Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Motivation Education & Training, Inc.
Docket No. A-12-63
Decision No. 2548
December 12, 2013

DECISION

Motivation Education & Training, Inc., (MET) a Head Start and Early Head Start grantee in Texas, appeals a determination by the Administration for Children and Families (ACF) disallowing $181,187 of the indirect costs that MET charged to its Head Start and Early Head Start grants for the program years ending November 30, 2008 (PY17) and November 30, 2009 (PY18). Over the course of its appeal, MET challenged the validity of ACF's disallowance calculation on several grounds. For example, MET argued that ACF improperly used provisional rather than final indirect cost rates to identify allowable costs; erroneously relied on MET's general ledger instead of its audited financial statements to determine MET's indirect costs; and failed to take into account journal entries adjusting MET's indirect costs after the relevant program years. MET also challenged the propriety of the audit and disallowance process.

For the reasons explained below, we conclude that ACF's determination is supported by the record and applicable regulations and that MET's arguments have no merit. Accordingly, we sustain the disallowance.

<u>Legal Background</u>

1. *A Head Start grantee must maintain financial records and file financial reports showing that costs charged are allowable and allocable to an award.*

Head Start grantees must comply with regulations specific to the Head Start program and with regulations that apply to all Department of Health and Human Services (HHS) grants to non-profit organizations at 45 C.F.R. Part 74. 45 C.F.R § 1301.10(a). Those regulations, in turn, incorporate the principles for determining allowable costs under awards to non-profit grantees at 2 C.F.R. Part 230 (Office of Management and Budget Circular A-122 (OMB A-122)). 45 C.F.R. § 74.27(a).

OMB A-122 provides that the "total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits." 2 C.F.R. Part 230, Appendix (App.) A, ¶ A.1. To be allowable, costs must be "reasonable for the performance of the award and . . . allocable thereto." *Id.* ¶ A.2.a. A cost is reasonable if it "is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award. *Id.* ¶ A.3.a. A cost is allocable to a particular award "in accordance with the relative benefits received." *Id.* ¶ A.4.a. Any cost allocable to a particular award "may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award." *Id.* ¶ A.4.b.

To be allowable, costs must be adequately documented. *Id.* ¶ A.2.g. A grantee must have a financial management system that provides "[r]ecords that identify adequately the source and application of federal funds" as well as "[a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. §§ 74.21(b)(2), (b) (7). Section 74.21, titled "Standards for financial management systems," states in relevant part: "Recipients' financial management systems shall provide for . . .[a]ccurate, current and complete disclosure of the financial results of each HHS-sponsored project or program in accordance with the reporting requirements set forth in § 74.52."

Section 74.52, titled "Financial reporting," requires non-profit grantees such as MET to file specific financial reporting forms, including the "Financial Status Report" or SF-269. The SF-269 includes a one-page summary of net grant outlays, the recipient's share of the net outlays, the federal share of the net outlays, and program income. The HHS Grants Policy Statement (GPS) states that "[b]efore submitting [financial status reports], recipients must ensure that the information submitted is accurate, complete, and consistent with the recipient's accounting system."[1] GPS at II-83. The Board has explained in prior cases that the SF-269 is a key element to ACF's ongoing oversight of Head Start grantees' fiscal management. *Child Opportunity Program, Inc.*, DAB No. 1700, at 3 (1999).

2. *A grantee's claims for indirect costs must be consistent with the applicable regulations, cost principles, and terms of the grantee's negotiated indirect cost rate agreements.*

Indirect costs are costs "that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective." 2 C.F.R. Part 230, App. A, ¶ C.1. Indirect costs are typically allocated and charged to federal awards by application of an indirect cost rate used to distribute common costs to benefitting cost

[1] The HHS GPS is available at http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf.

objectives. *Id* ¶ D.2; *Benaroya Research Institute*, DAB No. 2197, at 2 (2008). Under the simplified allocation method, an indirect cost rate is determined by dividing total allowable indirect costs by an equitable distribution base, such as direct salaries and wages. 2 C.F.R. Part 230, App. A, ¶ D.2. The resulting rate (expressed as a percentage) is then applied to equivalent direct costs of the particular grant program or project to determine the amount of indirect costs allocable to that program or project. *Id.*

A non-profit organization that claims indirect costs under federal awards must develop its indirect cost rate through negotiation with its "cognizant agency," the federal agency responsible for negotiating and approving the indirect cost rate for the organization on behalf of all federal grantor agencies. *Id.* ¶ E. The grantee submits to the cognizant agency an indirect cost proposal, which provides the basis for the review and negotiation leading to the establishing of the grantee's rate. *Id.* ¶ E.1.f. The results of the negotiation are formalized in a negotiated indirect cost rate agreement. *Id.* ¶ E.2.g.

