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Centro de Servicios a la Juventud, Inc., DAB No. 3095 (2023)

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Centro de Servicios a la Juventud, Inc.

Docket No. A-21-16
Decision No. 3095
May 8, 2023

DECISION

Centro de Servicios a la Juventud, Inc. (CSJ) is a Puerto Rico non-profit organization that operated Head Start and Early Head Start programs with grants from the Administration for Children and Families (ACF).¹ The Head Start statute requires that a grantee and its

federally funded Head Start program meet various program performance standards. The statute also requires the grantee to timely correct deficiencies in meeting those standards or face termination of its federal Head Start funding.

In February 2020, ACF determined that CSJ had deficiencies in multiple areas of Head Start program performance. On October 30, 2020, ACF determined that CSJ had failed to timely correct some of the previously cited deficiencies and on that basis terminated CSJ's Head Start grants. CSJ appealed the termination decision to the Departmental Appeals Board (Board), and the parties submitted evidence and argument supporting their positions on the merits of that decision.

We conclude that a preponderance of evidence in the record substantiates ACF's claim that CSJ failed to timely correct a deficiency in Head Start program governance. On that basis we sustain ACF's decision to terminate CSJ's status as a Head Start grantee.

Legal Background

Under the Head Start Act (Act), ACF provides grants to public and non-profit organizations that develop and operate programs that offer educational, health, and other services to promote the "school readiness" of pre-school-age children from low-income families. 42 U.S.C. §§ 9831, 9833, 9836. In operating a Head Start program, the grantee must meet "performance standards" in the areas of program governance, program operations, and administrative and financial management. *Id.* § 9836a(a)(1), (c) (directing the Secretary of Health and Human Services to establish Head Start

Page 2

performance standards by regulation and establishing requirements for compliance monitoring); 45 C.F.R. Parts 1301-1304 (specifying Head Start performance standards and procedures for monitoring grantees' compliance).

Head Start performance standards for program governance require a grantee to have a "formal [governance] structure" composed of two organs: a "governing body" with "legal and fiscal responsibility for administering and overseeing" the grantee's Head Start program; and a "policy council responsible for the direction of the [grantee's] Head Start program." 42 U.S.C. § 9837(c)(1)(A), (c)(2)(A); 45 C.F.R. § 1301.1.

The performance standards require the governing body and policy council to exercise certain responsibilities specified in the Head Start Act and regulations. See 45 C.F.R. § 1301.2(b)-(c). In general, the grantee’s governing body – whose members must possess background and expertise in certain areas and reflect the community served by the grantee’s Head Start program – is “responsible for activities” specified in section 642(c)(1)(E) of the Act. 45 C.F.R. § 1301.2(b)(1); 42 U.S.C. § 9837(c)(1)(B) (specifying required composition of the grantee’s governing body). Those activities include:

- “administering and overseeing” the grantee’s Head Start program and the “safeguarding of Federal funds”;
- “adopt[ing] practices that assure active, independent, and informed governance of the Head Start agency”;
- ensuring compliance with federal law and with applicable state and local laws;
- “reviewing and approving all major policies of the [Head Start] agency, including . . . the annual self-assessment and financial audit”; and
- “approving financial management, accounting, and reporting policies, and compliance with laws and regulations related to financial statements.”

42 U.S.C. § 9837(c)(1)(E)(i)-(iii), (iv)(V)(aa), and (iv)(VII).²

The grantee’s policy council – composed of parents of children currently enrolled in the grantee’s Head Start program and members of the community served by that program – “is responsible for activities” specified in section 642(c)(2)(D) of the Act, including:

Page 3

- activities to promote the “active involvement of parents in supporting program operations” and development of policies to ensure that the grantee is “responsive to community and parent needs”;
- “[b]udget planning for program expenditures”; and
- “decisions regarding the employment of program staff.”

42 U.S.C. § 9837(c)(2)(D)(i), (ii), (iv), (vi); 45 C.F.R. § 1301.3(c)(1). The policy council functions in more than just an “advisory capacity”; it has a “leadership role in the administration” of a grantee’s Head Start program. 81 Fed. Reg. 61,294, 61,305 (Sept. 6, 2016).

The Head Start performance standards for administrative and financial management require compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 45 C.F.R. Part 75. 45 C.F.R. § 1303.3; *see also Texas Migrant Council, Inc.*, DAB No. 2880, at 2 (2018) (“Ensuring compliance with Part 75 is a responsibility of proper administrative and financial management for all Head Start grantees.”). Section 75.303(a) of the Uniform Administrative Requirements for federal awards states that the “non-Federal entity” (*i.e.*, the recipient of a “Federal award”) must “[e]stablish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. . . .” 45 C.F.R. § 75.303(a).³

The Head Start Act and regulations require ACF to monitor whether a grantee is compliant with the program performance standards. *See* 42 U.S.C. § 9836a(c); 42 C.F.R. § 1304.1. If such monitoring reveals noncompliance, then ACF must inform the grantee of any “*deficiencies that shall be corrected.*” 42 U.S.C. § 9836a(e)(1)(A) (*italics added*). As defined in the Head Start Act, a “deficiency” is: (1) a “systemic or substantial material failure of a [Head Start grantee] in an area of performance that [ACF] determines involves” one or more enumerated circumstances (such as the “misuse of funds” received under the Head Start award); (2) a “systemic or material failure of the

Page 4

governing body of an agency to fully exercise its legal and fiduciary responsibilities”; or (3) “an unresolved area of noncompliance.”⁴ *Id.* § 9832(2)(A)-(C).

ACF must also require the grantee to correct any identified deficiency either: (1) “immediately,” if ACF “finds that the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of Federal funds”; (2) within 90 days, “if [ACF] finds, in [its] discretion . . . , that such a 90-day period is reasonable, in light of the nature and magnitude of the deficiency”; or (3) under a longer timeframe pursuant to a Quality Improvement Plan (QIP) approved by ACF. 42 U.S.C. § 9836a(e)(1)(B); 45 C.F.R. § 1304.2 (providing, among other things, that a “grantee must correct [a] deficiency pursuant to section 641A(e)(1)(B) of the Act, as the responsible HHS official determines”).

In practice, ACF requires that deficiencies necessitating “immediate” correction be corrected within 30 days. *Cnty. Action Agency of Central Alabama*, DAB No. 2797, at 3, 9 n.7 (2017).

If ACF determines, upon follow-up review, that a grantee has “failed to timely correct one or more deficiencies as defined in the Act,” then ACF may terminate the grantee’s federal Head Start award(s). 45 C.F.R. § 1304.5(a)(2)(iii); *see also* 42 U.S.C. § 9836a(e)(1)(C) (requiring ACF to “initiate proceedings to terminate the designation of the agency unless the agency corrects [a] deficiency”); *Texas Migrant Council* at 2. “To avoid termination, a [Head Start] grantee with deficiencies must fully correct them within the time frame ACF grants.” *Cnty. Action Agency of Central Alabama* at 9. “[A] single uncorrected deficiency is sufficient as a matter of law to authorize ACF to terminate a noncompliant Head Start grantee.” *Texas Migrant Council* at 3.

A Head Start grantee has the right to request and receive a hearing before the Board to contest a termination decision by ACF. 42 U.S.C. § 9841(a)(3); 45 C.F.R. § 1304.5(b)(1)(iv).

Case Background

The information in this section is drawn from documentary and other evidence submitted by the parties and is not in dispute. The parties’ evidence includes minutes of meetings of CSJ’s governing board and policy council, notes and summaries of meetings involving CSJ and ACF employees, and correspondence between the parties.

