

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: San Antonio Independent School District, Docket No. 28
Grant No. ESA-OE-6-73-0976
Audit Control No. 06-40101
Decision No. 23

DATE: June 29, 1976

DECISION

The San Antonio Independent School District appeals three audit disallowances under an Emergency School Aid Act (ESAA) basic grant and one disallowance for equipment acquired under a prior Emergency School Assistance Program (ESAP) grant. The audit reviewed activities of the ESAA basic grant from July 1, 1973, through October 31, 1973. The grant itself was for the full fiscal year ending June 30, 1974.

Our Statement Narrowing Issues was issued on April 14, 1976. It informed the parties that the record at that time failed to show a dispute of material facts and further advised of our intent to proceed on the basis of written briefs which we invited the parties to submit. Both parties have submitted materials and this matter is now ready for decision.

1. Use of ESAA Grant to Supplant Local Funds.

During the fiscal year ending June 30, 1973, the grantee maintained a staff of some 50 employees to handle fiscal matters relating to school district activities. Due to enrollment declines and a reduction in an ESAP grant, the grantee claims it budgeted for only 45 such staff for the following fiscal year. After the \$800,000 ESAA grant, with which we are concerned here, was approved, the five otherwise surplus employees were retained to service it. In the prior year the salaries and related costs of three of these five had been paid entirely from local funds and local funds paid 75% of the costs of the other two, the remaining costs for these two having been paid from the ESAP grant for that prior year. The grantee charged the full salaries of all five employees to the ESAA grant during the period under audit.

The auditor disallowed all the costs for the five employees, except for the proportion equivalent to that which ESAP funds had defrayed for two of the employees in the prior fiscal year. The bases of the auditor's disallowance were grantee's failure to comply with his assurance that the grant would be used only for additional costs of the program, the rule against use of the grant to supplant local funds and the rule which denies use of grant funds for the costs of an activity supported with funds from other sources during the fiscal year preceeding that for which assistance is sought, unless funds from the other source were reduced other than by action of the grantee.

Apparently the auditor reasoned that the portion of the costs for these employees which was paid from the ESAP grant the previous year was no longer available so it could be picked up by the ESAA grant. That portion of the costs amounting to 25% of the costs for two employees, was allowed and is not involved in this appeal.

The disallowance was \$9,416. through October 31, 1973, the closing date of the audit. The auditor estimated that \$26,806. should be disallowed for the full grant period in the absence of "corrective action" being taken by the grantee.

The grantee's "corrective action" was to make a retro-active adjustment in its records in December 1973, so that amounts initially charged to local funds the prior year were shown as charged to grants under Title I of the Elementary and Secondary Education Act. The grantee then maintained with apparent seriousness that as a result of this change its costs were not paid from local funds prior to July 1, 1973.

Even if the change were recognized, it would not resolve the problem because the Title I funds were also from a source other than ESAA. Our Statement Narrowing Issues invited a response on that point but the grantee failed to mention it. Of greater significance, however, the grantee's position ignores the clear purpose of the rules applied by the auditor. Those rules seek to carry out a Congressional directive that the ESAA grant be used only for activities which the grantee otherwise could not provide. To the extent that expenditures in the prior fiscal year were significant in this respect, that significance could not be diminished in the slightest by a bookkeeping transfer six months after the close of the fiscal year. We, therefore, give no recognition to the retroactive bookkeeping transaction.

The grantee's other argument on this item has more merit. It is that the five employees did not provide services in the prior period for any ESAA activity, there having been no ESAA grant in the prior year, and, therefore, the costs were for activities above those previously provided by the grantee.

The provisions intended to prevent use of an ESAA grant to fund activities which could be supported from other sources use as an important test whether in fact the activities previously had been supported from other sources. In that event the burden would be on the grantee to show continued unavailability of the other support. In this respect the ESAA regulations are considerably more strict than those applicable to ESAP, which were the subject of this Board's Decision No. 17 of May 28, 1976, concerning St. Landry Parish School Board, Docket No. 75-4. In ESAA, in addition to a requirement that the grant supplement and not supplant non-federal funds (45 CFR 185.13(g)) and that the grantee maintain its own efforts (185.13(i)), each grantee must assure the unavailability of non-Federal funds (185.13(c)) and further assure that the grant funds will be used solely to pay additional costs in carrying out the activities of the project and that the requested grant represents such additional cost (185.13(a)).

