



**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

**360 DEGREES BEAUTY ACADEMY  
(TX)**

**Docket No. 18-28-SP**

Federal Student Aid Proceeding

PRCN: 201820629835

Respondent.

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Appearances: Llyasah Dupree for 360 Degrees Beauty Academy.

Oluwaseun O. Ajayi, Esq. for the Office of the General Counsel, U.S. Department of Education, Washington, DC for Federal Student Aid.

Before: Judge Robert G. Layton

**DECISION**

This decision involves the second of two proceedings involving 360 Degrees Beauty Academy (360), which closed in 2011. It participated in the Federal Pell Grant and Direct Loan Programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* Within the U.S. Department of Education (ED) the office having jurisdiction over and oversight of these programs is the office of Federal Student Aid (FSA). The first proceeding was for a final program review determination (“FPRD”) issued in 2011. On appeal to the Office of Hearings and Appeals, that report’s liability of \$40,258.70 was affirmed. *In the Matter of 360 Beauty Academy, Docket No. 12-09-SP.*

In this proceeding, 360 is appealing ED’s FPRD that was issued on April 20, 2018. To ensure compliance, FSA conducted a program review of 360. ED provides grants, loans, and work-study funds to eligible students attending institutions of higher education through Title IV. 360 participated in Title IV programs through a Program Participation Agreement (“PPA”).

Subpart H proceedings provide for audit and program review proceedings. In such a proceeding, the respondent has the burden of proving by the preponderance of the evidence that

the Title IV funds it received were lawfully disbursed. 34 C.F.R. § 668.116(d). If the respondent fails to establish the correctness of its expenditure of federal education funds, it must return all such funds to ED. Once the respondent is given adequate notice of the demand by FSA in its FPRD, the established burdens of proof are implemented.

This proceeding is for a 2018 Final Program Review Determination issued April 20, 2018. That FPRD included two findings as the basis for liability. Finding 1, in the amount of \$19,000 (plus interest) was to recover funds for closed school loan discharges. For Finding 1, after this appeal began, FSA received documentation from 360 which showed that Student #1 had transferred the credit hours earned at 360, and, therefore, should not have been eligible for a student loan discharge. Based on that documentation, 360's Finding 1 liability was reduced by \$9,500 plus interest. FSA seeks revised total liability for Finding 1 of \$10,150.

Finding 2, in the amount of \$27,361.92, was to recover funds for unreconciled balances, or unsubstantiated drawdowns in excess of disbursements authorized as proper expenses. Although there was no documentation in the course of the hearing that led FSA to reduce the Finding 2 liability, ED had retained a balance of \$4,986.30 in an escrow account for 360, and that retained balance was applied, which resulted in a credit to 360 reducing liability for Finding 2 to \$22,375.62. The revised total liability for the two findings now at issue in this appeal is \$32,525.62.

### **Issue of 360'S Unauthorized Exhibit Filings with Reply Brief**

Both parties in this proceeding had sought and been granted extensions of time for the schedule for brief filings each was to submit. As the party with the burden of proof, 360 Degrees submitted its brief and evidence first, but was also allowed an opportunity to file a reply brief after FSA had submitted its brief and evidence.

The last extension sought was by 360 Degrees, which requested additional time to file its reply brief. In response to previous FSA extension requests, 360 stated that any delays would cause 360 to be "held up" from applying for reaccreditation. Despite having opposed additional delays, this tribunal granted 360 the additional extensions it sought to file its reply brief. However, the order granting the extension noted that FSA opposed 360 being allowed to submit additional evidence after the opportunity for FSA to respond to such evidence. The order granting 360 the extension of time also stated that:

To the extent that 360 seeks authorization for this proceeding to consider new evidence submitted after FSA's brief, consideration of 360's request must be **reserved**. The request shall be reviewed and a determination shall be made after there is a clear record of everything that 360 is attempting to have considered.

360 repeatedly submitted what it contended was additional evidence supporting its position in an unfair and unauthorized manner. It submitted additional and erroneously-styled documents containing evidence in a manner which it had been placed on notice would give FSA no opportunity to address the new and additional evidentiary documents. Those filings are unfair to FSA, since they were filed after FSA's opportunity to submit evidence on the issues the filings

raised. However, 360 Degrees also filed a document “Appeal 14” stating that its representative in this appeal was a consumer receiving services for a learning disability. 360’s representative has also repeatedly said that she is not an attorney. She suggests that as a non-attorney she may not follow the orders in this hearing correctly. She also suggests that there was unfairness in her being denied an opportunity to know about an extension request for time to file a brief by opposing counsel. 360 also subsequently acknowledged that she intentionally chose not to provide her extension requests to opposing counsel, despite having contended she had been denied notice on prior extensions. It should also be noted that all extension requests for both parties were granted.

The procedures for hearings before this tribunal allow for flexibility, and a decision based on all possible evidence is preferable. For those reasons, despite the unfair manner in which 360 filed a multitude of exhibits with its reply brief, all of the exhibits filed by both sides shall remain in the record. All the exhibits and evidence filed by both sides have been considered in the process of arriving at this decision on the appeal.