There are two types of indirect cost rates applicable to the Head Start program: provisional/final rates and predetermined rates.[2] At the beginning of an award period, actual costs are unknown. Therefore, where a grantee does not have a predetermined rate, a provisional (temporary) rate may be "used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period." *Id.* ¶ E.1.e. A grantee's "final rate" is later developed based on the actual costs of the period. ¶ E.1.d.

The HHS GPS provides that if the rate in effect at the beginning of a budget period "was provisional and is superseded by a permanent rate, whether higher or lower, the latter rate will be used to determine indirect cost reimbursement." GPS at II-28. However, the "award will not be adjusted downward, based on a lower permanent indirect cost rate . . . unless the indirect cost proposal that served as the basis for the negotiation included unallowable costs." *Id.*

Case Background

In April 2010, ACF conducted an on-site review of MET's Head Start and Early Head Start programs. ACF's review included an evaluation of the indirect costs MET charged to its PY17 and PY18 awards. To evaluate MET's indirect costs, ACF reviewed MET's

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[2] *See Head Start, Types of Indirect Cost Rates*, available at http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/operations/fiscal/costs/cost-principles/TypesofIndirect.htm (stating that fixed rates with carry forward provisions are not an option for Head Start grantees, according to the HHS Division of Cost Allocation.). A predetermined rate is "an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment." 2 C.F.R. App. A, ¶ E.1.b.

general ledger, financial statements of Head Start Expenditures, SF-269s, and indirect cost rate agreements for 2008 and 2009 with the Department of Labor, MET's cognizant federal agency.

By letter dated March 26, 2012, ACF notified MET that ACF was disallowing $181,187 in indirect costs MET charged to its Head Start awards for PY17 and PY18 based on the April 2010 review and the February 2, 2012 Office of Head Start report on the review.[3]

By letter dated April 19, 2012, MET appealed ACF's determination. After the parties submitted their opening briefs, the Presiding Board Member held an informal conference under authority of 45 C.F.R. §16.10 to allow the parties to provide any necessary further explanation of their positions, and to allow the Board to gain a better understanding of the dispute. Based on the results of the informal conference and at the request of the parties, the Presiding Board Member ordered a stay of proceedings for the parties to exchange additional information and to discuss settlement. The parties were unable to reach a settlement, however. The Presiding Board Member lifted the stay and gave the parties an opportunity to file supplemental briefs.

Analysis

1. *MET's negotiated indirect cost rate agreements and rates*

As summarized above, MET was permitted under the applicable regulations and cost principles to charge indirect costs to each of its Head Start awards by grouping total allowable indirect costs into a common pool and allocating the costs by applying a negotiated indirect cost rate to the respective segment of the base used to develop each rate.

Under MET's negotiated agreements with the Department of Labor, MET's indirect cost rates used a base of direct salaries and wages, including applicable fringe benefits; the rates provided under the agreements were to be applied to the appropriate base to identify the proper amount of indirect costs allocable to the respective program. ACF Exs. I, J. Each agreement required MET to submit a proposal to establish a final rate within six months after its fiscal year end and provided that "[b]illing and charges to Federal awards must be adjusted if the final rate varies from the provisional rate." *Id.* In addition, the

[3] ACF's March 26, 2012 notice cited two different figures for the total disallowance amount, $181,189 and $181,187. We use the $181,187 figure because it is the sum of the disallowance amounts identified in the notice for the two years at issue, $67,490 for PY17 and $113,697 for PY18. The March 26, 2012 notice also explained that ACF previously had issued a notice of disallowance relating to the April 2010 audit on December 13, 2011 but had since rescinded that determination notice.

agreements specified that "[i]ndirect costs allocable to a particular award or other cost objective may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by terms of the award." *Id.* The agreements further stated that if MET's "final rate is less than the provisional rate, the organization will be required to pay back the difference to the funding agency." *Id.*

MET's fiscal year is from July 1 to June 30 each year, and its indirect cost rate periods under agreement with the Department of Labor are aligned with MET's fiscal year. In contrast, MET's Head Start program year is from December 1 through November 30 of each year. Consequently, the parties agree, two provisional and two final indirect cost rates applied to each Head Start award year at issue.

