

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Head Start of New Hanover
County, Inc.
Docket No. 78-94
Decision No. 65

DATE:
SEP. 26, 1979

DECISION

Head Start of New Hanover County, Inc. ("grantee") appealed to the Board from the determination of the Director, Grants Administration Division, Office of Human Development Services (OHDS), Region IV, dated April 28, 1978, disallowing a total of \$6,485 charged to grantee's Head Start grant for the year ended May 31, 1977. This amount consisted of \$1,001 charged for out-of-town travel for which OHDS found there was no documentation, and \$5,484 by which OHDS found grantee fell short of the non-Federal share requirement applicable to the grant. The record on which this decision is based consists of grantee's application for review, OHDS's response to the appeal, and the responses of both parties to an Order to Develop Record issued by the Board Chairman.

I. Non-Federal Share

The non-Federal share issue is no longer before the Board. Grantee in its application for review conceded that it was \$5,484 short of the non-Federal share requirement, and, although it advanced certain arguments which denied responsibility for the shortage, stated that it was trying to make up the shortage. In its response to the appeal, OHDS indicated that the notice of grant award for the year ending May 31, 1979, permitted grantee to make up the shortage by increasing that year's non-Federal contribution. In the Order to Develop Record, the Board Chairman stated that, in light of these facts, "it is assumed that this issue is no longer before the Board," but nevertheless gave grantee an opportunity to indicate whether it wished the Board to review the issue. Grantee's response to the Order does not contain any mention of the non-Federal share issue.

II. Travel Costs

OHDS's notification of disallowance stated that \$1,001 in travel costs was disallowed based on the findings in the report of an independent auditor. According to the audit report, grantee did not have any documentation for \$1,001 of the total of \$1,801 which it charged to the grant at a per diem rate for out-of-town travel. Grantee's application for review did not deny that the travel costs were not documented, but argued that the only documentation which was required was travel vouchers signed by an authorized grantee official, and that grantee's failure to obtain such written authorization should be excused since grantee was unaware of this requirement and did not exceed the amount budgeted for travel.

Since neither the notification of disallowance nor the audit report cited any specific requirement for documentation of travel costs, the Board's Executive Secretary requested that OHDS provide such citations in its response to the appeal. None of the three provisions cited by OHDS constitute a clear requirement binding on grantee for documentation of travel costs. We hold, however, that a recipient of Federal grant funds has an inherent responsibility to maintain some sort of documentation which establishes that the funds were properly expended, and that grantee has failed to live up to this responsibility with respect to the funds in question here.

OHDS cited as one basis for the disallowance 45 CFR 74.61(a), which requires that "[g]rant financial management systems" provide for "[r]ecords which adequately identify the source and application of funds for grant... activities" and for "[a]ccounting records which are supported by source documentation." The Order to Develop Record suggested that this provision requires simply that such systems be established, and that this requirement was satisfied since grantee had asserted without contradiction that it had a travel policy providing for \$25 a day per diem and requiring hotel receipts. The Order noted that this reading of the provision was supported by the Head Start Audit Guide (revised January 1977), which directs auditors to determine whether the grantee's accounting system (referencing specifically the financial management systems required by Section 74.61(a)) includes certain procedures, and to recommend needed improvements. The Audit Guide does not direct the auditors to recommend the disallowance of funds related to any deficiencies in the accounting system. (Head Start Audit Guide, p. 12.) OHDS's response to the Order did not comment on this interpretation of 45 CFR 74.61(a).

OHDS also cited as a basis for the disallowance another provision in the 1977 Head Start Audit Guide (published as part of a proposed rule but omitted from the final rule) which requires that "Head Start agencies...adopt personnel policies and procedures for themselves and delegate agencies covering...expenses incidental to official duties including travel and per diem...." The Order to Develop Record noted that, like 45 CFR 74.61(a), this provision appears only to require that grantee have a travel policy in effect. OHDS did not dispute this conclusion in its response to the Order.

OHDS cited as an additional basis for the disallowance provisions in the Head Start Audit Guide requiring that all travel expenses be supported by travel authorization documents, properly approved by an appropriate grantee official; that all travel vouchers be approved by an authorized grantee official; and that there be some indication that travel costs were grant related, and that travel was necessary for the performance of the grant. The Order observed that since the audit report indicates that other travel costs for which there was no written approval were not disallowed, it did not appear to be proper to base the disallowance of the costs in question here on grantee's failure to obtain written approval. The Order also noted that the Audit Guide states that the necessity of the travel can be established by "trip reports, interviews, etc." The Order indicated tentatively

that since there was no indication in the audit report that the auditors looked at trip reports or conducted interviews, there was no basis for holding that the costs should be disallowed as unnecessary for the performance of the grant. OHDS's response to the Order did not comment on the Order's analysis of these provisions.

