

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Pinebelt Association for Community Enhancement
Docket No. A-14-108
Decision No. 2611
December 22, 2014

DECISION

Pinebelt Association for Community Enhancement (PACE) appeals the August 1, 2014 decision of the Administration for Children and Families (ACF) to terminate PACE's grant funding and designation as a Head Start grantee. ACF based the termination on its finding that PACE failed to timely correct deficiencies ACF identified during a review of PACE's Head Start and Early Head Start programs.

ACF moved for summary judgment with respect to one deficiency based on its determination that PACE failed to comply with a Head Start regulation requiring grantees to implement policies and procedures for handling cases of suspected child abuse. ACF argued that there are no genuine issues of material fact regarding the existence of the deficiency or PACE's failure to timely correct it, and that ACF is thus entitled to judgment in its favor as a matter of law. For the reasons explained below, we grant ACF's motion and affirm the termination.

Legal Background

Head Start is a national program that promotes the school readiness of low-income children by providing them and their families with health, educational, nutritional, social, and other services to enhance their cognitive, social, and emotional development. 42 U.S.C. § 9831.¹ The Secretary of Health and Human Services (HHS) must review each Head Start grantee's program at least once every three years to determine whether it meets program performance standards. 42 U.S.C. § 9836a(c)(1)(A). If a review finds that a grantee has a "deficiency," the Head Start Act requires the Secretary to "initiate proceedings to terminate the designation of the agency [as a Head Start agency] unless

¹ The Head Start Act, Pub. L. No. 97-35, §§ 635-57 (1981), as amended, is codified at 42 U.S.C. §§ 9831 *et seq.* The current version of the Head Start Act is at <http://eclkc.ohs.acf.hhs.gov/hslc/standards/law>. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section.

the agency corrects the deficiency.” 42 U.S.C. § 9836a(e)(1)(C); *see also* 45 C.F.R. § 1303.14(b)(4) (grant may be terminated if the grantee “has failed to timely correct one or more deficiencies”). If a Head Start agency has one or more deficiencies, the Secretary conducts a follow-up review to determine if the grantee has corrected them. 42 U.S.C. § 9836a(c)(1)(C).

As relevant here, a “deficiency” includes “a systemic or substantial material failure of an agency in an area of performance that the Secretary determines involves . . . (i) a threat to the health, safety, or civil rights of children or staff” or “(iii) a failure to comply with standards related to early childhood development and health services” 42 U.S.C. § 9832(2)(A).²

The Secretary may require a grantee to correct a deficiency immediately, if the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of federal funds; within 90 days if the Secretary finds a 90-day period reasonable, in light of the nature and magnitude of the deficiency; or by the time specified in a Quality Improvement Plan (QIP) that the grantee must submit for the Secretary’s approval. 42 U.S.C. § 9836a(e)(1)(B), (e)(2)(A); *see also* 45 C.F.R. § 1304.60(f) (HHS will terminate or deny refunding if a Head Start grantee “fails to correct a deficiency, either immediately, or within the timeframe specified in the approved [QIP]”). A single uncorrected deficiency is sufficient to warrant termination of funding. 45 C.F.R. § 1303.14(b)(4) (authorizing termination for failure to timely correct “one or more deficiencies”); *see, e.g., Avoyelles Progress Action Comm., Inc.*, DAB No. 2559, at 8 (2014).

Head Start grantees are entitled to an evidentiary hearing before the Board to contest the basis for ACF’s termination decision. 45 C.F.R. §§ 1303.14(c)(2), 1303.16. In this case, ACF has asked the Board to grant summary judgment in its favor and, therefore, not hold a hearing. The Board has held that it is appropriate to grant summary judgment in a Head Start termination case when there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. *See, e.g., Camden Cnty. Council on Econ. Opportunity*, DAB No. 2116, at 3-4 (2007), *aff’d*, *Camden Cnty. Council on Econ. Opportunity v. U.S. Dep’t of Health & Human Servs.*, 586 F.3d 992 (D.C. Cir. 2009). The party moving for summary judgment bears the initial burden of showing the

