

Head Start Hot Topics

CAPLAW 2010 National Training Conference

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Savannah, GA

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Handouts:

1. Tipton PowerPoint Slides

CAPLAW 2010 NATIONAL TRAINING CONFERENCE
THURSDAY, JUNE 17, 2010

HEAD START HOT TOPICS 2010

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OVERVIEW

- Eligibility
 - GAO Investigation
 - HHS/OHS Response
 - Review of Requirements
- Redesignation ("Recompetition")
- ARRA Issues
- Governance (Conflicts of Interest)
- Facilities Issues

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GAO INVESTIGATION

- GAO investigation of possible fraud and abuse in Head Start eligibility determinations and enrollment
 - October 2008 through April 2010
 - Prompted by allegations in August 2008 that Midwestern Migrant Head Start grantee manipulating information to enroll ineligible children
 - Further allegations in October 2009 of similar issues at Texas Head Start grantee
 - GAO then went undercover to try to enroll fake children at 15 Head Start centers around country
- GAO preliminary results communicated to Congress through testimony of Gregory D. Kutz on May 18, 2010 (GAO-10-733T)

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GAO INVESTIGATION

- Findings at Midwest Migrant grantee
 - Children moved from one center to another during last 60 days of program to make it appear that both centers were fully enrolled
 - 63 children double counted
- Allegations still under investigation
 - Manipulation of income documentation to make income ineligible children appear eligible
 - Enrollment of families that do not meet requirements for Migrant Head Start
 - Misappropriation of property purchased with grant funds

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GAO INVESTIGATION

- Findings at Texas Head Start grantee
 - Enrollment of income ineligible children encouraged to meet funded enrollment
 - Staff encouraged parents to claim that they were homeless when not
- Allegations still under investigation
 - Children classified as disabled when not
 - Children still counted as enrolled after left program
 - Personal use of grantee vehicles by staff

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GAO INVESTIGATION

- GAO findings from undercover investigation
 - For 13 eligibility tests, fake children not eligible based on documentation and other information provided to grantees
 - In 8 of these tests, children found eligible by grantee
 - At 7 centers, staff ignored information that would have made children income ineligible
 - In at least 4 instances, documentation doctored to exclude information that would have shown children income ineligible
 - For 2 eligibility tests, fake children eligible for Head Start
 - Scenarios designed to test if (and for how long) children would be counted in enrollment figures if never attended program
 - One child enrolled; grantee never called to complete enrollment process for second child
 - No evidence of manipulation but findings inconclusive because GAO voluntarily withdrew the one child actually enrolled
- Key vulnerability identified by GAO: Grantees not required to retain income documentation

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GAO INVESTIGATION

- GAO also "documented instances in which potentially eligible children were put on wait lists . . . because potentially eligible children could have been displaced by ineligible children fraudulently enrolled"
- GAO Methodology
 - Called 550 Head Start centers to identify those with wait lists and attempted to contact families on wait lists
 - Only 44 centers lacked wait lists
 - GAO interviewed 21 families on wait lists, but did not attempt to verify information provided during interviews
- Findings and concerns
 - Head Start wait lists were substantial
 - Eligible children cannot be enrolled because of lack of enrollment opportunities
 - Eligible children may not receive services because of "significant" wait lists

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GAO INVESTIGATION

- GAO suggested corrective actions to HHS
- GAO suggestions
 - Create OHS program management fraud hotline with tips investigated by HHS, Inspector General, or both
 - Stricter income verification and documentation requirements for Head Start staff to follow (such as keeping copies of income documentation)
 - More "undercover tests" of grantees similar to GAO investigation

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HHS RESPONSE

- New Program Instruction regarding income eligibility for enrollment (ACF-PI-HS-10-02)
- HHS Sec. Sebelius's May 17, 2010, letter to House Education and Labor Committee
- HHS Sec. Sebelius's May 17, 2010, letter to all Head Start grantees

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HHS RESPONSE

- New Program Instruction ACF-PI-HS-10-02 (May 5, 2010)
- Reminds grantees of two-step process to verify income eligibility
 - Review of income documentation and verification of family size to determine eligibility
 - Sign statement attesting to document review and eligibility determination
- Announces OMB approval of OHS Head Start Eligibility Verification form
 - Currently use of OHS form not mandatory
 - Currently not required to keep copies of documents reviewed regardless of form used
 - However, may change as result of GAO investigation

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HHS RESPONSE

- HHS Sec. Sebelius's May 17, 2010, letter to House Education and Labor Committee
- Sent to Committee Chair George Miller in advance of GAO testimony
- Main points:
 - Cases referred to HHS Inspector General
 - Suspensions, terminations, and recompetition
 - Unannounced visits to grantees
 - On-line fraud hotline
 - New regulations
 - Program guidance to grantees (ACF-PI-HS-10-02)

