

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

Subject: Florida Educational Research and Development Council, Inc.                      Date: March 29, 1979  
Docket No. 77-3  
Decision No. 54

DECISION

The Florida Educational Research and Development Council, Inc. ("grantee") appeals from a determination of the Chief, International Equal Education and Compensatory Education Branch, Grant and Procurement Management Division, Office of Education ("OE") disallowing \$26,523 charged to grant number OEG-0-8-522394-3991 for salary and wage payments during the period of March 1972 through December 1974.

Grantee was organized as a private nonprofit organization for the purpose of assisting public schools in the State of Florida to improve their educational programs and, in this connection, to conduct studies as well as major research and testing projects, and to disseminate the results thereof to the schools of the member counties.

The controversy under consideration originates in a Follow-Through project grant sponsored by grantee but to a large degree under the effective control of the University of Florida. The record shows that while grantee was generally authorized under the Terms and Conditions of the grant to enter into cooperative agreements with individuals or other entities for the effectuation of the legitimate purposes of the grant, it suffered its relationship with the University of Florida with which it had cooperative agreements to become overly informal. Because grantee was without professional staff of its own, its location on University premises, and the substantial representation of the University on grantee's Council, the routine activities and administration of the latter were in practical charge of the University. However, it is clear that through delegation of authority to carry out functions under a grant, a grantee may not divest itself of responsibility and accountability for Federal funds entrusted to it.

It was University personnel which used the \$26,523 of Follow-Through funds transferred to it by the grantee to pay salary and wages to members of the University faculty and to graduate students. Some preliminary equivocation apart, it is now undisputed that the payment was to compensate for routine classroom instruction of undergraduates and that the recipients of this fund rendered no service to the Follow-Through program.

Grantee's appeal from the determination of this disallowance rests on the contention that the University had detailed nine of its professors to serve as Liaison Officers to the grant project, as authorized by the grant terms; that this assignment required that the Liaison Officers be relieved of their teaching obligation to the University on a part time basis; that the grant budget provided stipulated salaries to the Liaison Officers but that they did not, in fact, receive such salaries, and that the University continued during the relevant period to pay these Liaison Officers their full salaries out of its own resources. Grantee maintains that the recipients of the amount which is the subject of the disallowance had acted as substitutes for the Liaison Officers, and that the payment was in lieu of the salaries to which the Liaison Officers were entitled under the Follow-Through grant, and which they did not receive.

This account of the facts surrounding the use of the amount disallowed raises some questions. Invited by the Board to explain why the University chose to pay the Liaison Officers their regular salaries undiminished for the time periods that they were engaged in serving the grant, and why they were not paid their budgeted salaries as provided in the grant, grantee offered nothing to shed light on the matter. We have no way of ascertaining whether the sum disallowed (\$26,523) was equal to, greater, or less than the aggregate of the salaries budgeted for the Liaison Officers. Equally, we are without knowledge whether the amount claimed by grantee as a set-off represents the reasonable value of the teaching services of the substitutes in terms of time devoted to teaching or relative professional competence.

On the basic question whether the Liaison Officers were paid their stipulated salaries in accordance with the Follow-Through budget we are not inclined to accept literally the statement by OE in its Response to the Supplemental Order to Develop Record that "Liaison Officers were compensated as a direct cost of the project on a salary basis." The Exhibit cited on this proposition merely sets forth the budgeted salaries for these officers, and does not purport to relate to the question of actual payment of these salaries. Further, this statement is not in harmony with the main trend of OE's position. Additional clarification on this particular might perhaps be called for if such were essential to decision but we think that an alternate and more satisfactory ground exists for the resolution of this appeal.

It appears that in addition to authorizing salary payments for Liaison Officers, the grant documents also provide for the employment of consultants for what grantee refers to as out-of-town services to the project communities, at a fixed daily fee. There is no full agreement between the parties concerning the degree of identity of function of consultants and Liaison Officers. Two important facts must, however, be viewed as established: one, that the same members of the University faculty detailed as Liaison Officers accounted for nearly 80% of the consultant force in terms of man-days spent in this capacity; two, that the compensation

actually received by the consultants for their services during one year out of a total relevant period of two years and nine months amounted to \$18,000. There is no basis in the appeal file for calculating the aggregate amount of consulting fees paid to the University professors who were assigned as Liaison Officers during the remaining period of one year and nine months with any degree of exactitude. There is on the other hand, nothing in the file to show that the practice of employing and compensating consultants during the time interval preceding or following the 1973-4 grant year for which information is available was at variance in any respect. It should also be observed that among the consultants who had functioned as Liaison Officers there were three who, in addition, had also served and received compensation as Project Director, Evaluation Coordinator, and Field Service Coordinator. Two of the latter are also listed in the budget as employed under the heading of Research and Development. That the amounts derived by these University personnel from Follow-Through sources were indeed considerable is seen from a tabulation introduced into the record by OE which indicates that during the relevant period the nine consultants received as compensation an amount exceeding \$75,000. Grantee countered that the amount includes receipts from "other projects," without in any way identifying those projects.

We note that in one of grantee's documents in support of its appeal the claim is made that during the period under consideration "Some \$50,650 of the time of University personnel were utilized by the Follow-Through program." This assertion, stated in general terms, may or may not be accurate. It is certainly of no probative value unaccompanied as it is by any allegation concerning payment for the time indicated.

The significance of these facts derives from the circumstance that nothing in grantee's presentation suggests that the University has deducted from the normal salaries payable to these members of its faculty an amount equal to the value of their time of duty during which they were employed by the Follow-Through grant and for which they have been paid from grant sources, or any lesser amounts. It is obvious that had such deductions been made, the amounts thus saved would, and should, have been used as a fund from which to compensate substitutes. Failure to do so, if such was indeed the case, would deprive grantee's theory of reimbursement or setoff for the amount disallowed of any plausibility.

We are persuaded that at no time during the relevant period did the University make adjustments downward in the salaries paid its faculty personnel on account of compensation they received from the grant for employment during released time. On December 28, 1976, OE requested grantee to submit documentation that would substantiate the fact that University professors paid as consultants by grantee were not paid by the University for the same periods of time. The file does not indicate that such documentation was supplied. Likewise, on February 18, 1977, OE advised grantee of the Region IV audit recommendation of disallowance. It referred to the consultant payments, and to grantee's attempted justification of the expenditure as proper com-

pensation for substitutes, and expressed the conclusion that "the substitute time should have been paid by the University with those monies released because the consultants should not have been paid their regular salaries." Grantee did not choose to address these position statements. In fact, grantee's responses to our Order to Develop the Record are consistent only with the notion that during the period here involved, University professors who devoted part of their academic time to the Follow-Through program continued to receive their contract salaries based on the "salary schedule in force."

In conclusion it is our opinion that in view of the admitted fact that the recipients of the disallowed amount did not render any service to the Follow Through project, the burden of proof, at least the burden of going forward with reliable evidence, is that of the grantee to demonstrate facts in justification. Grantee does not discharge this burden by vague suggestions that University personnel had worked long periods for the benefit of the grant or that consulting fees paid to them were in part attributable to "other projects" without further elaboration. In the absence of proof that would adequately explain and justify the failure of the University of Florida to deny payment to its faculty members for time released to and paid for by the Follow-Through grant, a decision that would sustain the payment in controversy as proper payment for substitutes would amount to our countenancing the burdening of the grant with double payment for one service.

Accordingly, we deny the appeal and affirm the determination of disallowance and refund in the sum of \$26,523.

/s/ Bernard Kelly

/s/ Thomas Malone

/s/ Irving Wilner, Panel Chairman