

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Webster Parish Police Jury
Docket No. A-15-75
Decision No. 2674
January 26, 2016

DECISION

Webster Parish Police Jury (Webster) appeals the disallowance of \$408,914 issued on May 12, 2015 by the Administration for Children and Families (ACF). The disallowance resulted from findings related to the allowability and documentation of costs claimed as part of the required matching share for Webster's Head Start program grant for the 2012 grant year.

For the reasons explained below, we sustain the disallowance in part and reverse in part.

Factual and procedural background

Webster has operated a Head Start program for many years. Webster Br. at 10; ACF Br. at 4. Currently, Webster runs five Head Start centers in Webster and Claiborne Parishes in Louisiana. *Id.*

In April 2013, ACF conducted a monitoring review of Webster's Head Start program. ACF Ex. 1, at 1. The reviewers looked at the grant period from January 1 through December 31, 2012, which included the Head Start program periods from January through May 2012 and August through December 2012. *Id.* at 3. The report of that review was issued on July 3, 2013 and included noncompliance findings relating to the requirement for cost sharing. *Id.* at 3-6.¹ Specifically, the reviewers made the following findings:

- (1) Webster failed to ensure that costs claimed as matching share were "not borne by other Federal grants." *Id.* at 3, *citing* 45 C.F.R. § 92.24(b)(1). This finding related to claims for physical examinations and lead screenings (\$31,445) and dental screenings (\$71,452) which were paid for by the Medicaid program. *Id.* The

¹ Other areas of noncompliance mentioned in the monitoring review are not at issue in this proceeding.

reviewers reported that the Head Start Director and Webster's Executive Director stated in an interview that they believed the costs could be counted as a part of the matching share because Medicaid was state-funded. *Id.*

- (2) Webster did not have records adequate to verify donated services claimed as matching share. *Id.* at 4, *citing* 45 C.F.R. § 92.24(b)(6). This finding related to three categories of in-kind contributions.
- a. Only summary records were provided to support claims for the services provided by community services workers who were identified by the Webster personnel interviewed as local inmates performing maintenance when children were not in attendance. *Id.* The summaries were unsigned, and did not describe the services or their location. The report does not state the amount of costs claimed in relation to this finding.
 - b. Records of mental health and disability services showed claims of \$181,564 for the year based on a rate of \$125 per hour with children and dates of service listed. *Id.* The documentation failed to include the name of the provider or the nature of the services provided to each child. *Id.* at 4-5. Webster had a contract with the Louisiana State University (LSU) Health Sciences Center for various disability services to be charged at \$125 per hour, but that contract did not provide for the services to be in-kind contributions but rather stated that Webster was to pay LSU based on itemized statements of work performed. *Id.* at 5.
 - c. Documentation for \$3,165 for vision screenings and \$3,150 for hearing screenings did not show the names of the children served or the date and location of services. *Id.* at 4. In addition, the relevant contracts did not support the basis for valuing the services at \$15 per screening in donation with only an additional \$5 fee to be paid to the provider. *Id.*
- (3) Webster failed to follow requirements for claiming in-kind contributions of \$306,620 for the use of facilities. *Id.* at 5-6, *citing* 45 C.F.R. § 92.24(g) and 2 C.F.R. Part 225, App. B, ¶ 11.a. Webster's claims for the use of space were "based on an informal estimate of fair-market value developed by the grantee," not on a use allowance for grantee-owned facilities or independent appraisals for facilities owned by third parties. *Id.* at 6.

The monitoring report informed Webster that the issues involving matching share requirements might be referred elsewhere in ACF to determine whether a disallowance would be appropriate. ACF Ex. 1, at 4-6. The report also explained that further fieldwork might be performed to determine the total amount of unallowable matching share costs. *Id.*

By letter dated May 12, 2015, ACF issued its determination disallowing \$408,914 based on the July 3, 2013 monitoring report. ACF Ex. 2, at 1. The disallowance stated that this amount resulted from the findings “related to unallowable non-Federal share matching claims for mental health and disability services, vision and hearing services, physical exams and dental screenings and donated space.” *Id.* ACF further stated that the “total unallowable non-Federal share match identified in the . . . monitoring report (i.e., \$597,396) exceeded the required non-Federal match and the amount claimed by the grantee on the final Financial Status Report submitted to ACF” (\$511,142). *Id.* at 2; *see also* Webster Att. 8 (2012 Financial Status Report). ACF explained that it calculated the amount to disallow as follows:²

Federal Head Start funds cannot exceed 80% of total costs of the program (per 45 CFR 1301.20) so, we added the Federal funds reported by your agency as actually expended for the grant year of \$2,044,570 to the allowable NFS [non-Federal share] of \$0, resulting in total actual program costs of \$2,044,570. Maximum allowable Federal expenditures would be 80% of total costs which is \$1,635,656 (i.e., 80% of 2,044,570), resulting in a disallowance of \$408,914 of Federal grant funds (i.e., \$2,044,570 actually expended minus \$1,635,656 allowable to be expended). Therefore, \$408,914 has been disallowed resulting from these findings.

ACF Ex. 2, at 3.

This appeal ensued.

² Webster does not dispute the calculation methodology in the disallowance letter, although it does, as discussed later, argue that some of the disallowed matching share should be found to be allowable. We therefore do not address the calculation of the disallowance further.

Applicable legal authorities³

ACF administers the Head Start program nationally by providing grants to qualified public and private agencies to meet the purposes of the Head Start Act (Act) “to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development[.]” 42 U.S.C. § 9831. The Act provides that federal financial assistance to Head Start programs “shall not exceed 80 percent of the approved costs of the assisted program or activities,” unless the Secretary determines that certain circumstances (not raised here) justify additional funding. *Id.* § 9835(b); *see also* 45 C.F.R. § 1301.20 (Head Start regulation on matching share).

Part 92 of title 45 of the U.S. Code of Federal Regulations contains the requirements for administering Department of Health and Human Services grants to local government entities.⁴ 45 C.F.R. § 92.1.⁵ All such grantees must maintain accounting records “which adequately identify the source and application of funds provided for financially-assisted activities.” *Id.* § 92.20(b)(2). Those records must be “supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.” *Id.* § 92.20(b)(6). The Board had applied the requirement for source documentation to matching share claims required to draw down federal grant funds. *See, e.g., Philadelphia Parent Child Ctr., Inc.*, DAB No. 2297, at 2, 6-33 (2009) (*Philadelphia PCC*) (applying source documentation requirement to detailed review of matching share claims).

