

# DAB Examines Disallowances Resulting from Inadequate Documentation of In-Kind Contributions and Salaries

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## Philadelphia Parent Child Center, Inc., DAB No. 2297 (2009)<sup>1</sup>

A recent decision of the Departmental Appeals Board (DAB) of the U.S. Department of Health and Human Services (HHS) provides informative guidance regarding the type of documentation required to meet the non-federal share portion of a Head Start grant with a variety of in-kind contributions and the records needed to support the payment of employee salaries with Head Start funds. Specifically at issue in the case was the disallowance by HHS's Administration for Children and Families (ACF) of approximately \$1.2 million in in-kind contributions that Philadelphia Parent Child Center, Inc. (PPCC) used to meet its Head Start program's non-federal share obligation and close to \$400,000 in employee salaries that PPCC charged to its Head Start program.

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### Facts

ACF initially disallowed approximately \$200,000 of PPCC's non-federal share contributions for fiscal year 2007 and PPCC appealed that decision. ACF then conducted an on-site review, following which ACF disallowed close to \$1 million more in in-kind contributions for that year due to inadequate documentation. The in-kind contributions at issue consisted primarily of

volunteer services provided by parents of children in PPCC's Head Start program and, to a lesser extent, fringe benefits connected with the volunteer time, donations of classroom space and donations of other resources. ACF also disallowed close to \$400,000 in salaries for 12 Head Start and Early Head Start positions on the ground that PPCC had failed to document those salaries and how they related to PPCC's Head Start program.

PPCC appealed these disallowances to the DAB, which upheld the salary disallowance. However, after reviewing voluminous documentation submitted by PPCC to support its treatment of in-kind contributions, the DAB found that much of the documentation demonstrated the amount and eligibility of the in-kind contributions. The DAB concluded that much of ACF's response to the documentation PPCC had submitted was too general and did not clearly inform PPCC why the documentation was insufficient. The DAB therefore reversed some parts of the disallowance while upholding others, permitted PPCC to submit additional documentation to ACF to clarify some of the in-kind contributions, and instructed ACF to re-calculate the amount of in-kind contributions supported

by the existing documentation and additional documentation provided by PPCC in light of the DAB's decision.

### In-Kind Contributions

The DAB analyzed many different forms and methods used to document multiple types of in-kind contributions. The forms and methods mostly consisted of volunteer forms, volunteer time sheets, sign in/out log sheets, classroom meeting minutes, annual meeting minutes, service contracts, and appraisals. Because the DAB's opinion is so fact specific, this article is unable to address each piece of documentation examined by the DAB but rather highlights the DAB's analysis regarding a handful of the records at issue to provide some guidance regarding the documentation needed to meet the non-federal share requirements with a variety of in-kind contributions.

### The Law

Because federal financial assistance to a Head Start program may not exceed 80% of the approved costs of the program, CAAs receiving Head Start funds must meet the remaining 20% with non-federal assistance.<sup>2</sup> The non-federal portion of the approved costs of the program may be met with cash or in-kind contributions. To be accepted, all cost sharing or matching contributions, including cash and third-party in-kind contributions, must: (1) be verifiable from the grantee's records; (2) not be included as contributions for any other federally assisted program; (3) be necessary and reasonable for the proper and efficient accomplishment of project or program objectives; (4) be allowable under the cost principles (for example, Office of Management and Budget Circular A-122); (5) not be paid by the federal government under another award, unless a federal statute authorizes the use of those funds for cost sharing or matching; (6) be provided for in the approved program budget; and (7) meet specific provisions related to the documentation and valuation of donated items or services.<sup>3</sup> Additionally, the CAA's financial management system must provide accounting records, including cost accounting records, supported by source documentation.<sup>4</sup>

### Volunteer Services

This section highlights some of the types of volunteer service documentation that the DAB found sufficient along with other volunteer service documentation that the DAB found to be clearly inadequate.

### Adequate Documentation

One type of documentation that the DAB found to be sufficient was a series of "Classroom Volunteers Master Sheets," one for each month for each PPCC classroom, listing the names of the volunteers and the number of hours they worked in that classroom during the stated month. Each master sheet was supported by a series of "Volunteer Forms" which recorded

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(IMs) many of which are available on the OCS CSBG website. (OCS CSBG IMs, including some not included on the OCS website, can also be found on CAPLAW's website <http://www.caplaw.org/resources/CSBGMemoranda.html>.) Other federal guidance on the CSBG program – including the terms and conditions of OCS's awards of CSBG funds to states, a model CSBG state plan, CSBG assurances that states must make in their state plan – can be found on the OCS CSBG web page.

