



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS  
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In the Matter of

**Docket No. 18-50-WA**

**MA,**

Debt ID 82260044031

Waiver Proceeding

Respondent.

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**DECISION GRANTING WAIVER**

This decision concerns a Notice of Overpayment of Salary to Respondent captioned Debt ID 82260044031.

During the pendency of this waiver request I issued an Order Governing Proceedings on September 6, 2018, requiring the Department of Education (ED) and the Department of the Interior (DOI) to jointly file a complete copy of the debt letter sent to the Respondent along with all attached documentation and other evidence relevant to this case. Neither ED nor DOI responded to that order. On October 16, 2018, I issued an Order to Show Cause, describing the failure of ED and DOI to file the required documents and providing them an opportunity to show why the waiver should not be granted based on the lack of notice given to the Respondent. Again, neither ED nor DOI responded to the order. Therefore, I will proceed with my decision using the record before me.

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

**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 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>1</sup> Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>2</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>3</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>4</sup>

First, I note that there is no evidence that Respondent engaged in any misrepresentation or other act of bad faith that would preclude him from satisfying the fault standard. I conclude that the Respondent satisfies the fault standard.

Next, on the equity factor, I need only reach the issue of whether Respondent received proper notice of the debt to determine whether repayment would be equitable. There is no evidence in the record that Respondent ever received sufficient notice of the debt. As described in the order to show cause, the debt letter is opaque and unclear as to the facts underlying the assertion of a debt. Nothing in the documents submitted demonstrates the nature of the debt to either the Respondent or me. ED and DOI have failed to file evidence of doing so despite being ordered twice to make such a filing. I must conclude that requiring repayment from Respondent, when Respondent has not received notice sufficient to allow him to craft a complete waiver request, would be against equity and good conscience. Accordingly, I will grant Respondent’s waiver request.

## ORDER

Pursuant to the authority at 5 U.S.C. § 5584 (2012), Respondent’s request for waiver of the debt to the United States Department of Education captioned Debt ID 82260044031 is **HEREBY GRANTED** in the entire gross amount. Any sums already collected to satisfy these debts will be refunded to Respondent immediately.

So ordered this 20th day of November 2018.

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Charles S. Yordy III  
Waiver Official

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<sup>1</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>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

<sup>4</sup> *Id.* § 32.3(g).