² The Head Start regulations, which predate the definition of “deficiency” in the Head Start Act, similarly define deficiency as including “[a]n area or areas of performance in which an Early Head Start or Head Start grantee agency is not in compliance with State or Federal requirements, including but not limited to, the Head Start Act or one or more of the [Head Start] regulations . . . and which involves: (A) A threat to the health, safety, or civil rights of children or staff” or “(C) A failure to perform substantially the requirements related to Early Childhood Development and Health Services” 45 C.F.R. § 1304.3(a)(6).

basis for its motion and identifying the portions of the record that it believes demonstrate the absence of a genuine factual dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If a moving party carries its initial burden, the non-moving party must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)).³

To defeat an adequately supported summary judgment motion, the non-moving party may not rely on general denials in its pleadings or briefs, but must furnish evidence of a genuine dispute concerning a material fact—a fact that, if proven, would affect the outcome of the case under governing law. *Matsushita* at 586, n.11; *Celotex*, 477 U.S. at 322-24. In deciding a summary judgment motion, a tribunal must view the entire record in the light most favorable to the non-moving party, drawing all reasonable inferences from the evidence in that party’s favor. *Camden Cnty. Council*, DAB No. 2116, at 4.

Procedural background

ACF reviewed PACE’s Head Start and Early Head Start programs on December 17, 2013 and determined that PACE was not in compliance with three requirements in the program performance standards for Head Start grantees that ACF has published in the Head Start regulations at 45 C.F.R. Part 1304, and one requirement in the Head Start Act. ACF Ex. 3 (Notice of Deficiency Requiring Immediate Correction). ACF determined that PACE was not in compliance with three Head Start regulations requiring that grantees (1) implement policies and procedures for handling cases of suspected or known child abuse, (2) ensure that no child will be left alone or unsupervised, and (3) ensure that staff not engage in corporal punishment or physical abuse. *Id.*; 45 C.F.R. §§ 1304.22(a)(5), 1304.52(i)(1)(iii), 1304.52(i)(1)(iv). ACF also determined that PACE failed to comply with a Head Start Act requirement that grantees establish and implement procedures for the ongoing monitoring of their programs. ACF Ex. 3; 42 U.S.C. § 9836a(g)(3).

ACF’s finding that PACE failed to implement policies and procedures for handling cases of suspected child abuse, which is the basis for ACF’s motion for summary judgment, alleged that PACE did not take the actions required by its policy concerning child abuse

³ Effective December 10, 2010, Rule 56 of the Federal Rules of Civil Procedure was “revised to improve the procedures for presenting and deciding summary-judgment motions and to make the procedures more consistent with those already used in many courts.” Committee Notes on Rules - 2010 Amendment, available at http://www.law.cornell.edu/rules/frcp/rule_56. The revisions alter the language of the rule, but the “standard for granting summary judgment remains unchanged.” *Id.* Although the Federal Rules do not directly apply, the Board may use them as guidance.

and molestation after a parent complained to PACE staff that her child had been sexually abused by a PACE Head Start teacher. ACF Ex. 3, at 3-5. ACF determined that each of PACE's failures to comply with the requirements in the regulations and in the Head Start Act was a deficiency as defined in the Head Start Act. *Id.* at 3, 5-8.

ACF notified PACE of its findings in a "Notice of Deficiency Requiring Immediate Correction" dated April 14, 2014 that PACE received on April 15, 2014. ACF Ex. 3. ACF informed PACE that its failures to comply with the requirements in the regulations were deficiencies requiring immediate correction which, ACF stated, meant "situations that must be resolved at the point of discovery or up to 30 days from when the notice of deficiency is given." *Id.* at 2. ACF, as relevant here, gave PACE 30 days to correct the deficiency under the regulation requiring grantees to implement policies and procedures for handling cases of child abuse, and 10 days to correct the deficiencies under the regulations requiring grantees to ensure that no child will be left alone or unsupervised and that staff not engage in corporal punishment or physical abuse. *Id.* ACF also gave PACE 90 days to correct the program monitoring deficiency cited under the Head Start Act requirement. *Id.* ACF told PACE that it would conduct a follow-up review. *Id.* at 1.

