



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS  
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In the Matter of

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**Docket No. 18-25-WA, et al.**

Debt ID 81281270393

Debt ID 81561270393

Waiver Proceeding

Respondent.

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**DECISION GRANTING WAIVERS**

This decision concerns two notices of overpayment of salary to Respondent. The first, captioned Debt ID 81281270393, cited a debt of **\$1,444.29**.<sup>1</sup> According to Respondent, this debt arose from a correction to her service computation date. The second, captioned Debt ID 81561270393, cited an additional debt in the amount of **\$716.21**.<sup>2</sup>

During the pendency of these waiver requests I issued two orders governing proceedings on June 4, 2018, and July 3, 2018, respectively. In these orders I required ED/DOI to file the complete record on which the overpayment determinations were made. I have not received the required filings or any other response from ED/DOI.

Based on the following analysis, I will grant the waiver requests.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (OHA) which, thereby, exercises authority and jurisdiction on behalf of the Secretary of Education to waive claims of the United States against a former or current employee of the Department. The undersigned is the authorized Waiver

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<sup>1</sup> In orders dated June 4 and July 3, 2018, I required the Department of Education and Department of the Interior (ED/DOI) to file a complete record concerning Respondent's cases, including the debt letters sent to Respondent. ED/DOI has made no further filing. Without copies of the debt letters, I can only rely on Respondent's representation of what the debt letters indicated, including the debt IDs. It is unclear whether the amount cited by Respondent for the first debt is the gross or net amount.

<sup>2</sup> Respondent filed a second waiver request on July 2, 2018, in response to the second debt letter. The waiver request does not cite the amount of the debt, but this amount is mentioned in an attached email.

Official who has been assigned this matter by OHA. Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

## DISCUSSION

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.<sup>3</sup> Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>4</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>5</sup> It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>6</sup>

In this case, I need only reach the issue of whether Respondent received proper notice of the debts to determine whether repayment would be equitable. There is no evidence in the record that Respondent ever received sufficient notice of either debt. ED/DOI have failed to file evidence of doing so despite being ordered twice to make such a filing. Absent this evidence, I conclude that there is no indication Respondent acted in bad faith. I must further conclude that requiring repayment from Respondent, when Respondent has not received notice sufficient to allow her to craft a complete waiver request, would be against equity and good conscience. Accordingly, I will grant Respondent’s waiver requests.

## ORDER

Pursuant to the authority at 5 U.S.C. § 5584 (2012), Respondent’s requests for waivers of the debts to the United States Department of Education captioned Debt ID 81281270393 and Debt ID 81561270393 are **HEREBY GRANTED** in their entire gross amounts. Any sums already collected to satisfy these debts will be refunded to Respondent immediately.

So ordered this 26th day of July 2018.

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Charles S. Yordy III  
Waiver Official

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<sup>3</sup> 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3, 5.

<sup>4</sup> 34 C.F.R. § 32.3.

<sup>5</sup> *Id.* § 32.3(a).

<sup>6</sup> *Id.* § 32.3(g).