Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Board of Education of Topeka Public Schools,
Unified School District #501
Docket No. A-11-75
Decision No. 2421
November 21, 2011

DECISION

The Board of Education of Topeka Public Schools, Unified School District #501 (BOE), appealed the April 7, 2011 determination of the Administration for Children and Families (ACF) disallowing $33,106.22 charged by BOE to its Head Start grant for the 2009-2010 program year for certain payments made to seven retired Head Start teachers. The amount remaining in dispute is $30,470.67, which represents all of the payments to five of the teachers and part of the payments to one of the teachers. ACF initially disallowed the payments on the ground that BOE failed to seek ACF's prior approval to charge them to the grant. According to ACF, the payments constituted "abnormal or mass severance pay," which the applicable cost principles make allowable only with prior approval. During the proceedings before the Board, ACF stated that it was disallowing the costs on the additional ground that they were not "necessary and reasonable for the proper and efficient administration" of the Head Start program, as required by the applicable cost principles.

For the reasons discussed below, we conclude that the disputed payments were not abnormal or mass severance pay within the meaning of the applicable cost principles. We also conclude that the costs were necessary and reasonable for the proper and efficient administration of BOE's Head Start program. We therefore reverse the disallowance in the amount of $30,470.67.

Legal Background

Part 74 of title 45 of the U.S. Code of Federal Regulations contains the requirements for administering Department of Health and Human Services grants and the principles for determining allowable costs. 45 C.F.R. § 74.1. Part 74 is made specifically applicable to Head Start grantees by the Head Start regulations. 45 C.F.R. § 1301.10(a). Section 74.27(a) states that the allowability of costs incurred by State or local governments is determined in accordance with the provisions of Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State and Local Governments." OMB Circular A-87, now codified at 2 C.F.R. Part 225, provides generally that, to be

allowable, costs must, among other requirements, be "necessary and reasonable for proper and efficient administration of Federal awards," be "allocable to Federal awards," and be "authorized or not prohibited under State or local laws or regulations." 2 C.F.R. Part 225, App. A, ¶ C.1.a-c. Among the factors to consider in determining whether a cost is reasonable are: whether the "cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award"; the "restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations"; and whether "the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government." *Id*. at App. A, ¶ C.2.a., b., d.

The costs of "compensation for personal services" are allowable to the extent they satisfy the specific requirements of the appendices to Part 225 and "the total compensation for individual employees" meets certain general requirements, including that it is "reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities[.]" 2 C.F.R. Part 225, App. B, ¶ 8.a.

Compensation for personal services "includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits." *Id*. at ¶ 8.a. Fringe benefits "are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans." *Id*. at ¶ 8.d.(1). "Except as provided elsewhere in [the cost] principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit." *Id*. The cost of fringe benefits in the form of employee health insurance and pension plan costs (and other costs not relevant here) are allowable "provided such benefits are granted under established written policies." *Id*. at ¶ 8.d.(5) (emphasis added).

In addition to these general provisions on fringe benefits, the cost principles on compensation for personal services define and limit "severance pay" as follows:

> (1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.
>
> (2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

> (3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

2 C.F.R. Part 225, App. B, ¶ 8.g (emphasis added).

HHS's 1997 "Implementation Guide for Office of Management and Budget Circular A-87," known as ASMB C-10,[1] further elucidates the nature of abnormal or mass severance pay as follows:

> 3-13 **. . . What is the definition of "severance pay" in this case, and what must be submitted to the Federal Government for approval?** [Att. B, ¶ 11.g(3)] . . .
>
> (1) Mass severance or termination benefits would include all expenses associated with the event. This would include: lump sum payments that may be linked to years of service, increased pension benefits such as granting additional years or eliminating penalties for early retirement, payments of unused leave, and the cost of any other incentive offered to employees as an incentive to leave government service, such as buy-outs.
>
> (2) The costs of these special termination benefits must be determined and prior approval of such costs must be obtained from the Federal cognizant office prior to claiming these costs directly or indirectly against Federal programs. The requests for prior approval, at a minimum, must demonstrate the reasonableness and allocability of such costs to Federal programs.
>
> (3) If a state or local government is contemplating such packages, they must obtain approval as required, based on the effective date of Circular A-87 for the specific governmental unit. . . .