ACF conducted the follow-up review on July 24, 2014, reviewed documentation that PACE submitted in response to the earlier findings, and determined that PACE had not corrected the previously-identified deficiencies. ACF Ex. 2 (Overview of Findings). By letter dated August 1, 2014, ACF gave PACE a copy of the Overview of Findings of the July 24, 2014 review and notified PACE that ACF was terminating PACE's designation as a Head Start and Early Head Start grantee and its grant funding due to PACE's failure to timely correct the deficiencies identified in the April 14, 2014 notice as needing immediate correction. ACF Ex. 1, at 1, 3 (citing 45 C.F.R. § 1303.14(b)(4)).

ACF in the termination letter notified PACE that it could appeal the termination to the Board and that its appeal must, among other requirements, specifically identify the factual findings PACE disputed and any legal issues raised and include any relevant documents that supported PACE's appeal. ACF Ex. 1, at 3-4.

PACE appealed the termination and requested a hearing. Regarding the deficiency for failure to implement policies and procedures for handling cases of suspected child abuse, the deficiency on which ACF later based its motion for summary judgment, PACE alleged that its executive director did not notify the PACE Board of Directors of the allegation of sexual abuse, which was made on February 17, 2012, until a Board meeting on May 16, 2014, after which PACE began assessing changes needed to address the deficiency. PACE submitted 12 exhibits with its appeal and stated that each member of its Board of Directors would "testify, under oath if necessary, that absolutely nothing was

disclosed to the Board [of Directors] concerning this incident at any time before the May 16, 2014 Board meeting.”⁴ PACE App. at 2. PACE subsequently identified three members of its Board of Directors who would testify at a hearing. PACE Ltr. (Nov. 11, 2014).

ACF in response argued, as relevant here, that there was no reason to hold a hearing because PACE had four uncorrected deficiencies and did not allege that it had timely corrected two of those deficiencies, including the deficiency for failure to respond as required by PACE’s policy to the allegation of sexual abuse by a Head Start teacher that is the subject of ACF’s motion for summary judgment. ACF Resp. at 15. ACF identified four witnesses who would testify at a hearing, and provided the declarations of two witnesses, the PACE health officer and the PACE program monitor/compliance officer. ACF Exs. 11, 12.

On November 14, 2014, prior to a scheduled pre-hearing conference, ACF moved for summary judgment on the ground that there was no dispute of fact material to its finding that PACE had failed to timely correct the deficiency based on failure to implement policies and procedures for handling cases of suspected child abuse. ACF Motion at 1. The Board then cancelled the pre-hearing conference, and PACE submitted its opposition to the motion for summary judgment.

Factual background

PACE’s “Guidelines for Abuse and Molestation” in effect at the time of the alleged abuse state that “[n]o staff member shall touch or cause anyone else to touch another child in a manner that would be considered as [m]olestation.” ACF Ex. 14, at 2. Its “Guidelines for Child Abuse and Molestation” in effect at that time state that (among other requirements) the executive director “will be notified IMMEDIATELY” of a “suspected incident of child abuse and/or molestation involving a staff member, volunteer, or substitute” and that the Hattiesburg police department “will be called in accordance with state law governing child abuse.” *Id.*, at 1. The staff person accused of abuse “will IMMEDIATELY be removed from the center and put on administrative leave until an investigation is done and the outcome of continued employment is determined.” *Id.* Additionally, the center director must complete a PACE reporting form that “will be given to the Child Abuse Officer who will investigate the incident to ensure all information is factual and complete; then report (within 2 hours) to the Executive

⁴ ACF does not argue, for purposes of summary judgment, that the May 16, 2014 meeting of the PACE Board of Directors was not within the 30-day time period for correcting the deficiency that ACF gave PACE in the April 14, 2014 Notice of Deficiency Requiring Immediate Correction, although PACE received that notice on April 15, 2014. ACF Ex. 3, at 9. Accordingly, we assume for purposes of our decision that the May 16, 2014 meeting took place within the 30-day correction period.