The provisional and final indirect cost rates for PY17 were:

December 1, 2007 – June 30, 2008 Provisional Rate	December 1, 2007 – June 30, 2008 Final Rate	July 1, 2008 – November 30, 2008 Provisional Rate	July 1, 2008 – November 30, 2008 Final Rate
20.04%	20.90%	21.24%	20.10%

The provisional and final indirect cost rates for PY18 were:

December 1, 2008 – June 30, 2009 Provisional Rate	December 1, 2008 – June 30, 2009 Final Rate	July 1, 2009 – November 30, 2009 Provisional Rate	July 1, 2009 – November 30, 2009 Final Rate
21.24%	20.10%	21.24%	18.29%

ACF Exs. I, J, L, Atts. C-1, C-2; MET Indirect Costs Calculations for Head Start for PY17 & PY18; Atts. B-1, B-2; ACF Supplemental Br. at 4.

2. *ACF reasonably relied on MET's Head Start Statements of Expenditures, SF-269s, general ledger and indirect cost rate agreements for 2008 and 2009 to calculate MET's charged and allowable indirect costs for PY17 and PY18.*

To identify MET's allowable and charged indirect costs for its PY17 and PY18 Head Start awards, ACF reviewed accounting documents and financial reports provided by MET during the August 2010 audit. ACF Ex. L. ACF determined that the federal share of net outlays that MET reported on its final SF-269s for each year ($5,136,344 for PY17 and 5,648,217 for PY18) were consistent with the "Total Admin/Program Costs" reported in MET's "Head Start Statements of Expenditures." *Id.* at 2-3; MET Br. Attachments B-1, B-2. The record copies of the SF-269s and MET "Head Start Statements of Expenditures" in the record support ACF's findings. ACF Exs. G, at 3, 6; H, at 1, 6.

To verify that the federal outlays reported by MET in its SF-269s and Head Start Statements of Expenditures were supported by MET's accounting records, ACF reviewed MET's general ledger. ACF Exs. F, L. Reconciling figures in MET's general ledger and the supporting project ledger for the Head Start program to take into account MET's different fiscal year and Head Start program year reporting periods, ACF's calculations determined that MET's net federal expenditures for PY17 were $5,135,688, and $5,648,547 for PY18. ACF Exs. L, at 4-5; C-1, C-2. Based on the minimal differences between the figures derived on the basis of the general ledger and MET's Head Start financial reports, ACF concluded that MET's general ledger supported the total federal Head Start expenditures that MET reported in its final SF-269s and Head Start Statements of Expenditures. ACF Ex. L, at 4-5.

Having established that MET's general ledger supported the total amounts of federal expenditures MET reported on its final SF-269s and Head Start Statements of Expenditures, ACF then used the general ledger to identify the indirect costs charged for each segment of each program year to which the different indirect cost rates applied. ACF Ex. L, at 5; MET Exs. B-1, B-2. To calculate final indirect costs allowed for each award, ACF used the indirect cost rate information available at the time of the review, which included the final rates shown on page 5 above, for all but the period July 1, 2009 through November 30, 2009.[4] For that period, ACF used MET's provisional rate, which was 21.24 percent. ACF Exs. L, at 6; Att. C-2. ACF applied the rates to the respective bases of program salaries, wages and applicable fringe benefits to derive MET's allowable indirect costs for PY17 and PY18. *Id.* Based on this methodology, ACF identified the excess indirect costs that MET recovered under its PY17 and PY18 Head Start grants. *Id.*[5]

As summarized above, MET was obligated as a Head Start grantee to maintain a financial management system with records that identified the source and application of federal funds and to keep accounting records supported by source documentation. 45 C.F.R. §§ 74.21(b) (2), (b) (7). The regulations also required MET to provide accurate, current and complete disclosures of the financial results of its Head Start projects by filing financial reports, including SF-269s, that it had reviewed to ensure that the information in

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[4] For the period December 1, 2007 through June 30, 2008, MET's final indirect cost rate of 20.90% had been established by its negotiated indirect cost rate agreement. For the periods July 1, 2008 through November 30, 2008, and December 1, 2008 through June 30, 2009, ACF used an actual indirect rate of 20.10% that ACF calculated based on MET's audited financial statements and which was consistent with the final rate later established under MET's negotiated indirect cost rate agreement for that period. ACF Ex. L, at 6.

