

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

APPLICATION OF THE STATE OF WASHINGTON

Docket No. 89-6-R

Recovery of Funds

ACN: 10-63248

DECISION AND ORDER

Statement of Facts

On April 3, 1989, the State of Washington (Washington) received a program determination letter from Ronald C. Oleyar, Director of the Financial Management Service, on behalf of his office, as well as the Office of Special Education and Rehabilitative Services and the Cost Determination Branch of the Grants and Contract Services of the United States Department of Education (Education).

The determination letter demanded the refund of money from Washington for misuse of Education grant money. The parties agree that the amount in dispute is \$862,171. Education argues that Washington failed to maintain an adequate system of time distribution records to account for salaries and benefits of employees who spent time on more than one grant program. [1/](#) Education based its allegation of improper record keeping on an audit performed on the Washington records by an auditor from the Office of the State Auditor for the State of Washington. The audit covered the period of July 1, 1985, through June 30, 1986. [2/](#)

The parties agreed that no part of the amount claimed is barred by the statute of limitations. Section 452(k) of the General Education Provisions Act, as amended by Public Law 100- 297 (GEPA). [3/](#)

The time distribution system that Washington used in fiscal year 1986 included four components:

- a) The supervisors determined and allocated, on a percentage basis, the time each employee was to devote to his or her program duties;
- b) The supervisors were responsible for observing and controlling employees' duties;
- c) Washington's monthly "Personnel Effort Report" provided for the entry and certification of percentages of time expended by program. Secretaries of Washington's larger programs often initiated the monthly reporting process for many of the employees by entering the percentage of time allocated to the employees and other data on the form prior to the employees' receipt and review of the form. Most final reports were typed by a secretary;

d) The fiscal 1986 monthly reports, with a few exceptions, were then certified by the signature of the employee at the end of each month. [4/](#)

Washington further explained through Bill Paulson's first affidavit dated December 1, 1989, that the time and duties of the allocation of personnel was based upon estimates made by directors who were familiar with the programs. [5/](#)

Bill Paulson serves Washington as an agency budget analyst. He claims to be responsible for (i) budget development and analysis in the internal agency operations; (ii) reconciliation of the Office of Superintendent of Public Instruction (OSPI) staff payroll and reported time/effort; and (iii) development and management of agency federal indirect cost proposals and allocations. [6/](#)

Paulson stated further that the Auditor's November 1984 report concluded that the Washington monthly reporting system was adequate. [7/](#) He relies upon a portion of the auditor's report which he quotes in part in his affidavit of December 1, 1989:

Our review included determining. . . that SPI (Washington) has supporting effort documents for payroll charged to federal programs. Exhibits Vol. I pg. 4, and Vol. VI attachment D, pg. 1.

The Auditor's report which Bill Paulson referred to in his affidavit is included with his affidavit at Attachment D. It is significant that the auditor commented at Note 2 on page 22 of his report:

. . . The statement of grant expenditures and reimbursement for federal grants does not provide for fixed assets, accounts payable or other balance sheet accounts. . . . It is not, nor is it intended to be, prepared in conformity with generally accepted accounting principles .

Paulson states that the method of reporting the employee time allocation between federal and state program activities has been essentially the same since 1979. Any revision to the allocation is initiated by a program supervisor notifying the budget office that the original percentage is no longer appropriate based upon a change in the employee's duties. He further stated that changes to the Monthly Effort Report may not be changed by the fiscal section. Exhibit Vol. I at pg. 6.

Mr. Paulson discusses, on page six of his Volume I affidavit, measures taken for revisions to the allocation of employee time use. He supports his method of allocation change discussed above at Attachment E of the same Volume I exhibit. Also in Attachment E, there is a letter from Judy Schrag to Bob Marshall concerning the topic of funding source changes. Schrag directed that certain changes or shifts of personnel "would make current responsibilities more consistent with funding." She indicated that she had reviewed her plan with Mr. Paulson before the changes were made.

The purpose of the second Paulson affidavit is to show his analysis of the new and more detailed time distribution report which he states was initiated as a result of an audit report issued May 1, 1987. [8/](#) He argues that the more detailed verification plan reinforces his first affidavit comments as to the accuracy of the methodology used during the audit period in question .

Paulson's statement in his Volume I affidavit explains the development of the system, the systems' assumptions and the underlying process that was formulated by program supervisors, directors and others. He stated that they based their opinion upon historical knowledge of the work loads, current observation, and initial allocations of employee time to duties. Tr. pg. 24. Counsel for Washington summarized at the hearing by saying :

It boils down to a judgmental decision on the part of the supervisors based upon their knowledge as to how much time will be expended and should be expended on chapter i vis-a-vis how much time is spent on state programs. Tr. pg. 25.

Washington admits to the correctness of the auditor's finding that the employees did not keep daily time records - Tr. pg. 29, 30.