Director,” who “will ensure that a full internal investigation of the incident is done.” *Id.* A copy of the completed report must also be forwarded to the ACF Regional Office within 24 hours of the incident, and the police department “will be asked to provide information to the Executive Director to assist in determining the outcome and action to be taken concerning the employee.” *Id.*

PACE’s “Guidelines for Child Abuse and Molestation” also require that “[i]n all cases, P.A.C.E. Head Start must comply with Mississippi law concerning the reporting of suspected incidents of abuse.” *Id.* Mississippi law requires that any child caregiver “having reasonable cause to suspect that a child is a neglected child or an abused child” must immediately make a report to the [Mississippi] Department of Human Services” and that “[a]ny person willingly failing to do so may be subject to a \$5,000 fine, a one-year prison sentence, or both.” MS. Ann. Code § 43-21-353(1)(7).

PACE does not dispute any of the following facts related to its handling of the allegation of sexual abuse that ACF cited in both its response to the appeal and its motion for summary judgment. Nor does PACE dispute ACF’s conclusion that these facts show that PACE did not follow its policy for responding to allegations of sexual abuse. ACF Resp. at 2-5; ACF Motion at 2-5. These facts are indeed supported by PACE’s own records and correspondence with ACF and Mississippi State agencies, the declarations of the PACE health officer and the PACE program monitor/compliance officer, and an incident report filed with the Hattiesburg, Mississippi police department.

On February 17, 2012, the mother of a three-year old Early Head Start student at a PACE Head Start center alleged to PACE staff that a Head Start teacher had sexually abused her child. ACF Exs. 6, at 4. At that time, the allegation of sexual abuse was made known to the accused teacher and at least one other staff member. *Id.* PACE’s executive director learned of the allegation of abuse at least by June 28, 2013, and PACE reported the allegation to the Mississippi Department of Human Services. *Id.*; ACF Exs. 4, at 16; 7; 9, at 2. As of December 2013, PACE was aware that the Mississippi Department of Human Services had not referred the case to law enforcement as Mississippi law apparently required. ACF Exs. 8, at 1; 9 at 2.

The teacher accused of sexual abuse of the three-year-old child continued to work at the PACE Head Start center during the 2013 to 2014 school year and, in April 2014, PACE selected him to teach Head Start children during the 2014 summer program, which ran from May 5 to June 14, 2014. ACF Ex. 11, at ¶¶ 6-11 (decl. of PACE health officer). On May 12, 2014, after PACE had received ACF’s notice of deficiencies, the PACE health officer and the PACE program monitor/compliance officer saw the accused teacher in a classroom at the PACE Head Start center where he was alleged to have abused the child, and he attempted to hide behind a door. ACF Exs. 11, at ¶ 8; 12, at ¶ 5 (decl. of PACE

program monitor/compliance officer). The PACE health officer then told the executive director that she had seen the accused teacher in a classroom and asked why he was there, and the executive director shrugged her shoulders. ACF Ex. 11, at ¶ 9. The health officer also told the PACE finance officer that she had seen the accused teacher in a classroom. *Id.* at ¶ 10.