During the timeframe relevant to this decision – 2019 and 2020 – CSJ operated Head Start programs with funding provided under three Head Start grants (award numbers 02CH010222, 02CH010336, and 02CH010501). ACF Ex. 2, at 3.

Page 5

CSJ has a board of directors and bylaws specifying the board’s composition, duties, and decision-making procedures. *See* ACF Ex. 8; ACF Ex. 16; ACF Ex. 34; CSJ Ex. 10. Between February 2018 and June 2019, CSJ’s board consisted of seven members, including a president (Angel Cruz Gonzalez), vice president (Rafael Mendez Acosta), secretary (identified as Alma Garcia Perez or Juanita Rios Mora), and treasurer (Jean Carlos Garcia Rosa). ACF Ex. 5, at 5; CSJ Exs. 5-6. During that period, CSJ’s managerial employees

included an Executive Director, a Head Start Director, Fiscal Officer (sometimes called the Director of Finance), Human Resources Director, and Operations Manager. ACF Ex. 41, at 4.

On June 13, 2019, CSJ's Executive Director passed away. ACF Ex. 41, at 30; ACF Ex. 6, at 4. CSJ's board met five days later, on June 18. CSJ Ex. 5, at 1. During that meeting, Alma Garcia Perez, who apparently had served as secretary, resigned. *Id.* At the same meeting, the board appointed Rafael Mendez Acosta (the board's vice president) as CSJ's Executive Director on an interim basis. *Id.* at 2. In addition, Mr. Mendez resigned his position as vice president, although there is some evidence that he remained an "ex officio" board member.⁵ *Id.*; CSJ Exs. 7-8; ACF Ex. 5, at 3.

CSJ's board met again on June 22 and July 13, 2019. ACF Ex. 6; CSJ Ex. 7. At the June 22nd meeting, three members asked Angel Cruz Gonzalez (the board's president) to resign, but Mr. Cruz refused. CSJ Ex. 7, at 1. At the July 13th meeting, the same three members – including the treasurer, Jean Carlos Garcia Rosa – "voted in majority" to remove Mr. Cruz, who was not in attendance. ACF Ex. 6, at 5, 7. Those three members also voted to appoint Mr. Garcia as acting president "until a proper vote was taken."⁶ *Id.* at 6.

On July 20, 2019, the CSJ board reportedly held another meeting during which it acted a second time to remove Mr. Cruz. Minutes of that meeting indicate that four members (including Mr. Garcia and Mr. Mendez) voted "unanimously" to remove Mr. Cruz and to approve the appointment of two new members, Ashley Santiago and Brian Quiles. ACF Ex. 7, at 3. The minutes also indicate that the four pre-existing members in attendance plus the two newly appointed members elected Mr. Garcia as president and Mr. Quiles as vice president. *Id.* at 3-4.

Page 6

On August 6, 2019, ACF employees responsible for overseeing CSJ's Head Start grants held a conference call with various CSJ board members and managerial employees, including Mr. Cruz (the former board president), Mr. Garcia (the recently elected president), Mr. Mendez (interim Executive Director); Johanna Urbaez (Head Start Director); and Madeline Alfonzo Zamot (Fiscal Officer). See ACF Ex. 4 (Decl. of Lori Hayes, Ed.D., Program Specialist at ACF, Office of Head Start, Region II), ¶¶ 1, 4; ACF Ex. 4, at 11. During that call (according to ACF's notes), ACF questioned whether CSJ's board had followed the organization's bylaws in removing and replacing its president. ACF Ex. 4, at 12, 13. ACF expressed a

broader concern that CSJ did not appear to have a functioning governing body that was meeting its responsibility to oversee its Head Start programs. *Id.* at 13, 15-18. Mr. Garcia indicated that prior to the death of the former Executive Director, CSJ's board was not actively involved in Head Start program governance or oversight, and that the former Executive Director controlled CSJ and made decisions for the organization. *Id.* at 13. ACF also questioned whether CSJ's policy council was fully involved in decisions affecting the programs, including the hiring of an Executive Director and approval of budgets and a recently filed refunding application. *Id.* at 13-16. In addition, ACF indicated that CSJ appeared to lack adequate "internal controls" and "fiscal policies and procedures," including with respect to bank account access and check-writing. *Id.* at 16. ACF also indicated during the meeting that it needed to approve the appointment of Mr. Mendez as interim Executive Director but that CSJ had not sought such approval. *Id.* at 14. ACF concluded the August 6th meeting by stating its impression that CSJ's officials had not exhibited an ability to work together, urging them to set aside differences, and emphasizing that CSJ needed a viable governing body that worked collaboratively with the policy council and CSJ's management team. *Id.* at 17. After the call, Mr. Cruz alleged in an August 9, 2019 letter to ACF that his removal from the board violated CSJ's bylaws because he and other board members were not given advance notice of the July 2019 meeting(s) and because the board had acted without a quorum. ACF Ex. 5, at 4.

On August 28, 2019, ACF conducted a monitoring review of CSJ. See ACF Ex. 3, at 1. ACF identified deficiencies, including those concerning program governance, during that review. See *id.* at 3.

In late August or early September 2019, the CSJ board appointed Manuela Velazquez-Valcarcel as the organization's permanent Executive Director. See ACF Ex. 11, at 7 (indicating that the board "confirmed" the appointment during an August 22nd meeting); ACF Ex. 12, at 9, 11, 13, 14 (indicating that the appointment was not approved until September 6 or 7). CSJ notified ACF of this action on September 19, 2019. ACF Ex. 49, at 1-2.

On October 7, 2019, pursuant to 45 C.F.R. §§ 75.207 and 75.305, ACF designated CSJ as a "high-risk" organization, finding that CSJ's management practices raised "serious questions about its ability to ensure proper programmatic use and financial stewardship of

Page 7

Head Start . . . grant funds.” ACF Ex. 14, at 1. In justifying that action, ACF stated that: (1) CSJ had not “establish[ed] and maintain[ed] a formal structure for program governance, including the legal and fiscal responsibility for administering and overseeing of quality services for Head Start children and families and for making decisions related to program design and implementation”; and (2) CSJ’s governing body (its board of directors) had not “adopt[ed] practices that assured active, independent and informed governance” and oversight of its Head Start programs, and “did not adhere to Head Start regulations and its by-laws.” *Id.* As a consequence of the high-risk designation, ACF restricted CSJ’s ability to draw down federal funds without prior approval from ACF. *Id.* at 1-2. ACF also required CSJ to submit a “corrective action plan” indicating how it would “correct . . . [its] inability to maintain a formal structure for program governance to administer and oversee the Head Start program and the safeguarding of Federal funds.” *Id.* at 2.

On October 26, 2019, CSJ sent ACF a corrective action plan; a cover letter in which CSJ expressed its disagreement with the high-risk designation and asserted that its board of directors was properly constituted and meeting its governance responsibilities; and supporting documentation, including board and policy council meeting minutes, meeting attendance sheets, financial and accounting records, and an English-language version of organizational bylaws approved by CSJ’s board on October 12, 2019. See ACF Ex. 17. Notwithstanding CSJ’s disagreement with the high-risk designation, the corrective action plan stated that CSJ would work with ACF and others to train its board members on their responsibilities and would also “establish policies to ensure” active, independent, and informed governance by the board. *Id.* at 207-08.

On December 6, 2019, ACF informed CSJ that it had submitted “sufficient documentation demonstrating th[at] the governing body [had] adopted revised practices that provide[d] effective oversight of the Head Start program,” and that “based on the documentation received,” ACF was rescinding CSJ’s “High Risk/Restricted Drawdown status.” ACF Ex. 18, at 1.

