



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Departmental Appeals Board
Appellate Division, MS-6127
Room G-644, Cohen Building
330 Independence Avenue, SW
Washington, D.C. 20201

March 20, 2015

BY DAB E-FILE

[name redacted]
[address redacted]

and

[name redacted]
[address redacted]

Re: Gulf Coast Community Action Agency, Docket No. A-15-33

ORDER TO SHOW CAUSE

Counsel:

Gulf Coast Community Action Agency (GCCAA) has requested a hearing on a determination by the Administration for Children and Families (ACF) to terminate GCCAA's designation as a Head Start grantee, a determination communicated to GCCAA in a Notice of Termination dated December 15, 2014, a copy of which GCCAA submitted with its Notice of Appeal. ACF took the termination action pursuant to Section 641A(e)(1)(C) of the Head Start Act (42 U.S.C. § 9836A(e)(1)(C)) and 45 C.F.R. § 1303.14(b)(4) based on GCCAA's alleged failure to timely correct an immediate deficiency. GCCAA had been notified of the deficiency in a Notice of Deficiency Requiring Immediate Correction dated April 25, 2014. ACF Ex. 1. The notice stated that the deficiency, identified during an offsite review of GCCAA's Head Start program on December 18, 2013, involved GCCAA's failure to "ensure all staff abided by the program's standard of conduct requiring them not to engage in corporal punishment or

physical abuse” and “posed imminent harm or immediate danger to . . . children of the Head Start program . . .” *Id.* The notice was accompanied by an Overview of Findings from the review and informed GCCAA that it must correct the deficiency within 30 days. *Id.* ACF issued the Notice of Termination after a follow-up review on October 22, 2014, and included with the Notice an Overview of Findings from that review. The findings from both reviews involve GCCAA’s handling of multiple instances of alleged child abuse by GCCAA staff. *Id.*

The Board notified the parties in the Acknowledgement of Appeal (Acknowledgment) that the hearing in a Head Start grant termination case must begin “no later than 120 days from the date the grantee’s appeal is received by the Departmental Appeals Board” unless that time is extended for a reason specified in that section, including a request for summary disposition. 45 C.F.R. § 1303.17. In this case, the Board stated, a hearing must begin no later than May 21, 2015. Acknowledgment at 4. In the Acknowledgment, the Board also told the parties that it anticipated holding a pre-hearing conference by telephone during the week of April 6-10. *Id.* The Board later notified the parties that the telephone prehearing conference is scheduled for April 8, 2015 at 1:00 p.m. Board’s March 16, 2015 letter.

The purpose of this Order is to clarify whether an evidentiary hearing is necessary or whether, instead, this case can be decided on summary judgment or based on the written record. The regulations provide that a terminated Head Start grantee is entitled to a hearing to contest the basis for ACF’s termination decision. 45 C.F.R. § 1303.14. However, the Board has held that it may decide a Head Start termination case on summary judgment without violating a grantee’s right to a hearing in cases where there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. *E.g. Avoyelles Progress Action Comm., Inc.*, DAB No. 2559, at 3 (2014); *Camden Cnty. Council on Econ. Opportunity*, DAB No. 2116, at 3-4 (2007), *aff’d*, *Camden Cnty. Council on Econ. Opportunity v. U.S. Dep’t of Health & Human Servs.*, 586 F.3d 992 (D.C. Cir. 2009).

At this time, neither party has moved for summary judgment. However, the Board has held that it may decide Head Start termination and suspension cases on summary judgment on its own motion in circumstances where there has been no showing of a genuine dispute about any material fact and an evidentiary hearing, therefore, would serve no purpose. *See Municipality of Santa Isabel*, DAB No. 2230 (2009) (summarily upholding termination of Head Start grant without issuing an order to show cause where ACF filed motion to dismiss stating that no material fact was in dispute and grantee’s reply did not challenge that assertion but raised only legal issues); *see also Head Start Bd. of Dirs., Inc.*, DAB No. 2148 (2008) and *The Connector (Making the Connection), Inc.*, DAB No. 2191 (2008) (upholding suspensions of Head Start grants for more than 30 days following issuance of orders to show cause).