A test even more specific for this case is regulation section 185.13(a)(2) which provides that the cost of an activity supported by an applicant with funds from other sources during the prior fiscal year may not be considered as an additional cost to the applicant unless the funds from the other sources have been reduced other than by action of the applicant.

There is no claim that the local funds used for the cost of the employees in question have been reduced by other than grantee's action. The question is more basic: Was the fiscal service in the prior year an activity of the ESAA grant? Reading the entire regulation in context it could be argued that whatever function the grantee performed the prior year which could be used in the succeeding year to support the project, cannot be charged to the grant unless the prior year support has been reduced by other than the grantee's action. Such an argument is more compelling, however, if the activity is one which has substantive program content. For example, if the grantee maintained a special counseling activity during the prior year for students affected by desegregation, the cost of that activity could not be met from the ESAA grant in the succeeding year when it became incorporated into the project. The fiscal activity involved here, however, is an administrative

or auxiliary service. When the personnel involved were keeping fiscal records the prior year, their activities had no necessary connection with any service which would be rendered to students under the ESAA grant the following year. We thus distinguish between continuing an activity which can stand on its own as a project activity and one which is not inherently an ESAA activity (e.g., keeping fiscal records) but can be supported only because the activity is auxiliary to other ESAA services (e.g., keeping records related to ESAA expenditures). As indicated, in the St. Landry Parish decision, supra, the requirement that the grant be used to supplement and not supplant other funds is not applicable to a disallowance such as this because one cannot say here that the grantee would have spent any of this money for anything that would qualify as an ESAA activity in the absence of the ESAA grant. Had there been no such grant there would have been no need of fiscal records which an ESAA grant may appropriately support.

The provision of 45 CFR 185.13(c) which requires the grantee to assure that it is "not reasonably able" to provide the ESAA assistance from non-federal sources is more properly applied in determining eligibility for the grant. It cannot be applied to the audit exception since we do not know what the grantee's fiscal ability was in the year covered by the grant.^{1/} Accordingly, the expenditures discussed under this heading should be allowed.

2. Allocation of Special Programs Section Costs.

The Special Programs Section of the grantee furnished certain administrative services for all of the grantee's 17 federally assisted programs which in fiscal year 1974 were budgeted at more than six million dollars. ESAA grants constituted about 13% of these funds but 89% of the total Special

-
1. The grantee states that the Office of Education had refused to allow amounts for fiscal administration in the budget for later fiscal years. The time of grant approval would seem to be appropriate for such action through a determination that the grantee was not in need of the grant funds to defray the cost of the fiscal activity connected with administration of the ESAA project.

Programs salaries were charged directly to the ESAA grants. Also all telephone expenses were charged directly to ESAA grants, including a number of long distance calls to the Texas Education Agency which has no jurisdiction over such grants.

The Assistant Director for the Special Programs Section told the auditors that the staff devoted about 30% of its time to basic ESAA grants, 10% to bilingual ESAA grants and 5% to metropolitan ESAA grants. The remaining 55% of time was spent on other types of grants. Since the audit covered only ESAA basic grants, the findings allowed 30% of the section's expenditures. This constituted an allowance of \$15,150 which is a reduction of \$29,650 of the amount of the ESAA basic grant budgeted for such purpose.

The grantee points out that it has numerous employees other than those in the Special Programs Section engaged in grant administration and that rather than fund portions of salaries of many who spent part of their time administering the ESAA basic grant, it selected the salaries of the four Section employees as providing an amount which represented the cost to the grantee of the various administrative services provided for that grant. This simplified record keeping and time reporting. The grantee asserts this method "has been accepted by other auditors of various federal programs." It cites no policy in support of such a method although our Statement Narrowing Issues requested that it do so.

The Regional Commissioner points out that number five of the terms and conditions applicable to ESAA grants as published in 38 FR 3468 of February 6, 1973, requires the grantee to keep records relating to the expenditures of the grant funds "including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the grant."^{2/}

-
2. The Regional Commissioner submitted this provision in response to footnote 2 of our Statement Narrowing Issues, which noted that we had not been referred to any applicable regulation on required records. The grantee had an opportunity to comment on the response of the Regional Commissioner but did not do so.

