

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Head Start Board of  
Directors, Inc.  
Docket No. A-08-29  
Decision No. 2148

DATE: January 22, 2008

DECISION

The Head Start Board of Directors, Inc. (HSBD) appealed the November 28, 2007 decision of the Administration for Children and Families (ACF) to suspend, for more than 30 days, financial assistance to HSBD under its Head Start grant. In its letter of appeal, HSBD did not dispute ACF's legal or factual bases for the suspension. The Presiding Board Member, therefore, issued an order directing HSBD to show cause why the Board should not enter a decision in favor of ACF upholding the suspension. HSBD then filed a response to the order that also failed to dispute ACF's legal or factual bases for the suspension.

For the reasons explained below, we uphold ACF's decision to suspend financial assistance to HSBD for more than 30 days.

**Legal Background**

Head Start is a national program that provides comprehensive child development services. 42 U.S.C. § 9831; 57 Fed. Reg. 46,718 (October 9, 1992). The program serves primarily low-income children, ages three to five, and their families. Id.

Head Start grantees must comply with a range of requirements related to administrative and fiscal management and the provision of high quality services responsive to the needs of eligible children and their families. See, e.g., 45 C.F.R. Parts 1301, 1304, 1305, 1306, 1308, 1320. The standards at issue here are at 45 C.F.R. § 1301.32(a)-(e) and concern development and administrative expenses.

Under specific circumstances, ACF may suspend a Head Start grantee's financial assistance. See 42 C.F.R. §§ 1303.11 (suspension on notice and opportunity to show cause), 1303.12

(summary suspension and opportunity to show cause), 1303.13 (suspension continuing more than 30 days). Section 1303.2 defines "suspension" as a "temporary withdrawal of the grantee's . . . authority to obligate previously awarded grant funds pending corrective action by the grantee."

This suspension was first issued pursuant to section 1303.12(a). ACF letter of November 28, 2007 (ACF letter), at 1.<sup>1</sup> Section 1303.12(a) authorizes ACF to issue a suspension without prior notice if, among other risk factors, --

it is determined that immediate suspension is necessary because of serious risk of . . . substantial injury to property or loss of project funds.

Under section 1303.12(f), such suspensions may not exceed 30 days unless certain condition are met, including: "(1) The conditions creating the summary suspension have not been corrected, or (2) The parties agree to a continuation of the summary suspension for an additional period of time."

With three exceptions that do not apply here, suspensions that remain in effect for more than 30 days are subject to section 1303.13. 45 C.F.R. § 1303.12(g). Under section 1303.13, ACF may extend a suspension or issue a suspension for more than 30 days. Section 1303.13(b) provides:

After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

The reasons that justify termination of financial assistance are set forth at section 1303.14 and include failure "to comply with the Head Start grants administration requirements set forth in 45 C.F.R. part 1301." 45 C.F.R. § 1303.14(b)(6).

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<sup>1</sup> The record before us consists of ACF's letter of November 28, 2007 suspending the grant for more than 30 days (which describes preceding events), HSBD's appeal letter of December 3, 2007 (HSBD appeal), the Board's Acknowledgment and Order to Show Cause, and HSBD's January 8, 2008 response to the order. Therefore, we do not have a copy of ACF's initial suspension letter.

If ACF extends or issues a suspension for a period greater than 30 days, the grantee may appeal (subject to inapplicable exceptions) the suspension to the Departmental Appeals Board. 45 C.F.R. § 1303.13(b). Section 1303.13(f) provides that such an appeal -

must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

A grantee bears the burden of proof in showing that it has complied with applicable standards. First State Community Action Agency, Inc., DAB No. 1877, at 9 (2003); Rural Day Care Association of Northeastern North Carolina, DAB No. 1489, at 8, 16 (1994), aff'd No. 2:94-CV-40-BO (E.D.N.C. Dec. 19, 1995).

### **Factual Background**

On October 23, 2007, ACF summarily suspended HSBD's financial assistance under its Head Start grant for 30 days pursuant to 45 C.F.R. § 1303.12(a) and appointed an interim grantee to administer the grant during the suspension. ACF letter at 1. The suspension was subsequently extended by the agreement of the parties until December 2, 2007. Id. The ACF letter states that ACF "initiated the [initial suspension] action based on information and evidence gathered by the U.S. Department of Health and Human Services Office of Inspector General (OIG) beginning on July 31, 2007 and continuing to the present." Id.

On November 28, 2007, ACF informed HSBD that it was continuing the summary suspension pursuant to section 1303.13(b). Id. As the legal basis for the extension of the suspension, ACF relies on section 1303.14(b)(6), which states that financial assistance may be terminated (and therefore suspended) if "[t]he grantee has failed to comply with the Head Start grants administration requirements set forth in 45 C.F.R. part 1301." Id. As the factual basis for the suspension, ACF relies on "additional information and evidence gathered by the [OIG] beginning on July 31, 2007 and continuing to the present." Id. at 2. ACF concluded that this information and evidence "demonstrate an unacceptable level of risk to the federal funds awarded to" HSBD and failure to comply with subsections 1301.32(a)-(e). Id. at 2, 4. ACF also relied on information received from two members of HSBD's Board of Directors that "raised concerns regarding risks to federal funds awarded to your Head Start program." Id. at 4. ACF described the nature of this risk and noncompliance, such as HSBD's failure to identify and allocate administrative and

development costs and failure to maintain accounting information in an "understandable format." Id. at 3-4.

ACF informed HSBD that the suspension would remain in effect "until further notice, while ACF considered other information resulting from the OIG's ongoing work as well as the results of an on-site review conducted by an ACF-led team" during the week of November 26, 2007. Id. at 2-3.