On May 14, 2014, the PACE executive director reported the allegations of sexual abuse to the Hattiesburg, Mississippi police department and placed the accused teacher on administrative leave and informed him that PACE procedures required that he be “cleared of the accusation” to return to work. ACF Exs. 6, at 3; 10. PACE does not allege that the teacher was ever “cleared” of the accusation. Nonetheless, the PACE program monitor/compliance officer saw the accused teacher at a PACE training on July 1, 2014, at which she was told, by the PACE education specialist, that the accused teacher had to leave the training to take a polygraph examination, which, the education specialist later said, he had failed. ACF Ex. 12, at ¶ 8. The PACE program monitor/compliance officer saw the accused teacher at a PACE training again on July 2, 2014, and in an Early Head Start classroom on July 10, 2014. *Id.* at ¶¶ 8, 9. Both the PACE program monitor/compliance officer and the health officer saw the accused teacher at a PACE parent orientation on July 22, 2014. ACF Exs. 11, at ¶ 12; 12, at ¶ 10; 13.

Analysis

ACF moves for summary judgment “with respect to the abuse deficiency, 42 C.F.R. § 1304.22(a)(5),” on the ground that there is “no genuine issue of material fact with regard to the existence of a deficiency [or] with regard to correction of this deficiency.” ACF Motion at 1. Section 1304.22(a)(5), part of the early childhood development and health services program performance standards at subpart B of Part 1304, requires Head Start grantees to “establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained [which] must include . . . (5) Established methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable Federal, State, or Tribal laws.” ACF notes that it gave PACE 30 days to correct its deficiency under that regulation but that the undisputed evidence shows that it did not do so. ACF asserts that “[m]ost of PACE’s evidence” of corrective actions that PACE submitted to ACF during the review process and in this appeal “is outside this time frame and therefore, as a matter of law, is irrelevant to whether PACE corrected the deficiency.” ACF Motion at 6.

Summary judgment for ACF is appropriate here. The undisputed facts show both that PACE’s violation of section 1304.22(a)(5) was a deficiency under the Head Start Act, and that PACE failed to correct the deficiency within the time ACF provided, authorizing ACF to terminate PACE’s Head Start grant.

1. The undisputed facts show that PACE had a deficiency based on its failure to comply with 45 C.F.R. § 1304.22(a)(5).

ACF determined that PACE violated the requirement to implement established methods for handling suspected or known child abuse cases and that the violation was a deficiency as defined in 42 U.S.C. § 9832(2). ACF Ex. 3, at 5 (stating that PACE's failure to comply with section 1304.22(a)(5) was "a deficiency as defined under . . . the Head Start Act as a [systemic] or substantial material failure in the area of performance that the Secretary determines involves a threat to the health, safety, or civil rights of children and staff"); ACF Resp. at 6-9. The undisputed facts ACF cited in its motion for summary judgment support that determination.

PACE, as noted, does not dispute any of the facts shown by the evidence on which ACF relies. PACE does not dispute that a teacher on its staff received the allegation of sexual abuse on February 17, 2012 but that PACE's executive director did not learn of the allegation immediately, as required, and PACE did not report the allegation to the Mississippi Department of Human Services until well over a year later. PACE also does not dispute that the teacher accused of the sexual abuse on February 17, 2012 remained on duty and taught Head Start children during the 2013-2014 summer school session and that PACE did not place the accused teacher on leave until May 14, 2014. PACE also does not dispute that even after the teacher was placed on leave, he was seen on multiple occasions at the Head Start center where he was alleged to have committed the abuse. PACE further does not dispute that it violated its own policy by failing to immediately remove the accused teacher from the Head Start center and place him on administrative leave until the allegation was investigated. ACF Ex. 14, at 1; *see* ACF Ex. 10 (PACE May 14, 2014 letter to accused teacher stating "[t]o date the incident has not been investigated"). PACE also violated its policy by the failure of another teacher to immediately inform the executive director of the abuse allegation and by not immediately reporting the abuse allegation to the Mississippi Department of Human Services as required by state law. ACF Ex. 14, at 1 (PACE "Guidelines for Abuse and Molestation" stating that "[i]n all cases, P.A.C.E. Head Start must comply with Mississippi law concerning the reporting of suspected incidents of abuse."). PACE also does not allege that it ever investigated the allegation of sexual abuse as required by its policy.