When researching a CSBG legal issue, be sure to check the CSBG agreement (often called a contract or award document) between your CAA and the state. In addition, many states have state CSBG or Community Action laws and regulations and many state CSBG offices issue CSBG policies and procedures.

1. See 42 U.S.C. 9902(2).
2. *Id.*
3. See Pub. L. No. 111-5, Div. A, Tit. VIII, 123 Stat. 115, 179 (2009).
4. 42 U.S.C. § 9916(a)(1)(B).
5. 2 C.F.R. Part 230, Appendix A, paragraph A.2(f).
6. *II Principles of Appropriations Law*, 10-97-10-99.
7. See, e.g., Pub. L. 111-117, Div. D, Tit. II, 123 Stat. 3034, 3251 (2009).
8. See, e.g., CSBG Terms and Conditions, par. 15, available online at [http://www.acf.hhs.gov/programs/ocs/csbg/allocations/2010\\_tc.html](http://www.acf.hhs.gov/programs/ocs/csbg/allocations/2010_tc.html).
9. See OCS Information Memo. 61 (2002), available online at <http://www.acf.hhs.gov/programs/ocs/csbg/guidance/im61.html> and 42 U.S.C. § 9907(a).
10. 42 U.S.C. § 9918(a).
11. See OCS Information Memo. 60 (2002) available online at <http://www.caplaw.org/documents/TransmittalNo.60.pdf>.
12. 42 U.S.C. § 9919(b).

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the number of hours that the volunteer worked in that classroom during the given month, and the activity performed. The volunteer form recorded the volunteer's name, address, and status (parent/guardian, relative, community member, or other); the program served (Head Start or Early Head Start); the classroom; the date or dates of the volunteer services; the time-in and time-out; and one or more of eleven activity codes.<sup>5</sup> There were spaces on the form for signatures of the volunteer, the teacher, any individual who filled out the form on behalf of the volunteer or teacher, and the fiscal officer.<sup>6</sup>

ACF presented four arguments regarding the volunteer master sheets and the individual volunteer forms, all of which the DAB rejected. First, noting that the handwriting changed from form to form for the same volunteer, ACF argued that these inconsistencies called the reliability of the information contained in the forms into question. In rejecting this argument, the DAB opined that, although the volunteer names listed on the master sheets and on the volunteer forms appeared to have been written by different people, the difference in handwriting was consistent with the master sheets having been prepared by a PPCC staff member who reviewed the volunteer sheets signed by volunteers and recorded the volunteers' names and reported hours onto the

master sheet. According to the DAB, the fact that a PPCC staff member compiled the information on volunteers and the hours they worked in a particular month onto a master sheet did not undermine the reliability of the information contained in the volunteer sheets.

Second, ACF argued that PPCC failed to provide adequate source documentation to verify and account for in-kind contributions and failed to submit contemporaneously completed parent volunteer forms that adequately documented parent hours. Moreover, ACF argued that PPCC attempted to support its claim solely with accounting information from its general ledger. The DAB rejected these arguments on the basis that ACF did not explain why the volunteer forms and classroom volunteer master sheets did not constitute contemporaneously prepared source documentation.

Third, ACF argued that PPCC failed to show that parent volunteers were performing the duties of an assistant teacher, which ACF said was required by HHS's grants administration regulations on in-kind contributions (45 C.F.R. § 74.23(i)). The DAB rejected this argument on the basis that ACF did not explain which part of the regulation (which does not refer to assistant teachers) required that parent volunteers perform the duties of an assistant teacher in order for their volunteer hours to count as in-kind contributions. The DAB noted that even if ACF's argument could be interpreted as questioning the rates at which PPCC had valued the volunteer services, the rates PPCC used were reasonable for a major metropolitan area, such as Philadelphia.

Finally, ACF argued that some forms constituting source documentation were neither verified nor signed by an appropriate official from PPCC's fiscal office as ACF alleged was required. The DAB rejected this argument, finding that ACF did not cite legal authority for this supposed requirement and that most forms were initialed in the space indicating review by PPCC's fiscal office.<sup>7</sup>

### **Inadequate Documentation**

Generally, the volunteer services documentation that the DAB found to be inadequate consisted of forms that (1) were not filled out completely; (2) were not prepared contemporaneously with the volunteer work performed; (3) failed to note the activities performed; and/or (4) failed to show how the activities performed benefited the Head Start program.

