied with program requirements.<sup>11</sup> Before participating in Title IV programs, institutions are required to sign program participation

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<sup>8</sup> See ED Ex. 1

<sup>9</sup> See ED. Ex. 1.

<sup>10</sup> *In re Housatonic Community College*, Dkt. No. 15-36-SP, U.S. Dep't of Educ. (July 26, 2016) at 2 and 34 C.F.R § 668.16(d).

<sup>11</sup> 34 C.F.R. § 668.116(d).

agreements.<sup>12</sup> When an institution enters into the agreement, it agrees to comply with the statutory and regulatory provisions applicable to the Title IV programs it administers, establish and maintain administrative and fiscal procedures and records “as may be necessary to ensure proper and efficient administration” of Title IV funds, and that it is liable for all improperly spent or unspent Title IV funds.<sup>13</sup>

## ANALYSIS

### **DEPARTMENT’S PRIMA FACIE CASE**

In Subpart H proceedings, the FSA has the initial burden of production while Respondent carries the burden of proof.<sup>14</sup> The Department’s obligation to present a prima facie case is satisfied when it informs the institution that: (1) there is a regulatory obligation to repay to the Department Title IV funds and to document the basis for the determination that a liability is owed and (2) the specific reason that the Department asserts that the school did not meet this obligation.<sup>15</sup> By virtue of the issuance of an FAD and its articulation of violations of the regulations regarding post-withdrawal disbursements of student loan funds, FSA has presented a prima facie case in this appeal. Once the Department’s prima facie burden has been met, YHI must establish, by a preponderance of the evidence, that they did not violate the regulations pertaining to post-withdrawal disbursement of student loan funds.

### **SCOPE OF TRIBUNAL’S REVIEW**

The tribunal’s authority in Subpart H proceedings is proscribed. The remedies available in Subpart H program review proceedings are contractual in nature and allow for recovery of

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<sup>12</sup> 34 C.F.R. § 668.14(a).

<sup>13</sup> 34 C.F.R. §§ 668.14(b)(1), (4), and (25); 34 C.F.R. § 668.116(a) and (d).

<sup>14</sup> 34 C.F.R. § 668.116(d); *In re DeMarge College*, Dkt. No. 04-39-SP, U.S. Dep’t of Educ. (July 31, 2009); *In re Sinclair College*, Dkt. No. 89-21-S (September 26, 1991)

<sup>15</sup> See *In re Housatonic Community College*, Dkt. No. 15-36-SP, U.S. Dep’t of Educ. (July 26, 2016) at 2 and *In re City University of New York, Lehman College*, Dkt. No. 18-38-SP, U.S. Dep’t of Educ. (April 22, 2020).

misspent federal student aid funds only.<sup>16</sup> Institutions that participate in the federal student aid programs have fiduciary obligations to the Department and to student aid recipients.

### **PARTIES' ARGUMENTS**

YHI argues that for each of these three students, it obtained signed student authorization forms during orientation at the start of their educational programs and that these forms served as the proper documentation to allow for post-withdrawal disbursements. YHI asserts that the students understood that the authorization form would allow for such disbursements and that the institution's third-party servicer believes this form is sufficient.

FSA does not dispute YHI's assertion about obtaining forms during orientation, but asserts that it is incumbent upon YHI to demonstrate that the post-withdrawal disbursements made on behalf of the three students at issue (Student #s: 1, 2, and 3) were done with their consent within 30 days of the date that they withdrew from the institution. FSA argues that YHI has not provided any legal basis for overturning this finding as the institution merely asserts that it obtained the students' consent at the beginning of their educational programs and not after they withdrew from the institution. FSA argues that under 34 C.F.R. § 668.22(a)(6)(iii)(A)(1), students must be given an opportunity to accept or decline some or all post-withdrawal disbursement of federal student loan proceeds. FSA states that YHI is ultimately responsible for the Direct Loans disbursed to Students 1-3 as a fiduciary of the Department. FSA contends it is immaterial whether or not Students #s 1-3 understood that the authorization form (Student Authorization to Budget Financial Aid Funds form) they signed during orientation allowed YHI to make disbursements, since the institution was obliged to obtain a post-withdrawal consent within 30 days of the students' withdrawal. FSA asserts that the regulation recognizes that

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<sup>16</sup> See 34 C.F.R. Part 668; *In re Macomb Community College*, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (June 23, 1993); *In re Phillips Junior College, Melbourne*, Dkt. No. 93-80-SP, U.S. Dep't of Educ. (November 23, 1994).

situations may change between the date of orientation and students' withdrawal in which they no longer agree to accept additional loan funds. 34 C.F.R. § 668.22(a)(6) provides procedural safeguards to protect students that must be adhered to prior to institutions' using loan funds to offset students' tuition balance. Additionally, FSA points out that YHI's claim that its third-party servicer believes it obtained proper consent is similarly unpersuasive and does not demonstrate compliance.<sup>17</sup> FSA states that it has conclusively demonstrated that the withdrawals for these students were made after they withdrew from YHI, as demonstrated by the National Student Loan Data System (NSLDS) records.<sup>18</sup> FSA has provided information for the record for each of the three students at issue.