³ ACF describes Webster Parish as a “non-profit organization” and cites provisions from administrative requirements applicable to non-profits several times in its brief, while elsewhere citing local government grantee administrative requirements. ACF Br. at 4; *id.* at 2-3. In its monitoring report and disallowance letter, however, ACF applied authorities applicable to local governments. *Compare* ACF Br. *passim* with ACF Exs. 1, 2. Webster does not dispute the applicability of the local government provisions and describes arrangements it has with parish school boards as “inter-agency agreements,” which appears to support the conclusion that Webster is a local government entity rather than a private non-profit organization. Webster Br. at 3; *see also* Webster Att. 15 (Cooperative agreement describing public purpose of Webster Parish Police Jury and its Office of Community Services which operates the Head Start program). We also note that Webster’s inventory of property includes a courthouse, jail, library and other facilities associated with government functions. Webster Att. 14. We therefore proceed to apply the local government authorities. The substantive applicable principles are analogous in any case, so the distinction has no practical effect on the outcome. *Compare* 45 C.F.R. Part 92 and 45 C.F.R. Part 74.

⁴ Effective December 26, 2014, Part 92 of title 45 of the Code of Federal Regulations was superseded by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards” published in 45 C.F.R. Part 75. *See* 79 Fed. Reg. 75,871, 75,889, 75,981 (Dec. 19, 2014). We cite to the Part 92 regulations because they were in effect when the Head Start grant at issue was awarded.

⁵ Unlike Part 74, Part 92 is not specifically mentioned in the list of additional regulations made applicable to Head Start grantees by the Head Start regulations. 45 C.F.R. § 1301.10(a). Nevertheless, by its own terms, Part 92 sets out administrative rules for all grants to local government entities. 45 C.F.R. §§ 92.1, 92.4(a); *see also Municipality of Santa Isabel*, DAB No. 2230, at 11 (2009) (“The Board is bound by applicable laws and regulations, including the general administrative requirements in 45 C.F.R. Part 92 that were applicable to the Municipality’s Head Start grant. 45 C.F.R. § 16.14.”).

The basic rule for matching share permits claiming of either or both of the following:

- (1) Allowable costs incurred by the grantee . . . under the assistance agreement. . . .
- (2) The value of third party in-kind contributions applicable to the period to which the . . . matching requirements applies.

45 C.F.R. § 92.24(a). Section 92.24(b)(6) further provides that –

Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

The Board has long held that all grantees have the “burden of documenting the existence and allowability of [their] expenditures of federal funds.” *Touch of Love Ministries, Inc.*, DAB No. 2393, at 3 (2011). We apply these general principles in our analysis below and cite, where relevant, to additional requirements specific to particular costs.

Analysis

Scope of dispute

Webster represents that its Executive Director and Fiscal Director conducted an internal review of its 2012 claims for in-kind contributions and donated space. Webster Br. at 8-10; Webster Atts. 17, 18. In a resulting summary report of in-kind contributions, Webster separated items for which it claims to have source documentation from items identified in the general ledger and on the Financial Status Report to ACF for which no source documentation was found. Webster Att. 18. In many categories, the amounts claimed in the internal review as substantiated in-kind contributions were significantly less than the amounts reported to ACF originally. *Id.* We consider the reductions in the internal review to constitute concessions by Webster that it is unable to document those amounts as required by the regulation.

The in-kind contributions which Webster identified as supported by source documentation in its internal review were as follows:

| | |
|--------------------------|-------------|
| Disability services ---- | \$93,437.50 |
| Vision ----- | 1,815.00 |
| Hearing ----- | 1,695.00 |

| | |
|------------------------|-----------------|
| Work crew ----- | 85,732.75 |
| Volunteers ----- | 10,173.76 |
| Donations ----- | 3,564.27 |
| <u>Equipment -----</u> | <u>2,400.00</u> |
| Total | \$198,818.28 |

Webster Att. 18. Webster submitted with its appeal file source documentation for some of these categories which we discuss in later sections of this decision.

As to the donated space claims, Webster concedes that it did not understand its obligation to claim grantee-owned space only through a use allowance. Webster Br. at 8.⁶ Based on its internal review, Webster admits that the appraised rental values of four locations which it owns were improperly claimed at a total of \$82,772, but asserts that a use allowance of \$6,663 for those spaces should be allowed. Webster Br. at 9; Webster Att. 17. Webster asserts that its internal review also showed that certified appraisals supported the value claimed for the third-party donated spaces in the amount of \$148,285. Webster Br. at 8-9; Webster Att. 17.

In summary, Webster now asserts that only \$353,766.24 of the \$511,142 which it claimed on its Financial Status Report is documented and allowable. Webster concedes that its non-Federal matching share was thus overstated by approximately \$157,375.76 and seeks equitable relief from having to repay the corresponding excess federal funds drawn out.⁷

⁶ Webster seems to refer interchangeably to a requirement to have a “use agreement” and the requirement to employ use allowance to claim for grantee-owned space, and submitted a 2015 cooperative endeavor agreement between Webster Parish Police Jury and its Office of Community Services relating to the grantee-owned properties. Webster Br. at 8; Webster Att. 15. ACF states that Webster’s internal review “determined that a use agreement was required for four of the listed properties that were owned by Webster Parish.” ACF Br. at 10. No requirement for a use agreement for property owned by the grantee is cited by Webster or by ACF in its brief, monitoring report or disallowance letter. The regulations, however, do limit claims for donated space in buildings to which the grantee obtains title to “only depreciation or use allowance[],” rather than appraised value or fair rental rate, but say nothing about grantees having “use agreements” for claiming a use allowance for donating space in their own buildings. 45 C.F.R. § 92.24(e)(2)(ii), with exceptions not applicable here.

⁷ Our calculation of Webster’s numbers would result in a slightly higher overstatement, but we need not resolve this discrepancy since the exact amount Webster concedes as overstated does not affect our final resolution here. ACF asserts that Webster’s brief “limits its appeal to \$157,375.76 of the originally disallowed costs.” ACF Br. at 2, *citing* Webster Br. at 11. ACF misreads Webster’s brief which merely concedes a shortfall of \$157,375.76 in matching share and does not calculate the effect of that concession on the amount of federal funds drawn down and disallowed.

Donated services

In regard to the donated services, ACF relies not only on the regulatory requirement at section 92.24(b)(6) that volunteer services be documented like regular personnel activity but also cites to Training and Technical Assistance (TTA) guidance published on the website of ACF's Head Start Early Childhood Learning & Knowledge Center. The relevant TTA guidance, titled "Non-Federal Share Narrative," explains the nature of documentation needed to claim for in-kind services as follows:

The use of volunteer time as match must include the establishment of a wage scale based upon the grantee agency's internal scale or prevailing wages in the area. Time sheets must be used to document hours contributed to the program. These timesheets must follow the same standards of documentation as employee time and attendance records, and must include:

- Volunteer's name.
- The dates, including year, the volunteer provided services.
- The duration of time of services the volunteer provided to the program.
- The volunteer's supervisor's signature.
- The volunteer's signature.
- The volunteer activity.
- The rate applied to the activity.
- Total valuation for the time period.

