

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

DEVRY UNIVERSITY, INC.

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION and

DR. MIGUEL CARDONA, *in his official
capacity as Secretary of the United States
Department of Education,*

Defendants.

Case No. 1:22-cv-05549

Honorable LaShonda A. Hunt

NOTICE OF WITHDRAWAL OF MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff DeVry University, Inc. (“DeVry”) gives notice to the Court that DeVry hereby withdraws its pending motion for a preliminary injunction because DeVry has now obtained the relief requested in that motion. (ECF No. 38.) In its motion, DeVry requested that the Court enjoin the Department of Education’s administrative recoupment action, *In the Matter of DeVry University*, U.S. Dep’t of Educ., No. 22-54-BD (the “Recoupment Action”), pending this Court’s resolution of DeVry’s structural constitutional claims asserted in the First Amended Complaint. (ECF No. 38.) On October 17, 2023, Administrative Law Judge (“ALJ”) Robert Layton *sua sponte* reconsidered DeVry’s renewed request for a temporary stay of the Recoupment Action pending the resolution of DeVry’s structural constitutional claims in this case, and temporarily stayed the Recoupment Action. (ECF No. 38-2 ¶ 6; ECF No. 38-6.) A copy of the ALJ’s October 17, 2023 Order is attached as Exhibit A to this Notice. Because DeVry has obtained all the relief requested in its motion for a preliminary injunction, the motion is now moot.

Dated: October 17, 2023

Respectfully submitted,

/s/ Matthew Kutcher

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EXHIBIT A



UNITED STATES DEPARTMENT OF EDUCATION
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WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

In the Matter of

DEVRY UNIVERSITY,

Respondent

Docket No. 22-54-BD

Borrower-Defense Proceeding

OPE ID: 01072700

ORDER GRANTING DEVRY UNIVERSITY'S REQUEST FOR A STAY

On June 21, 2023, the Respondent, DeVry University (DeVry or Respondent), renewed its request for a stay of this proceeding, which previously was denied in an April 6, 2023 Order. Respondent stated that its renewed request is based on recent developments; namely, the April 14, 2023 issuance of a U.S. Supreme Court opinion in *Axon Enterprise, Inc. v. Federal Trade Commission*, 143 S. Ct. 890 (2023) (*Axon*). According to DeVry, the *Axon* decision holds that “a party to an agency proceeding need not await the conclusion of the proceeding to assert constitutional challenges in federal court to the agency’s structure and authority to conduct the proceeding, because subjecting a party to an allegedly unconstitutional proceeding constitutes immediate and ongoing harm that cannot be remedied.”¹ DeVry stated that on June 16, 2023, it moved for leave to amend its complaint in *DeVry University, Inc., v. U.S. Department of Education*, No. 1:22-cv-05549 (N.D. Ill.), to assert constitutional challenges regarding the Department’s authority to proceed with this borrower defense recoupment action, in light of the *Axon* decision.

DeVry’s request for a stay was denied in this proceeding on June 22, 2023.

¹ See Respondent’s June 21, 2023 Renewed Request for a Temporary Stay of the Administrative Proceeding.

While it remains unclear that the *Axon* decision mandates issuing a stay, the undersigned has been following other developments, including arguments articulated in *Career Colleges and Schools of Texas v. United States Department of Education*, (US Court of Appeals, Fifth Circuit Case No. 23-50491). Those arguments call into question several relevant issues.

Having reviewed the *Career Colleges* pleadings filed since this tribunal entered its order denying DeVry's request for a stay on June 22, 2023, this tribunal now agrees that DeVry's request should be granted.

As this tribunal stated in its April 6, 2023 Order, the parties are to immediately notify the tribunal if any directives regarding this proceeding are made by any Article III courts, including any directives to stay this proceeding.

For the above-stated reasons, and upon reconsideration by this tribunal, DeVry's renewed request for a temporary stay of this proceeding is **ORDERED GRANTED**.

DATE OF ORDER: OCTOBER 17, 2023

ROBERT
LAYTON

Digitally signed by
ROBERT LAYTON
Date: 2023.10.17 14:49:05
-04'00'

Robert Layton
Administrative Law Judge

SERVICE

This Order has been sent by OES electronic service to:

Jay Vaughan, Esq.
David E. Mills, Esq.
Caitlin B. Munley, Esq.
Katherine Lee Carey, Esq.
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By automatic email notice generated by OES.

And to:

Todd Davis, Esq.
Sue Lin, Esq.
Samuel R. Bissell, Esq.
John Patrick Bailey, Esq.
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