Having reviewed the briefs and exhibits filed by the parties in this case, the Board does not currently see any purpose that would be served by an evidentiary hearing. Any facts of record about which there may be genuine disputes do not appear to be material to deciding whether ACF was authorized to terminate GCCAA's grant, even when those facts are construed in the light most favorable to GCCAA as summary judgment requires. For example, while GCCAA alleges disputes about whether it reported to the State three of the incidents of abuse discussed in ACF's Notice of Deficiency, Appeal Br. at 11 n.1, there is no dispute that GCCAA did not report to the State incidents of alleged abuse that occurred subsequent to that notice and were cited in the Notice of Termination. Nor does GCCAA raise any dispute about other facts cited by ACF and supported by record evidence that may be sufficient, without resolution of any reporting disputes, for the Board to determine whether GCCAA ensured that staff abided by program standards prohibiting corporal punishment or abuse. For example, GCCAA does not dispute that an Assistant Manager of one of its Head Start centers violated its policies by waiting nearly two months after she heard of allegations of abuse in that center to report the allegations to the Center Manager and that GCCAA did not suspend the Assistant Manager based on this violation until more than a month after she told them of the allegations.

For the reasons stated, GCCAA should show cause on or before April 1, 2015, why an evidentiary hearing is necessary. GCCAA should identify any specific facts it regards as material to deciding whether ACF was authorized to terminate its designation as a Head Start grantee and also identify what evidence in the record shows that there is a genuine dispute about those facts. *See e.g. Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e) and stating that if a moving party carries its initial burden, the non-moving party must "come forward with 'specific facts showing that there is a genuine issue for trial.'"). If GCCAA identifies such facts, it should also address whether an in-person hearing is necessary to resolve the factual disputes it perceives (and make any appropriate proffer of witness testimony) or whether, instead, it would be appropriate for the Board to resolve any such evidentiary disputes and decide the case based on the written record. ACF may file a response to GCCAA's response to this Order on or before April 7, 2015. The Board has set these time frames so that it will be able to consider the parties' responses in advance of the pre-hearing conference.

The Board refers GCCAA to certain Board decisions it may want to consider in preparing its response to this order. The Board has held that a termination based on failure to timely correct a deficiency cannot be overturned based on steps the grantee took to correct deficiencies outside the period of correction set by ACF, 30 days in this case. *E.g. Pinebelt Ass'n for Cmty. Enhancement*, DAB No. 2611, at 11-12 (2014); *Babyland Family Servs., Inc.*, DAB No. 2109, at 21 (2007). In *Pinebelt*, the Board also noted its holdings that "the quality of a grantee's staff rests squarely on the grantee, and that the grantee does not cease to be responsible for the actions of its staff or their consequences simply by asserting that the staff involved have been fired." *Pinebelt* at 9, citing *Rural*

Day Care Ass'n of Ne. NC, DAB No. 1489, at 27, 55 (1994), *aff'd*, *Rural Day Care Ass'n of Ne. NC v. Shalala*, No. 2:94-CV-40-BO (E.D. N.C. Dec. 20, 1995). Also, the Board has held that in determining whether a grantee has corrected its deficiencies, “the grantee’s ‘performance must be evaluated on the basis of how the organization as a whole is functioning and responding to the deficiency’” not on disciplinary action taken against specific employees or evidence of staff training without monitoring to verify that employees trained effectively implemented that training. *Jacksonville Urban League*, DAB No. 2565, at 20 (2014), *quoting S. Del. Ctr. for Children and Families*, DAB No. 2073, at 29-30 (2007). Moreover, the Board has held that it has no authority to overturn a legally authorized or required termination of a Head Start grant based on equitable principles. *Southwest Ark. Dev. Council, Inc.*, DAB No. 2489, at 9 (2012); *Municipality of Santa Isabel* at 11.

The pre-hearing conference in the appeal will be convened by telephone call on Wednesday, April 8, 2015 at 1:00 pm EDT. You will be provided a toll-free conference call number prior to that date. Please let the Board staff attorney know who will be participating on behalf of your party.

_____/s/____

Sheila Ann Hegy
Presiding Board Member