ACF, Office of Head Start, Program Manag. & Fiscal Operations, *Non-Federal Share Narrative*, available at <http://eclkc.ohs.acf.hhs.gov/hslc/ta-system/operations/mang-sys/fiscal-mang/Non-Federal%20Share.htm> (Online Guidance). Webster does not deny that it was on notice of this guidance, nor does it dispute that the guidance reasonably interprets the applicable regulatory provision. We therefore review the documentation submitted by Webster to substantiate donated services as in-kind contributions using these requirements along with the regulatory standards for in-kind matching shares.

1. Disability services consultants

Despite Webster's assertions in its brief (at 2-4) that its documentation sufficed to show that the disability services were allowable in-kind contributions, a careful review of the material submitted for the record fails to support that claim. The documents submitted to us fall short in several respects.

ACF disallowed \$181,564 in disability services costs claimed as matching share. ACF Ex. 2, at 1; ACF Br. at 7.⁸ The disallowance was based on the monitoring report findings that the grantee had “no detailed information showing the name of each child, dates of services, and services provided to support in-kind claims, and [that] its professional agreements did not specify services to be treated as in-kind contributions.” ACF Ex. 2, at 1, *citing* ACF Ex. 1.

Webster acknowledges that its agreement with LSU did not provide for in-kind contributions because such donations were prohibited by LSU policies. Webster Br. at 3. Webster asserted, however, that its in-kind claims were not for services provided by LSU but were actually for services provided under agreements with two other entities, Webster Parish School Board (WPSB) and Claiborne Parish School Board (CPSB). *Id.* According to Webster, those inter-agency agreements called for special services staff from WPSB and CPSB to “conduct developmental screens, evaluation, develop IEPs [Individualized Education Programs], and conduct speech and occupational therapy.” *Id.* Webster does not state whether the inter-agency agreements specified that the services would be in-kind donations, but, as discussed next, it is evident that the agreements contained no provision for how the services would be valued.⁹

Webster states that it charged the services provided under the inter-agency agreements using the hourly rate set in the LSU contract. Webster Br. at 3. Webster asserts in its brief that its grantee staff did “research” and discussed the matter with “the special services department” to confirm that the costs were “comparable.” *Id.* This bald assertion is unsupported by any details as to who did what research, whether the qualifications of the individuals involved were compared, or whether the services actually provided under the interagency contracts were at a similar level of difficulty to those

⁸ The disallowance amount is not entirely clear since the monitoring report actually determined that the grantee claimed \$9,063 for December 2012 and \$181,564 for the “year-to-date.” ACF Ex. 1, at 4, *citing* Special Services Monthly Attendance sheet. The Special Services Monthly Attendance Sheet is not identified as such in Webster’s attachments. Webster’s general ledger appears to show current month and prior year to date for expenses. *See, e.g.*, Webster Att. 7. In any case, it is not possible to determine from any documents in the record before us whether the year-to-date total included the December 2012 claims or only the claims up to December 2012. Given that we do not find any of the disability services claims sufficiently documented to be allowable matching share, we need not develop the record further to determine the exact amounts claimed.

⁹ Webster represents that it is submitting the inter-agency agreements as Attachment 2 to its brief, but that attachment contains only additional copies of the LSU contract. Webster did not choose to submit a reply brief and did not request to supplement the record. In any case, even if we obtained copies of the inter-agency agreements, and even if they did provide for in-kind donation of the services claimed, they would not suffice to support the claims here for the reasons explained later.

provided for in the LSU contract.¹⁰ We conclude that this record does not establish that the rate charged by LSU for the services to be provided under its contract with Webster could reasonably be extended to services provided under inter-agency agreements with the school boards.

Furthermore, it would appear to be improper to apply the hourly rate from a consulting contract to an inter-agency agreement with public agencies. The regulations provide that when organizations other than the grantee or its subgrantee or a “cost-type contractor” furnish “free of charge the services of an employee in the employee’s normal line of work, the services will be valued at the employee’s regular rate of pay exclusive of the employee’s fringe benefits and overhead costs.” 45 C.F.R. § 92.24(c)(2). Nothing in the record suggests that the special service staff members from WPSB or CPSB who donated developmental services to Webster children were “cost-type contractors” or were regularly paid \$125 per hour before benefits.

Turning to the actual documentation of the donated services, we find that some but not all of the information which the ACF monitoring report found missing has been provided.¹¹ The monitoring report stated that the monthly attendance sheet “listed children and dates, with most claims for half an hour per day; however, it did not include the name of the provider or the services provided to each child.” ACF Ex. 1, at 4-5. Webster points to a “Monthly Disabilities Service Report Chart” which it states shows “services provided by the school’s special services staff” and includes “child’s name, dates of service, type of service, hours of service and Consultant’s Name.” Webster Br. at 3. The document Webster submitted is entitled “Annual Report of In-Kind Disability Services” prepared by the Head Start Director and mentions WPSB and CPSB as “collaborating agencies.” Webster Att. 3. Children’s names are listed with dates of service, total hours of service (ranging from .5 to 6.5 hours, roughly reflecting 30-60 minutes per date of service), consultants’ names (often four or five different names per child), and cursory mention of the category of diagnosis or service (such “dev. delayed/speech,” “IEP,” or “screening”). *Id. passim*. The document appears to have been compiled at the end of the year from

¹⁰ Indeed, on this record, the services do not appear to be the same. The LSU contract includes program-level services such as observation and ratings of classrooms, in-service and other staff training, and staff and parent consultations, among other activities, whereas the documentation of consultant activities in the monthly spreadsheets appears to relate to developmental or speech services or IEP planning for individual children. *Compare* Webster Att. 1 *with* Webster Att. 3.

¹¹ ACF failed to address the documentation submitted by Webster, referring only to the findings of its monitoring report and the example of attendance sheets which it submitted. ACF Br. at 5-7, *citing* ACF Exs. 1, 5. Our *de novo* review of the Webster documentation shows, however, as discussed in the text, that, while more extensive than what the monitoring team apparently saw, the documentation still falls short of demonstrating that Webster’s records properly show how the value of in-kind disability services claimed was derived.

other records and contains no signatures, no specific times of service, no information on the nature of services provided each time, and no identification of which agency each consultant worked for.

