

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Manila Westhaven Parent Council, DATE: September 18, 1981
Inc.
Docket No. 81-73
Decision No. 212

DECISION

Statement of the Case

As the result of an audit for the budget period September 30, 1978 to September 29, 1979, the Manila Westhaven Parent Council, Inc. (Grantee) was found to have failed to provide a sufficient non-Federal share to match its Head Start program grant award (Head Start Grant No. 9-C-54(01)). The audit report indicated that Grantee had exceeded the applicable limitation on its Federal share by \$16,431. Therefore, an HHS auditor recommended that this amount be disallowed. Grantee was notified of the recommended disallowance by the Regional Administrator, Office of Human Development Services (OHDS), Region IX, in a letter dated January 30, 1981. By letter to OHDS, dated February 9, 1981, Grantee requested a waiver of its non-Federal share. This request was denied by OHDS in an official notice of disallowance sent to Grantee on April 30, 1981.

Grantee was further informed that part of the disallowance, \$192, represented the amount by which Grantee had overspent its grant award. OHDS specified that this amount had to be paid through non-Federal funds. Grantee does not contest this point and has, in fact, paid that sum (Response to Order to Show Cause, received July 27, 1981). Thus, the amount at issue is \$16,239.

This decision is based upon Grantee's application for review, filed on May 20, 1981, an Order to Show Cause issued June 23, 1981, and Grantee's response to that Order.

Discussion

Grantee admits its failure to provide the required non-Federal share (Application for Review, p. 1), but seeks a waiver of the requirement.

The regulations upon which both Grantee and OHDS rely in this case are based upon a Head Start statutory provision at 42 USC §2812(c), which states:

Unless otherwise provided in this part, financial assistance extended to a community action agency or other agency pursuant to section 2808 of this title and section 2809(a) of this title shall not exceed 80 per centum of the approved cost of the assisted programs or activities. The Director may, however,

approve assistance in excess of such percentages if the Director determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this subchapter.

The regulation at 45 CFR §1301.20, reads in pertinent part:

- (a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:
 - (i) An amount in excess of that percentage is approved under section 1301.21;

Grantee seeks to avail itself of the waiver contained in §1301.21 which provides:

The responsible HEW official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county: (a) That has a per capita income of less than \$3,000 per year; or (b) that has been involved in a major disaster. 1/

Under this regulation, the responsible official determines whether to waive the 80 percent limitation on Federal funding based on two findings. First, Grantee must show it has made a reasonable effort to meet its required non-Federal share. In both its application for review and its response to the Order to Show Cause, Grantee cites a variety of "special circumstances" which, it claims, made it impossible for Grantee to achieve its non-Federal share for the year in question. While these circumstances may very well enable Grantee to demonstrate the reasonableness of its effort, §1301.21 requires more. In addition to having made a reasonable effort to provide its non-Federal share, Grantee must also be located in a county which has an annual per capita income of less than \$3,000 or which has been involved in a major disaster. Grantee readily admits it cannot meet either the income or disaster criteria, but maintains that the quality of its

1/ At the beginning of the budget period in question the cited provisions were found at 45 CFR §1301.3-1 and 45 CFR §1301.3-2 respectively. They were redesignated on April 24, 1979 (44 Fed. Reg. 24061) without substantive change.

program and its demonstrated ability to generate more than the 20% minimum non-Federal share in subsequent periods warrants an increase in its Federal share for the period in question.

Despite general arguments based upon equity, this Board has consistently upheld Agency determinations based upon clear regulations. (Board Decisions: American Foundation for Negro Affairs, Decision No. 73, December 28, 1979; Pinellas Opportunity Council, Inc., Decision No. 80, February 6, 1980; Vermont State-Wide Cost Allocation Plan, Decision No. 84, February 26, 1980). The regulation clearly establishes additional criteria other than a reasonable effort which must be met by a grantee in order to secure a waiver of the 80% limit on FFP. Grantee has failed to meet either of the additional criteria in the regulation.

Conclusion

For the reasons stated above, the appeal is denied.

/s/ Cecilia Sparks Ford

/s/ Norval D. (John) Settle

/s/ Donald F. Garrett, Panel Chair