[5] Counsel for ACF stated at the informal conference that ACF used the provisional rate for the last segment of the period at issue and that ACF was not seeking an increase in the disallowance based on the lower final rate even though it had the authority to do so. Tr. at 12-13.

them was accurate, complete, and consistent with MET's accounting system. 45 C.F.R. § 74.52. Based on these requirements, ACF's explanation of the methodology it used to calculate the disallowance, and our review of the record copies of MET's general ledger, indirect cost rate agreements, and financial reports, we conclude that ACF reasonably relied on MET's Head Start Statements of Expenditures, final FS-269s, general ledger and indirect cost rate agreements to determine MET's charged and allowable indirect costs for PY17 and PY18.

We note that in documents filed during this appeal, ACF stated that the disallowance notice "mistakenly reflects a disallowance amount of $113,697 for the 2009 program year" and that, as explained in the affidavit of the accountant who performed the calculations, "the amount disallowed for the 2009 program year should have been 120,059." ACF Br. at 4, n. 2, *citing* ACF Ex. L. In addition, the affidavit states that the calculations used to derive the disallowance amounts "included as actual indirect costs charged" to the awards amounts identified in MET's Head Start Statements of Expenditures as "Total Non-personnel Costs" instead of amounts identified as "Indirect Costs." ACF Ex. L, at 6-7. The corrected calculations performed by ACF pending this appeal show "excess indirect costs recovered" in the amounts of $66,510 for PY17 and $119,582 for PY18. ACF Ex. L at 6-7, Att. C-1, Att. C-2.

ACF, however, has not argued that the disallowance amount identified in the March 26, 2012 notice ($181,187) should be increased to reflect the corrected "excess indirect costs recovered" amounts, which total $186,092. *Id.*; ACF Supplemental Br. at 11. Thus, while ACF's corrected calculations show that the total disallowance amount identified in the March 2012 notice understates the total excess amount of indirect costs recovered by MET during the FY17 – FY18 period, we do not increase the disallowance to that amount because ACF, in its discretion, has chosen not to seek a modification of the disallowance during this appeal.

3. *MET's material challenges to ACF's determination are unsubstantiated.*

In reviewing a disallowance, the Board is "bound by all applicable laws and regulations." 45 C.F.R. § 16.14. Thus, "the Board must uphold a disallowance where it is authorized by law and the grantee has not disproved the factual basis for the disallowance." *Touch of Love Ministries*, *Inc.*, DAB No. 2393, at 3 (2011) (*citing* cases). The Board has consistently held that, "under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability" of costs for which it received federal funding. *Id. citing* DAB No. 2197 (*citing* cases). The Board has also held that "[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee," and that "[o]nce a cost is questioned as lacking documentation, the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant." *Recovery Resource Center, Inc*., DAB No. 2063, at 12-13 (2007); *Northstar Youth Servs., Inc*., DAB No. 1884, at 5 (2003).

On review of MET's briefs and exhibits, we conclude that MET failed to provide sufficient documentation to support any of its material challenges to the disallowance. In its notice of appeal, MET initially asserted that the disallowance appeared to be "based on [ACF's use of] provisional rates prior to adjustments required by final indirect cost rate agreements for the relevant periods." Notice of Appeal at 1. MET stated that it found on review of ACF's audit report that "a provisional indirect cost rate was used for one of the calculations." *Id.* According to MET, the indirect costs it charged to its awards were consistent with its final indirect cost rates established under its negotiated agreements with the Department of Labor.

As explained above, the indirect cost rate agreements available to ACF at the time of the April 2010 review covered MET's fiscal years ending June 30, 2008 and June 30, 2009; ACF was able to use the final indirect cost rates available for all but the last segment of MET's PY18 award to determine MET's allowable indirect costs for PY17 and PY18. ACF Exs. I, J; ACF Ex. L at 5. ACF used the provisional rate of 21.24% for that last segment, covering the July 1, 2009 through November 30, 2009 period. MET Att. B-2.