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HHS RESPONSE

- HHS Sec. Sebelius's May 17, 2010, letter to all Head Start grantees
- Expands on letter to Congress
- Main points:
 - Fraud allegations will be referred to Inspector General (possible criminal prosecution)
 - Suspensions and terminations for "pervasive fraud or misuse of funds"
 - Swift correction by grantees of inadequate controls
 - More unannounced monitoring visits
 - Web-based fraud hotline
 - Increased oversight of grantees with "identified risk factors" (per annual risk assessment)
 - New verification and staff training regulations
 - Recompetition

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ELIGIBILITY AND ENROLLMENT

- Reauthorization in 2007 changed eligibility standards [42 U.S.C. § 9840(a)(1)]
- Three categories:
 - Automatically or primarily eligible ("Category A")
 - Extended income eligible ("Category B")
 - Over income ("Category C")
- Priority goes to "Category A" but up to 45% of enrollment from other two categories (35% from "Category B" and 10% from "Category C")

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ELIGIBILITY AND ENROLLMENT

- Category A (At least 55% of enrollment):
 - Categorical eligibility
 - Eligible for public assistance or in absence of child care would potentially be eligible; or
 - Homeless under McKinney-Vento definition (See Policy Clarifications OHS-PC-I-081, OHS-PC-I-085, and OHS-PC-I-086); or
 - Children in foster care (Categorically eligible under Performance Standards regardless of family income [45 C.F.R. § 1305.2(l)])
 - Income eligibility (Family income below poverty line)
- "Category A" (automatically or primarily eligible children) must receive selection priority over "Category B" (extended income eligible children)

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ELIGIBILITY AND ENROLLMENT

- Public assistance includes:
 - Supplemental Security Income (SSI)
 - Temporary Assistance to Needy Families (TANF)
- SSI: Child eligible if any family member receives SSI, regardless of family income
- TANF: Family receives benefits or services funded under the authority of the TANF program on a regular basis (not sporadic or episodic)
 - Cash payments, vouchers and other forms of benefits designed to meet the family's ongoing basic needs
 - Supportive services such as transportation, subsidized child care and employment-related services such as job training

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ELIGIBILITY AND ENROLLMENT

- McKinney-Vento [42 U.S.C. § 11434a(2)] definition of homeless: "Individuals who lack a fixed, regular, and adequate nighttime residence" and includes those who:
 - (i) Share housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (ii) Have primary nighttime residence that is public or private place not designed for or ordinarily used as regular sleeping accommodation for human beings;
 - (iii) Live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
 - (iv) Are migratory and qualify as homeless because they live in circumstances described in clauses (i) through (iii)
- See Policy Clarifications OHS-PC-I-081, OHS-PC-I-085, and OHS-PC-I-086

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ELIGIBILITY AND ENROLLMENT

- Category B (Up to 35% of enrollment):
 - Not eligible under "Category A" but family income below 130% of poverty line, if:
 - Agency has implemented policies to ensure that needs of "Category A" children are being met; and
 - Selection priority given to "Category A" children, who will be served prior to serving "Category B"
- Category C (Up to 10% of enrollment): No income restriction

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ELIGIBILITY AND ENROLLMENT

Category	Percentage
CATEGORY A	55%
CATEGORY B	35%
CATEGORY C	10%

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ELIGIBILITY AND ENROLLMENT

- Reauthorization in 2007 also changed requirements for enrolling children with disabilities
 - Previously: At least 10% of enrollment opportunities available for children with disabilities
 - Now: At least 10% of children actually enrolled must be children with disabilities [42 U.S.C. § 9835(d)]
 - Can request waiver (up to three years)
- OHS has issued program instruction (ACF-PI-HS-09-04) addressing enrollment of children with disabilities
 - Grantee IEP or determination not sufficient
 - Must be identified as having disability by local IDEA agency
 - Must meet 10% requirement by midpoint of program year and then maintain 10% for rest of year

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19

REDESIGNATION

- Reauthorization in 2007 required system for "designation renewal" [42 U.S.C. § 9836(c)]
 - Expert panel to make recommendations on "transparent, reliable, and valid system"
 - Agencies "delivering a high-quality and comprehensive head start program" redesignated as head start agencies for 5 years
 - Other agencies subject to open recompetition
- "Designation renewal" or recompetition has not yet been implemented but:
 - OHS not ignoring recompetition requirement
 - Mentioned in responses to GAO report