The auditor and the Regional Commissioner have applied this provision favorably to the grantee by accepting its estimate that 30% of time was spent in connection with the basic ESAA grant under audit and the disallowance was for costs charged in excess of that percentage. The terms and conditions referred to above might have supported a disallowance of the entire amount for failure to have supporting information as to the amount applicable to the basic ESAA grant.

The grantee lists expenses totaling \$45,131.20 which it attributes to the ESAA basic grant and which is more than the \$44,800 claimed for that purpose. Moreover, it asserts that an estimated \$465,324 of expenses are incurred in administering the Federal grants, excluding direct secretarial and clerical employees, and that the share attributable to the grant under audit is 12.7% for a total cost of \$59,200.

In effect the grantee says that while its records overstated the share of the Special Programs Section costs which could be attributed to ESAA activities, consideration should be given to other services performed for the ESAA project which were never recorded as a charge to that grant. To do so would be completely out of harmony with the condition cited above requiring that records and supporting documents be kept for charges to the Federal grant. The condition is intended to carry out the expectation of Congress for documentation of expenditures as expressed in Section 434(a) of the General Education Provisions Act, 20 U.S.C. 1232c(a)(1). We, therefore, sustain the disallowance of excess charges of the Special Programs Section and the denial of consideration of the cost of other units which were not charged to the ESAA project even though they might have provided support for it.^{3/}

-
3. In addition to the grantee's failure to maintain records to support the other costs as attributable to the ESAA grant, the fact that the grantee was defraying them from other sources during the year for which the grant was made would indicate that they should not be charged to the ESAA project under 45 CFR 185.13(a), (c), and (g) referred to previously in this decision.

3. Costs of Preparation of "Follow-on" Proposals.

This item involves the claim that employees whose salaries were totally charged to the grant spent a part of their time in preparing "follow-on" proposals for later grants, an activity which may not be charged to the current grant. The auditor reported that the Special Programs Section Assistant Director estimated the time involved was between 75 and 125 personnel days so the US/OE Regional Commissioner requested an adjustment of \$12,500, representing 125 personnel days at an estimated \$100 per day. The grantee challenged this computation saying that "this proposal" was prepared by Dr. Paul Kantz, Associate Superintendent, whose salary came from local funds, based partially on information developed from the prior ESAA and ESAP grants.

The grantee also challenged the auditor's assertion that the grantee's official had estimated 75 to 125 personnel days for preparation of the follow-on. It submitted a letter from the official who stated that the inquiry came by telephone. He understood it was a survey of the time spent by large school districts for this purpose and he gave a spur of the moment guess, including time spent by various personnel from whom data are obtained, regardless of the source of funds which pay their salaries. He did not intend to imply that all of this was Special Programs Section time.

After receipt of our Statement Narrowing Issues the grantee asserted that at the time of the audit the only follow-on proposal possibly involved was for the year 1973-1974 which was submitted in the Spring of 1973 and, therefore, the ESAA grant which did not commence until July 1, 1973 could not have been used. The grantee stated also that all proposals involved were prepared by an Assistant Superintendent and his secretary, whose costs were paid with local funds.

Although the Regional Commissioner was given an opportunity to respond to these assertions, he has not done so. We must treat the Superintendent's statement as the equivalent of one under oath since it is made under a similar penalty for falsification involving, as it does, a claim for Federal funds. 18 U.S.C. 1001. On this basis, and in the absence of contrary

information from the Regional Commissioner, the record fails to support a use of personnel whose costs were charged to the grant for preparation of a follow-on proposal. The questioned expenditure under this heading should therefore be allowed.