### **Issues**

- 1. Under Finding 1, is 360 liable to reimburse FSA for closed school student loan discharges for Students 2 and 3?**
- 2. Under Finding 2, is 360 liable to repay FSA for unreconciled balances?**

### **Summary of Decision**

360 is liable for the funds FSA paid out to students for closed school student loan discharges. 360 is also liable to repay the cash balances it was not authorized to receive in unreconciled Title IV balances.

### **Findings of Fact**

For Finding 1 of the FPRD, Student #2 was a student at 360 from June 29, 2010 to March 9, 2011. Handwritten notes from 360 stated the student dropped on March 9, 2011, and the school closed on March 10, 2011. Student #2 withdrew within 120 days of 360’s closure date. *ED-2, Smoker Affidavit, Paragraph 12.*

Student #3 was a student at 360 from November 16, 2010 until the school closed on March 10, 2011. Although Student #3 then enrolled at Vogue and completed the Cosmetology program, Student #3 did not transfer any hours from 360. Student #3 was a student at 360 on its closure date. *Ed-2, Smoker Affidavit, Paragraph 12.*

For Finding 2 of the FPRD, FSA informed 360 it had unreconciled balances-that is, that 360 had withdrawn more funds than was appropriate for the authorized funding under the Pell Grant and Federal Direct Loan programs of Title IV. Those initial unreconciled balance amounts were for \$11,150.21 and \$16,211 respectively. *Ed-1, at p. 8.* FSA reduced this amount by \$4,986.30, reflecting credit given 360 for the remaining amount held in escrow in 360’s letter of

credit. *Ed-1, at p. 8.* After that credit, Finding 2 was reduced to \$22,375.62.

Many of 360's unauthorized filings were beyond the scope of what had been originally authorized by the schedule. However, those filings also provided additional evidence to support the liability FSA seeks to impose. For example, "Exhibit F" is from 360's student aid service provider, and reaffirms that 360 is responsible for the funds pulled out as unauthorized withdrawals from its line of credit with FSA. The auditor's report presented by 360 also points out that the unreconciled balances must be addressed. Other filings relied on handwritten and uncorroborated assertions which were insufficient to meet 360's burden of proof to establish defense on the liability. For example, "Appeal 14" showed a handwritten drop request dated one day before the school closed. 360's reply brief concedes the withdrawals are within 120 days of closure, but responds by calling all the students "liars", again, without any corroboration to establish that claim.

## **Principles of Law and Analysis**

### **Finding 1**

The closed school discharge provision for Federal Direct Loans states that the Secretary will discharge a borrower's obligation to repay a Direct Loan "if the borrower... did not complete the program of study for which the loan was made because the school at which the borrower... was enrolled closed, as described in paragraph (c) of this section." 34 C.F.R. §685.214(a)(1).

Student eligibility requires that the student:

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed...

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school... 34 C.F.R. §685.214(c)(1)(i).

360 also argues that the law should allow it to be discharged whether or not a student transfers to another institution, which is simply not what the law provides for in such cases. Students are not required to transfer credits, or to take a teach-out. If the student elects not to transfer credits or take a teach-out, that student is entitled to receive the closed school loan discharge, and 360 is responsible for those amounts.

## Finding 2

Schools participating in Title IV must account for the money they receive from Title IV funds, and return any unreconciled balances. Under the program's regulations, a participating school is a fiduciary for the administration of the Title IV, HEA programs. As a fiduciary, 360 is subject to the highest standard of care and diligence in administering the Title IV programs, and must account to the Secretary for funds received. 34 C.F.R. §668.82(a-b). See also *In re University of Cincinnati*, Docket No. 11-34-SP, U.S. Dep't of Educ. (Aug. 30, 2011).

Under Title IV, participants must maintain accounting and internal control systems that identify the cash balance of the funds of each program that is included in the participant's bank, and must exercise the level of care and diligence required of a fiduciary with regard to maintaining Title IV, HEA funds. 34 C.F.R. §668.82(a-b). Furthermore, federal program regulations require that educational institutions maintain financial records which reflect all program transactions on a current basis. Those transactions, including financial aid records, must be reconciled in accordance with accepted accounting procedures. 34 C.F.R §668.24(a-b)

360 has maintained unreconciled cash balances under Title IV, and has provided no proof to contradict the affidavit and evidence submitted by ED.

## Conclusions of Law

1. **Under Finding 1, 360 is liable to reimburse FSA for closed school student loan discharges for Students 2 and 3.**
2. **Under Finding 2, 360 is liable to repay FSA for unreconciled balances.**

## **ORDER**

In Finding 1, Students # 2 and # 3 are eligible for closed school loan discharge under 34 C.F.R. §685.214. In Finding 2, 360 has offered no defense or explanation for the unreconciled cash balances. 360 is liable for \$10,150 for Finding 1's total loan discharge liability, and is also liable for the unreconciled cash balances of \$22,375.62. 360 is **ORDERED** to repay to the United States Department of Education the sum of \$32,525.62.

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Robert G. Layton  
Judge

**Dated: April 16, 2019**