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20

REDESIGNATION

- Expert panel met as required (3 meetings in 2008)
- Panel's final report issued December 2008
 - No action taken on report (yet)
 - How will final report shape recompetition regulations?
- Implementing regulations
 - Under 2007 Reauthorization, proposed regulations required within 3 months of panel's final report (would have been March 12, 2009)
 - Notice of Proposed Rulemaking (NPRM) has not been issued but is coming
 - OHS looking for recommendations

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21

ARRA ISSUES

- American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("the Stimulus"), provided \$2.1 billion in funding for Head Start and Early Head Start
- ARRA funding comes with enhanced reporting requirements
 - Administration concerned with ARRA spending
 - Erroneous payments
 - Other misuse of funds
 - Tight fiscal controls needed for ARRA funds

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ARRA ISSUES

- Inspector General audits related to ARRA
 - Capacity audits for new Early Head Start grantees
 - Additional audits
 - 24 other grantees
 - Selected by OHS
- Special funding under ARRA for audits
- Funding now exhausted for these audits
- However, may see more Inspector General audits related to issues identified in GAO report

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GOVERNANCE ISSUES

- Reauthorization in 2007 included for first time express provisions prohibiting conflicts of interest as part of governance requirements
- Similar but not identical provisions for Governing Body and Policy Council
- Problem: 2007 Reauthorization did not define "conflict of interest"
 - Policy Clarification in 2009 issued but not all circumstances addressed
 - Program Instruction planned

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GOVERNANCE ISSUES

- Governing Body members are subject to four conflict of interest prohibitions [42 U.S.C. § 9837(c)(1)(C)]
- No financial conflicts of interest
 - Financial conflict not defined
 - No guidance
- No compensation for serving on Governing Body or providing services to agency
 - Addressed to limited extent in Policy Clarification
 - Limited exception
- No employment of members or immediate family by agency
 - Immediate family definition addressed in Policy Clarification
 - Limited exception
- Must operate independently of staff

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GOVERNANCE ISSUES

- Limited exception to conflict of interest prohibitions concerning compensation and employment of family
- Applies "if an individual holds a position as a result of public election or political appointment, and such position carries with it a concurrent appointment to serve as a member of a Head Start agency governing body" [42 U.S.C. § 9837(c)(1)(d)]
 - Must report conflict to HHS
 - Can still receive salary from public office

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GOVERNANCE ISSUES

- Policy Council members are subject to two conflict of interest prohibitions [42 U.S.C. § 9837(c)(2)(C)]
- No conflicts of interest
 - Not limited to "financial" conflicts
 - Could include positional or personal conflicts
- No compensation for serving on Policy Council or providing services to agency

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GOVERNANCE ISSUES

- OHS issued policy clarification concerning conflicts of interest last year [OHS-PC-E-029 (May 13, 2009)]
- Defines immediate family: "Generally includes the spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother-in-law and father-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law, and adopted and step family members."
- Reiterates that board member may not receive compensation for providing services to agency

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GOVERNANCE ISSUES

- Policy Clarification also addresses relationships with staff and possibility of recusal
- Relationships with staff: "In the case of a governing body member with a close and continuing relationship with a staff member, the financial interests of the staff member in continued employment with the grantee and possible preferential treatment may be imputed to the governing body member with whom the staff member has the relationship if justified by the circumstances. the conflict can either be addressed through the exclusion of the member with the conflict from the governing body, or the member's recusal."
- Policy Clarification states that "There are some other conditions where a conflict of interest may be of a limited nature and the conflict of interest may be addressed through the individual's recusal from participation in discussions and votes on matters affected by the conflict."

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GOVERNANCE ISSUES

- Unresolved issues regarding conflicts of interest remain
- Common recurring issues
 - Board member works for financial institution
 - Board member works for (but is not owner of) vendor other than financial institution
 - Waiver
 - Sole source problem (especially in rural areas)
 - Lower cost/price available because of relationship to agency

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FACILITIES ISSUES

- OHS has issued Program Instruction responding to common facilities-related questions [ACF-PI-HS-09-10 (Dec. 8, 2009)]
- Issues addressed
 - Prior approval
 - Notice of Federal interest
 - Collateral
 - Interest
 - Lease/purchase arrangements
 - Rental costs
 - Funding sources
 - Disposition
 - Record retention

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FACILITIES ISSUES

- Issues still remain from the grantee perspective
- Two common issues
 - Federal interest
 - Private financing/development often essential to new Head Start center development/acquisition
 - Head Start funds needed to pay mortgage or other costs associated with acquisition/development
 - Private developer/financing source will not want to be subordinate to Federal interest
 - Rental costs
 - Previously, many grantees formed subsidiaries to build and own centers and lease back to grantee; only viable alternative for funding center development/acquisition
 - Grantees may have been encouraged to take this route in some regions
 - Rental payments under less-than-arms-length leases limited and may not cover true carrying costs of subsidiary

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