HSBD appealed ACF's decision to the Board pursuant to section 1303.13(f). HSBD stated -

We would like to appeal the decision to extend the summary suspension on the ground that we do not have the means necessary to correct any of the findings regarding fiscal management. **We are not contesting the findings of the ongoing OIG audit,** however, since all financial assistance has been suspended, we do not have the funds necessary to correct the issues at hand. We have been asked to prove how we plan to bring the program into compliance, but with no available funding, we will continue to be unable to put our plan into action.

HSBD appeal at 1 (emphasis added). HSBD then described the actions it would take, if funding were restored, to bring its financial management into compliance with Head Start requirements. HSBD closed by requesting, "We ask you to consider making the funds available to allow us to begin the process of bringing the program into compliance." HSBD appeal at 2.

Because HSBD did not dispute ACF's legal or factual bases for the suspension, the Presiding Board Member ordered HSBD to show cause why the Board should not enter a decision in favor of ACF upholding the suspension.

In response to the Order to Show Cause, HSBD stated in full -

Although HSBD is neither aggressively controverting nor contesting the Board's perceived factual basis for any interim suspension, HSBD respectfully submits that there are tangible and substantial mitigating circumstances which, in all fairness, should ultimately limit the duration of any upholding of the present suspension.

In essence, the gravamen of any concern, is essentially a benign accounting error, as previously elucidated, and is in no way reflective of the integrity, viability and efficacy of HSBD Head Start Program. The program

remains a worthy grantee. Hopefully, the duration of the suspension will accurately reflect the nature and extent of the underlying factual predicate.

HSBD letter of January 8, 2008 (HSBD response).

### **Analysis**

As the appellant, HSBD must "fully set forth the grounds for the appeal" and also submit "all documentation that the [appellant] believes is relevant and supportive of its position." 45 C.F.R. § 1303.13(f). HSBD does not assert, however, that ACF's actions violate applicable law, regulations or policy, nor does it dispute any material fact alleged by ACF.

As the legal basis for the imposition and extension of the suspension, ACF relied on section 1303.12(a), concluding that HSBD's financial management posed a "serious risk . . . of loss of project funds," and section 1303.13(b), finding that HSBD's failure to comply with the requirements of subsections 1301.32(a)-(e) is a "reason[] that justif[ies] termination of financial assistance" under section 1303.14(b)(6). HSBD does not argue that this was not a proper legal basis for imposing a summary suspension or extending that extension for more than 30 days.

As the factual bases for this suspension, ACF made a number of specific factual assertions about HSBD's failure to comply with subsections 1301.32(a)-(e). ACF letter at 3-5. For example, ACF alleged that HSBD did not track costs according to whether they were development or administrative costs, that HSBD did not allocate dual benefit costs such as salaries to development and administration, and that HSBD was not able to demonstrate that allowable costs for development and administration did not exceed the limit of 15%. Id. at 4-5. ACF alleged that this information was collected in the course of an OIG audit beginning on July 31, 2007 and continuing to the present. Id. at 2. Additionally, ACF alleged that at a meeting on November 2, 2007 the Board Treasurer indicated that on becoming Treasurer he had been unable to understand the financial information compiled by the then Chief Financial Officer (who had subsequently left), and he was still unable "to get accounting information in an understandable format." Id. at 4. The Treasurer also indicated that there were purchases made for items that could not be located. Id.

Viewing HSBD's submissions in a light most favorable to HSBD, we conclude that HSBD has failed to dispute ACF's factual allegations.

In its appeal letter, HSBD stated that "[w]e are not contesting the findings of the ongoing OIG audit," thereby admitting that it was not in compliance with subsections 1301.32(a)-(e). HSBD letter at 1. Further, HSBD failed to effectively dispute ACF's allegations about the Treasurer's assertions. In its response to the Order to Show Cause, HSBD makes a number of ambiguous statements, such as "HSBD is neither aggressively controverting nor contesting the Board's perceived factual basis for any interim suspension," and "the gravamen of any concern, is essentially a benign accounting error, as previously elucidated, and is in no way reflective of the integrity, viability and efficacy of HSBD Head Start Program." HSBD response. The first of these statements is an admission; the second is not nearly specific enough to place ACF's allegations in dispute. As to the second, HSBD does not allege any specific facts (such as any description of the "benign accounting error" or its financial management systems) to dispute ACF's allegations. Further, HSBD did not submit any documentation (such as financial statements) that would tend to show that ACF's findings are incorrect or relate to a "benign accounting error," even though section 1303.13(f) requires an appellant to submit with its appeal "all documentation that the grantee believes is relevant and supportive of its position."

Instead of disputing ACF's legal arguments or factual assertions, HSBD requests that the Board reinstate HSBD's grant funding despite the fact that it does not dispute ACF's bases for imposing or continuing the suspension, i.e., noncompliance with the grants administration requirements in part 1301 and serious risk of loss of project funds. HSBD asks the Board to rescind the suspension and reinstate its funding because "there are tangible and mitigating circumstances which, in all fairness should ultimately limit the duration of any upholding of the present suspension." HSBD Response. Even if HSBD had described such circumstances, which it did not, this would not provide a basis on which the Board could reverse or rescind the suspension.

Conclusion

For the reasons stated above, we uphold ACF's suspension of financial assistance to HSBD under its Head Start grant.

\_\_\_\_\_/s/\_\_\_\_\_  
Leslie A. Sussan

\_\_\_\_\_/s/\_\_\_\_\_  
Constance B. Tobias

\_\_\_\_\_/s/\_\_\_\_\_  
Judith A. Ballard  
Presiding Board Member