The grantee, apparently recognizing the limitations of this document, explains that it was “developed to calculate actual in-kind costs” using the \$125/hour rate, that the “services rendered are not included” there, but that that information is recorded in the monthly “Disability Services Report.” Webster Br. at 4. Webster also indicates that monthly attendance spreadsheets “verify” the costs to show “\$93,437.50 in disability services provided by the school board special services’ staff.” *Id.*, citing Webster Att. 4. Attachment 4 is entitled “Documented Evidence for Disability Services In-Kind” and contains only a collection of “visitor control sheets” from different Head Start centers for various months with times in and out and signatures with checkmarks to indicate if the visitor is a parent or consultant. Webster Att. 4 passim. Some, though not all, of the consultants’ signed names correlate with the names of individuals listed as consultants in the Annual Report discussed in the prior paragraph. *Id.* A final column for purpose of visit contains terse entries similar to those in the Annual Report such as “DD students,” or “speech,” or “IED.” *Id.* Nothing in the attachment seems to be a monthly disability services report or a monthly attendance spreadsheet for disability services’ consultants.

The only monthly attendance spreadsheets in the record are those for January and December 2012 which ACF submitted. ACF Ex. 5. These spreadsheets list names (presumably of children) with days of the month across the top and entries of .5 (presumably 30 minutes) for some days. These entries are then totaled in another column and multiplied by the \$125/hour rate to give a total in-kind claim per child for that month. *Id.* It is unclear what documents were used to compile these spreadsheets which themselves do not identify either the consultant or service provided on any particular date. The times shown for individual children in the monthly spreadsheets do not correspond to the services shown as provided that month to those children in the Annual Report of In-Kind Disability Services. Compare ACF Ex. 5 with Webster Att. 3. For example, the first child listed as receiving services in January 2012 in the Annual Report of In-Kind Disability Services is shown as receiving .5 hours of service on only one date that month – January 11, 2012. Webster Att. 3, at unnumbered page 4. The January 2012 monthly attendance spreadsheet, by contrast, shows the same child receiving services three times per week (Monday, Wednesday, and Friday) for a total of 6.5 hours for the month. ACF Ex. 5, at unnumbered page 2. The second child on the Annual Report list is shown as receiving zero hours of service in January 2012 but as receiving 6.5 hours in the monthly attendance spreadsheet. Compare Webster Att. 3, at unnumbered page 4 with ACF Ex. 5, at unnumbered page 2.

In sum, we find the records to be lacking in essential specifics about questions such as which consultants worked for a school board (and not LSU), what qualifications they had, which children received services on which dates and times, and what the services

actually comprised. For example, does the word “speech” imply that an individual speech therapy session was provided by a licensed speech therapist or that a teacher or aide engaged in some kind of speech activities with a group of children with special needs in that area? The valuation of such different services would likely not be the same. Webster offered no affidavits or other supplemental information (such as lists identifying particular consultants’ employers or qualifications or policies about disability service activities at Webster) that might have allowed us to determine reasonable value. The inconsistencies in the records undermine their reliability as well. While we do not doubt that children received some special education services during the year, the documentation falls short of the standards required by the regulation and interpretive guidance for volunteer in-kind claims.

We conclude that none of the disability services claims are allowable as in-kind contributions. ACF determined that \$181,564 of costs in this category were unallowable as non-federal match based on the monitoring report’s finding of the year-to-date 2012 claims. ACF Ex. 2, at 1; ACF Ex. 1, at 4.¹² We therefore uphold the full amount of the disallowance attributable to this category.

2. Vision and Hearing Services

ACF rejected \$3,165 in vision screening costs and \$3,150 in hearing screening costs, again citing the same findings of the monitoring report. ACF Ex. 2, at 1, *citing* ACF Ex. 1. Webster submitted Hearing Screening Records showing the names of children, their classrooms and teachers, the dates screened for hearing, and the results (such as whether a letter was sent to parents about impacted wax in ears, ear tubes or other concerns). Webster Att. 5-A *passim*. From these records, spreadsheets were compiled showing the students by teacher and date of service and identifying for each a fee of \$5 and a donation of \$15. *Id.* *passim*. Based on these documents, Webster contends that it has documented allowable costs of \$1,815 for vision and \$1,695 for hearing screening services. Webster Br. at 5.

Webster acknowledges that its longstanding, annually renewed agreement with the health services provider who performed professional vision and hearing screening did not specify the amount of the in-kind donation at the time of the monitoring. *Id.* Webster states that the omission was “inadvertent” and submits revised contracts spelling out the donation of \$15 per screening for each category of screening. *Id.*; Webster Atts. 5, 6.

¹² Webster’s brief argued only that \$93,437.50 for disability services (the amount identified in its internal review) should be allowed without commenting on the remaining amount disallowed. The undisputed amount may represent services provided by LSU which Webster is no longer seeking to treat as matching share after its internal review. Given our determination that none of the claims are allowable, we need not resolve the discrepancy with certainty.

The contracts are identified as amended, retroactively cover the period in 2012 when the services were provided, and are signed by the provider and Webster's Executive Director on August 1, 2013. Webster Atts. 5, 6. Each contract details the specific services to be performed at each screening. For hearing, the consultant is to use the audiometer to test each ear at decibel levels of 20, 1000, 2000, and 4000, to identify and recommend where further services are needed, and to provide staff training where needed. Webster Att. 5, at unnumbered page 2. For vision, each screening is to include acuity, using specific tests; cover/uncover, alternate cover; near point of convergence; versions; and Hirschberg Light Reflex Test, and here too any need for further services or treatment is to be identified. Webster Att. 6, at unnumbered page 2.

In its response brief, ACF merely repeats that the contracts did not state the amount of in-kind donation and that Webster did not document the "names of the children receiving the screening, dates of services, or locations" ACF Br. at 7.¹³ ACF did not provide a reason to reject the retroactive amendments of the contracts to spell out the agreed donation, and we conclude that they adequately reflect that the provider had accepted a per-screening fee of \$5 and donated a balance of \$15. ACF did not question either the valuation of the services at \$20 each or the attendance of the provider on the recorded service dates. Only one contractor provided these screening services, so identifying the individual provider is not problematic. ACF did not explain why the level of detail on the screening reports and spreadsheets is not adequate to substantiate the costs which Webster now claims for these donated services.

We therefore reverse the portion of the disallowance attributable to **\$1,815** for vision screenings and **\$1,695** for hearing screenings as in-kind donations.