On January 30, 2020, CSJ’s board president, Mr. Garcia, informed ACF that CSJ had hired a new Executive Director, Ismael Velez (replacing Manuela Velazquez, who had been hired just four months before), and a new Fiscal Officer, Josue Santiago (replacing Madeline Alfonzo). ACF Ex. 49, at 3, 9. The next day, ACF informed CSJ that it would not approve the

new hires until CSJ provided additional information or documents, including evidence of board and policy council approval of the hires; the salaries for both positions; a description of how the salaries would be “allocate[d] across all [of CSJ’s] funding sources”; and a “description of the process used to recruit for the positions.” *Id.* at 4.

On February 2, 2020, CSJ sent ACF a letter, signed by Mr. Garcia, stating that its policy council had participated in the process of recruiting and selecting the new Executive

Page 8

Director and Fiscal Officer; that 20 applications for the two positions had been received and screened; that eight candidates had been interviewed; and that the policy council had participated in the interviews (although the letter gave no details about the nature or extent of that participation). ACF Ex. 20, at 1-2, 4-5; ACF Ex. 49, at 5. In addition, CSJ stated that its board and the policy council had decided that a single person should serve as both Executive Director and Head Start Director, with the person currently serving as the Head Start Director “move[d] to the position of Sub-Head Start Director.” ACF Ex. 20, at 3. CSJ further stated that CSJ was proposing to allocate all of the Fiscal Officer’s salary and virtually all of the Executive Director’s salary to CSJ’s Head Start grants. *Id.* at 6.

In support of its statements about the hiring process for the Executive Director and Fiscal Officer, CSJ submitted vacancy announcements indicating that the period for submitting applications was January 19 through January 25, 2020. ACF Ex. 20, at 9-10, 14-15. CSJ also submitted minutes of a joint meeting of CSJ’s board and policy council on January 25, 2020 (the closing date of the vacancy announcements). *Id.* at 12-13. According to those minutes, the board and council discussed the candidates for Executive Director and Fiscal Officer recommended by an “interview committee” – those candidates being Ismael Velez for Executive Director and Josue Santiago for Fiscal Officer – and unanimously approved their appointments. ACF Ex. 21, at 2, 3-5. Despite CSJ’s assertion in its February 2, 2020 letter to ACF that its board and policy council had decided to combine the duties of Executive Director and Head Start Director (ACF Ex. 20, at 4), the minutes of the January 25th meeting reflect no discussion or approval of such a change (see ACF Ex. 21).

The January 25th meeting minutes indicate that five board and four council members attended but do not list or mention all attendees by name (as minutes of previous meetings do). *Compare* ACF Ex. 21, at 3-5 *with* ACF Ex. 7 (minutes of July 20, 2019 meeting). The minutes identify only three board members by name: Mr. Garcia

(president); Brian Quiles (vice-president); and Angel Guzman, whose appointment to CSJ's board is not reflected in the minutes of any previous meeting or other record of board action. ACF Ex. 21, at 3-5. The January 25th minutes mention only one policy council member by name, Laura Alicea, the council's vice president. *Id.* at 4. The minutes state that they were "approved" and certified as accurate by Mr. Garcia and Ineabelle Gonzalez, the policy council's president, and contain what appear to be images of their signatures. ACF Ex. 20, at 13.

On February 6, 2020, ACF had a telephone conversation with Ineabelle Gonzalez, who had served as the policy council's president since August 2019. ACF Ex. 4, at 4; Hayes Decl. ¶ 3. According to ACF's notes of that conversation, Ms. Gonzalez stated that the policy council had not been involved in the selection of the former Executive Director (Manuela Velasquez) and new Executive Director (Ismael Velez), or in the decision to combine the positions of Executive Director and Head Start Director. ACF Ex. 4, at 4.

Page 9

Gonzalez also told ACF that she did not attend the January 25, 2020 joint meeting of the board and policy council; that only one council member (Laura Alicea) attended that meeting; and that she (Gonzalez) did not sign the minutes of that meeting, even though her signature, or at least an image of it, appears above her name at the end of that document.⁷ *Id.*

In a letter to ACF dated February 7, 2020, Ms. Gonzalez, the parent of two children in CSJ's Head Start programs, reported that, on that date, she attended a meeting with Mr. Garcia and others during which Mr. Garcia "threatened, harassed and intimidated" her. ACF Ex. 22, at 3-4. According to Ms. Gonzalez, Mr. Garcia questioned whether she was doing her job, made comments implying that she should resign, told her to "leave [the meeting] now," and stated that he did not want to see her at a meeting with ACF later that week. *Id.* at 3. Ms. Gonzalez clarified that she did not attend the January 25, 2020 joint meeting of the board and policy council because she did not learn that the meeting would be held until the afternoon of the January 24 and had a pre-existing, conflicting commitment the next day. *Id.*

On February 12, 2020, ACF officials conducted a site visit to CSJ and met with three former employees who had been recently fired by CSJ's board president. Hayes Decl. ¶ 3; ACF Ex. 4, at 5. ACF also had a separate meeting with the board and policy council presidents.

ACF Ex. 4, at 5. During the latter meeting, ACF expressed concern about CSJ's hiring of key employees (such as the Executive Director hirings in July 2019, September 2019, and January 2020) without prior approval from ACF; about key personnel (such as the Executive Director and Fiscal Officer) being terminated without notice to ACF and (reportedly) "without cause"; and about the CSJ board's failure to notify or consult with the policy council about, or seek its involvement in, personnel matters, including terminations. *Id.* ACF also noted that the roster of CSJ board members submitted to ACF in October 2019 did not match the list of members reflected in the Articles of Incorporation on file with the Puerto Rico Department of State. *Id.* In addition, ACF questioned CSJ's overall "governance," indicating that board and policy council members "lack[ed] an understanding of their responsibilities and oversight of the grantee," and that "[governing board] meeting minutes [were] being altered with incorrect attendance numbers and copied signatures." *Id.* Under the heading "Internal Controls," ACF's meeting notes state that the "GB [governing board] President wants

Page 10

control of all areas of fiscal including access to the PMS system,"⁸ and that CSJ "demonstrates inaccurate cost allocation throughout their 11 programs" with "most staff salaries . . . charged 100% to" CSJ's Head Start grants even when the position requires work with other, non-Head Start programs. *Id.* The meeting notes further indicate that ACF recommended to the board president that he "stop micromanaging within the organization," "follow [Head Start] Regulations for all processes," and "follow . . . internal policies and procedures," and that he and the new Executive Director work to "better understand the culture of the organization" and be more "transparent" with staff, families, and ACF. *Id.*

On February 21, 2020, ACF issued a Program Performance Summary Report (February 2020 Report) citing CSJ for deficiencies in "program governance" and financial management. ACF Ex. 3, at 4-5. The report stated that its findings were based on information obtained during an August 28, 2019 "monitoring review" and notified CSJ that it had 30 days to correct the cited deficiencies. *Id.* at 1, 3. As the legal bases for the deficiency citations, ACF cited section 642(c)(1)(E)(ii) of the Head Start Act (42 U.S.C. § 9837(c)(1)(E)(ii)), which requires a grantee's governing body to "adopt practices that assure active, independent, and informed governance of the Head Start agency . . . and fully participate in the development, planning, and evaluation of the Head Start programs

involved,” and 45 C.F.R. § 75.303(a), the provision of the Uniform Administrative Requirements requiring a grantee to “[e]stablish and maintain effective internal control” over its federal award. *Id.* at 3, 4, 5.