Following ACF's review, a final indirect cost rate of 18.29% for the fiscal year ending June 30, 2009 was established under MET's agreement with the Department of Labor. ACF Ex. L at 5-6, Att. C-2; MET "Indirect Costs Calculations for Head Start for PY17 & PY18." Application of the final, lower rate to the last segment of PY18, however, would result in a *lower* amount of allowable indirect costs and would *increase* the amount of unallowable indirect costs charged to $158,682 for PY18. ACF Ex. L, Att. C-2. Accordingly, we reject MET's claim that the disallowance was attributable to ACF's use of provisional indirect cost rates.

MET further indicated in a chart attached to its notice of appeal that it had charged $64,839 to its PY17 award and $63,699 to its PY18 award in "Indirect Cost Adjustments Due to Final Rate Approvals of *Previous* Years." MET Ex. A, "Indirect Cost Calculations for Head Start for PY17 and PY18" (emphasis added). Listing each adjustment by the "Date of Adjustment," MET's chart suggested that MET considered rate adjustments to be allowable indirect costs that were allocable to the program year in which the adjustments were made, even if the adjustments reflected costs associated with prior program year awards.

The terms of MET's negotiated indirect cost rate agreements and the applicable cost principles substantially limited MET's ability to charge to its awards indirect costs relating to rate adjustments, however. As summarized above, MET's negotiated indirect cost agreements as well as the applicable cost principles prohibited MET from shifting indirect costs allocable to one award to another award (including an award for a subsequent year) to overcome funding deficiencies or to avoid restrictions imposed by law or by terms of the award. Thus, MET was not permitted to charge rate adjustments to its PY17 and PY18 awards if the adjustments related to prior program year awards. MET also was not entitled to increase its federal funding to cover indirect costs charged on the basis of provisional rates that exceeded the allowable amounts later determined under lower final rates.

MET failed to provide supporting documentation to show that the adjustments recorded on its chart were not the types precluded by its indirect cost rate agreements or the applicable cost principles. Indeed, MET failed to identify the nature of the "adjustments due to final rate approvals for previous years" or to otherwise show that the adjustments it charged to its PY17 and PY18 awards were allowable and allocable to the program years to which they were charged. Accordingly, we conclude that MET failed to meet its obligation to document that these charges represented allowable, allocable costs.

In MET's opening brief and at the informal conference, MET further argued that ACF erred in relying on MET's general ledger because the general ledger does not reflect "[a]djustments made almost two years following the closeout" of each fiscal year that "are made to fund balances and not to the general ledger." MET Br. at 4. Moreover, MET asserted, MET's negotiated cost rate agreements with the Department of Labor are based on MET's audited financial statements, not the general ledger. MET Reply at 10-11, MET Ex. 2. According to MET, once it receives its final indirect cost rates based on its audited financial statements, it allocates to each grant the costs based on its final rate and makes appropriate adjustments. MET Br. at 3-4; MET Reply at 8. Therefore, MET argued, ACF should have used MET's audited financial statements to calculate MET's Head Start program indirect costs.

While MET argued that ACF erroneously relied on general ledger data instead of audited financial statements to calculate allowable indirect costs, MET failed to show that any of the amounts recorded in the general ledger were not correct. MET also failed to provide either ACF or the Board with the audited financial data that supposedly support MET's contention. Moreover, as ACF observed, it "was not feasible to use MET's [audited] financial statements for ACF's analysis of" PY17 and PY18 because "MET's financial statements were based on MET's fiscal year which does not align with" the award program periods and because the audited financial statements "did not provide sufficient detail to segregate costs associated with [the] individual awards." ACF Supplemental Br. at 3. "Instead," ACF observed, the audited "financial statements group expenditures across multiple awards as H[ead] S[tart] expenditures." *Id.* Indeed, MET acknowledged in its opening brief that the indirect costs in its audited financial statements are reported for the fiscal year period, which does not align with the Head Start program period, and "that it is difficult to get 'audited' grant years individually due to our numerous grants and the costs thereof." MET Br. at 5. Thus, we conclude that MET's contention that ACF should have used audited financial statements instead of its general ledger to calculate allowable and charged indirect costs has no merit.