There is thus no dispute that PACE failed in an ongoing manner to implement its abuse policy and to respond seriously to an allegation that a PACE teacher had sexually abused a three-year-old child, including permitting the accused teacher to remain in contact with Head Start children for some two years after the alleged abuse occurred. This record justifies ACF's determination that PACE had a systemic or substantial material failure in an area of Head Start performance, early childhood development and health, that involved a threat to the health and safety of the children under PACE's care and was a clear failure to comply with early childhood development standards contained in the regulation at 45 C.F.R. § 1304.22(a)(5).

PACE does not dispute that its failure over an extended period of time to respond to the sexual abuse allegation as required by its policies was a deficiency under Head Start law. Instead, PACE places responsibility for those failures on its executive director who, PACE states, “did not notify the Board of Directors of any allegation of sexual abuse until the May 16, 2014 Board meeting.” PACE App. at 2. PACE argues that its Board of Directors “has no ability to act on incidents of which it has no knowledge” and “can not be expected to monitor the actions of each and every employee” including the executive director, who, “when her handling of this matter came to [the PACE Board’s] attention . . . was terminated.” *Id.*; PACE Opp. at 4.

PACE’s assertion that its Board of Directors was unaware of the abuse allegations, even if true, provides no basis to find that there was not a deficiency. This Board has held that the responsibility for the quality of a grantee’s staff rests squarely on the grantee, and that the grantee does not cease to be responsible for the actions of its staff or their consequences simply by asserting that the staff involved have been fired. *Rural Day Care Ass’n of Ne. NC*, DAB No. 1489, at 27, 55 (1994), *aff’d*, *Rural Day Care Ass’n of Ne. NC v. Shalala*, No. 2:94-CV-40-BO (E.D. N.C. Dec. 20, 1995). As we noted in *Rural Day Care*, the Head Start Act requires grantees to adopt rules that “assure that only persons capable of discharging their duties with competence and integrity are employed[.]” 42 U.S.C. § 9839(a)(3)(B). PACE as a grantee is thus responsible for the actions of its employees who carry out its Head Start program, and the Board of Directors’ lack of awareness of PACE’s failure to implement its policy for handling complaints of alleged sexual abuse of Head Start children does not excuse PACE’s failure to comply with the requirements of the Head Start laws and regulations.

Undisputed facts thus establish that PACE had a deficiency under the Head Start Act based on its failure to comply with 45 C.F.R. § 1304.22(a)(5), and PACE did not raise a genuine dispute of material fact regarding the existence of the deficiency.

1. Undisputed facts show that PACE failed to timely correct the deficiency, and PACE’s assertion that it took some timely actions to correct the deficiency does not raise a genuine dispute of material fact.

ACF moves for summary judgment on the ground that there is no genuine dispute regarding facts that establish that PACE did not correct the deficiency within the 30-day time period ACF provided in its notice dated April 14, 2014, which ended on May 15, 2014. As noted above, a single uncorrected deficiency is sufficient to warrant termination of Head Start funding. *See* 45 C.F.R. § 1303.14(b)(4) (authorizing termination for failure to timely correct “one or more deficiencies”).

PACE does not explicitly contend that it corrected the deficiency by May 15, 2014 but asserts only that it took some corrective actions within the 30-day period. PACE cites ACF’s argument that “most” of PACE’s evidence of corrective actions is outside the

30-day period for corrective action as, in effect, a concession by ACF “that PACE has presented evidence of corrective action within the thirty day time period.” PACE Opp. at 1. As discussed below, the evidence of actions PACE took within the 30-day period does not show that PACE corrected the deficiency during that time even if the evidence, construed most favorably to PACE, shows PACE took some actions toward correction.