In support of its determination that CSJ had a deficiency in program governance, ACF found that CSJ’s board: (1) held a meeting to remove Angel Cruz as board president without notifying him of the meeting in advance; (2) failed to keep “clear and formal minutes and resolutions regarding the [b]oard’s actions and membership,” including how members were elected; (3) did not meet federal requirements for composition of a Head Start agency’s governing board; (4) “did not involve the policy council on any of its decisions” or “work in conjunction with” the council in selecting or approving the hiring an interim Executive Director, in violation of CSJ’s bylaws; (5) did not review and approve CSJ’s annual “self-assessment”; and (6) hired an interim Executive Director and permanent Executive Director without ACF’s prior approval. ACF Ex. 3, at 4. In support of its determination that CSJ had a deficiency in financial management, ACF found that CSJ’s internal controls were inadequate to ensure that its Head Start grants were being used or managed in compliance with federal requirements, noting that CSJ’s board president and Executive Director were the only persons who had access to the organization’s bank accounts and that its Fiscal Officer lacked accurate data to prepare financial statements and perform other tasks. *Id.* at 5.

Page 11

On March 4, 2020, ACF met with the CSJ board president (Mr. Garcia) and Executive Director (Mr. Velez) to discuss the February 2020 Report. See Hayes Decl. ¶ 3; ACF Ex. 4, at 6. During this meeting, ACF:

- indicated that the cited deficiencies had to be corrected by March 23, 2020 unless CSJ asked to extend the deadline;
- indicated that the termination process would begin if CSJ did not correct the cited deficiencies by the deadline;
- informed CSJ that it was not approving Mr. Velez’s appointment as permanent Executive Director because his entire salary was being allocated to CSJ’s Head Start programs even though CSJ operated other, non-Head Start programs that the Executive Director was responsible for overseeing;

- indicated that salaries paid to the Executive Director (Mr. Velez) and Fiscal Officer (Mr. Santiago) – the latter who had just left his position after being appointed on January 25, 2020 – were subject to disallowance because CSJ had not requested ACF’s “prior approval” of their appointments;
- observed that “communication and trust” did not exist between CSJ’s board and policy council, and that the two bodies needed to work together; and
- expressed general concern about cost allocation and requested that CSJ send information about how personnel costs were being allocated among its funding sources.

ACF Ex. 4, at 6. ACF also advised CSJ that it had been delinquent in submitting required financial and audit reports, and that a recently issued federal award notice had instructed it to submit federal financial reports (SF-425 and SF-429) for the 2017-18, 2018-19, and 2019-20 budget periods within 30 days, and a Single Audit report for fiscal year 2018 (the year ended September 30, 2018) within 60 days. *Id.*; ACF Ex. 24, at 4.

After the March 4, 2020 meeting, and at CSJ’s request, ACF extended the deadline for correction of cited deficiencies from March 23 to April 27, 2020. ACF Ex. 4, at 6; ACF Ex. 49, at 34; ACF Ex. 1, at 1.

On March 13, 2020, CSJ filed an amendment to its articles of incorporation to reflect a change in the membership of its board of directors. CSJ Ex. 40. According to that filing, the membership change reduced the board’s size from eight to six members. Jean Carlos Garcia Rosa and Brian Quiles remained the board president and vice president, respectively. *Id.* at 1-2.

Page 12

By letter dated March 17, 2020, ACF formally notified CSJ that, pursuant to 45 C.F.R. § 75.207, it was again limiting CSJ’s ability to use Head Start grant funds effective that date. ACF Ex. 27. ACF advised CSJ that it would be subject to “restricted drawdown” of federal funds until: (1) its program governance and financial management deficiencies were corrected; (2) it submitted the financial and audit reports requested by ACF in the recent award notice; (3) it filled key positions, including Executive Director and Fiscal Officer, and obtained ACF’s approval of the hires; and (4) it completed a current “community assessment” and submitted that assessment to ACF. *Id.* at 1-2.

On March 18, 2020, ACF telephoned CSJ's Executive Director, Mr. Velez, to discuss various matters, including the correction of deficiencies, the filling of "key staff" vacancies, and CSJ's internal controls ("[w]ho [was] signing checks" and "drawing down money"). Hayes Decl. ¶ 3; ACF Ex. 4, at 7. Repeating information contained in its March 17th letter, ACF advised Mr. Velez that key staff hirings had to be approved by ACF "prior to extending the job offer if [the job] paid more than 50% from HS/EHS funds." ACF Ex. 4, at 7. ACF further advised Mr. Velez that CSJ needed to submit a "complete" plan for allocating staff salaries to its Head Start and other programs. *Id.* ACF reiterated that request in a March 24, 2020 email to Mr. Velez. ACF Ex. 49, at 37.

On March 24, 2020, CSJ sent ACF a letter, bearing signatures of the board and policy council presidents, requesting approval of its most recent selections for Fiscal Officer (Angel Martinez Colon) and Director of Human Resources (Luis Cardona Rivera). ACF Ex. 49, at 38-42, 44, 46-47, 50-52. The letter explained how CSJ recruited and screened applicants for those positions and asserted that both the board and policy council were involved in the "interview phase" of the selection process and had approved both selections. *Id.* at 39. According to the March 24th letter, the Fiscal Officer and Director of Human Resources would devote all their time to Head Start programs, and thus 100 percent of their salaries would be allocated to CSJ's Head Start grants. *Id.* at 39-41.

In a March 25, 2020 letter signed by Mr. Garcia, CSJ asked ACF to reconsider the decision placing CSJ on restricted draw-down. ACF Ex. 28, at 2-9. CSJ indicated that it had developed, or was in the process of developing, a quality improvement plan to correct the cited deficiencies; that it was addressing the fiscal management deficiency by creating a new "fiscal Manual"; that it planned to train its "fiscal personnel" about the manual; and that its board and policy council recently held "successful" meetings and were "working together [on] all matters related to" its Head Start programs. *Id.* at 3. Mr. Garcia acknowledged that CSJ had not yet filed the financial and audit reports requested by ACF or a current community assessment but stated that an accounting firm was working on its Single Audit for fiscal year 2018, and that ACF should extend any deadlines to file the financial and audit reports in accordance with a 2017 Office of Management and Budget memorandum (titled "Administrative Relief for Grantees Impacted by Hurricanes Harvey, Irma and Maria"). *Id.* at 3-4, 6, 32. Mr. Garcia also acknowledged that CSJ had recently suspended its Head Start Director, Johanna Urbaez,

and reported that her duties were being performed by the Executive Director (Mr. Velez) pending a decision about her employment status. *Id.* at 4. (CSJ later notified ACF that Ms. Urbaez had been terminated effective April 9, 2020. ACF Ex. 49, at 58.) Finally, Mr. Garcia noted that CSJ was awaiting ACF's action on the requests for approval of Mr. Velez as permanent Executive Director and of its candidates for Fiscal Officer and Human Resources Director. ACF Ex. 28, at 5; see also *id.* at 73 (March 12, 2020 letter containing additional information supporting CSJ's request for approval of Ismael Velez as Executive Director).

On March 29, 2020, CSJ submitted a cost allocation plan to ACF. ACF Ex. 30. The cost allocation plan allocated 97 percent of the Executive Director's salary to federal programs (including Head Start), three percent to a non-federal program funded by Puerto Rico, and zero percent to two other non-federal programs operated by CSJ. *Id.* at 6. The plan did not address how salaries of the Fiscal Officer and Director of Human Resources would be allocated. The plan stated that it would be considered by CSJ's board and policy council. *Id.* at 10.

