



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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*In the matter of*

**CTK,**

**Docket No. 21-21-WA**

Salary Overpayment  
Waiver Matter

Debt ID: 11101597536

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent, a U.S. Department of Education employee, has filed an overpayment waiver request seeking a waiver of a \$1,025.12 gross debt identified by Debt ID 11101597536. The overpayment in question occurred due to a leave share adjustment.

With the waiver request, Respondent included a narrative explanation of the debt, the debt letter Respondent received, and copies of emails and time and attendance sheets. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I find that Respondent has failed to meet the burden to justify granting a waiver of the debt.

**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.<sup>1</sup> 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.

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<sup>1</sup> The Department's policy is set forth in its Handbook for Processing Salary Overpayments. U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

## DISCUSSION

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>

In this case, the debt letter indicates that the “overpayment was a result of a leave share adjustment initiated by your agency” for one pay period cited in the letter.<sup>5</sup> Attached to the debt letter is a list showing a pay adjustment for “ANN LEAVE USED” with a negative balance in the “Time” column. In the waiver request, Respondent demonstrates an additional understanding of the nature of the debt. Respondent states that Respondent applied for the leave share program and speculates that the donated leave was erroneously applied after the appropriate pay period. Respondent also states “that the hours were in fact added” and the debt “is in the process of being corrected.” Respondent requests a waiver only “in the event the timesheets are not corrected in the requested due date of this bill.”

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) the fault standard: whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) the equity standard: whether Respondent can show that it is against equity and good conscience for the Federal Government to recover the overpayment.<sup>6</sup>

Respondent does not specifically present arguments in favor of finding that Respondent satisfies either the fault or equity standards. I note that nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. However, I need not rule on the fault standard because I find that Respondent does not satisfy the equity standard.

Under the equity standard, an employee must repay a valid debt unless doing so would be inequitable.<sup>7</sup> There are no rigid rules for determining whether repayment is equitable, but factors considered generally include: whether the debt is substantial; whether repayment would be unconscionable in the Respondent’s unique circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; and whether collection of the debt would impose an undue financial burden.<sup>8</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>9</sup> The nature of the debt is not punitive; the

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<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

<sup>4</sup> *Id.* § 32.3(g).

<sup>5</sup> Letter dated Apr. 19, 2021, from Interior Business Center to Respondent at unp. 1.

<sup>6</sup> 5 U.S.C. §§ 5584(a), (b)(1); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3–5.

<sup>7</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

<sup>8</sup> *In re J*, Dkt. No. 17-04-WA, U.S. Dep’t of Educ. (Mar. 23, 2017) at 5 (citing *In re David*, Dkt. No. 05-22-WA).

<sup>9</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

debt is merely the difference between the amount paid by the Department and the amount the Department should have paid to Respondent in each pay period.

In this case, Respondent does not present evidence or argument in favor of finding that repayment of the debt would be inequitable. In the absence of such a showing, Respondent does not satisfy the second factor and there is no basis for granting a waiver. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

I note that Respondent's waiver request focuses exclusively on Respondent's perception that donated leave should be applied retroactively to the timesheet in question. Respondent characterizes the failure to apply donated leave as a "discrepancy" which Respondent believed was "in the process of being corrected" at the time the waiver request was filed. These statements suggest that Respondent may not believe the debt cited in the debt letter is valid. The validity of the debt, which may be addressed in a pre-offset hearing, is outside the scope of my authority as a Waiver Official. However, Respondent may file a request for a pre-offset hearing within 10 days of receiving this decision.<sup>10</sup>

#### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the debt to the United States Department of Education captioned Debt ID 11101597536 is **HEREBY DENIED**.

So ordered this 12th day of July 2021.

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Charles S. Yordy III  
Waiver Official

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<sup>10</sup> 34 C.F.R. § 32.6(b) ("An employee who has requested a waiver under § 32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.").