The affidavits of Margaret Reeves, Janet Carlson, Paul De La Rosa, Barbara Martens and June Peck reflect the process which Bill Paulson described. The affidavits are from supervisors who had responsibility to judge, determine and control the initial and on-going allocations of time to various federal and State program activities. Each affidavit recites the same statement as to the responsibility shown above. Exhibit Volume II.

The Auditor's report is shown in Exhibit E . On page 3 of 27, the auditor stated on May 16, 1987, that he identified each employee whose salary and benefits were funded partially by state and partially by federal funds or by two or more federal funds.

The auditor asked the following questions:

- a. Do you keep daily records?
- b. Do you know the basis for changing your time?
- c. Do you know why percentages change?

Only one of eleven persons interviewed indicated that partial daily time records were kept. The notes of the Susan Fahn interview state that the percentage of effort was based upon her estimate of how her time was spent. [9/](#) It is noteworthy that the auditor commented that 40% of her time was spent on Chapter I programs but no part of her compensation was actually charged to that account.

Some of those interviewed were aware of the basis for the distribution of time, however, most employees did not know the basis; no employees knew the reason for a change in the percentage . Jeanne Leaf stated that the changes in funding had more to do with budget availability than in time spent. Exhibit B, pg. 18 of 27. Sylvia Guilfoil stated that the percentage of effort was dictated to her and not really based upon the actual work done. Exhibit B, pg. 19 of 27. Jeanne Fisher additionally stated that she was told what percentage she was to put into the report. Exhibit B, pg. 19 to 27. Beret Harmon stated that she thought that the time charge does bear a fairly close relationship to what she was doing. Exhibit B, Pg. 20 of 27.

The auditor's notes are dated May 17, 1987, which is several weeks after the May 1, 1987, auditor's report number 4454 was completed .

Arguments Presented

Education, first, argues that Section 455(b) (5) of GEPA requires any State Educational Agency to use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program. [10/](#)

Next, section 437 of GEPA requires each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan or any other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain records for five years after completion of the activity for which the funds are used.

Additionally, Education argues that it has published regulations in 34 C.F.R. 74.60 et seq. on the standards for financial management systems. [11/](#) At 34 C.F.R. 74.6(a), the regulation cites that accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant.

Later at (b) g the regulation states that records which identify accurately the source and application of funds for grant or subgrant activities shall be maintained.

Costs for payroll and distribution of time for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency (emphasis added) . [12/](#) Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method should produce an equitable distribution of time and effort. 34 C.F.R. Subtitle A, App. C, Part II, B., 10, (b)..

Education states in its brief submitted on December 22, 1989 at page 12:

The evidence does not show that Washington maintained an adequate time distribution system and therefore Washington cannot sustain the burden that the funds in question should not be returned to Education.

Counsel for Education was asked at the oral argument held February 14, 1990, the following question:

What do you mean in the December, 1989, brief at page 12 when you state the records must at a minimum, accurately support the charges by showing an adequate relation to the actual time spent on the federal programs involved? Tr. pg. 44.

Counsel stated that an adequate program, in Education's opinion, has four elements: (i) accurate, (ii) detailed, (iii) contemporaneous, and (iv) supports the charges. He said further that a nexus exists between the actual time and the charge to the federal grants Tr. pg. 45.

Washington simply argues that they have maintained adequate records to comply with the laws and regulations cited by Education .

Review of Relevant Facts

Education maintains that Washington should return all of the money Washington received for the programs listed in the auditor's notes on Exhibit E page 12A. There is no dispute as to the amount of money that Education demands from Washington. The parties have agreed in the stipulations and in oral argument that the sum in dispute is \$862,171. The dispute arises from a disagreement as to the adequacy of the time distribution records maintained for the employees who worked in more than one federal or state and federal program as shown in Exhibit E

The records were not kept on a daily basis by the employees according to the employees interviewed by the auditor. Counsel for Washington agreed this was true.

The method of record keeping according to Washington was based upon an historical evaluation done by supervisors as to the time each employee was to devote to each program duty. Bill Paulson stated that the time and duty allocation was based upon estimates made by directors familiar with the programs.

In asserting a credible method of accounting, Paulson relied upon comments in the auditors' report from the preceding audit period which concluded Washington had support documents for payroll charged to federal programs. The auditor, however, also stated that Washington is not providing for fixed assets, accounts payable or other balance sheet accounts; nor is Washington preparing the reports in conformity with generally accepted accounting principles.

Judy Schrag's letter to Bob Marshall states that the current work responsibilities are to be consistent with the funding received. The supervisors' affidavits reflect their responsibility to determine and control on-going allocations of time. The auditor's interview with the support staff personnel came to the same conclusion. The employees admitted they did not keep daily records. They, generally, did not know how the allocation and time records were done. Some stated that it did not always reflect what was actually done. The allocation was driven by the funding received. Counsel for Washington's argument highlighted facts to support that it was the judgmental decision of supervisors as to how much time was being spent on each objective.