On April 1, 2020, ACF denied CSJ's request to reconsider the decision to place CSJ on restricted draw-down. ACF Ex. 32. ACF also notified CSJ that its cost allocation plan was unacceptable and that it would conduct a monitoring review to determine whether previously cited deficiencies had been corrected. *Id.* at 1-2.

On April 2, 2020, ACF officials had a telephone discussion with Mr. Garcia and Mr. Velez. Hayes Decl. ¶ 3; ACF Ex. 4, at 8. ACF acknowledged during the meeting that CSJ had recently submitted some of the previously requested SF-425 and SF-429 reports but stated that the reports did not show the correct budget period and had otherwise been submitted incorrectly. ACF Ex. 4, at 8. ACF also indicated that CSJ needed to submit a cost allocation plan covering all of its programs (Head Start and non-Head Start) to ensure that each bore its fair share of administrative, salary and other costs. *Id.* ACF reiterated that CSJ also needed to provide a current community assessment and evidence that the assessment had been reviewed on an annual basis. *Id.* CSJ responded that it was gathering information to update the community assessment. *Id.*

On April 25, 2020, CSJ asked ACF again to approve its choices for Executive Director, Fiscal Officer, and Human Resources Director. ACF Ex. 35, at 1, 4. In connection with that request, CSJ submitted a revised cost allocation plan. *Id.* at 2, 4-5; ACF Ex. 49, at 61. The

revised plan allocated a portion of the Executive Director's salary to CSJ's non-Head Start programs but did not do so for the salaries of the Fiscal Officer and Human Resources Director. ACF Ex. 35, at 14, 20.

On April 27, 2020 – the deadline set by ACF for correction of the deficiencies cited in the February 2020 Report – CSJ submitted a “Quality Improvement Plan” (QIP) to ACF.

Page 14

ACF Ex. 36, at 1, 2, 393-94; ACF Ex. 1, at 1. The QIP indicates that the following measures had been taken to correct the cited governance deficiency:

- The CSJ board removed the former board president (Mr. Cruz) in July 2019, and the board was “reconstituted” in accordance with the then-existing bylaws and “internal procedures”;
- CSJ revised or updated its bylaws on October 12, 2019, and again on April 18, 2020, to ensure their “alignment and compliance” with Head Start program governance and other requirements; and
- On April 1, 2020, the CSJ board and policy council received program governance training, including instruction on the relationship among the board, policy council, and “Head Start management.”

ACF Ex. 36, at 2-4. The QIP further indicates that certain other measures had been taken (or would be taken) to correct the cited financial management deficiency.⁹

In the cover letter accompanying the QIP, CSJ assured ACF that its board and policy council understood, and were exercising, their respective responsibilities and were working together. *Id.* at 393-94. CSJ submitted various documents to support the statements in its QIP and cover letter, including meeting minutes, training materials, documentation of attendance at training sessions, copies of organizational bylaws approved in October 2019 and April 2020, and a Fiscal Policies and Procedures Manual. *Id.* at 16-411. The meeting minutes submitted with the QIP indicate that CSJ's board and policy council had held separate or joint meetings on March 7, March 23, and March 30, 2020 in which a quorum of each body approved various personnel actions, including the

Page 15

termination of the policy council president (Ineabelle Gonzalez) and Head Start Director (Johanna Urbaez), the selection of Mr. Velez as Executive Director, the selection of a Fiscal Officer and Human Resources Director, and the consolidation of the positions of Executive Director and Head Start Director. ACF Ex. 25, at 3-4; ACF Ex. 26, at 4-6; ACF Ex. 29, at 4-6; ACF Ex. 36, at 372, 400, 402.

On August 9, 2020, Executive Director Velez requested a meeting with ACF to discuss CSJ's cost allocation plan. ACF Ex. 49, at 71. The meeting with Mr. Velez was initially scheduled for August 21 and rescheduled for August 27. *Id.* at 72. The meeting never occurred because, on August 21, ACF received an email from Mr. Velez stating, without explanation, that August 21 was his last day at CSJ. *Id.* at 73.

On August 27, 2020, ACF received an email from Mr. Garcia confirming that Mr. Velez was no longer the Executive Director. *Id.* at 74; ACF Ex. 4, at 27. Mr. Garcia stated that the "person in charge of the staff, temporarily," was Luis Cardona Rivera (the Director of Human Resources). ACF Ex. 49, at 74.

On September 9, 2020, ACF learned from Mr. Cardona that, during a CSJ board meeting earlier that month, Mr. Garcia had resigned as board president "during the week of 9/1/2020" and been replaced by Brian Quiles, formerly the vice president. ACF Ex. 4, at 26; Hayes Decl. ¶ 6. ACF also learned from Mr. Cardona that he was serving as CSJ's Executive Director, Head Start Director, and Human Resources Director but lacked access to the Head Start Enterprise System (HSES) (a communication and data management system for ACF and Head Start grantees), HHS's Payment Management System (PMS), and Grant Solutions (a grants management system) and was unaware of who had access to those systems. ACF Ex. 4, at 26, 27.

On September 11, 2020, noting the recent election of Brian Quiles as CSJ board president, ACF asked CSJ to provide the following information or documentation:

- "[a]ny documentation related to the appointment of the new board [president]," including board meeting minutes, meeting agenda sent to the board's members in advance of the meeting in which the new board president was elected, and the resignation letter of the prior board president, Mr. Garcia;

- a current list of the persons serving as CSJ’s Executive Director, Head Start Director, and Fiscal Officer; their dates of appointment; a description of the process for selecting them; and “documentation related to the departure or resignation of the prior Executive Director, Ismael Velez”;
- evidence of policy council approval of the current Executive Director, Head Start Director, and Fiscal Officer; and

Page 16

- a list of staff (and their titles) and who had access to HSES, Grant Solutions, PMS, and CSJ’s bank accounts.

ACF Ex. 44.

CSJ responded on September 18, 2020. ACF Ex. 45. The response included a copy of a “corporate resolution” purportedly adopted at a September 1, 2020 board meeting. *Id.* at 6, 58. According to the resolution, three of the board’s five members (whom the resolution did not name) attended the meeting. *Id.* at 58. The resolution further indicates that the members present voted to remove an absent member (Yasara Alvarez Rivera) who, the board found, had a conflict of interest stemming from her employment with a local governmental body. *Id.* at 58. In addition, the September 1st resolution reflects that the board voted to add two new members (Mildred Ortiz and Gabriel Acevedo), accept the written resignation of Jean Carlos Garcia Rosa from the board, and elect Brian Quiles as the new board president and Angel Guzman as vice president. *Id.* Although the resolution indicates that five named members (including the two recently installed members) “certified” the resolution’s accuracy, the resolution is not signed by any member, does not indicate by whom it was prepared or that it was circulated to members for their review, and does not state affirmatively that the certifying members actually attended the meeting. *Id.* at 58. In addition, the resolution does not indicate where or how the meeting was conducted. CSJ did not respond to ACF’s request for documentation that the board’s members, including the member who was removed, had been given advance notice of the September 1st meeting and its agenda. *Id.* at 2, 7-20, 59-72.

By letter dated September 26, 2020 and submitted to ACF on September 27, 2020, CSJ asked ACF to approve Jean Carlos Garcia Rosa as Executive Director. ACF Ex. 46, at 1-5. The letter states that four candidates were interviewed for the position; that CSJ’s board and policy council participated in the interview process; that the choice was narrowed

from four to two candidates (Mr. Garcia and another); and that the board and policy council ultimately and “unanimously” chose Mr. Garcia. *Id.* at 3. According to ACF, CSJ’s September 26th letter was ACF’s first notice of Mr. Garcia’s appointment as Executive Director. ACF’s motion for summary judgment and response to CSJ’s appeal (MSJ) at 22.

