

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Chinle Arizona School District #24
Docket No. 77-15
Decision No. 60

DATE: JUN. 29, 1979

DECISION

This is an appeal from the disallowance of \$163,431 of a \$281,006 project grant for the fiscal year ending June 30, 1974, made under Part A of the Indian Education Act (20 U.S.C. 241aa) for financial assistance for projects to meet the special education needs of Indian children.

The following is a brief statement of facts which are set out more fully in the Chairman's Order to Clarify the Record, dated January 24, 1979: As relevant here, project funds were to be used (1) for Navajo aides to provide a bilingual and bicultural approach to education through the third grade level and (2) for a career education program for secondary school students. The disallowed costs are:

1. \$30,731 for salaries of teachers engaged in activities not related to project objectives;
2. \$61,161 for construction costs;
3. \$45,863 for purchase of construction equipment;
4. \$24,472 for supplies related to a construction project and for general education purposes; and
5. \$1,204 for excess indirect costs.

I

The expenditures shown in item 1 (salaries) and a portion of those shown in item 4 (supplies) were disallowed as having been used for general educational purposes rather than for the needs of the project. The grantee contested that audit finding and was requested in the Order to Clarify the Record to establish that the expenditures were for the project. The grantee has been unable to do so, assigning as reasons inefficient administration under a former superintendent, loss of records in a move in January 1976, a break-in in the spring of 1977 and flooding of offices caused by a broken water line in December 1978. The grantee claims also that the audit report contains overly strict interpretations of the regulations. As noted in the previous order, the grant was made to the school district as an institutional entity and that entity is responsible for accounting for the proper use of funds. It cannot escape that responsibility by pointing to the shortcomings of its own prior administrators.

We might be able to view with more tolerance a situation where records became unavailable through no fault of the grantee. Here, however, all of the events which are stated to have affected the availability of records occurred after 1975. The audit report was issued December 31, 1975. Prior to issuance of that report the audit agency furnished proposed findings to the grantee and invited it to respond to them. Those responses are included in the report as issued December 31, 1975. None of the grantee's responses, however, offered documentation to dispute the audit findings. There is reason, therefore, to assume that the grantee has not been disadvantaged by the subsequent damage to its records.

The grantee having shown no documentation to support inclusion of these items as project expenditures, there is no basis for asserting that the audit action was based on an overly strict application of the regulations.

II

The amount of \$61,161 for construction costs and part of the \$24,472 for supplies were disallowed because of use for construction of a combination gymnasium and vocational educational facility. The grant funds were not available for construction except they could be used for "minor remodeling of classroom or other space used for such programs currently meeting the special educational needs of Indian children." 45 CFR 186.19(b). "Minor remodeling" was defined as minor alternations in a previously completed building and as excluding structural alterations to buildings and building construction. 45 CFR 186.2. The grantee has not shown that any of the following justifications assigned for the disallowance were inaccurate: (1) the activity was not included in the approved project (2) the expenditures were for construction which went beyond permissible minor alterations because they were for the creation of entirely new space, and (3) there was no previously completed building to which alterations could be made. Instead these expenditures represented part of the cost of expanding a building from a gymnasium which was approved for construction in February 1973 and which was still in process of construction at the time of the audit in December 1974.

The disallowed items apparently were for increasing the size of what was started as a gymnasium, so it would include vocational education classrooms. Perhaps that was a highly desirable action, but one for which project funds were not properly available.

III

The grantee purchased five units of heavy-duty construction equipment for which it charged \$45,863 to project expenditures on the basis that the equipment was intended to be used for instruction in the vocational education instruction component of the project. It explained that it was not able to obtain instructors so it used the equipment in the maintenance of school district property.

The Order to Clarify (which, incidentally, through typographical error gives the amount as \$5,863) requested that the grantee submit evidence of its planning for such a course, to show the efforts it has made to obtain teachers, and to state whether such courses have been instituted to this date. The grantee also was asked to justify charging large expenditures to the project if it had no reasonable assurance that the equipment could be use in project activities (i.e. for vocational education)

The grantee's reply fails to provide any basis for a belief that there was a reasonable need to purchase the equipment for vocational education instruction. The reply is as follows:

"Evidence detailing the planning of the school for offering courses in the operation of this equipment could not be found nor was documentation of attempts to find and employ a teacher available. The course was never instituted because of the inability of the District to locate a qualified teacher. Due to the location of the District it is extremely difficult to find qualified teachers for regular school subject areas let alone for a specialty subject. The District still sees a need for training students in this area and is still attempting to put together such a program."

The grantee ignored our request that it explain why it thought acquisition of such expensive equipment could be justified when it had no reasonable assurance of being able to provide the vocational education instruction. In fact its response demonstrates the unreasonableness of making large equipment expenditures when there were obstacles to obtaining a qualified instructor, which obstacles have continued over the several years following the purchase of the equipment and continue to this date.

IV

The final item of \$1,204 included in the disallowance is made up of \$818 for an incorrect computation of indirect costs by the Apache County Superintendent and \$386 representing the charge of indirect costs with respect to disallowed expenditures for salaries and supplies. The only ground the grantee gave for its appeal of this item was that the overcharge by the office of the Apache County Superintendent should be collected by the Federal Government from that office. The Order to Clarify the Record stated that such an adjustment between the grantee and the county is for local or local and state resolution.

Disposition

The conclusions expressed by the Chairman in the Order to Clarify the Record are adopted for purpose of this decision. We note the grantee's continued assertion that the expenditures benefited its students and that

the school district has severe financial problems as well as other difficult problems which result from its geographic and cultural composition. These arguments, however, are not properly addressed to us because we have no authority to base our decision on them. We can only determine whether the grantee has expended the disallowed funds consistently with the requirements applicable to the project for which the grant was made. The grantee has failed to submit documentation or any other proper basis for a determination that any item was improperly disallowed. The appeal, therefore, is denied.

/s/ Malcolm S. Mason

/s/ Francis D. DeGeorge

/s/ Edwin H. Yourman, Panel Chairman