3. Physical and dental screenings

Webster claimed as matching share \$31,445 for the value of physical examinations and lead screening and \$71,452 for the value of dental screenings. ACF Ex. 2, at 2. ACF found that the costs of these services were paid by the Louisiana Medicaid program. ACF Ex. 1, at 3. Section 92.24(b)(1) of the applicable administrative regulations provides that "a cost sharing or matching requirement may not be met by costs borne by another Federal grant." ACF argues, and Webster does not deny, that the State Medicaid program receives federal funding. ACF Br. at 8; Webster Br. at 6. Webster concedes

¹³ The only reference ACF cites for these assertions is ACF Exhibit 4, which relates to the real property appraisal issue we address later, and which has no page 4 as cited. ACF Br. at 7. Based on the page number cited and the context, we assume ACF intended to cite the monitoring report, ACF Exhibit 1, at 4. ACF did not discuss the documentation provided in Webster's appeal file and addressed in the text.

that these costs were not eligible matching share and removed them from the calculation of matching share in its internal review. Webster Br. at 6, 9. We therefore sustain the portion of the disallowance attributable to the claims for these services

Real estate costs

The matching share claims for in-kind donation of space included both locations owned by Webster and locations provided for its use by third parties. The issues differ for each kind of space, so we address them separately.

1. Grantee-owned space

Webster states that four facilities for which in-kind space donations were claimed are owned by Webster and were acquired or renovated by it for use in the Head Start program. Webster Br. at 8; Webster Att. 17, at 2. Webster acknowledges in its brief that it was unaware of the requirements for how to claim matching share for use of its own facilities, and instead claimed for these spaces based on appraisals of fair market value. *Id.* We agree with ACF that Webster could not claim use of grantee-owned space based on fair-market value rather than acquisition cost. ACF Br. at 11.

Webster, as noted earlier, performed an internal review of the questioned in-kind matching share claims. Webster Br. at 8-9. In that review, Webster concluded that \$6,663 could be claimed based on the use allowance method, instead of the \$82,772 which Webster originally claimed based on appraisals for use of its own facilities. *Id.* at 9; Webster Att. 17, at 2.

ACF acknowledges Webster's recalculation based on use allowance, but then objects that the use allowance may only be based on the original acquisition cost, not an appraisal or fair market value. ACF Br. at 10-11. This objection appears to be based on a misreading of Webster's brief and attachments. ACF focuses on Webster's statement that its recalculated claim for "the value of donated space verified by appraisals [and] calculated use allowance for project year 2012 was \$154,948 [\$148,285 plus \$6,663]." ACF Br. at 10-11, *quoting* Webster Br. at 9 (bracketed material added by ACF). This statement combines the calculation presented in the internal review for appraised fair market value of third-party donated space (\$148,285), discussed in the next section, with the use allowance calculation for grantee-owned space (\$6,663). It does not state, as ACF implies, that the use allowance is based on appraisal or fair market value. In fact, the summary sheet from the internal review shows that use allowances were calculated based

on original acquisition cost plus the cost of renovations multiplied by .02.¹⁴ Webster Att. 17, at 2. The summary provides the acquisition date, acquisition cost plus cost of renovations/improvements, and calculation of use allowance for each of the four grantee-owned facilities. *Id.* For each of these facilities, the column on “appraised annual rental value” contains zero dollars and the column on use allowance contains an entry. *Id.* ACF does not question the accuracy of the acquisition dates and costs or the reasonableness of the 2% use allowance rate, which is supported by ACF’s own instructions. Online Guidance. We see nothing on the face of the information provided that causes us to question the correctness of the calculations.

We therefore find that a use allowance totaling **\$6,663** for the usage of the grantee-owned facilities for the Head Start program is an allowable matching share and reverse the portion of the disallowance attributable to that matching share.

2. Third-party space donations

As to the facilities the use of which was donated to Webster by other entities, Webster maintains that it did have independent appraisals to support the values claimed as non-federal matching share. Webster Br. at 7. Webster asserts that its staff did not merely estimate fair rental values at \$5 or \$6 but rather relied on certified appraisals. *Id.* The worksheet on which the monitoring review relied for its contrary finding was, according to Webster, a projection estimating “annual amounts for budget planning purposes.” *Id.*¹⁵ Further, Webster explained that the amount on the worksheet (\$306,620) was not the amount ultimately recorded in the general ledger as donated space for the year ending December 12, 2012 because the actual amount was less than estimated (\$246,624).¹⁶ *Id.* at 7-8; Webster Att. 13 (“Space/Facility Budget Worksheet”).

¹⁴ For one facility called Minden HQ, the total is reduced further to reflect 50% Head Start use. Webster Att. 17, at 2.

¹⁵ We find this representation consistent with the monitoring review’s assertion that, when interviewed, Webster’s Comptroller stated both that “all facilities were appraised ‘at one time or another,’” although the appraisals were conducted 5-20 years before, and that “grantee staff estimated Head Start center property values at \$5 or \$6 per square foot.” ACF Ex. 1, at 6. That is, the fact that grantee staff did indeed make estimates in projecting the budget does not necessarily mean that the ultimate matching share claims were not based on appraised values, as ACF implies in reporting the Comptroller’s statements. *Id.*

¹⁶ The worksheet and ledger totals here included both the grantee-owned space discussed previously and the third-party donated space. Thus, the amount recorded in the ledger as matching for third-party donated space alone was \$163,852 (\$246,624 minus \$82,772). As explained in the text, the grantee’s internal review supported \$148,285 in third-party donated space to which it added \$6,663 for use allowance on grantee-owned space for a total claimed in-kind space match of \$154,948. Webster Br. at 8-9, *citing* Webster Atts. 13-15, 17.

Section 92.24(d)(2) provides that when a third party “donates the use of . . . space in a building but retains title, the contribution will be valued at the fair rental rate of the . . . space.” Where a third party donates buildings or land and the title passes to the grantee, section 92.24(e) states that the treatment of the donated property depends on whether or not the purpose of the grant was to assist in the acquisition of property (“awards for capital expenditures”). For other grants, as in the present case of a Head Start grant not aiming at property acquisition, the grantee must employ depreciation or use allowance unless prior approval was obtained from the awarding agency to treat the costs differently. 45 C.F.R. § 92.24(e)(2); *see also* Online Guidance (“ACF does not allow the fair market value of donated buildings to be counted as cost sharing or match for grantees subject to 45 CFR Part 92. Only depreciation or use allowances based on the property’s market value at the time it was donated may be counted.”).

Section 92.24(g) contains the applicable provisions on appraisals of real property:

In some cases under paragraphs (d), (e) and (f) [paragraph (f) is not relevant here] of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. . . .

The net effect is that where a third-party owner donated real property, Webster could only claim the value of depreciation expense or use allowance (as with grantee-owned space) but based on the appraised market value at the time of donation rather than the acquisition cost. Where a third-party owner donates use but not ownership of real property, Webster could claim as a donation the fair rental rate for the use of the property. Neither Webster nor ACF (at least in its brief) seems to have fully understood or applied these standards.

