

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Educational Service District                      DATE: May 10, 1977  
          No. 104  
          Ephrata, Washington  
          Docket No. 76-11  
          Decision No. 37

DECISION

Educational Service District No. 104, Grantee, appeals from a determination of the Director, Grant and Procurement Management Division, Office of Education ("Director"), disallowing an expenditure and demanding a refund.

In 1971, Grantee was awarded an initial grant for the period of 3/26/1971 to 6/25/71 for the development of a Bilingual Education Program under Title VII of the Elementary and Secondary Education Act of 1965 (20 USC 880b). This phase I grant was followed by an award of an operating grant for the period of 7/7/1971 to 6/30/1972. The item disallowed represents an expenditure in the amount of \$2,500 charged to the grant for the 1971-2 funding period as a salary allocation to the school superintendent of the grantee district in anticipation that the size and complexity of the Bilingual Program would cause a substantial amount of extra work for the superintendent. It is alleged that such work was in fact performed.

As ground for disallowing the expenditure, the Director cites grantee's failure to mention remuneration for the superintendent in the original project proposals or budgets in connection with the phase I or phase II grant applications; that the grant award was not amended to show such remuneration; that the documentation submitted by the grantee does not adequately justify a charge of \$2,500 and that, in any event, the superintendent would be expected, by virtue of her position, to spend a certain amount of time in connection with the bilingual education project as with any other project of educational concern to the school district.

In support of the appeal grantee points out that in addition to the Office of Education grant, its Bilingual Project was also, during 1971-2, the beneficiary of a Head Start grant, for a total in excess of \$217,000, constituting 34% of the entire operating budget of the school district for that year and that the sum of \$2,500 cost for salary allocation is only somewhat in excess of 1% of the total of the combined grants. Such a rate, it is contended, would have been considered "extremely reasonable" had indirect costs been allowed.

Grantee did not have an established indirect cost rate or base during the pertinent period.

We see no merit in grantee's argument. Its position does not consist with the concept or function of budget in the grants field, generally, and as specifically exemplified in section 11 of the Grant Terms and Conditions attached to the grant herein in terms of "...amount of funds approved by the Office of Education for designated services..." (emphasis added). The Notification of Grant Award for phase I, the initial project development grant, put grantee on notice that fund support for phase II of the Bilingual Education Program (the funding for 1971-2) would be awarded only after submission and approval of an acceptable proposal for operation and budget.

In view of grantee's assertion that it had anticipated the need of extra work by its superintendent by reason of the addition of the Bilingual Program to its other activities, it is remarkable that the breakdown of the functional classifications in grantee's proposed phase II grant does not in any way refer to the superintendent. Grantee's argument for the allowability of the \$2,500 for allocation of salary on the basis of a percentage formula might be appropriate to a consideration of indirect cost, a non-existing context in view of the admitted fact that no indirect rate or base had been established for the 1971-2 period. Nor are we provided with any evidentiary basis for determining whether a salary allocation in an amount exceeding 1% of the total project funding is "extremely" reasonable, or even reasonable. Especially is this true in the face of a total absence of data in the appeal file concerning the superintendent's overall remuneration for official services, and the proportion of time, out of the total, devoted to the grant project during the relevant period.

A further infirmity in grantee's position is demonstrated by its Response to the Audit Findings. That document contains an outline of meetings and conferences in which the Superintendent participated and a listing of telephone calls, some of which are unidentified, made by her in furtherance of the Bilingual Education Program. But an examination of that document reveals that a substantial part of the enumerated services related to the Head Start, rather than to the Office of Education Grant. 45 CFR, Part 100, App. B, provides that salaries of employees chargeable to more than one grant program should be supported by appropriate time distribution records.

In addition to the evidentiary and procedural reasons which militate against grantee's position, it appears to us that the expenditure considered herein does not qualify as an inherently allowable cost item.

Section 4.b of the Grant Terms and Conditions prescribes that allowability of costs incurred under this grant shall be determined by principles set forth in referenced documents including Chapter 5-60 of the Department of Health, Education and Welfare Grants Administration Manual (also identified as Circular A-87, promulgated May 8, 1968.) Attachment A, B.9 to this Circular, defines a local unit (of Government) as meaning "Any political subdivision of Government, below State level". Attachment B, D.6 thereto provides: "The salaries of...the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable."

A superintendent of schools in a district like Grantee herein is, of course, its chief executive officer, and the generality of the regulatory definition affords no occasion for doubting the status of the appellant as a local unit of Government. This would seem to be especially true with regard to an Educational Service District which normally possesses considerable attributes of political autonomy.

The Office of Education Regulation 45 CFR 100c brings Title VII of the Elementary and Secondary Education Act of 1965 (20 USC 880d) under which the grant herein was made, within the purview of #100c.2(3) which provides: "Expenditures for the Board of Education or other governing body of the school district for the compensation of the chief administrative officer of the school district are not to be included as administrative charges for the purpose of this paragraph and are not to be charged to the Federal program involved on an indirect or direct cost basis."

While it is true that the last cited Regulation was not promulgated before November 6, 1973, a date subsequent to the occurrence of the transaction considered herein and, therefore, not binding of its own force, it possesses a relevance in the premises by virtue of its consistency in contents as well as language, with the relevant provisions of Circular A-87 referred to among the terms and conditions of this grant.

Provisions fully in accord with the foregoing are found in Regulations 45 CFR 74.3, which defines a school district as a local unit of Government and in Appendix C, Part I B.9, and Part II, 6 thereto. Allowing for the fact that these Regulations have not been formally adopted by the Office of Education, it is obvious that they are in pari materia with the analogous OE Regulations in Part 100c, and that they clearly reinforce the policy relating to the treatment of salaries of chief executive officers of school districts as allowable costs.

For the reasons stated, we affirm the determination of disallowance and refund of the sum of \$2,500.

/s/ Irving Wilner, Panel Chairman

/s/ Stuart H. Clarke

/s/ Thomas Malone