#### Student # 1

Student 1 began attendance at YHI on March 3, 2020 and signed the student authorization form during orientation. On March 20, 2021, YHI determined that Student # 1 withdrew from the institution effective January 13, 2021. During orientation at the start of the program, Student 1 signed a Student Authorization to Budget Financial Aid Funds form.<sup>19</sup> Subsequently, on May 24, 2021, YHI made post-withdrawal disbursements of federal Direct Loan funds in the amount of \$4,701 to Student 1's account.<sup>20</sup>

#### Student # 2

On July 6, 2021, Student # 2 began attendance at YHI and signed a Student Authorization to Budget Financial Aid Funds form.<sup>21</sup> On September 22, 2021, Student 2 withdrew from the

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<sup>17</sup> See *Matter of Hair Interns School of Cosmetology*, Docket No. 98-81-SP, U.S. Dep't of Educ. (November 5, 1998); 2000 WL 33664067, at \*2 (July 25, 2000) ("the use of a third-party servicer is simply a resource used by a school in the processing of Title IV funds, and cannot be ... considered as proof of regulatory compliance.")

<sup>18</sup> See ED Exs. 4 – 6.

<sup>19</sup> See ED Ex. 4 (Student 1 NSLDS Records) at 1.

<sup>20</sup> See ED Ex.1 at 18.

<sup>21</sup> See ED Ex. 5 at 2; and ED Ex. 2 at 7.

institution.<sup>22</sup> Then, on October 25, 2021, YHI made post-withdrawal disbursements of federal Direct Loan funds in the amount of \$2,722 to Student # 2's account.<sup>23</sup>

### Student # 3

On September 7, 2021, Student # 3 began attendance at YHI and signed a Student Authorization to Budget Financial Aid Funds form.<sup>24</sup> On November 11, 2021, Student 3 withdrew from Y's Hair. ED-6 at 1. Subsequently, on December 28, 2021, YHI made a post-withdrawal disbursement of Direct Loans funds in the amount of \$4,701 to Student 3's account.<sup>25</sup>

### **POST-WITHDRAWAL DISBURSEMENTS**

When a Title IV recipient withdraws from an institution, if outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of the outstanding charges with federal student loan funds **only** (emphasis added) after obtaining confirmation from the student that they still wish to have the loan funds disbursed. 34 C.F.R. §§ 668.22(a)(6)(ii)(A), 668.22(a)(6)(ii)(A)(2). The institution must provide the student with a written notification within 30 days of the date of the institution's determination that the student withdrew that requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account. 34 C.F.R. § 668.22(a)(6)(iii)(A). The written notification must identify the type and amount of loan funds and explain that the student may accept or decline some or all of those funds. *Id.* If the student does not respond or otherwise confirm that they authorize the post-withdrawal disbursement, no such disbursement can be made by the institution. 34 C.F.R. § 668.22(a)(6)(iii)(F).

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<sup>22</sup> See ED Ex. 5 (Student 2 NSLDS Records) at 2.

<sup>23</sup> See ED Ex. 1 at 18.

<sup>24</sup> See ED Ex. 6 (Student 3 NSLDS Records) at 1; and ED Ex. 2 at 5.

<sup>25</sup> See ED Ex. 1 at 18.



## **YHI HAS NOT MET ITS EVIDENTIARY BURDEN**

YHI bears the burden in this proceeding to demonstrate that it did not violate the regulatory requirement concerning post-withdrawal disbursements and that the institution is not liable to reimburse the Department for the post-withdrawal disbursements to the three students at issue. YHI did not meet this evidentiary burden. Respondent YHI did not offer any argument or produce any documentation demonstrating that it obtained the students' consent to make these disbursements after the students withdrew from the institution. Consequently, YHI's post-withdrawal disbursements were unauthorized and in violation of federal regulations. YHI remains liable for this finding.

## **CONCLUSIONS OF LAW**

- 1. The Department provided a prima facie case for assessing liabilities under Finding 2021-003.**
- 2. YHI did not meet its burden of persuasion that it should not be held liable for the post-withdrawal disbursements for three students under Finding 2021-003.**

## **ORDER**

YHI is liable for and is **ORDERED** to repay to the United States Department of Education the sum of \$12,260 in liabilities for Finding 2021-003.

**DATE OF ORDER: FEBRUARY 5, 2024**

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Robert G. Layton  
Administrative Law Judge

## **NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H**

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 668.119.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. An appeal must be filed within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appealing party shall provide a copy of the appeal to the opposing party. The appeal shall clearly indicate the case name and docket number.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed in OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

Hand Delivery or Overnight Mail\*

Secretary of Education c/o Docket Clerk  
Office of Hearings and Appeals  
U.S. Department of Education  
550 12<sup>th</sup> Street, S.W., 10<sup>th</sup> Floor  
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These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119. Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

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