[1] Excerpts of ASMB C-10 are included in ACF Exhibit 7. The full document is available at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf. The excerpt quoted here refers to Attachment B of OMB Circular A-87 identified in Part 225 as Appendix B.

ACF Ex. 7, at 4-5 (emphasis in original). ASMB C-10 also describes the criteria to be used by a cognizant agency in determining whether abnormal severance costs will be allowed, including "estimated savings, total and Federal, in both dollars and numbers of employees" and "the effect the downsizing will have on the operation, continuity, and effectiveness of programs." *Id*. at 5. ASMB C-10 states in addition that severance payments "associated with normal turnover," as opposed to "reductions due to program cutbacks or elimination, reductions in the government workforce, buy-outs, etc.," are allowable. *Id*.

Case Background

The core issue presented in this case is whether the payments at issue are in the nature of normal fringe benefits, specifically School District pension plan costs supplementing the State pension program, or in the nature of severance pay, specifically abnormal or mass severance pay. The facts material to resolving this issue, as shown by the record before the Board, are undisputed.

Unified School District No. 501, a public school district, operates a Head Start program in Topeka, Kansas. BOE Br. at 1. Teachers in this Head Start program are members of the school district's professional bargaining unit, and terms and conditions of their employment are governed by the Professional Agreement between BOE and the National Education Association-Topeka, Inc. *Id*. at 2. (There is no indication in the record that this was not the case throughout the time periods referenced here.) Beginning in 1980, Kansas law authorized the board of education of any school district to establish an "early retirement incentive program" that provided for "cash payments" to employees who retired "prior to the retirement age as provided" under the Social Security Act but who were eligible to retire under the state's retirement system. *Id*. at 2, 11, quoting K.S.A. 72-5394.

In 1982, the Professional Agreement between teachers and the school district first included an article which provided for additional payments to retiring teachers beyond those provided by the statewide pension system. BOE Br. at 2. The provision, titled "Early Retirement Incentive," as amended in various years, ultimately applied to professionals governed by the agreement who were employed by the district between 1982 and 2002. [2] *Id.*

[2] The 1985-1986 Professional Agreement lowered the age of eligibility, lowered the number of years of service, and added health insurance as a benefit. The 2004-2005 Professional Agreement limited the application of Article 11 to persons who were employed on or before October 1, 2002.

During the 2009-2010 program year at issue here, the early retirement incentive provision, located in Article 11 of the 2009-2010 Professional Agreement, provided that eligible employees who announced by April 1 in a given calendar year their intention to retire on July 31 of that year could receive monthly payments starting in October and continuing until they reached age 66, as well as health insurance coverage until reaching age 65. (These monthly payments from the district were made in addition to the state pension payments and were based on one-third of the base salary of a beginning professional.) Under Article 11, an employee is eligible for payments if the employee--

1. is currently a professional employee of the School District,
2. is sixty (60) through sixty-five (65) years of age on or before July 31,
3. has ten (10) years or more of continuous full-time employment service with the School District immediately prior to taking retirement leave of absence or early retirement incentive or has been employed the equivalent of fifty percent (50%) or more of a full-time position for fifteen (15) years, and
4. is qualified and eligible to receive retirement payments from the Kansas Public Employees Retirement System (KPERS).

BOE Br. at 4-5; BOE Ex. 6, at 6-2, 6-3. Eligible employees who completed three consecutive years of employment immediately preceding retirement and 10 or more years of service are also eligible for compensation for some or all of their unused sick leave, depending on the length of service. *Id*.