In view of the fact that the provisions cited by OHDS as a basis for the disallowance are not clearly applicable by their own terms, we need not reach the question, raised in the Order to Develop Record, whether they were unenforceable against grantee on the ground that they were not published in the Federal Register as required by 42 U.S.C. 2928f(d). We note, however, that the Audit Guide on which OHDS relies was not issued until January 1977, seven months after the grant in question was awarded, and that, by OHDS's own admission, a copy of the Audit Guide was not mailed to grantee until February 25, 1977, when the grant year was three-quarters over. If OHDS expected the grantee to carry out its grant program in accordance with the provisions of the Audit Guide, it should at a minimum have given timely notice of those provisions to grantee.

In this instance, however, we find that the requirement for documentation of costs is so basic that OHDS need not rely for its disallowance on any specific provision in the applicable guidelines. (Cf. University of Minnesota, DGAB Decision No. 44, Docket No. 77-4, August 14, 1978, p. 3.) Since there was no requirement for a particular type of documentation, the Order to Develop Record suggested that if grantee could provide some proof, such as affidavits from the individuals involved, that the out-of-town trips in question were in fact made, that might provide adequate assurance as a practical matter that Federal funds were not improperly used. This suggestion was based on the observation that grantee's per diem rate was only \$25, and that, even assuming a hotel bill as low as \$15, the remaining \$10 would have been barely sufficient to cover the cost of food, leaving little room for any abuse of the per diem payment. Accordingly, grantee was requested to provide documentation, if any was available, showing that the out-of-town trips in question were in fact made, and OHDS was requested to comment on whether the documentation provided by grantee adequately assured that the funds in question were properly expended.

In response to the Order, grantee submitted a list which grantee claims identifies "trips" taken by staff members in 1976 but not documented sufficiently to meet the auditor's requirements. The costs claimed for the trips listed total \$1,161.05. In support of these costs, grantee submitted no documentation other than three "Affidavits to Verify Travel." Grantee states that the affidavits verify the attendance of staff members "other than the 3 staff members who are no longer with Head Start," which appears to be an admission that some of the costs claimed are not verified by the affidavits. The affidavits are signed by persons identified as the director of Head Start of New Hanover County, Inc., a secretary, and

a "PI/Soc. Ser./Coord.." Each states that the person signing attended one or more "Workshop[s] and/or conference[s]" in certain months of 1976 and was reimbursed "per diem and mileage at the approved rate." The affidavits themselves do not indicate the number of days for which travel costs were claimed or the sites of the workshops and conferences or their nature.

It is possible that grantee felt that the conferences and workshops were sufficiently identified in the list submitted, which does give general descriptions (such as "Handicap Workshop" and "Home Base and Split Session Conference") for four of the five trips listed and sites for all five of the conferences and workshops listed. Since this information is not in the affidavits, however, it is not clear that the affidavits relate to the costs claimed.

Grantee had been directed to submit documentation showing that the trips were in fact made. It does submit after-the-fact affidavits prepared for the purpose of this case. While after-the-fact documentation will not necessarily be rejected by the Board (cf. University of the Pacific, DGAB Decision No. 15, Docket No. 15, April 21, 1976, pages 3-4), such documentation is clearly less acceptable than contemporary records and must face a burden of persuasion which it must meet by its specificity and precision. The documentation supplied is vague, imprecise and incomplete. Grantee was directed to brief the question whether the documentation offered assures that the funds were properly expended. It has clearly not shown that that is the case. Possibly, if afforded a further opportunity to submit evidence and brief its significance, grantee might present support for some part of the remaining disallowance, but the kind of after-the-fact documentation supplied by grantee becomes even more unsatisfactory the more it is tailored to meet repeated invitations for proof. We do not feel that it is appropriate to offer grantee still one more opportunity to make a cogent case.

OHDS's response to the Order states only that the documentation is inadequate to support the travel costs in question without citing any particular deficiencies. We believe that it is clear even in the absence of briefing by OHDS that the documentation provided is not adequate to assure that the funds in question were properly expended. Accordingly, the appeal is denied.

/s/ David V. Dueks

/s/ Bernard E. Kelly

/s/ Malcolm S. Mason, Panel Chairman