Webster describes the facilities at 618 Weston Street as consisting of land, along with a brick building containing a cafeteria and one classroom. Webster Br. at 7. This space is leased from the school board for \$1 per year for ten years (apparently the low rent cost was to compensate for improvements Webster had to make before occupying the building after a fire). Webster Att. 12, at unnumbered page 6. Webster has also placed its own prefabricated classrooms on the leased land, but had an appraisal of the site done in 2001 omitting the grantee-owned prefabricated units. *Id.* Nothing in the appraisal supports the claimed fair rental value of \$5 or \$6, but the appraisal does show estimated gross potential income from the building (presumably were it to be rented commercially) of \$2.98 for 4028 sq. ft. for a total of \$12,000 less a 7% vacancy rate (\$840) for a net rental income of \$11,160. *Id.* The projected vacancy rent would form part of a calculation of fair rental value on a commercial market and should therefore have been deducted from

the claimed amount. Absent any showing by ACF that this amount is unreasonable (or any suggestion that the value is likely to have decreased since the appraisal), we conclude that \$11,160 constitutes allowable matching share.

Webster also provided a 1992 fair market rental appraisal for 9.23 acres of land at the same address at \$8,275 per year. Webster Att. 12, at unnumbered 2-3. We understand this to be the land housing the prefabricated units. Webster Br. at 7. Neither ACF's guidelines nor the regulations directly address use of donated land where the title does not pass to the grantee (in which case approval would be required to show that it would be an allowable cost to rent such land) and the land is not appurtenant to the leased building space (in which case the fair rental value of the land is not separately claimed). Online Guidance. Obtaining use of land on which to house prefabricated Head Start classrooms appears to be an allowable grant-related cost, and the rental claim does not appear to duplicate that for the separate area with the building.¹⁷ ACF did not offer any analysis to challenge either the allowability or the reasonableness of the fair rental value for the use of the land. We therefore consider the \$8,275 to be an allowable matching share.

ACF does acknowledge that the 618 Weston Street location constituted leased space, but says it is "unclear if this property is the basis on which Webster Parish asserts \$154,948 as allowable cost for donated space." ACF Br. at 11. It is in fact clear that this property was included in the donated space claimed as allowable non-federal match. Webster Att. 17, at 2 (spreadsheet listing donated space in-kind claims). The center at 618 Weston is identified as the Mother Goose Land Center; and Webster claimed \$12,000 for the building and \$8,275 for the land on which the classrooms were located (and removed a prior \$40,080 claim for the grantee-owned prefabricated classrooms). *Id.* ACF offered no other reason that these amounts would not be appropriate claims.

We therefore conclude that **\$11,160** constitutes allowable matching share for the use of the building and **\$8,275** is allowable for use of the land at 618 Weston Street.

¹⁷ By contrast, Webster provided no information on the 3 acres identified as "Homer land" for which it claimed \$1,500 as "appraised annual rental." Webster Att. 17, at 2. Absent further explanation of the use of this land, and its association, if any, with A-B-C Center listed on the same street, we cannot determine whether any matching share amount is allowable for this land.

Webster listed three other locations as donated space not owned by the grantee for which it asserts that claims at “appraised annual rental value” were allowable:

- Humpty Dumpty at 479 Bellevue Rd., Cotton Valley for 11,350 sq. ft. @ \$5 = \$56,750
- A-B-C Center at 1042 Pearl St., Homer for 7,342 sq. ft. @ \$5 = \$36,710
- 1-2-3 Center at 2050 Mason Dr., Haynesville for 6,610 sq. ft. @ \$5 = \$33,050

Webster Att. 17, at 2.¹⁸ The monitoring report, as mentioned earlier, asserted that Webster “did not obtain an independent appraisal from a certified appraiser to determine the fair rental rate of space owned by third parties,” but also noted the Comptroller’s statement that the facilities were appraised although 5-20 years earlier. ACF Ex. 1, at 5-6. The three named facilities are listed as appraised on January 11, 1991 (approximately 20 years before the program year at issue). Webster Att. 17, at 2. Webster did provide a letter of that date from an appraiser stating that these three facilities have a fair rental value of \$5 per square foot per year based on “accepted appraisal methods.” Webster Att. 11, at 4; *see also* Webster Att. 10 (appraiser’s credentials).

ACF does not discuss the appraisal at all in its briefing and does not indicate whether the age of the appraisal undercuts its validity in determining current fair rental value. ACF does state that the 618 Weston Street property was the only one reported to be “leased,” but does not explain the significance of that statement. ACF Br. at 11. ACF does not question that Webster was permitted the use of these three properties without compensation for Head Start purposes. While it is true that Webster did not provide details about the ownership and use agreements for the third-party owned properties, ACF’s own instructions merely state that “[l]oaned . . . space (e.g. the donor retains title) shall be valued at its current fair market rental rate.” Online Guidance.

In the absence of any explanation from ACF for rejecting the fair rental values for which Webster proffered documentation, we find that the donated space amounts for these three facilities constitute allowable matching share in the amount of \$56,750 + \$36,710 + \$33,050, or **\$126,510**.

¹⁸ Corresponding locations appear in the worksheet discussed earlier but with slightly different square footage figures. Webster Att. 13.

Added to the allowable amounts for the 618 Weston Street property, the total allowable matching share for use of third-party owned space is **\$145,945**.

Other matching share claims

ACF asserted that the disallowance was calculated based on a non-federal matching share of zero dollars (hence, disallowing 20 percent of the claimed program expenditures). ACF Br. at 5; ACF Ex. 2, at 3. ACF does not assert that the categories of matching share questioned in the monitoring report and disallowed constituted the only matching share amounts identified by Webster or explain why it used a figure of zero for matching share.

Webster points to several other categories of donated services and in-kind contributions which it asserts were allowable, adequately documented based on its internal review, and consistent with its general ledger and Financial Services Report to ACF. Webster Br. at 9; Webster Att. 18. ACF does not deny that these costs also constituted identified matching share, does not assert that they were unallowable in nature, and does not provide any reason why they could not serve to reduce the disallowance, if supported by adequate documentation.¹⁹ We must, therefore, review the documentation submitted by Webster to support these additional items.

1. Volunteer services

Webster's internal review summary identifies as follows two categories of services not addressed by the monitoring report or disallowance:

| | |
|------------------|-------------|
| Work crew ----- | \$85,732.75 |
| Volunteers ----- | 10,173.76 |

Webster Att. 18. We have already discussed the standards to be applied in evaluating the documentation of volunteer services.

