

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: California State University, Chico
Docket No. 78-6
Decision No. 91

DATE: APR. 28, 1980

DECISION

This appeal concerns disallowances, dated December 29, 1977, made by the Office of Education pertaining to several grants and contracts, awarded to California State University, Chico, funded by the Department of Housing and Urban Development, the Department of Agriculture, the Office of Human Development, the Health Resources Administration, and the Office of Education. A disallowance, pertaining to an Alcohol, Drug Abuse and Mental Health Administration grant, included in the original disallowance letter, was resolved in favor of the grantee by the Office of Education Regional Commissioner, as HEW Action Official, by letter dated March 13, 1978, upon receipt of a copy of a September 15, 1977 letter from the agency. The September 15, 1977 letter, enclosed with the copy of the appeal sent by the grantee to the Office of Education, indicated that ADAMHA had accepted grantee's justification of the disallowed expenditure.

Neither the original appeal nor the disallowance letter accompanying it identified which of the disallowances were related to grants and which were related to contracts. The disallowances were identified only by granting entity, grant or contract number, and amount, as follows:
(1) HRA 70-4079--\$1,741, (2) USDA 21-79--\$1,267, (3) OHD OS-71-10--\$1,130, (4) OE-Critical Language Program--\$960, and (5) HUD CD-69-614--\$470.

Prior to requesting a response to the appeal from the agency, the Board issued a letter to the parties, dated April 24, 1978, asking the parties to comment on whether the Board had jurisdiction over the appeal of the disallowances relating to the grants funded by the Departments of Housing and Urban Development (CD-69-614) and Agriculture (USDA 21-79) in light of the jurisdiction of the Board as limited by 45 CFR 16.2 to certain disputes involving "grants awarded by a constituent agency of the Department of Health, Education, and Welfare" (HEW).

As neither party could persuasively establish authority for the Board taking jurisdiction of these two grants, the agency was informed that it did not have to respond to the appeal as it pertained to the non-HEW grants.

The agency's response to the appeal indicated that HRA 70-4079 and OHD OS-71-10 were contracts and stated, with respect to the OE-Critical Language Program grant disallowance, that due to "[t]he fact that our San Francisco office is no longer in existence and there is no grant number, we could not locate the files and are in no position to make any determination."

An Order to Show Cause, dated July 2, 1979, was issued to the parties directing the grantee to show cause why the appeal should not be dismissed with respect to the disputes pertaining to the grants funded by the Departments of Housing and Urban Development (CD-69-614) and Agriculture (USDA 21-79) and the contracts funded by the Health Resources Administration (HRA 70-40-79) and the Office of Human Development (OHD OS-71-10). The agency was directed to show cause why the grantee's appeal should not be granted with respect to the \$960 disallowance relating to the OE-Critical Language Program because the agency could provide no justification for the disallowance.

The grantee stated, in its response to the Order, that the part of the appeal relating to the non-HEW grants should not be rejected until the grantee heard from the grantor agencies regarding additional justifications (relating to the substantive issues of the case) that were submitted to the Office of Education.

The agency stated, in its response to the Order, that the \$960 relating to the Critical Language Program grant was for consultant services, "disallowed due to the lack of documentation because the Grantee did not adhere to the Cost Principles and Departmental procedures set forth on Pages 35 and 36 of the audit report." However, apparently because of its inability to locate the files, the agency has not provided the Board with the Audit Report, the date of grant award, the period of the grant, grant award documents, grant identification number, or specific description of the services disallowed. Accordingly, the agency has not sufficiently supported the basis for the disallowance.

Conclusions

The appeal is granted with respect to the \$960 disallowed in the OE-Critical Language Program grant.

With respect to the contracts funded by HEW (HRA 70-40-79 and OHD OS-71-10), and the non-HEW grants (USDA 21-79 and CD-69-614), the jurisdictional mandate of this Board is circumscribed precisely by the Board's regulations. 45 CFR 16.2 limits the Board's jurisdiction to disputes relating to grants funded by constituent agencies of HEW. Although 45 CFR §16.3(k) provides that the term "grant" includes "financial assistance when provided by contract," there has been no showing that the contracts involved here fall

within this provision. The appeal, therefore, is dismissed without reaching the merits with respect to these contracts and non-HEW grants.

/s/ Clarence M. Coster

/s/ Bernard E. Kelly

/s/ Frank Dell'Acqua, Panel Chairman