A separate program was initiated in the 2009-2010 school year under a Memorandum of Understanding (MOU), titled "Early Resignation & Early Retirement Incentives," signed on November 19, 2009 by the School District and the teachers' union. The MOU offered several additional options to employees applying for early resignation or retirement no later than February 15, 2010. BOE Br. at 5. Option 1 allowed an employee to receive the full retirement benefits provided by Article 11 at age 59 instead of 60 provided all other requirements were met. Option 2 allowed any employee who qualified for KPERS and had 10 years of service with the School District to be paid an early exit incentive of $16,780 plus compensation for accrued sick leave. Option 3 allowed any employee who had 10 years of service with the School District and accrued at least 80 KPERS "points"[3] to resign and be paid a severance pay of $15,000 and be compensated for accrued sick leave. Option 4 provided employees not eligible for Options 1-3 and employees retiring under Article 11 with a monetary incentive for submitting letters of resignation early. The MOU also provided for an additional payment to any employee retiring or resigning under Options 1-4 with 25 or more years of service with the School District. *Id*. at 5-6; BOE Ex. 7.

[3] According to BOE, retirement under KPERS requires 85 points. BOE Reply Br. at 4.

BOE states that the MOU was adopted in response to "harsh cuts to school funding" and "designed to encourage separation from government services" and agrees that any payments under the MOU constitute "'abnormal or mass severance pay' for which prior permission of the agency would be required." BOE Br. at 5; BOE Reply Br. at 3. However, BOE asserts, and ACF concedes, that the Head Start grant funds at issue were not expended for payments made pursuant to the MOU. *See* BOE Br. at 12; ACF Br. at 5.

ACF does allege that payments made to seven retired Head Start teachers under the Article 11 provisions constituted abnormal or mass severance pay and were improperly charged to Head Start. ACF Br. at 5. BOE used program year 2009-2010 Head Start funds for the following payments made to Head Start teachers (identified by their initials), as follows:

- JE – 31 years in Head Start program, retired at 60 in 2006. Paid $10,759.92 for monthly stipends and $5,287.92 for health insurance premiums.
- MS – 29 years in Head Start, retired at 64 in 2009. Paid $9,610.20 for monthly stipends.
- SM – 40 years in Head Start, retired at 63 in 2010. Paid $973.34 for monthly stipends and $516.32 for health insurance premiums.
- KP – 26 years in Head Start, retired at 60 in 2010. Paid $973.34 for monthly stipends and $516.32 for health insurance premiums.
- JS – 9 years in Head Start, following 30 years for School District, retired at 60 in 2010. Paid $973.34 for monthly stipends and $516.32 for health insurance premiums.
- NS – 23 years in Head Start, retired at 59 in 2010. Paid $973.34 for monthly stipends and $516.32 for health insurance premiums.
- BV – 15 years in Head Start, retired at 60 in 2010. Paid $973.34 for monthly stipends and $516.32 for health insurance premiums.

BOE Br. at 7-8; BOE Reply Br. at 3-4, 7; BOE Ex. 8; ACF Ex. 13.[3]

[3] BOE also paid at least some of these teachers (not identified in the record) for unused sick leave pursuant to Article 11, but did not charge these payments to grant funds. *See* BOE Br. at 12; BOE Reply Br. at 3, 8. BOE made additional payments, authorized by the MOU, to the five teachers who retired in 2010 before the February 15 expiration date of the MOU, but as noted above did not charge these payments to grant funds. (The other two teachers retired before the November 19, 2010 effective date of the MOU.)

ACF notified BOE in an April 7, 2011 letter of its conclusion that these payments were for "mass or abnormal severance pay" and are unallowable because BOE expended Head Start funds for these payments without seeking prior approval. BOE appealed the disallowance in full. Notice of appeal at 1. During the proceedings before the Board, BOE stated that it would repay the Head Start funds used for the payments to NS, who retired at age 59 and would not have been eligible for the payments but for the MOU, which lowered the age of eligibility from 60 to 59. BOE Br. at 12; BOE Reply Br. at 3. BOE further stated that it would repay that part of the payments made to JS that was allocable to the 30 years she worked for the School District before retiring after nine years with Head Start. BOE Reply Br. at 7. The amount in dispute is therefore reduced to $30,470.67.