4. Equipment Acquired Under an Emergency School Aid Program Grant (ESAP) But Not Used for Program Purposes.

Unlike the preceding adjustments, this involves expenditures of funds from an ESAP grant. The grantee acquired various items of photographic and sound equipment which the grantee asserts were intended for the community information program under ESAP grant No. OEG-6-71-0340. This grant ran from the period October 19, 1970, through September 4, 1971, with an automatic extension of three months if the activities could be concluded during that period. The equipment was purchased because the grantee thought the program would be continued at substantially the same level for succeeding periods but in fact the succeeding grant was reduced by 90%. Thereupon the grantee stored the equipment and later transferred it to other uses. Apparently, at least part of the later use was for vocational instruction under another Federally assisted program. It is not clear to what extent any of the equipment was ever used in the ESAP program. It is clear that at least the \$6,346.81 editor listed below was never so used.

The grantee disagrees with the auditor's listing and submits invoices which reflect the following:

<u>Invoice Date</u>	<u>Description</u>	<u>Price After Any Discounts Shown</u>
3/30/71	Auricon camera, etc.	\$1,915.65
3/23/71	Light meter, tripod	396.30
5/6/71	Ang. zoom & misc. equip.	3,630.44
4/1/71	Splicer and mike	584.57
4/30/71	Mike and equip.	420.17
10/28/71	Stenbeck Editor	6,346.81
		<u>\$13,293.94</u>

The audit report indicated that an adjustment should be made for the value of the property as diverted from program activities and the grantee thereupon undertook to fix a value by obtaining three bids on the equipment, all dated April 23, 1974. Two were for zero and one for a total of \$950. The

grantee offered to make an adjustment of \$950 or to return the equipment for disposition by the Government.^{4/}

The US/OE Regional Commissioner took the position that the adjustment should be in the amount of the full acquisition cost because "data indicates the equipment was in use little or not at all in support of the activity for which it was intended."

The editing equipment listed above constituted almost one-half the cost of all the equipment. The grantee took steps to obtain editing equipment as early as November 1970, but it was told delivery would be delayed. After cancellation of one order, delivery was obtained on another machine on October 28, 1971. Since the normal expiration date of the project was September 4, and the delivery was in the three month period which represented the automatic extension for concluding project activities, this item clearly was not needed for the project and in fact was never used for project purposes. We asked the grantee to comment upon the need for the equipment at the time when it was first irrevocably committed to consummate the purchase. Since it has not provided such information, we proceed on the basis that the grantee had ample opportunity to cancel the order for the editor after it learned that the contemplated project would not be continued beyond September 4, 1971, except for the three month period of concluding activities.^{5/}

-
4. The bids are not relevant in view of our disposition here. We express astonishment, however, that the grantee does not seek to assign a reason for its inability to obtain better bids. The grantee's representation that equipment (much of which was in such short supply that delivery required the better part of a year) for which it decided to expend more than \$13,000 of the federal grant, had a value of only \$950 in less than two years, during most of which time it was in storage, is simply incredible.
 5. This gives the grantee the benefit of an assumption that it was warranted initially in planning the purchase of equipment which could be used only in event of a grant continuation, when there was no tangible basis for assuming that the grant would be continued.

The grantee has stated that "some use of the equipment [other than the editor] was made prior to the cancellation of the project," but fails to specify the extent of that use. It would appear that the camera and other production equipment would be of extremely limited use without availability of editing capability. When the grantee knew that delivery of an editor would be delayed for an uncertain period, it should have questioned the desirability of immediately going through with the purchase of the camera, sound, and related equipment.

Under the circumstances the purchase of the editor clearly was not in support of the terminating ESAP project. To a lesser degree, the other equipment also was not in support of the project because of its limited value without editing equipment.

The terms and conditions applicable to the grant, published at 35 FR 13447 on August 22, 1970, made HEW Grants Administration Manual Chapters 1-410 and 5-60 applicable to this grant. Paragraphs 10 and 40 of Chapter 1-410 required expenditures for equipment to be limited to that necessary for successful execution of the grant activities and stated such expenditures must give effect to the function of the equipment in facilitating the successful execution of the project. Chapter 5-60 incorporated the provisions of OMB Circular A-87 which provided that all expenditures must be necessary and reasonable for the proper administration of the project. Since the grantee has failed to come forward with an explanation of why it was desirable to purchase any of the equipment in the absence of having editing equipment or why it took delivery of the editor during the concluding phase of the grant, we hold that the expenditures for all of the equipment should be disallowed.

/s/ David V. Dukes

/s/ Thomas Malone

/s/ Edwin H. Yourman, Panel Chairman