¹⁹ Indeed, ACF did not refer to these costs in its disallowance letter at all, so it might be considered that they were not questioned. ACF Ex. 2. We find, however, that the monitoring report made a broad finding that Webster "did not ensure third-party in-kind contributions used to satisfy its matching requirement were verifiable from its records." ACF Ex. 1, at 4. The report also asserted that "[v]olunteer services performed by community service workers were not adequately documented." *Id.* Webster plainly understood that its in-kind contributions for 2012 had been questioned across the board, since it submitted documentation and argument as to all the categories. We therefore conclude that, despite the absence of further elucidation in ACF's disallowance letter or brief, Webster was on notice that it had to make a showing that its records did contain documentation sufficient to verify the claimed matching share.

The monitoring report's discussion of "community service workers" does not make a distinction between "work crew" and other volunteers. It states that "a monthly Volunteer Summary sheet for December 2012" was reviewed which did not include a description or location for the services provided and lacked signatures from either the volunteer or a Webster staff member. ACF Ex. 1, at 4. ACF did not comment on the documentation submitted by Webster for work crew and other volunteers, although it did cite to its own copy of a sheet listing days and hours worked by one individual in December 2012 in regard to its discussion of disability services. ACF Br. at 6-7; ACF Ex. 3. It is not clear if this is the same sheet to which the monitoring report refers. The monitors report that, in an interview, Webster's Executive Director and Head Start Director "stated donated services were provided by local inmates and involved facility maintenance under the supervision of the Sheriff's Department when children were not in attendance." ACF Ex. 1, at 4.

Webster argues that the "matching claims to support its non-Federal share claim were verifiable from its records" and requests "a review of the facts along with the documented evidence." Webster Br. at 1-2. Turning to the documentation, Webster submitted a two-part attachment 9B identified as containing the records for work crew and a multi-part attachment 9 identified as containing the records for in-kind volunteers.²⁰

a. Work crew

The records in Webster Attachment 9B resemble the description of the December 2012 volunteer summary sheet in that each page shows a total number of hours by day for each day during a month for a single individual with no description of the service performed. Each entry appears to record either absence or eight hours of work. The vast majority of the pages are unsigned with the worker's name printed at the top, although some names are written in cursive and a few records contain unidentified signatures of other persons in the middle of the pages. *See, e.g.*, Webster Att. 9B – Part 1, at unnumbered page 19. Part 1 of that attachment covers the first six months of 2012, and part 2 covers the rest of that year. Before each set of monthly records in each part is a small spreadsheet totaling the hours worked multiplied by a rate of \$9.50 per hour. The same rate is multiplied by the hours worked per month by each volunteer on the individual monthly sheets.

Webster offered no explanation of the nature of these services beyond titling the attachment as "work crew." Webster did not confirm or deny, either by affidavit or even in its brief, the assertion in the monitoring report that its officials told the monitors that facility maintenance services were provided by inmates. No agreement or other

²⁰ Webster Attachment 9A contains records relating to donations of in-kind items rather than services and is discussed in the next section of this decision.

document was submitted to show an arrangement with the Sheriff's Department or penal authorities. Furthermore, Webster gave no basis for valuing the work crew services at \$9.50 and, if these are prisoners, it is unclear whether minimum wage rates apply and whether their labor is subject to any state valuation. We conclude that Webster failed to document that these services constituted allowable in-kind matching share.

b. Volunteers

The records in Webster Attachment 9 are quite different in nature. They appear on their face to largely represent activities of parents either attending training or orientation programs or volunteering in Head Start classrooms or centers. The same online training materials relied on by ACF for the documentation requirements for volunteer services states that "Head Start parents may furnish volunteer services." Online Guidance. Parent activities that benefit Head Start may be claimed as in-kind contributions but attendance at "special programs such as literacy" is not allowable because the parent is receiving a benefit from the grantee. *Id.*

Webster Attachment 9 consists of six sets of documents – one each for September (9-Part 1), November (9-Part 3), and December of 2012 (9-Part 4), and three for October 2012 (9-Part 2, Sections 1-A, 1-B, and 2).²¹ Webster provides a spreadsheet indicating that the monthly totals for volunteer services represented by these records are as follows:

| | |
|----------------------|-----------------|
| September 2012 | \$ 931.00 |
| October 2012 | 4,812.27 |
| November 2012 | 1,710.12 |
| <u>December 2012</u> | <u>2,720.37</u> |
| Total | \$10,173.76 |

Webster Att. 9, at unnumbered 2. The records in attachment 9 overall contain considerably more detail than those for work crews. Unlike the sheets in attachment 9B, these records generally identify a start and stop time, a center or classroom, and a specific activity, and in most cases contain the volunteers' signatures. Overall, the records in attachment 9 contain what the Board has referred to in a prior case requiring a similar review of grantee documentation as "indicia of reliability (such as having been regularly maintained during the course of the Head Start program to document the receipt of volunteer services) and [are] sufficient to establish the receipt of in-kind contributions and their amount." *Philadelphia PCC* at 8. ACF does not question that the documentation was contemporaneous and part of a record-keeping system. *See also id.* at 12-13.

²¹ Webster did not make any claim or submit any documentation for volunteer services for any other months in 2012.

Looking in some detail at the September 2012 records, we find that Webster Attachment 9-Part 1 contains a sign-in form identified as a volunteer group activity timesheet for a parent empowerment activity at the MGL (Mother Goose Land) Center from 5-6 PM on September 6, 2012 with 29 different signatures. Webster Att. 9-Part 1, at unnumbered 4-5. In another color of ink, a value of \$9.50 per person per hour is written in on each line yielding a total of \$275.50 for the volunteer session. *Id.* The same attachment contains a similar form for a parent meeting at the ABC Head Start Center from 5-6 PM on September 11, 2012 with 20 distinct signatures and a total valuation of \$190. *Id.* at 6. Another form shows 15 distinct signatures for a September 11, 2012 parent orientation at the 123 Head Start Center with a total valuation of \$142.50. *Id.* at 7. The attachment also contains 12 signatures for a parent orientation at Humpty Dumpty on September 12, 2012 for \$114; and two parent meetings at Jack and Jill on September 13, 2012 (14 people from 6-7PM and 4 from 8-9PM) for \$199.50. *Id.* at 8-10. The attachment also contains one volunteer time sheet for in-kind contributions showing the name and signature of an individual serving as an assistant teacher at the Jack and Jill Center on September 11, 2012 for one hour from 10:15 to 11:15 AM. *Id.* at 11. Similar records show classroom assistance duties or Head Start open house activities in other months. *See, e.g.,* Webster Att. 9-Part 2, Section 1-A, at unnumbered 8-14.