Analysis

I. The disputed payments were not abnormal or mass severance pay for which ACF's prior approval was required.

BOE acknowledges that the MOU was "designed to encourage separation from government service" and that payments made pursuant to the MOU constituted abnormal or mass severance pay within the meaning of the cost principles. BOE Reply Br. at 3. However, BOE asserts that the payments made solely under Article 11 did not constitute abnormal or mass severance pay. BOE describes these payments as a "local pension" supplementing the benefits available under the State retirement system (KPERS). BOE Br. at 11-12. BOE points out that Article 11 has been in existence since the early 1980's. *Id.* at 11. BOE also asserts, and ACF does not dispute, that Article 11 was negotiated in exchange for foregone raises. *Id.* at 11-12; Notice of appeal at 1; BOE Reply Br. at 6-7. Thus, BOE argues, payments made pursuant to Article 11 were not intended to encourage early departures or to downsize staff in response to a financial crisis. *Id.* BOE takes the position that these payments therefore constituted fringe benefit costs allowable without prior approval under 2 C.F.R. Part 225, App. B, ¶ 8. BOE Reply Br. at 10.

We agree with BOE that the disputed payments are not properly categorized as abnormal or mass severance pay. The central element in identifying abnormal or mass severance pay, as clarified in ASMB C-10, is that severance or termination benefits be "associated with the event" and provided as an "incentive to leave government service." ACF Ex. 7, at 5. While ASMB C-10 makes clear that abnormal or mass severance pay is not restricted to circumstances involving forced dismissals, the payments must at least be intended to encourage employees to voluntarily leave the workforce due to the need to eliminate or cut back programs or reduce their operating costs.

The essential weakness in ACF's argument that the disputed payments were associated with an abnormal or mass severance event is that ACF failed to distinguish between payments made under Article 11 and those made under the MOU or other programs. In support of its position that the payments constituted abnormal or mass severance pay, for example, ACF points to the fact that BOE acknowledged in its brief that "'harsh cuts to school funding in the 2009-10 school year' resulted in a one-time change establishing the early exit incentive program . . . memorialized in a MOU." ACF Br. at 8, quoting BOE Br. at 5. ACF's reliance on the purpose of the MOU (which is undisputed) is misplaced since none of the payments in dispute were made pursuant to the MOU. Indeed, two of the six teachers in question retired before the MOU even went into effect.[4]

ACF also points to a November 6, 2009 Topeka-Capital-Journal news article "describing the school board's consideration of steps to reduce the budget before a reduction in force is implemented" as an "example showing the District's motivation in reducing the workforce[.]" ACF Br. at 9, citing ACF Ex. 2. Even if such a news article could be considered probative of the School District's intent, BOE points out, and ACF does not dispute, that the subject of the article was a retirement incentive offered only to administrative personnel not governed by the Professional Agreement. *See* BOE Reply Br. at 4, citing BOE Ex. 9. Measures adopted in 2009-2010 to respond to an unquestionably serious budget event do not shed light on the purpose of an early retirement program for School District teachers in existence for more than twenty years.

ACF also asserts that BOE "had actual knowledge of the federal government's interpretation of the applicable grant rules that early retirement incentive payments constituted abnormal severance payments," and that "ACF's interpretation should be given deference." ACF Br. at 14. The "interpretation" on which ACF says it relies is set out in a February 25, 2009 letter from the Office of the Chief Financial Officer of the U.S. Department of Education (U.S. DOE) to the Commissioner of Education for the Kansas Department of Education. ACF asserts, and BOE does not dispute, that "[o]n or after June 9, 2009, the Kansas letter was posted on [the Kansas Department of Education] website," and "[o]n January 14, 2010, ACF emailed the [U.S. DOE] letter to the [School] District." ACF Br. at 14.

[4] The remaining four teachers received payments under the MOU in addition to the payments made under Article 11. ACF could have argued (but did not) that those individuals conceivably might not have retired when they did but for the availability of additional payments under the MOU. The determinant of an abnormal or mass severance payment under ASMB C-10, however, is the purpose for which the additional payments are offered, not the motivation of individual retirees in selecting their departure dates. ACF did not allege that any Head Start funds were spent on payments to which the teachers were not entitled under Article 11, regardless of the MOU.