PACE asserts, and the record shows, that on May 14, 2014, during the 30-day period for correcting the deficiency, PACE’s executive director reported the allegation of abuse to the Hattiesburg Police Department and sent the teacher accused of the abuse a letter placing him on administrative leave. PACE Opp. at 2; ACF Exs. 6, 10. PACE also asserts that at “the next regular Board meeting of the PACE Board of Directors” which “occurred within the relevant thirty day time period” for correcting the deficiency, “the sexual abuse allegation [was] discussed and action was taken by the Board.” PACE Opp. at 2. PACE apparently refers to the Board of Directors meeting on May 16, 2014. PACE Ex. A. As we discuss next, neither the executive director’s actions PACE cites, nor the actions that PACE claims its Board took during the corrective action period, raise any dispute over a fact material to whether PACE fully corrected the deficiency within the required time frame.

PACE’s assertions about what occurred at the Board of Directors’ meeting on May 16, 2014 are insufficient to raise a genuine dispute of material fact. PACE states specifically that at the May 16 meeting, “the procedure for reporting suspected child abuse/neglect was changed” and that the “specific procedural changes which were made during the thirty day corrective period are stated on PACE’s Exhibit ‘B’ entitled Procedure for Reporting Suspected Child Abuse/Neglect.” PACE App. at 1; PACE Opp. at 3. PACE also asserts that the three PACE Board members PACE has designated as witnesses “will testify that the report was made at the Board meeting that these procedures had been adopted pursuant to the recommendation of counsel and were in place prior to the Board meeting” which, PACE asserts, “clearly constitutes corrective action within the thirty day time period.” PACE Opp. at 3.

The “Procedure for Reporting Suspected Child Abuse/Neglect” at Exhibit B is undated, but, assuming for the purposes of summary judgment that the PACE Board adopted that policy at its May 16, 2014 Board meeting and that it established a new procedure as PACE asserts, that document does not show that PACE corrected the deficiency. PACE has not explained how the new procedure differs from the previous procedure (ACF Exhibit 14) or why adoption of the new procedure corrected the deficiency in implementing its prior policy. The actions that the new procedure requires of PACE staff are substantively similar to those required by the old procedure. Both require that the center director and the executive director be immediately notified of the “incident” and that the accused staff person be immediately removed from the Head Start center and placed on leave until an investigation is complete. Both require the center director to complete a PACE reporting form and give it to the abuse officer “who will investigate the

incident to ensure” that the report “is factual and complete” and then give the report to the executive director “within 2 hours.” ACF Ex. 14, at 1; PACE Ex. B. Both require notification of state authorities and ACF. Unlike the old procedure, the new procedure includes excerpts from Mississippi state law defining child abuse and stating the obligation of persons in certain professions “or any other person having reasonable cause to suspect” child abuse to report to the Mississippi Department of Human Services, but PACE does not argue that, or explain why, this inclusion or any other new policy provision corrected the deficiency. PACE Ex. B, at 1. The deficiency identified by ACF was a failure to implement the existing policy. Moreover, merely changing the existing policy, without taking steps to ensure that the revised policy would be implemented (for example, training staff in what the policy required) is on its face insufficient to cure the identified deficiency.⁵

The minutes of the May 16, 2014 meeting of the PACE Board also raise no genuine disputes warranting denial of ACF’s motion for summary judgment. The minutes state that there “was discussion” of the sexual abuse “incident” and that the executive director “discussed procedural changes that were made” and “stated that she had taken the necessary steps to ensure that the incidents were corrected with the proper paperwork in place.” PACE Ex. A, at 2. The minutes also state that PACE’s attorney “made recommendations to be added to the reporting procedures.” *Id.* These minutes, however, do not identify any specific corrective actions that PACE implemented and thus raise no dispute material to ACF’s conclusion that PACE did not timely correct the deficiency.