The following are a few examples of the forms the DAB found inadequate along with the DAB's reasoning behind its findings. A delegate agency of PPCC used volunteer time sheets to record the name of an individual volunteer, a classroom number, the month, the work performed, the date, the time in and the time out. Even though the DAB determined that the volunteer time sheet was sufficient, the DAB found that some of the sheets were completed in a way that rendered the sheets clearly inadequate. For instance, one of the volunteer time sheets included only a name and

three dates. As a result, the DAB found that a number of the time sheets failed to provide the basic information about the work performed which was needed to determine if that work benefited the Head Start program.<sup>8</sup>

Another example of documentation that DAB found clearly inadequate was again from one of PPCC's delegate agencies. The form was in the nature of spreadsheets summarizing the hours received from volunteers and the delegate agency department for which the work was performed such as childcare, thrift shop, etc. The DAB found that the spreadsheets failed to show the "actual reporting of hours by volunteers."<sup>9</sup> The DAB explained further that "[a]t best these forms appear to summarize and report information derived from other contemporaneous documentation that PPCC did not provide."<sup>10</sup> Moreover, the DAB found that the spreadsheets failed to contain a description of the activities performed by the volunteers.

### Volunteer Fringe Benefits

Volunteer fringe benefits that are consistent with those paid to employees and are reasonable, allowable and allocable may count as part of the in-kind contributions used to meet the federal share.<sup>11</sup> However, the DAB found that the method that PPCC used to calculate its volunteer fringe benefits was not adequately substantiated. PPCC claimed to have calculated fringe benefits at the same rate it used for its regular employees but provided no explanation for the basis of the percentage calculation used. The DAB found that not only did PPCC fail to provide sufficient documentation for the volunteer fringe benefits claimed but also failed to explain the basis for the percentage calculation of the volunteer fringe benefits as well as for its employee fringe benefits.<sup>12</sup>

### Donated Professional Services and Consulting

PPCC claimed to have obtained a number of professional services at discount rates and to have submitted documentation supporting the discounted rates as in-kind contributions used to meet its non-federal share. However, the DAB found that, with the exception of services provided to one delegate agency, PPCC had not adequately documented the in-kind donation of professional services. PPCC failed to submit documentation reflecting: (1) the terms of the service and donation; (2) the ordinary fee of the consultant; (3) that the ordinary fee was consistent with the market rate for similar consulting work; (4) that the services were actually provided, including the number of hours; and (5) how the services specifically benefited the Head Start program for which they are claimed as in-kind contributions.<sup>13</sup>

### Donated Space

PPCC claimed classroom space donated to the program by collaborating agencies as in-kind contributions. ACF disallowed these contributions because PPCC did not obtain an independent appraisal of comparable space. However, in its appeal, PPCC submitted an appraisal of the donated space from one collaborating agency which showed that comparable space had a rental value significantly higher than the value PPCC had assigned to the donated space.

The DAB concluded that the value of the space donated by the one collaborating agency was not an unreasonable rate for either that particular space or the space donated by the other collaborating agencies. As a result, the DAB found that PPCC could use the space donated by the one collaborating agency that was clearly documented as being used for the Head Start program as an in-kind contribution to meet PPCC's non-federal share. As to the space donated by the other collaborating agencies, the DAB gave PPCC the opportunity to supply ACF with documentation showing the amount of the other donated space being used for the Head Start program for the purpose of including that amount as part of the in-kind contribution.<sup>14</sup>

PPCC also submitted documentation regarding donated space that appeared to relate to the payment of a mortgage by its delegate agency. The DAB noted that because the cost principles state that capital expenditures for buildings and land are unallowable as direct charges without the prior approval from the funding source and PPCC did not allege that it had obtained such prior approval, PPCC did not have the documentation necessary to consider the mortgage as an in-kind contribution used to meet the non-federal share.<sup>15</sup>



### Resource Donations

The DAB found that documentation of donations of resources such as juice, cupcakes, clothes and educational materials that included (1) a description of the donated resource; (2) the classroom receiving it; (3) a reasonable value for the donation; and (4) the name of the donor was sufficient to establish these donations as part of the non-federal share.<sup>16</sup> Conversely, the DAB found that the documentation of resources such as a microwave, a television, a television cabinet and a United Way grant failed to show that PPCC received these items and/or that the items received benefited the Head Start program.<sup>17</sup>

### Wages and Salaries

ACF disallowed \$387,238 in salaries for 12 positions – including CEO/president, executive vice president/plan operations, director of finance, human resources specialist, four finance staff, two receptionists and two drivers – that PPCC had charged to its Head Start and Early Head Start grants. The DAB noted that an allocation spreadsheet submitted by PPCC showed that the 12 employees in question did not work exclusively on PPCC's Head Start program. (It is not clear from the DAB decision if the salaries were charged as direct or indirect costs to PPCC's Head Start and Early Head Start grants.)