BOE does not dispute that it had timely notice of the U.S. DOE letter. As BOE correctly points out, however, that letter does not advise or even suggest that every retirement program a school district might have will involve abnormal or mass severance payments. *See* BOE Reply Br. at 2. The letter states in pertinent part:

> I am writing to alert you to recent audit findings in the area of severance costs, specifically retirement incentive payments that are provided to encourage employees to leave their employment. State and Local Education Agencies (SEAs/LEAs) may be mistakenly concluding that certain retirement incentive payments are fringe benefits that can be charged to Federal programs, rather than "abnormal or mass severance pay." As a result, some SEAs and LEAs are not obtaining the required prior approval to charge retirement incentive payments to Federal programs. Prior approval, to charge such costs, must be obtained from the US Department of Education or other cognizant Federal agency.

ACF Ex. 1, at 1 (emphasis added). The letter then proceeds to set out the provisions in OMB Circular A-87 regarding severance pay. As indicated, the letter by its terms applies only to those "retirement incentive payments that are provided to encourage employees to leave their employment."

ACF also suggests that Article 11 is similar to the one-time early retirement incentive that was the subject of a DOE audit completed in 2007. *See* ACF Br. at 14, citing ACF Ex. 11. However, ACF does not point to any evidence that Article 11 payments were provided to reduce the size of the workforce at any particular time or to encourage teachers to retire earlier than they otherwise could. The record shows that, to the contrary, the Article 11 payments were based on an arm's-length negotiation resulting in a long-term agreement by the parties that School District employees would be entitled to additional benefits upon retirement in lieu of higher wages over the years. Moreover, the six Head Start teachers whose payments are in dispute had met the eligibility requirements for KPERS retirement at age 60 and were entitled to a period of approximately five years during which he or she could retire and receive the Article 11 payments. It is thus impossible to see this program as tied to a particular "event." Instead, the payments were made when individuals who were already eligible to retire under the State retirement system became eligible for additional benefits under a contract with the School District that had been in effect for nearly two decades.

We agree with ACF, and BOE does not deny, that, under ASMB C-10, "increased pension benefits" may constitute costs that could be associated with an abnormal or mass severance event. We cannot find, however, on the record before us, that the Article 11 payments here were associated with any abnormal or mass severance event. We

recognize that the title of Article 11 is "Early Retirement Incentive," but under the circumstances here we decline to give conclusive weight to this title in the face of evidence that in substance the provision was not adopted to encourage downsizing of the workforce.

We therefore conclude that the Article 11 payments were not abnormal or mass severance payments that were unallowable in the absence of ACF's prior approval.

II. The disputed payments were necessary and reasonable costs of the Head Start program.

ACF takes the position that, if the Board finds that prior approval of the payments made under Article 11 was not required, "the disallowance should be permitted to stand based on the determination that the early retirement incentive program is not necessary or reasonable for the proper and efficient performance and administration of the Head Start program." ACF Br. at 18, citing OMB Circular A-87, Att. A. § C.1. ACF asserts that BOE has offered "no evidence or argument . . . to prove that the early retirement incentive program was necessary for the hiring and maintaining of a Head Start staff." ACF Br. at 18. ACF points out that "the establishment of the early retirement incentive program would not have provided an inducement to become a Head Start employee for three teachers . . . who had already became [sic] Head Start teachers prior to the commencement of that program" or to a fourth teacher "who was employed by the [School] District as a school teacher and was already entitled to participate in the early retirement incentive program prior to her becoming a Head Start teacher in 2001." *Id*. at n.8. ACF argues further that the disputed payments are not necessary or reasonable because they "reduce the funds available for direct services to the intended beneficiaries of the program[.]" *Id*. at 11; *see also id*. at 18. In particular, ACF notes that the student transportation costs and general supplies costs BOE charged to its Head Start grant in program year 2009-2010 were significantly less than the same costs in each of the two preceding program years.[5] *See id*. at 12. ACF also asserts that "there are a number of Head Start employees who are currently either eligible or nearing eligibility to exercise the early retirement incentive clause, meaning the amount diverted out of the program will increase," raising "a question as to whether the District would have the financial capacity to perform its obligations under the grant." *Id*. at 13.

