

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: University of Guam DATE: November 29, 1976
Audit Control No. 44034-09
Docket No. 76-5
Decision No. 28

DECISION

Auditors from the United States Department of the Interior questioned \$13,746 of grantee's claimed Federal costs for fiscal years 1971 and 1972 of which \$140 was later allowed by the U.S. Office of Education. Three separate programs were involved in the disallowance made by the Office of Education on January 14, 1976. The programs and disallowances are these:

1. Upward Bound Program -

<u>FY 1971</u>	<u>FY 1972</u>
\$3,933	\$3,806
2. Education Professions Development Act Part V-D Program - \$5,107
3. Education Professions Development Act Part B-2 Program - \$760
4. Total disallowed (deducting the above mentioned \$140) - \$13,606.

Upward Bound Program

In the Upward Bound Program, grantee exceeded the maximum Federal per student cost which must not, when averaged over the entire grant period, exceed \$1,440 per year per student (80 percent of \$150 per month per student) as established by Section 408(c) of the Higher Education Act of 1965 and the 1970-71 Upward Bound Guidelines. According to 408(c), the Commissioner of Education could approve assistance in excess of 80% of the cost of carrying out the program if he determined, "in accordance with regulations establishing objective criteria," that such action was required in furtherance of the purposes of the program. Such regulations have not been promulgated, however.

Grantee in its appeal to this Board of February 18, 1976, admits that it was in fact aware of the per student limitation, but appears to argue that the questioned expenditures were retroactively authorized by a 25% cost of living adjustment approved by DHEW in 1974. The \$1,440 per student per year expenditure limit in fiscal years 1971 and 1972 was a statutory requirement. The 25% adjustment on which grantee relies, even if it were permissible for the grant years in question, appears to pertain only to eligibility criteria and not at all to Federal share limitation, and as such is not a defense to the excess cost per student per month.

Education Professions Development Act Part V-D

The audit found improper personnel costs in grantee's EPDA Part V-D Program for advanced training and retraining of personnel serving in programs of education other than higher education. The project director spent less than 100% of his working time on the project because he carried a part-time teaching load during the period of the project. Grantee admits this fact and the fact that the director received no additional compensation for his teaching duties but argues that it is reasonable to assign such a person some teaching duties as long as the teaching does not interfere with the timely completion of the project.

The facts seem to be clear that the project was completed satisfactorily and on time. It is also clear that only that portion of the salary of an employee assigned to a Federal project which is comparable to the portion of his time devoted to the project may be charged to the grant. Section J.7(d) of OMB Circular A-21 extended to training grants by Supplement B, (adopted in OE regulations in substantially the same terms 45 CFR §100c Appendix C, Part I, ¶J.7.d and Part II, ¶J.) states, in part, that:

"The direct cost charged to organized research for the personal services of professorial and professional staff will be based on institutional payroll systems. Such institutional payroll systems must be supported by...an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member..."

Education Professions Development Act Part B-2

Two participants in grantee's EPDA Part B-2 Program, which was designed to attract and qualify teachers to meet critical teacher shortages, were employed as full-time teachers in the semester immediately preceding the training program according to both grantee and OE. Both participants were uncertified at the time of their enrollment in the Program. The Program guidelines provide the following eligibility criteria:

"Only persons 'otherwise engaged' i.e., not presently engaged in the field of education are eligible to participate in the training projects...Teacher trainees are commonly recruited from seven major categories...former teachers who have not taught for at least one semester immediately preceding the training program..." (emphasis added).

There appeared to be no dispute as to the legal requirement of a limit in fiscal years 1971 and 1972 of \$1,440 per student per year in the Upward Bound Program. There appeared to be no dispute as to the legal requirement that an employee assigned to a Federal project may only have charged to the program grant that portion of his compensation which corresponds to the portion of his time spent on the project, regardless of the effect on that project of non-project work. There also appeared to be no dispute that the two teachers in the EPDA Part B-2 Program were full-time teachers immediately preceding the training program and that program guidelines specifically disqualify persons of this type from the program.

Accordingly, the appellant was directed to show cause in writing why the Board should not proceed to decision forthwith on the record already made; identifying the respects, if any, in which a statement of the facts and issues substantially as set forth above was materially incomplete or inaccurate, and the reasons, if any, why the appeal should not be rejected for violation of the statutory and regulatory provisions cited above; accompanied by any briefing on any aspect of the case the appellant wished to submit. Grantee was also directed to furnish a copy of the notices of grant awarded for Grant No. 0-70-4494(453) (Upward Bound Program), Grant No. OEG-0-71-1862(725) (EPDA Part V-D Program) and Grant No. OEG 0-1-021410-2752(731) (EPDA Part B-2 Program).

Grantee has responded to the Order to Show Cause. It did not furnish the notices of grant awarded. These were required because they might furnish an argument in support of grantee's position. Its failure to furnish these documents does not however appear to affect the result, since grantee's response confirms that it has no additional information to present; that it admittedly exceeded the allowable expenses for students (but, it argues, in doing so, made the program more beneficial to the students); that it did not comply with the applicable EPDA regulations (but it argues, in doing so accomplished the basic mission of the project); and that it charged for 100% of the time of the project director who did not spend 100% of his time on the project.

CONCLUSION

The violations are thus clear. The policy arguments, while possibly persuasive, call for a change of statute or a change of regulation. They do not justify a clear violation of the terms under which grantee requested and accepted Federal funds. The appeal is denied.

/s/ Stuart H. Clark

/s/ Bernard E. Kelly

/s/ Malcolm S. Mason, Panel Chairman