With respect to MET's contention that the general ledger did not reflect post-closeout adjustments made to the fund balances, MET asserted during the informal conference that it made a journal entry impacting salaries and fringe benefits in PY17 that was not reflected in the allocation base derived by ACF using the general ledger. Specifically, MET contended that the general ledger reported $125,701 more for salaries and fringe benefits than documented in MET's audited financial statement. Tr. at 20. The Presiding Board Member issued a stay of proceedings at the end of the conference for MET to submit documentation to support these contentions and revised final SF-269s.

However, in response to ACF's post-conference request for a copy of the journal entry posted to the Head Start Program fund balance resulting in a $125,701 decrease in salaries and fringe benefits, MET acknowledged that it "was incorrect. This was [an] administrative cost which [ACF] correctly included in salary and fringe." ACF Suppl. Ex. A, at 2. In its last submission to the Board following the stay, MET did not mention its prior claim that it had made a post-audit revision for salaries and fringe benefits to PY17. Accordingly, we do not consider this argument further since MET appears to have acknowledged that its contention was incorrect.

MET's response to ACF's post-conference requests also indicated that MET agreed with ACF that MET was not allowed to recover costs incurred for one program year from another program year's funding and, consequently, that MET was not permitted to recover rate variances from previous program years in either PY17 or PY18. ACF Suppl. Ex. C at 1; ACF Supple Ex. D at 1. MET further agreed with ACF's calculations of the indirect cost bases for each segment of the Head Start awards and acknowledged that MET had recovered indirect costs exceeding its allowable amounts for PY17 and PY18. ACF Suppl. Exs. A at 2; D at 1. At the same, MET asserted in its letter to ACF that its "total overcharge for PY17 and PY18 [was] $122,232." ACF Suppl. Ex. D at 1. Again, however, MET did not provide documentation to support this claim and, at best, it amounts to a concession that the bulk of the disallowance was correctly taken.

Accordingly, we conclude that MET's challenges to ACF's disallowance calculation are not supported by documentation sufficient to support its contentions.

4. *MET has been provided ample opportunity to dispute the disallowance and to present evidence and argument to support its contentions.*

In its notice of appeal and briefs, MET objected to the duration of the review and disallowance process, lack of communication by ACF staff during the period between the April 2010 review and the issuance of the disallowance notice, and behavior of ACF staff during the April 2010 review. MET asserted, among other things, that the only contact by ACF about this matter between the April 2010 review and the issuance of the March 2012 disallowance notice was a telephone call from ACF in "late summer or early fall of 2010." MET Br. at 2; MET Final Br. at 5. According to MET, ACF asked MET general questions about how MET charges indirect costs and told MET that its procedures were proper. MET Br. at 2-3; MET Final Br. at 5-6. MET argues that before issuing the disallowance, ACF should have given MET an opportunity to explain why general ledger data cannot be used to ascertain its indirect costs. MET has also criticized the behavior of ACF staff during the audit and questioned the competence of the accountant who reviewed MET's financial statements and accounting records and who calculated the disallowance on behalf of ACF.

MET has not pointed to any regulations or ACF policies governing the review and disallowance process that limit time periods or establish deadlines for ACF to issue findings or determinations relating to a review of a grantee's financial management systems and claims. Moreover, MET has not asserted that the duration of the review, determination and appeal in any way prejudiced MET from fully presenting its arguments or positions relating to its indirect cost charges. Indeed, while MET asserted that ACF should have communicated its concerns early and engaged MET in meaningful discussions about MET's indirect cost charges prior to issuing the disallowance, the Board has given MET ample opportunity to present its arguments and substantiate its allegations in numerous written submissions and during the informal conference. For the reasons discussed above, even with these opportunities, MET failed to substantiate its contentions. Finally, MET has not shown how the behavior of ACF staff during the April 2010 review has any bearing on the disallowance. Accordingly, we conclude that MET's objections to the duration and propriety of the audit and disallowance process are immaterial, that MET has been provided ample opportunity to dispute the disallowance, and that MET has failed to carry its burden to document that the disallowed charges represent allowable costs properly allocated to MET's PY17 and PY18 Head Start awards.

Conclusion

For the reasons discussed above, we sustain ACF's disallowance of $181,187 in indirect costs charged to MET's Head Start grants for the program years ending November 30, 2008 and November 30, 2009.

/s/

Stephen M. Godek

/s/

Constance B. Tobias

/s/

Leslie A. Sussan
Presiding Board Member