PACE’s descriptions of the testimony of its proposed witnesses also do not demonstrate that the testimony would establish the existence of any fact material to whether PACE corrected the deficiency within the 30-day time period, as PACE asserts. While PACE in its opposition to the motion for summary judgment appeared to indicate that the three members of the Board of Directors would testify as to actions taken at the May 16, 2014 meeting, the descriptions of their testimony that PACE previously submitted state that two of the three witnesses would testify as to actions taken at the meeting of the PACE Board “held [on] **August 6, 2014[.]**” PACE Ltr. at 2 (Nov. 11, 2014). This testimony would address actions taken nearly three months beyond the 30-day period for correcting the deficiency provided in ACF’s April 14, 2014 notice. Thus, such testimony would be incapable of raising a dispute of material fact. As a matter of law, steps to correct deficiencies outside the time period ACF gives for correction cannot remove ACF’s

⁵ Notably, the new procedure, like the old, does not require that the executive director notify the PACE Board of Directors of an abuse allegation until after PACE has completed an investigation of the alleged abuse. Thus, on its face, the new procedure does not cure the problem that PACE blames for the deficiency, its executive director’s failure to timely inform the PACE Board of the abuse allegation.

authority to terminate based on the failure to timely correct. *Babyland Family Servs.*, DAB No. 2109, at 20 (2007); *see also Jefferson Comprehensive Care Sys., Inc.*, DAB No. 2377, at 2 (2011) (“Evidence that a grantee came into compliance with the applicable requirements after the time provided for correction ended does not establish that the grantee corrected its deficiencies.”). The Head Start regulations “are clear that all deficiencies must be corrected by the end of the period for correction.” *Philadelphia Hous. Auth.*, DAB No. 1977, at 14-15 (2005), citing 45 C.F.R. § 1304.60(c), *aff’d*, *The Philadelphia Hous. Auth. v. Leavitt*, No. 05-2390, 2006 WL 2990391 (E.D.Pa. Oct. 17, 2006).

PACE’s description of the testimony of the third witness, the PACE Board chair, states that he would testify “concerning discussions of the Board of Directors after it received notices of deficiencies in the summer of 2014.” PACE Ltr. at 1 (Nov. 11, 2014). That proposed testimony, like PACE’s vague assertions that its Board of Directors took timely corrective action, does not allege that the witness would testify as to any actions taken to correct the deficiency during the 30-day period.

A party opposing an adequately-supported motion for summary judgment may not rely on general denials in its pleadings or briefs, but must furnish evidence of a genuine dispute concerning a material fact—a fact that, if proven, would affect the outcome of the case under governing law. *Matsushita* at 586, n.11; *Celotex*, 477 U.S. at 322-24. PACE’s mere assertions that it will show at a hearing that it took corrective action, without alleging what those actions were or how they actually corrected the deficiency within the 30-day time period, are not sufficient to demonstrate the existence of any genuine dispute regarding a fact that could support a determination that PACE timely corrected the deficiency.

In any event, the actions that PACE alleges its Board of Directors took during the corrective action period, like the actions of the PACE executive director (notifying the police and placing the teacher on administrative leave), are ultimately irrelevant in light of the undisputed facts that establish that the deficiency remained uncorrected. There is no dispute that, in violation of PACE’s policy, the teacher accused of sexual abuse continued to be present in PACE Head Start classrooms and facilities as late as July 22, 2014, and that his presence was known to PACE staff and management, including the PACE executive director. There is also no dispute that PACE never completed any investigation of the sexual abuse allegation as required by its policy, notwithstanding PACE’s awareness that state authorities had not conducted an investigation. These are material facts showing PACE’s failure to correct within the time period set by ACF, and PACE has not even attempted to dispute them.

PACE thus raised no genuine dispute of fact material to ACF's determination that PACE failed to timely correct the deficiency under the Head Start Act based on PACE's failure to comply with the Head Start program performance standard at 45 C.F.R. § 1304.22(a)(5). ACF is therefore entitled to summary judgment in its favor as a matter of law.

Conclusion

For the foregoing reasons, we grant ACF's motion for summary judgment and affirm ACF's decision to terminate PACE's Head Start grant.

_____/s/
Judith A. Ballard

_____/s/
Leslie A. Sussan

_____/s/
Sheila Ann Hegy
Presiding Board Member