CSJ attached to its September 26th letter a corporate “resolution” purportedly adopted at a September 21, 2020 board meeting. ACF Ex. 46, at 10; ACF Ex. 47. According to the resolution, three board members (and perhaps four – the resolution is unclear about the number, as it refers to a quorum of “three (4)” of “five (5)” board members) attended the meeting and unanimously voted to offer Mr. Garcia the position of Executive Director. ACF Ex. 47, at 2. Like the resolution purportedly adopted at the September 1st board meeting, the resolution purportedly adopted at the September 21st meeting is not signed by any member, does not identify the attending members by name, and does not indicate

Page 17

where or how the meeting was conducted. It also does not indicate whether the board’s members had been given advance notice of the meeting.

CSJ also attached to its September 26th letter the minutes of a September 21, 2020 policy council meeting whose agenda included “inform[ing] [the council of] the selection of the new Executive Director, Mr. Jean Carlos Garcia Rosa and communicat[ing] the approval of the position.” See ACF Ex. 46, at 6-8; ACF Ex. 48, at 4-6. According to those minutes (which state that the September 21st meeting was conducted by “conference call”), “the Delegates [in attendance] were asked their opinion regarding this matter [and] [a]ll unanimously agreed with the selection of the candidate.” ACF Ex. 48, at 4, 5.

ACF’s Termination Decision

By letter dated October 30, 2020, ACF notified CSJ that it was terminating CSJ’s designation as a Head Start grantee 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. § 1304.5(a)(2)(iii). ACF Ex. 1, at 1. ACF stated that it was taking that action because CSJ had failed to correct the program governance and financial management deficiencies identified in its February 2020 Report by April 27, 2020, the correction deadline set by ACF. *Id.* at 1, 3. ACF stated that CSJ’s governance deficiency remained uncorrected during its follow-up monitoring review (conducted during May and June 2020) because CSJ’s board:

- “changed its membership multiple times over the course of a year, and did not show that it followed its bylaws in removing or adding members”;
- “continued to hire and remove key personnel without prior notice to or approval by [ACF]” and “without involvement of the policy council, the body responsible for the direction of the program”; and
- failed to “demonstrate that it reviewed and approved required reports and audits that the program was required to submit, including the annual Self-Assessments, the Community Assessment, or the Single Audit.”

Id. at 3. ACF further indicated that the financial management deficiency remained uncorrected because CSJ “did not show that it had implemented its Quality Improvement Plan (QIP) to correct the deficiency” and failed to “provide accurate documentation requested by the Regional Office[.]” *Id.* The termination notice advised CSJ that more specific or detailed findings supporting the termination decision could be found in ACF’s October 30, 2020 Program Performance Summary Report (October 2020 Report), a copy of which was included with the termination letter. *Id.* at 1, 5; see also ACF Ex. 2 (October 2020 Report).

Page 18

Board Proceedings

This case has a protracted procedural history. We confine our discussion to an abbreviated summary of key procedural events. We need not discuss every submission filed by the parties or the Board’s rulings, and notices, letters, and other communication to or with the parties.

CSJ timely appealed ACF’s termination decision to the Board. In its December 7, 2020 letter acknowledging receipt of the appeal, the Board established a schedule for the submission of written argument and evidence; explained that the Board may decide this appeal on summary judgment, without violating CSJ’s statutory right to a hearing, if the record reveals no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law; notified the parties that the Board would commence a hearing within 120 days of receipt of the appeal in accordance with 42 U.S.C. § 9841(a)(3) (B) unless it determined that the 120-day date should be modified if, for instance, delaying the hearing was necessary to give the parties a full and fair opportunity to develop and

present their cases; and instructed CSJ to notify the Board in writing if it wished to waive an in-person hearing and consent to have the Board decide the case based on the parties' documentary evidence and other written submissions, in accordance with 45 C.F.R. § 1304.5(f)(5). By subsequent rulings and notices, the Board suspended and modified the schedule for submission of written argument and evidence, thereby extending the due dates set in the December 7, 2020 letter to enable the parties to complete their written submissions.

On April 15, 2021, CSJ notified the Board and ACF that it was waiving its right to a hearing and consenting to a decision based on parties' written submissions. ACF stated its position that it would be appropriate for the Board to decide this case on summary judgment in ACF's favor, but that it would not object to a decision based on the written submissions alone should the Board determine that summary judgment is not appropriate.

CSJ filed an opening brief (CSJ Br.) on April 16, 2021, contending that it had corrected any deficiencies by late 2019. CSJ filed no documentary or other evidence at that time, even though the Board's acknowledgment letter had instructed CSJ to submit copies of documents upon which its statements and arguments were based. ACF responded to CSJ's opening brief with a motion for summary judgment (supported by 54 exhibits, with ACF exhibit 4 (Hayes Decl.) including attachments) (MSJ), contending that there is no genuine dispute that CSJ had deficiencies in program governance and financial management as of February 2020 but failed to correct the deficiencies by the April 27, 2020 deadline set by ACF. CSJ filed a brief opposing the motion (Opp. Br.), along with 60 exhibits (numbered 1-17, 18A-B, 19, 20A-B, 21-54, 55A-D). ACF then replied to CSJ's brief opposing the summary judgment motion (ACF Reply to Opp. Br.). Briefing on the termination decision concluded with CSJ's submission, on August 30, 2021, of a reply (CSJ Reply), along with a document titled "Quality Improvement Plan," which,

Page 19

although not marked by CSJ as an exhibit nor accompanied by an amended exhibit list that identifies the document as an exhibit, we accept as CSJ Exhibit 56.¹⁰

Many of the exhibits filed by CSJ contain documents written in Spanish. On August 3, 2021, the Board notified the parties that it would obtain English-language translations of documents from CSJ Exhibits 5, 7, 8, 12, 15, 17, 21, 22, 23, 24, 25, 26, 28, 33, 37, 38, 47, 50,

and permitted CSJ the opportunity to identify any other document in the record that it believed should be translated.

On September 1, 2021, CSJ notified the Board that it would not request translations of any additional exhibits.

On November 5, 2021, the Board informed the parties that, in view of CSJ's waiver of its right to an in-person hearing, the case would be decided based on the written record and that it was unnecessary to rule on ACF's summary judgment motion. The Board also informed the parties of its intention to obtain English-language translations of certain documents in ACF Exhibit 17, in addition to the documents in CSJ's exhibits the Board previously had identified for translation.¹¹ The Board also gave the parties one last opportunity to identify any other portions of the record they believe ought to be translated to English. Neither party identified any additional record materials for translation.

On January 13, 2023, the Board provided its translations to the parties and allowed them one month to note any material errors or inaccuracies in the translations. The Board also notified the parties that, upon further review, the Board determined that it would not be necessary to obtain English-language translations of certain documents in ACF Exhibit 17 and, accordingly, obtained translations of fewer pages of documents in that exhibit than the Board had identified earlier for translation. ACF did not respond to the Board's January 13 notice with concerns about, or proposed corrections to, the Board's translations. After the one-month period expired, CSJ asked for additional time to

Page 20

respond to the Board's January 13 notice. The Board gave CSJ two additional weeks, and CSJ responded on the extended due date.¹² The Board then closed the record.

Findings and Conclusions Regarding Merits of the Termination Decision

In an appeal of a Head Start grant termination, ACF must make a "*prima facie* showing (that is, proffer evidence sufficient to support a decision in its favor absent contrary evidence) that it has a basis for termination" under the applicable legal standards.

