



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

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In the Matter of

**Docket No. 17-63-ST**

**NATIONAL STUDENT AID SERVICES, INC.  
(OK)**

Federal Student Aid Proceeding

PRCN: 201520799990

Respondent

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Appearances: Arthur Heavener, President, for National Student Aid Services, Inc.

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 Robert G. Layton

**DECISION**

National Student Aid Services, Inc. (National) is a third party servicer, responsible for overseeing and administering for schools participating in the programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). On October 30, 2017, the undersigned received a written Request for a Show Cause Hearing and Request for Review in the above-styled proceeding. The Requests were filed by Arthur Thomas Heavener Jr., President of National. National challenged the emergency action by the Department of Education, Federal Student Aid (FSA) and also challenged its termination from participation in programs authorized under Title IV. The emergency action proceeding has been addressed by separate decision affirming the emergency action, and ordering National may not administer any third party services under the Title IV program during the pendency of this action.

The action which the emergency action accompanied is the subject of this proceeding-FSA's termination of the eligibility of National to contract with an eligible institution to administer any of its Title IV participation under 20 U.S.C. § 1070 et seq. The termination action was taken in Part II of a letter dated October 20, 2017, and was taken under the authority of 20 U.S.C. § 1094(c)(1)(H) and 34 C.F.R. Part 668, Subpart G. Upon receiving National's request for review, this matter was assigned for a hearing pursuant to 34 C.F.R. §668.89.

The action subject to this appeal is the October 20, 2017 termination letter issued based

on the Program Review Report issued by FSA's Third Party Service Oversight Group. National was responsible for administering Title IV for 18 different institutions. The briefing schedule for the termination matter set forth a schedule for briefing by first FSA and then by National. FSA complied with its briefing schedule and evidentiary submissions, and properly served its brief and submission. National declined to respond with any opposing brief or evidence as ordered in the briefing schedule.

On January 10, 2019, FSA filed a motion for a dismissal. The motion requested a dismissal and a potential default judgement, based on both FSA's belief that National was no longer operating as a third-party servicer and based on National's failure to comply with the briefing order for this appeal. FSA seeks dismissal with prejudice of the termination portion of this proceeding.

For the reasons set forth below, this decision upholds FSA's action termination of National's Title IV program participation, although that decision is reached through a process other than a dismissal or default judgment. Instead, due to National's failure to file its brief, this proceeding must be terminated and the record submitted for a decision.

34 C.F.R. §668.90 establishes the authority of the hearing official in Subpart G proceedings. The relevant part states:

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing. ... (c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

Because National failed to provide its brief and supporting evidence, this decision must be issued after a review of the presently existing administrative record. The record shows that FSA has established that National must be terminated from eligibility to contract with Title IV institutions as a third-party service provider.

The Oversight Group's findings detailed Title IV violations by National, including a Lack of Policies and Procedures, and Failure to Adhere to Title IV Administrative Capability Standards. This Finding was based upon several other major violations at institutions where National was the third-party service provider. The contract National used with these institutions was so vague no one could identify which responsibilities the institution would meet, and which responsibilities National was expected to meet. Eight of National's clients examined in the program review did not have an adequate audit trail. Five of the six did not have adequate attendance records, or had attendance record discrepancies. *Program Review*, p. 5.

When participating institutions engage third party services to provide administrative services on their behalf, both the institution and the third party servicer act in the capacity of a fiduciary and both are subject to the highest standard of care and diligence in administering the program and accounting to the Department for any funds administered. 34 C.F.R. §§

668.82(a),(b)(2). The servicer must have written procedures in place to set forth the responsibilities of all parties with respect to all approval, disbursement and delivery of Title IV, HEA funds, and with respect to the preparation and submission of reports to the Secretary. 34 C.F.R. § 668.16(b)(4).

Under 34 C.F.R. § 668.11, in order for a third-party servicer to participate in any Title IV, HEA program, it must meet the imposed standards. If a servicer that is already participating does not continue to comply with those standards, it is subject to proceedings including an emergency action, a fine, or the limitation, suspension or termination of the eligibility of the servicer to participate in any aspect of the Title IV, HEA program..

Not only did National's institution clients fail to have audit trails and attendance records, all six institutions examined in the program review failed to have an adequate Return of Title IV fund policy, or had incorrect, unpaid or late Return of Title IV Fund calculations. All six examined institutions also failed to have an appropriate Satisfactory Academic Progress (SAP) Policy.<sup>1</sup>

National was required to take action to assemble a comprehensive file reconstruction spreadsheet of the program review findings, which it also failed to do. National also failed to engage a Certified Public Accountant to develop procedures to test the accuracy and completeness of the file review and spreadsheets, and to prepare a report noting any exceptions found by the CPA. *Program Review*, p. 6.

Basic attendance records were missing for institutions that paid National as a third party service provider. Institutions and providers on their behalf must maintain records needed to properly administer Title IV HEA funds. 34 C.F.R. § 668.24(a). Attendance records are needed to establish academic payment periods and document disbursements of Title IV funds. Five of the six institutions examined pertaining to National failed to have properly maintained attendance records. *Program Review*, p. 9.

National's administration of services as detailed in the review show a systemic and global breakdown. Other violations included failure to report potential fraud, leave of absence deficiencies, incomplete verification, incorrectly-reported disbursement dates, errors in attendance cost calculations and calculation of Federal Pell Grant cost of attendance, and failing to provide adequate award notifications. FSA's findings were articulated with specific references to individual institutions and individual students within those institutions, as well as institutional samples and student samples, and appendices to the review.

FSA correctly states the law supporting termination of National's participation:

The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer (i) violates any provision of or applicable to

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<sup>1</sup> Numerous other of National's client institutions which were not part of the program review were found to have had numerous other Title IV violations that were also set forth in the program review.

Title IV of the HEA, or any regulatory provision prescribed under that statutory authority. *34 C.F.R. § 668.86(a)(1)(I)*.

In the present case, National further failed to submit anything requested in the program review report. FSA repeatedly sought responses and file reviews in order to establish the Title IV requirements had been met, and National has failed to submit any responsive documentation.

### **ORDER**

Pursuant to 34 C.F.R. § 668.91(a)(2)(i), this decision finds that the termination sought by FSA is warranted in whole. On the basis of the foregoing, it is **ORDERED** that National Student Aid Services, Inc.'s eligibility to participate further in Title IV programs be terminated.

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Robert G. Layton  
Judge

**Dated: January 28, 2019**



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