[5] ACF states that it appears that this "is due to the increase in 2009-2010 in the yearly cost of health/accident insurance . . . , a fringe benefit for personnel." ACF Br. at 12-13. We presume that ACF is referring at least in part to the health insurance premiums that are included in the disputed payments, although ACF does not demonstrate the asserted connection.

The Board's longstanding practice permits an agency to amend a disallowance, so long as a grantee has adequate notice of the reasons for the amendment and adequate opportunity to respond. *See, e.g.*, *New Hampshire Dept. of Health and Human Services*, DAB No. 1862, at 10-11 n.5 (2003) citing 45 C.F.R. §§ 16.1, 16.9, 16.13, 16.15, and 16.21; *Mississippi Dept. of Human Services*, DAB No. 1267 (1991); *West Central Wisconsin Community Action Agency*, DAB No. 861 (1987). BOE had an adequate opportunity to respond to ACF's new basis for disallowance after it received ACF's brief. We therefore proceed to consider the merits of this newly-asserted basis for the disallowance.

Contrary to what ACF argues, the record supports a finding that the disputed costs were necessary costs of BOE's Head Start program. As noted previously, the payments were made pursuant to a collective bargaining agreement between the School District and the union representing all of the teachers employed by the School District, including the teachers in the Head Start program run by the School District. The payments were necessary because they were made pursuant to a contractual obligation BOE was legally required to honor. There is no reason on the record before us to doubt that the arm's-length negotiations reflected an assessment of what fringe benefits were necessary to retain qualified staff over the long term. Head Start presumably received any benefits accruing to the School District as a whole as a result of the enhanced pension agreement. As indicated above, ACF argues that particular teachers to whom Article 11 payments were made could not have been influenced by Article 11 to join the Head Start staff since Article 11 (or its predecessors) did not exist at the time they did so. However, Article 11 could have influenced these employees in other ways that benefitted Head Start, such as by making experienced staff more willing to continue working for BOE's Head Start program.

Moreover, ACF's sole basis for finding that the payments were not reasonable costs of BOE's Head Start program is that the payments might have resulted in leaving inadequate Head Start funds for direct services to children enrolled in the program. ACF does not provide any evidence that BOE's Head Start program was found deficient in any respect, much less that it had a deficiency that was related to inadequate funding for such direct services. Additionally, since the payments under Article 11 were negotiated in exchange for lower salaries, the payments presumably served to keep Head Start salary costs lower than they otherwise might have been. ACF's assertion that the decrease in expenditures for student transportation and supplies in program year 2009-2010 was due to the payments in question is entirely speculative. In addition, ACF's concern that the payments will increase in the future and threaten the viability of BOE's Head Start program has no bearing on whether the payments charged to the program year 2009-2010 grant are reasonable. In any event, it is not clear that the payments would necessarily increase in the future since employees are eligible to receive the payments for only a limited period (until age 66 for monthly stipends and until age 65 for health insurance premiums) and the program is limited to those employed as of 2002. *See* BOE Reply Br. at 8.

We therefore conclude that the payments at issue were necessary and reasonable costs of BOE's Head Start program.

Conclusion

For the foregoing reasons, we conclude that the disputed payments were not unallowable on either ground asserted by ACF, i.e., that they constituted abnormal or mass severance payments requiring ACF's prior approval or that they were not necessary and reasonable for the proper and efficient administration of the Head Start program. We therefore reverse the disallowance in the amount of $30,470.67. This decision does not preclude ACF from issuing a new disallowance if it determines that all or part of the costs were unallowable on other grounds.

We note that our conclusion does not affect ACF's separate determination requiring BOE to revise the budget in its application for a Head Start continuation grant to delete payments similar to those at issue here. The Board Chair rejected BOE's appeal of that determination as premature. Ruling on Jurisdiction dated August 4, 2011. The basis for the ruling was that "ACF has not made a final decision denying reimbursement for such payments from funds awarded for the continuation grant" and that "receipt of a 'final written decision' is a prerequisite for an appeal" under the Board's regulations at 45 C.F.R. § 16.3(b). Ruling at 2.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member