

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: The Neighborhood House Association  
Docket No. 80-81  
Decision No. 136

DATE:  
December 1, 1980

DECISION

By letter dated April 3, 1980, from the Regional Administrator, Office of Human Development Services (OHDS), Region IX, to the Executive Director of the Neighborhood House Association (NHA or Grantee), the OHDS Headstart Grantee for San Diego, OHDS upheld a disallowance of \$39,406, the amount of the shortage in Grantee's required non-federal matching share. The Regional Administrator further informed NHA that an "adjusting grant award reducing the current year's (PY "0") New Obligation Authority (NOA) by the amount of the disallowance with a commensurate increase in the non-Federal share requirement will be initiated." By letter dated April 30, 1980, the Grantee filed an incomplete application for review with this Board. On May 20, 1980, the Board's Executive Secretary informed the Grantee that its application did not comply with Board requirements and directed the Grantee to file a copy of the Notice of Disallowance. That document was filed June 6, 1980. The Agency filed its response to the Grantee's Application for Review on July 31, 1980. The Board invited the Grantee to reply to the Agency's response. The Grantee did not file a response. We have determined to proceed to decision based on the Grantee's application for review and the Agency's response to that application 1/. For reasons stated below, we conclude that that the disallowance should be upheld.

1/ When the Board's Invitation to Brief, dated September 25, 1980, elicited no response, the designated representative for the Grantee was contacted by telephone in order to determine if a reply would be filed. The representative claimed no knowledge of the Invitation and stated his belief that his client had settled the case with the Agency. The representative then was given several opportunities to elicit information from his client, but failed to respond to the Board by telephone as promised. The representative had been notified repeatedly that the Board had no other choice but to proceed to decision on the record compiled to that point if the Grantee failed to respond.

Statement of the Case

An audit report dated December 15, 1978 covering NHA's grant year "L" ending February 28, 1978 was prepared by the NHA's own auditing firm and identified certain questioned costs. On June 29, 1979, the HEW Audit Agency (HEWAA) transmitted a copy of the audit report to NHA's Board of Directors with a cover letter noting the report's disallowance recommendations and requesting NHA to respond to the Regional Administrator, OHDS, within 30 days of the HEWAA letter concerning these recommendations.

On August 2, 1979, NHA requested and received on August 7, 1979 a thirty day extension in order to reply to the HEWAA letter of June 19, 1979. Inasmuch as no response had been received from NHA by OHDS, OHDS sent a notice dated January 9, 1980 disallowing the \$40,060 of costs recommended for disallowance in the audit report. The \$40,060 included the \$39,406 shortfall in NHA's required 20 percent non-Federal share for grant year "L" and a \$654 disallowance for lack of supporting documentation on certain payments for supplies. By letter dated January 18, 1980, NHA requested reconsideration by the Regional Administrator of the OHDS disallowance determination. In its request for reconsideration, NHA stated that documentation for the questioned expenditure of \$654 had been located and explained that the bulk of the shortage of non-federal matching funds totalling \$39,406 was due to extreme weather conditions. NHA stated that because of weather conditions, its North County based delegate agencies were unable to comply with repeated requests for reports and documentation prior to the closing of the books at the end of grant year "L" on February 28, 1978. NHA, therefore, requested a "waiver" of its non-Federal share shortfall because of the unusual circumstances and alternatively, suggested that the shortage be charged against non-Federal contributions for Year "M" which exceeded requirements. Attached to NHA's request for reconsideration to OHDS were copies of San Diego County Board of Supervisor Resolutions and local newspaper clippings indicating that the county had suffered severe rainstorm and flood damage during the period between January 14, 1978 and the end of February 1978.

On April 3, 1980, the Regional Administrator, OHDS, denied NHA's request for "waiver" and upheld the \$39,406 disallowance. The Administrator pointed out that although NHA suggested that the shortage was attributable to extreme weather conditions, its appeal did not explain how the extreme weather conditions were responsible for the delegate agencies being unable to comply with repeated requests for reports and documentation.

The Regional Administrator stated,  
[o]nce the extreme weather conditions had subsided, the North County based programs should have been able to produce the missing reports and documentation.

In requesting further reconsideration from this Board and in support of its appeal, the Grantee states that the disallowance will serve as a hardship and will have a negative impact on the families served by this program.

#### Discussion

The limits of financial assistance which may be provided by the Federal government to a Headstart grantee for the period in question are set forth at 42 U.S.C. §2928(b).<sup>2/</sup> That section states:

Financial assistance extended under this part for a Headstart program shall not exceed 80 per centum of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if he determines in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this part.... The Secretary shall not require non-Federal contributions in excess of 20 per centum of the approved costs of programs or activities assisted under this part.

45 C.F.R. §1301.21 establishes the objective criteria by which the Secretary may waive the the required 20% non-Federal share as contemplated by the statute. That section states as follows:

Criteria for increase in Federal financial assistance.

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

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<sup>2/</sup> On November 2, 1978, 42 U.S.C. §2928(b) was recodified at 42 U.S.C. §2928b(c) by Public Law 95-568 and amended to eliminate "he" and substitute "the Secretary."

In order to meet the criteria, a Headstart agency must first demonstrate that it "has made a reasonable effort to meet its required non-Federal share but is unable to do so." It is not sufficient in and of itself to allege, with nothing more, as NHA has done, that the Grantee has been involved in a major disaster. Even if NHA had met the "major disaster" test--a questionable proposition itself--its submissions have not provided any proof that the Grantee made a reasonable effort to meet its required non-Federal share. In fact, the contrary is true. The extreme weather conditions complained of by NHA occurred during the last month and a half (January 14, 1978 - February 28, 1978) of the grant year in question (March 1, 1977 - February 28, 1978) and should not have interfered with the Grantee's delegate agencies being able to provide their non-Federal share for the other 10 months. Furthermore, NHA has never indicated why, as noted by the Regional Administrator, the North County programs should not have been able to produce the missing documentation once the extreme conditions had subsided.

The Board agrees with the Agency that NHA has failed to show that it made a reasonable effort to meet its required non-Federal share. NHA has not produced any documentation to indicate that the Federal share shortage was attributable to the extreme weather conditions. The Board finds that the Agency's denial of the Grantee's request for waiver was in accordance with provisions of 45 C.F.R. §1301.21 and was reasonable. The Board has held that it will not substitute its discretion for that of the Agency where the Agency's decision is in accordance with the rules and the Agency's exercise of its discretion is reasonable. (Oregon State-Wide Allocation Plan, DGAB Docket No. 75-7, Decision No. 22, June 25, 1976).

#### Conclusion

For the reasons stated above, we uphold the disallowance of \$39,406 for grant H-7015 "L" ending February 28, 1978.

/s/ Clarence M. Coster

/s/ Cecilia S. Ford

/s/ Norval D. (John) Settle, Panel Chair