### The Law

Salaries to be charged to a federal grant must be documented on payrolls prepared by a responsible official of the organization.<sup>18</sup> Additionally, the amount of salary charged

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to a Head Start grant must be supported by activity reports that: "(1) reflect an after-the-fact determination of the actual activity of each employee; (2) account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization; (3) are signed by the individual employee, or by a responsible supervisory official having first-hand knowledge of the activities performed by the employee, [and indicate] that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports; and (4) are prepared at least monthly and coincide with one or more pay periods."<sup>19</sup>

### The DAB's Analysis

In this case, the DAB found that PPCC had failed to provide activity reports that indicated the amount of time that employees actually spent on its Head Start program. Instead PPCC provided two documents prepared before the time period at issue: a weekly payroll for employees showing how salaries were allocated among different programs and a cost allocation plan for FY 2006, the fiscal year prior to the one at issue. Additionally, PPCC asserted that it conducted time studies for each employee but that it was unable to locate these studies.

The DAB noted that it is generally hesitant to find non-contemporaneous documentation adequate, but acknowledged it has previously held that summary time sheets showing the amount of time worked by each employee on each project, accompanied by signed affidavits, may serve as adequate substitute documentation. However, it observed that PPCC had failed to provide this type of substitute documentation.

### Lessons Learned

- Carefully document volunteer time to be used as in-kind contributions to meet a non-federal share (or matching) requirement by using forms that include: (1) the name of each volunteer; (2) the date(s) the volunteer provided services; (3) amount of time provided on each date; (4) a description of what activity was performed for the benefit of the program; (5) the signature of the volunteer; and (6) the signature of the volunteer supervisor.
- Prepare any documentation reflecting the receipt of an in-kind contribution contemporaneously with when the services are performed and/or the resources are donated.
- Create agency-wide methods and forms to track all types of in-kind contributions used to meet the non-federal share.
- Ensure that the CAA and its delegate agencies, if any exist, use the same types of documentation to track in-kind contributions.
- Designate an employee in the CAA to oversee the receipt of all in-kind contributions used to meet the non-federal share. The employee should coordinate the

implementation of documentation standards and spot-checks to ensure that these standards are being met.

- If ACF disallows in-kind contributions, on appeal the CAA should argue for the right to submit documentation to establish allowability of the questioned costs and, if documentation is unclear, submit additional evidence, such as affidavits from volunteers, to clarify why the costs are allowable.
- Train supervisors of volunteers and volunteers on proper ways to fill out volunteer service forms
- Support the salary amounts charged to a Head Start program with activity reports that are prepared at least monthly, coincide with a pay period, and include the following: (1) an after-the-fact determination of each employee's actual activity; (2) the complete activity the employee is obligated to perform and for which he/she receives compensation; (3) signature of the individual employee or of a responsible supervisory official with first-hand knowledge of the employee's activities; and (4) an indication that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the report periods.

1. The complete decision can be found online at <http://www.hhs.gov/dab/decisions/dabdecisions/dab2297.pdf>.
2. 42 U.S.C. § 9835(b).
3. 45 C.F.R. § 74.23.
4. 45 C.F.R. § 74.21(b)(7).
5. The activity codes were: "Working with child/children; Assisted with meals; Clean-up; Meeting/Workshop/Training; Field Trip; Outside conference; At home activity; Outdoor activity; Parent Involvement Room; Center Leadership; Home Visits."
6. PPCC, DAB No. 2297, pp. 11-15.
7. PPCC, DAB No. 2297, pp. 11-15.
8. PPCC, DAB No. 2297, p. 18.
9. PPCC, DAB No. 2297, p. 24.
10. PPCC, DAB No. 2297, p. 24.
11. PPCC, DAB No. 2297, p. 24-25.
12. PPCC, DAB No. 2297, p. 25.
13. PPCC, DAB No. 2297, p. 29-32.
14. PPCC, DAB No. 2297, p. 26-27.
15. PPCC, DAB No. 2297, p. 27.
16. PPCC, DAB No. 2297, p. 28-29.
17. PPCC, DAB No. 2297, p. 27-28.
18. OMB Circular A-122 codified at 2 C.F.R. Part 230, App. B, ¶ 8.
19. 2 C.F.R. Part 230, App. B, ¶ 8.m(1), (2).

## Robert M. Coard Conference Scholarship

CAPLAW is pleased to offer the Robert M. Coard Conference Scholarship to two individuals in Community Action for the 2010 National Training Conference. The scholarship was created by the CAPLAW Board of Directors in honor of the late Robert Coard, founding president and board member of CAPLAW. For over 40 years, Mr. Coard was a leader in Community Action and advocate for low-income individuals everywhere.

To view eligibility requirements and apply for the scholarship, visit [www.caplaw.org/2010conference](http://www.caplaw.org/2010conference). Submissions must be postmarked or submitted via e-mail by **May 14, 2010**.