

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

Subject: American Indian Center of Dallas, Inc.  
Docket No. 76-19  
Decision No. 52

DATE: DEC. 4, 1978

DECISION

History of Case

This case involves an appeal by the American Indian Center of Dallas, Inc. (grantee) from the disallowance by the Office of Education (OE) of \$3500 paid by the grantee to salaried employees in the lieu of fringe benefits. The project budget, as approved, provided that fringe benefits would not exceed 15 per cent of base salaries. The \$3500 figure represents the amount by which the payments in lieu of fringes exceeded 15 percent of the base salaries of the employees involved. OE has withdrawn its initial objection to the cash form of the compensation, but maintains that the item should be disallowed since the grantee did not obtain prior approval of the deviation from the approved budget. The overall figures for the project in question were: \$113,348 actual and \$114,000 budgeted. The regulations provide that minor deviations from the approved budget do not require prior approval unless they constitute a material change in the administration of a project. 45 CFR 100a.29(b)(2). What constitutes a minor deviation in the case of a private non-profit grantee is not spelled out, although it is in the case of a state or local government grantee. 45 CFR 100a.29(a)(3)(iii). If this grantee were a state or local government, the deviation would be minor by the plain operation of that regulation.

The Board, in an Order to Show Cause dated January 28, 1978, posed the following questions to grantee and OE:

1. Why the expenditure of \$3,504 should not be considered minor within the meaning of 45 CFR 100a.29(b) (which would remove it from the prior approval requirement), and
2. Why the expenditure should not be regarded as unreasonable.

OE's response, on the first question, apparently concedes that the expenditure is minor, but argues that it is a "material change in the administrative portion of the approved project," since it almost doubles the fringe benefit amount. If the Board agreed with this position, the amount would be disallowed since grantee did not obtain prior approval. The term, "material change in the

content or administration of the approved project" which appears in 45 CFR 100a.29(b)(2), is not defined in the regulation. In our view, however, it must mean more than simply increasing the costs. Rather, it would mean a change which could affect the outcome of the project, such as a change in the organization and staffing, the extent of use of consultants, or the like. All we are talking about here is whether the secretaries are paid more or less in lieu of fringes. Apart from questions of morale which might arise, the change, concededly "minor," would be highly unlikely to have any effect on the outcome of the project. Accordingly, we hold that the expenditure of the additional \$3,500 is "minor," within the meaning of 45 CFR 100a.29(b), and is not a "material change in the administration of the project" within the meaning of 45 CFR 100a.29(b)(2).

OE's response asserts further that grantee has not substantiated the increased expenditures as required by 45 CFR 100a.477. The response, which raises this issue for the first time, does not set forth any specific deficiencies in grantee's recordkeeping in this regard. There is no reason to believe that the fact of the expenditure, the purpose, the amounts, and payees were not properly recorded. If OE is saying that grantee's files do not contain documentation giving the reasons for the increase, it is not shown here what the records had or did not have. But, assuming the records contained no material on this aspect of the expenditure (its reasons or reasonableness, as opposed to the who, what, when and where), grantee should not be precluded from presenting such information in defense of the expenditure in this proceeding, even if the information was not maintained in grantee's records.

With regard to the reasonableness of the expenditure, which is required by the regulations, even if there is prior approval or none is required, grantee's explanation is that costs were in line with what an individual would pay for those items, and that, because of the small size of grantee's operation at the time in question, it was not practicable for grantee to procure them at a lower cost. Grantee did not provide any support for the specific amount expended, aside from an undocumented reference to an Internal Revenue Service action approving fringe benefits amounting to 25% of base salary.

In our view, the significance of the 15% ratio in the approved budget is in terms of the burden of proof: if grantee had been able to keep the cost of fringes within that measure, OE would be required to produce some evidence of unreasonableness to disallow any portion of the expenditure. On the other hand, where, as here, grantee has exceeded the 15% figure, the burden should be on grantee to demonstrate the reasonableness of the expenditure.

Since, in its initial review of the project, OE did not raise the question of the reasonableness of the specific amount expended on this item (presumably because it saw no reason to do so, given its objection to the cash form of compensation and the grantee's failure to obtain prior approval of the excess over 15%), we believe it would be premature for the Board to rule on that

question (the reasonableness of the specific amount). Accordingly, we limit the holding in this decision to the construction of section 100a.29, and return the case to OE with the following instructions:

- 1) Within 30 days of the date of this opinion, OE shall advise grantee if it questions the reasonableness of the expenditure in excess of 15%.
- 2) If OE does not so question the reasonableness of the excess, it will be deemed allowed.
- 3) If OE questions the reasonableness of the excess, grantee shall have 30 days from the date of receipt of notice that the reasonableness of the excess is questioned, to demonstrate to OE that the excess was reasonable.
- 4) Grantee may offer in support of its claim of reasonableness evidence of comparable costs, including, but not limited to:
  - a) Contemporaneous costs to individuals of comparable benefits in the Dallas area,
  - b) Per capita costs of comparable benefits under public or private group plans,
  - c) Costs incurred by grantee when it converted to in-kind benefits in the next fiscal year.
- 5) Any such supporting materials shall be considered by OE without regard to whether grantee had maintained them in project files.

#### Conclusion

We hold that grantee's expenditures of \$3500 in excess of 15% of base salary is "minor" and not a "material change in the administration of the project" within the meaning of 45 CFR 100a.29, so that prior approval of OE was not required. With respect to the question of the reasonableness of such expenditure, we return the case to OE with instructions to proceed in accordance with Part II of this opinion.

/s/ Theodore A. Miles, Panel Chairman

/s/ Francis D. DeGeorge

/s/ Thomas Malone