ACF did not argue that the parent empowerment sessions, or the other parent meetings and activities, were in the nature of benefits to the parents as opposed to volunteer involvement by the parents benefitting Head Start or otherwise question their allowability. Neither did ACF object to the default valuation of volunteer services not identified as professional at \$9.50 per hour. Given that ACF's online training materials state that valuation of volunteer services should include a fringe benefit component analogous to that provided to grantee staff, \$9.50 per hour appears reasonable on its face as a valuation for the combination of donated time and fringe benefits. *See also Philadelphia PCC* at 23-24. We therefore conclude that the recorded hours for parent activities in meetings and classrooms which show the time, date, location and nature of the services and which are charged at \$9.50 per hour documented throughout Webster Attachment 9 are allowable matching share.

Webster Attachment 9 also contains, however, some "consultant in-kind forms" which include signed and dated attestations that the individual has donated time (generally .5 – 3 hours) to the benefit of the Head Start program. *See, e.g.,* Webster Att. 9-Part 2, Section 1-B, at unnumbered 24; Webster Att. 9-Part 4, at unnumbered 6-14. These forms generally state the individual's "position," such as retired educator or "President," but most do not explain the particular service provided. *But see* Webster Att. 9-Part 3, at unnumbered 6 ("instructor's aide" charging \$50 for 1 hour for "GED workshop"). The consultants' time is valued at \$15-50 per hour with no information as to the basis for the value assigned. Head Start online guidelines explain that the value of volunteer time must be based on the service actually provided not only the individual's professional status. Online Guidance (dentist who volunteers for classroom work as opposed to

providing dental services should be valued according to classroom wage scale). Webster did not provide affidavits or documentation to clarify either the nature of the services provided or the credentials of the consultants. While the attestations provide reasonable assurance and sufficient detail to conclude that services were provided, the source documentation is insufficient to justify placing a higher value on these particular services. We therefore treat these consultant services as allowable matching share but only at the default rate of \$9.50 per hour. We calculate the difference between the amount claimed for the consultant services and the amount allowable at \$9.50 per hour to be \$436.50.

In summary, we find allowable the volunteer services for which source documentation was provided in the amount of \$10,173.76 minus the excess consultant costs of \$436.50 for a total of **\$9,737.26** in matching share.

2. In-kind donations

Apart from the volunteer service contributions, Webster also proffered source documentation concerning donations of items to the various Head Start centers and classrooms. Webster Att. 9A (multiple parts). These documents also appear to be contemporaneous and regularly maintained. Generally, each record shows the donor name, date, center, staff person receiving the donation, description of the items, and value or cost. *Id. passim*. The nature of the items is mostly seasonal or celebratory – such as candy and food suitable for children’s parties (pizza, cupcakes, etc., as well as plates and napkins) during the Halloween period and a large number of small toys, stuffed animals, puzzles, dolls, coloring books and similar children’s items in December. *Id.* Most of the candy and food were donated by individuals (teachers, parents or others); a large proportion of the toys and gifts were donated by organizations such as a senior center and an Army reserve center. Individual items were mostly valued well under \$5.

ACF has given us no reason to doubt either the veracity or sufficiency of the source documentation or the reasonableness of the values assigned. Our review of the documentation supports the allowability of the **\$3,564.27** claimed as matching share in this category.

3. Equipment

Webster indicated, as noted earlier, that it claimed \$2,400.00 for donated equipment in 2012. ACF’s online guidance defines donated equipment as only that which has a fair-market value greater than \$5,000 at the time of donation. Online Guidance. Thus, the items included in Webster’s claim are not subject to the specific documentation standards applicable to donated equipment such as descriptions of the equipment and its condition and references for the proposed program use. *Id.*

Webster did not identify the donated items it considered “equipment.” Webster Attachment 9A-Part MGL2, at unnumbered 29, documents receipt of a 19 inch color television valued at \$129 and a DVD player valued at \$30. The program utility of these items is evident and their valuation is reasonable. We allow a matching share of **\$159** for these items. The remaining amount claimed as equipment is unallowable because Webster has not shown that it could be verified from its records.

Calculation of remaining disallowance

In light of our conclusion that the allowable matching share was greater than zero, the disallowance must be recalculated to reflect the amount allowed. To do so, we simply follow the same formula used by ACF, so we do not find it necessary to remand for recalculation.

We determined above that the following amounts of matching share are allowable and adequately documented in Webster’s records:

| | |
|---------------------------------------|---------------|
| Vision | \$1,815.00 |
| Hearing | 1,695.00 |
| Use allowance for grantee-owned space | 6,663.00 |
| Use of third-party owned space | 145,945.00 |
| Volunteer services | 9,737.26 |
| In-kind donated items | 3,564.27 |
| <u>Equipment</u> | <u>159.00</u> |
| Total | \$169,578.53 |

We add the actual reported (grant-funded) expenditures of \$2,044,570.00 to the allowable NFS of \$169,578.53, resulting in total actual program costs of \$2,214,148.53. Maximum allowable Federal expenditures would be 80% of total costs which is \$1,771,318.82 (i.e., 80% of 2,214,148.53). ACF thus properly disallowed the difference between the actual reported expenditures and the allowable Federal expenditures, \$2,044,570.00 minus \$1,771,318.82, or \$273,251.18.

We therefore sustain a disallowance of \$273,251.18, rather than the \$408,914 originally disallowed by ACF.

Equitable relief

Webster asks that we grant it “relief from the non-Federal share requirement” as a result of the acknowledged “shortage” in its match found in the internal review. Webster Br. at 10. Webster emphasizes its long standing as a Head Start grantee and the documented need for such services in its community. *Id.* Webster reports that more than “17,000

children and families have experienced success in the program’s 50 years of commitment to service.” *Id.* Webster also argues that repayment would create a “financial hardship” and result in “its closure and elimination of vital services” to needy children. *Id.* at 2.

While Webster may well be proud of its results, Webster’s request for relief from its financial obligations to the government to continue that “legacy and commitment” (Webster Br. at 11) is not within the scope of this proceeding. The Board has consistently held that it “has no authority to waive a disallowance based on equitable principles.” *Bright Beginnings for Kittitas Cty.*, DAB No. 2608, at 7 (2014), quoting *Municipality of Santa Isabel*, DAB No. 2230, at 11 (2009); accord *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404, at 20 (citing 45 C.F.R. § 16.14 and stating that the Board “is bound by all applicable law and regulations” and “cannot provide equitable relief”).

The applicable law and regulations, as fully explained above, authorize ACF to impose a disallowance in the amount sustained here. We therefore cannot grant the requested relief.

Conclusion

For the reasons explained above, we sustain a disallowance amount of \$273,251.18.

_____/s/
Constance B. Tobias

_____/s/
Susan S. Yim

_____/s/
Leslie A. Sussan
Presiding Board Member