Friendly Fuld Neighborhood Ctr., Inc., DAB No. 2121, at 3 (2007); *Central Mississippi, Inc.*, DAB No. 2757, at 3-4 (2016). ACF has a basis for terminating a Head Start award when a

grantee fails to timely correct any “deficiency” in Head Start program performance. 42 U.S.C. § 9836a(e)(1)(C); 45 C.F.R. § 1304.5(a)(2)(iii) (authorizing termination for failure to timely correct “one or more deficiencies”); *Avoyelles Progress Action Committee, Inc.*, DAB No. 2559, at 8 (2014).

If ACF makes the required prima showing, then the Head Start grantee “must demonstrate by a preponderance of the evidence” that it was “in compliance with program standards.” *Friendly Fuld* at 4; *Central Mississippi* at 4 (noting that the “ultimate burden of persuasion is on the Head Start grantee to show that it was in compliance with program standards”). In this context, that means that the grantee must demonstrate that it corrected any program deficiencies within the timeframe set by ACF. *Friendly Fuld* at 7. “The Board evaluates the correction of a deficiency not by whether the specific actions or incidents underlying the deficiency were repeated but whether the underlying conditions that caused the deficiency to occur have been eliminated.” *Texas Migrant Council* at 15.

With this framework in mind, we first assess ACF’s claim that CSJ had a deficiency relating to program governance as of February 21, 2020, the date on which ACF issued its report of the August 2019 monitoring review. We then consider whether CSJ corrected any such deficiency within the timeframe set by ACF. We find that CSJ did not timely correct a deficiency related to program governance and ACF lawfully terminated CSJ’s status as a Head Start grantee on that basis. Accordingly, we need not consider ACF’s claim that CSJ had, but failed to correct, a deficiency relating to financial management. See *Central Mississippi* at 1 (holding that it was unnecessary to address a deficiency allegation because the grantee’s failure to correct another deficiency was sufficient to uphold the grantee’s termination).

Page 21

1. As of February 21, 2020, CSJ had a deficiency in Head Start program performance because its governing body was then materially failing to fully exercise its legal responsibilities under the Head Start Act.

The Head Start program performance standards provide that a Head Start grantee’s governing body must exercise or meet the responsibilities specified in section 642(c)(1)(E) of the Head Start Act (42 U.S.C. § 9837(c)(1)(E)). 45 C.F.R. § 1301.2(b)(1) (indicating that the governing body is “responsible for activities specified” in section 642(c)(1)(E) of the Head Start Act). Those responsibilities include: “adopt[ing] practices that assure active,

independent, and informed governance” of the grantee; “fully participat[ing] in the development, planning, and evaluation of the Head Start programs involved”; ensuring compliance with federal and applicable state and local law; “reviewing and approving all major policies of the [Head Start] agency, including . . . the annual self-assessment and financial audit”; developing procedures for selecting members of the policy council; “approving financial management, accounting, and reporting policies, and compliance with laws and regulations related to financial statements”; and “approving personnel policies and procedures, including [those] regarding the hiring, evaluation, compensation, and termination of the Executive Director, Head Start Director, Director of Human Resources, Chief Fiscal Officer, and any other person in an equivalent position with the [grantee].”¹³ 42 U.S.C. § 9837(c)(1)(E)(ii), (iii), (iv)(V)(aa), (iv)(VI), (iv)(VII), and (iv)(IX). A grantee has a “deficiency” in Head Start program performance when its governing body systemically or materially fails to “fully exercise its legal and fiduciary responsibilities,” which include the responsibilities assigned to that body by the Head Start performance standards. *Id.* § 9832(2)(B). As outlined below, the record shows that CSJ’s board was materially failing to exercise or meet these responsibilities during 2019 and early 2020.

1. As of February 21, 2020, the CSJ board had not adopted practices to assure active, independent, and informed governance of CSJ.

The record indicates that during the years relevant to the parties’ dispute, CSJ had bylaws specifying procedures or processes designed to promote or ensure active, independent, and informed decision-making by its governing board. One of those bylaws required the board secretary to provide members advance written notice of meetings and meeting agenda. See ACF Ex. 8 (2010 bylaws), at 19; CSJ Ex. 10 (Nov. 2016 bylaws), at 2-3; ACF Ex. 16 (Oct. 12, 2019 bylaws), at 9, 23. ACF proffered evidence that CSJ’s board

Page 22

did not follow that directive – that the board failed to provide its president (and perhaps other members) notice of July 13 and July 20, 2019 meetings during which attending members voted to remove him.¹⁴ See ACF Ex. 5, at 4; ACF Exs. 6-7 (July 2019 board meeting minutes). CSJ alleges that notice of those meetings was provided to all members (Opp. Br. at 5) but proffered no evidence to support that claim.¹⁵ Nor did CSJ provide evidence that the board secretary regularly provided adequate advance notice of meetings and meeting agenda to members. According to available meeting minutes,

CSJ's board met at least eleven times from July 13, 2019 through February 26, 2020. See ACF Exs. 7, 10, 11, 12, 15, 20, 21; CSJ Ex. 8; CSJ Ex. 9; CSJ Ex. 47, at 25, 30, 33, 60-61. None of the minutes indicate that attending members were informed in advance of topics to be discussed, and some suggest that members first received that information *during* the meeting. See, e.g., ACF Ex. 15, at 5 (stating that members of the Board of Directors [were] welcomed [to the meeting] *and read the Agenda*") (our emphasis).

Another bylaw required CSJ's board to elect its members who are independent and otherwise qualified to serve. ACF Ex. 16 (Oct. 12, 2019 bylaws), at 15-16 (Art. II, §§ 1, 3); CSJ Ex. 10 (Nov. 2016 bylaws), at 3 (Art. VI, § 3). The February 2020 Report expressed concern about whether members of the CSJ's board had been duly elected, and about the lack of clear and formal documentation of official action regarding the board's membership. ACF Ex. 3, at 4 (noting that it was "unclear when or how" certain individuals had become members). The record shows that ACF's concern was not unwarranted. For example, minutes of an August 13, 2019 board meeting identify Celide Collazo Mila as the board's treasurer, but neither those minutes nor minutes of any previous meetings (on July 20 or July 13, 2019) document her election as a board member. See ACF Ex. 10, at 1, 4; ACF Ex. 7; CSJ Ex. 8. In addition, Ms. Collazo is not identified as a board member in a corporate amendment filed by CSJ with the Puerto Rico Department of State on or about September 3, 2019. ACF Ex. 9, at 4-5, 9-10.

Similarly, Angel Guzman is identified as a member of CSJ's board in the minutes of a January 25, 2020 meeting. ACF Ex. 21, at 2, 5. Yet in the corrective action plan submitted to ACF in late October 2019 (in response to its designation as a high-risk

Page 23

grantee), CSJ indicated that its board had seven members, none of whom was Mr. Guzman. ACF Ex. 17, at 207. Minutes of a November 16, 2019 board meeting list the same seven members, and minutes of a November 30, 2019 board meeting make no reference to Mr. Guzman. See, e.g., CSJ Ex. 47, at 60-61. (No minutes or other records allude to a board meeting held between November 30, 2019 and January 25, 2020.) In its brief opposing ACF's summary judgment motion, CSJ notes that it filed an "Officers Amendment" with the Puerto Rico Department of State in March 2020 identifying Mr. Guzman as a board member (Opp. Br. at 18, citing CSJ Ex. 40), but neither that filing nor CSJ's brief indicates that the board elected Mr. Guzman at some point or how he came to

be a member. A version of CSJ's bylaws adopted by CSJ's board on October 12, 2019 empowered the board president to "appoint" an individual to fill a "vacancy" on the board and "serve until the expiration of the term" of the member whose departure created the vacancy. ACF Ex. 16, at 16. However, there is no evidence that Mr. Guzman was appointed to fill a "vacancy" on the board or that the board was notified of his appointment and qualifications to serve.