Review of the Law

The General Education Provisions Act requires a State recipient of funds from the Department of Education to use fiscal control and accounting procedures. GEPA, Section 437, requires the State agency to keep records which fully disclose the amount and disposition of funds received, the total cost of the activity for which the funds are used, and the share of that cost provided from other sources .

Washington agreed by the terms of the various grants to comply with the terms of 34 C.F.R. 74.61<a>, which requires accurate, current, and complete disclosure of the financial aspects of a program of the grant. Further, 34 C.F.R. Subtitle A, Appendix C, Part II, B, 10, b states that cost

for payroll will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. (emphasis added) . Payrolls must be supported by time and attendance or equivalent records for individual employees working on more than one program. Appropriate time distribution records are required to reflect an equitable distribution of time and effort.

CONCLUSIONS

Daily time records for employees working on more than one cost objective were not done daily. They were generated from historical data of the funding cycles of the various programs. It was driven more by the source of funds than the documentation of actual time spent on each objective. The payroll and time distribution records were not done, according to the auditor of the state, by generally accepted methods of accounting.

The Grant agreement between Washington and Education required full disclosure of the use of the funds received, the share of costs from other sources, and costs of payrolls documented and approved with generally accepted practice of the State Appropriate time records are required. Though a definition is not provided for "appropriate" as used in "appropriate time records," it is assumed that a record is "appropriate" if the record accounting methodology is a generally recognized and accepted practice within the State Here, Washington was not using generally accepted methods of accounting for the time used and for the distribution of work effort of the employees who were working on the various cost objectives. The parties have agreed that the sums shown (Exhibit E) correctly reflect an undisputed sum of \$862,171.

I find that Washington has not kept adequate records nor the equivalence of adequate records . They used a method that is based upon an unacceptable accounting practice. They kept no actual records of work effort. Furthermore, Washington has not provided sufficient convincing evidence to bear the burden of showing that equivalent records were being kept. The method of recordkeeping must be supported by an equitable distribution of time and effort. Here, the supervisors' allocation was not driven by actual time and effort or any method of tracking reasonably related to the actual efforts of the employees in question. The records were being kept in accordance with the budget cycle or with budget availability. It was not being kept at the source of the work effort. Those actually doing the work were contacted on a monthly basis and usually after the supervisors or directors indicated to the employee what percentage of time was to be allocated by the managers. The work allocation was driven more by a management decision based upon funding availability and not on actual work performed.

Washington has failed to sustain the burden of showing that adequate records were being kept and that they are not obligated to refund the sum of \$862,171. They have failed to comply with the recordkeeping requirements found in the General Education Procedures Act and the Code of Federal Regulations governing the keeping of records for payroll employees engaged in work effort on more than one Federal program or more than one State or Federal program.

Therefore, the State of Washington is ordered to refund the sum of \$862,171. The matter is referred to the appropriate division of the United States Department of Education for collection.

Daniel R. Shel
Administrative Law Judge

Issued: May 24, 1990
Washington, D. C.

1/ Stipulation of the parties, January 20, 1990.

2/ The amount of \$862,171 is based upon the records listed in Education's Exhibit E, page 12A. Exhibit E is taken from the Auditor's notes. The programs listed are: Adult Basic Education, program reference #84.002, \$49,595; Bilingual Education, program reference #84.003, \$54,864; Migrant Education, program reference #84.011, \$79,900; Chapter I, program reference #84.012, \$179,678; Handicapped Education, program reference #84.023, \$8,351; Early Childhood Education, program reference #84.024, \$79,457; Handicapped Education, program reference #84.027, \$207,134; Special Education, program reference #84.029, \$13,574; Vocational Education, (Basic), program reference #84.048, \$22,174; Vocational Education (Progressive Improvement), program reference #80.050, \$4,640; Chapter II, program reference #84.151, \$157,478; Emergency Immigrant Education, program reference #84.162, \$4,310 and NIE, program reference #84.999, \$1,011.

3/ Stipulation of the parties, signed January, 20, 1990; the first affidavit of Bill Paulson, dated December 1, 1989, at page 3.

4/ Stipulation of the parties, dated January 20, 1990.

5/ Paulson Affidavit #1, signed December 1, 1989, at page 5.

6/ Paulson Affidavit #1, signed December 1, 1989, at page 1.

7/ Paulson Affidavit #1, signed December 1, 1989, at page 3-4.

8/ The date of the audit report which is the basis for this action is dated December 24, 1987. However, the final determination letter on page i states that certain findings of that report were (Exhibit B, Pg. 17 of 27) based upon the auditor's report of examination No. 4454, dated May 1, 1987.

9/ Exhibit B, pg. 19 of 27.

10/ GEPA was enacted as Title IV of Public Law 90-247.

11/ Washington has agreed in Its grant agreements to the provisions of 34 C.F.R. 74 et seq. (See the agreements attached to the Education post hearing submission.)

[12/](#) Washington agrees that the costs are direct. See page 21 of the transcript of the hearing. However, the classification of costs, indirect or direct, is not a relevant issue in the determination of this case.