ACF's program review identified or revealed other irregularities. For example, ACF received reports, not denied by CSJ, that board meeting minutes showed incorrect attendance numbers and that members' signatures had been copied. See ACF Ex. 4, at 5. In addition, we note that the minutes of some board meetings – including meetings purportedly held on January 25, 2020 and February 26, 2020 – lacked details that one might reasonably expect to find in such records, including the names of members in attendance and the location or method of conducting the meeting.¹⁶ ACF Ex. 21 (minutes of Jan. 25, 2020 board meeting omitting identity of three of the five members purportedly in attendance); CSJ Ex. 47, at 33 (minutes of Feb. 26, 2020 board meeting omitting names of three participating members and failing to indicate where or how the meeting was conducted); *compare with* ACF Ex. 15, at 4 (minutes of Oct. 12, 2019 board meeting, specifying the meeting place and the names of attending members). These circumstances suggest that the board as a whole was not a functioning governing body whose members were actively participating in the governance of CSJ's Head Start programs.

Page 24

As additional support for its deficiency finding, ACF points to its findings regarding the board's relationship with CSJ's policy council. MSJ at 11, 30-31. As noted, the policy council is generally responsible for the "direction" of a grantee's Head Start program, including making decisions regarding program operations (including recruitment and enrollment of eligible children and the employment of program staff), budget planning, and setting policies to ensure that the programs respond to community and parental needs. 42 U.S.C. § 9837(c)(2)(D); 45 C.F.R. § 1301.1. It follows that a grantee's governing body cannot fully or adequately exercise its responsibility for informed governance of a Head Start program unless it involves, or collaborates or consults with, the policy council in making decisions affecting aspects of the program for which the council is responsible. CSJ's bylaws apparently recognized the importance of such a working relationship because they required the board to "[m]aintain a system of communication and

participation in meetings and activities with the members of the Regulatory Policy Council to ensure consultation and meaningful collaboration on program decisions.” ACF Ex. 16 (Oct. 12, 2019 bylaws), at 21 (Art. V, § J). In addition, CSJ’s bylaws explicitly required the governing body to secure policy council approval of certain key staff.¹⁷

We see no indication that as of February 21, 2020, CSJ’s board had established a “system” or structured process for working with the policy council, as required by its bylaws.¹⁸ And despite the bylaws’ and Head Start Act’s assignment of decision-making responsibility to the policy council for employing program staff (see 42 U.S.C. § 9837(c)(2)(d)(VI)), CSJ’s board did not involve the policy council, or otherwise seek its input, in making hiring decisions affecting CSJ’s Head Start programs. As noted, the council’s president reported to ACF (see CMS Ex. 4, at 4) that the council was not involved in the selection of CSJ’s Executive Director (Manuela Velasquez) in August or September 2019. CSJ did not deny that report. Nor did CSJ proffer evidence refuting the council president’s assertions that she did not attend the January 25, 2020 meeting to consider the hiring of a new Executive Director (replacing Ms. Velazquez) and Fiscal

Page 25

Officer, and that only one council member – the council’s vice president, Laura Alicea – attended that meeting. Although minutes of the January 25th meeting state that four council members (including the council’s vice president) attended, see ACF Ex. 21, at 3, we give the document no weight because it fails to identify the attending members by name (other than the council’s vice president, Laura Alicea), see *id.* at 4, and because CSJ did not allege, much less demonstrate, that the attendance numbers were accurate.

Nor do we credit the assertion by CSJ in its February 2, 2020 letter that the policy council had participated in the process of selecting an Executive Director and Fiscal Officer because the letter provides few supporting details: it does not name the council members involved; describe how (if at all) they worked with the board during the recruitment, screening, or interview process; or identify members of the “interview committee” referred to in the minutes of the January 25th joint board-council meeting.¹⁹ ACF Ex. 20, at 5. CSJ’s suggestion in that letter, that the board and council made thorough or “rigorous” efforts to find and hire a new Executive Director and Fiscal Officer (see *id.* at 2, 4-5), appears implausible based on the available evidence and timeline of events. For those two positions, CSJ produced vacancy announcements indicating that CSJ was

soliciting applications from Sunday, January 19 through Saturday, January 25, 2020. *Id.* at 9-10, 14-15. CSJ alleged that the announcements appeared online and in local employment offices but offered no evidence of the announcements' publication or distribution. *Id.* at 4. CSJ further claimed to have received 20 applications for the positions, interviewed eight applicants, then selected two candidates from the interview pool for board and council consideration. *Id.* at 4-5. It is unclear how all this occurred in the brief interlude between January 19 (the opening date of the vacancy announcements) and January 25 (which is both the closing date of the vacancy announcements and the date of the board meeting to approve the candidates selected for board consideration).

In short, the record demonstrates that as of February 2020, CSJ's board was not consistently adhering to organizational bylaws regarding meetings and election of directors, kept records that inaccurately portray the extent to which its members were participating in meetings, and made personnel decisions affecting CSJ's Head Start programs without meaningful collaboration with, or input from, the policy council. These circumstances amply demonstrate that CSJ's board had not adopted practices to assure active, independent, and informed governance of CSJ, as required by 42 U.S.C. § 9837(c)(1)(E)(ii).

Page 26

2. As of February 21, 2020, CSJ's board was not exercising its responsibility under the Head Start Act to ensure compliance with applicable federal law.

The February 2020 Report identifies two additional governance failures by CSJ's board. First, the report states that CSJ's board approved the hiring of certain key personnel without ACF's approval. See ACF Ex. 3, at 4. Title 45 C.F.R. § 75.308(c)(1)(ii) provides that recipients of non-construction federal awards, such as a Head Start award, "must request *prior approvals* from HHS awarding agencies" for certain "program or budget-related reasons," including "[c]hange in a key person specified in the application or the Federal award" (italics added). The term "prior approval" means "written approval by an authorized HHS official evidencing prior consent before a recipient undertakes certain activities or incurs specific costs." 45 C.F.R. § 75.2. "Key persons" identified in CSJ's Head Start award as requiring ACF's prior approval included its Executive Director, Head Start Director, and Fiscal Officer "if any of those positions [was] funded, either directly or through indirect cost recovery, more than 50 percent with Head Start funds." ACF Ex. 24,

at 5. Cost allocation information submitted by CSJ shows that more than 50 percent of funding for those positions came from CSJ's Head Start grants. See ACF Ex. 35, at 20 (showing allocation of personnel salaries and time to CSJ's Head Start and other programs).

As detailed in our background summary, the record shows that, in violation of section 75.308(c)(1)(ii)'s requirement that CSJ secure ACF's prior approval for any "change in a key person" specified in its Head Start awards, CSJ's board authorized the hiring of an acting Executive Director in June 2019, a permanent Executive Director in August or September 2019, a new Executive Director in January 2020 (replacing the one who had been hired in August or September 2019), and a Fiscal Officer in January 2020 without first having sought or obtained ACF's approval (written or otherwise) of the appointments. CSJ does not dispute that it failed to obtain ACF's prior approval for these hirings or argue that the regulation did not require such approval under the circumstances.²⁰ By authorizing the hiring of key personnel in violation of a federal grant administration regulation, CSJ's board failed to meet its responsibility under Head Start performance standards to "ensure [CSJ's] compliance with Federal laws" governing its Head Start programs. 42 U.S.C. § 9837(c)(1)(E)(iii).²¹

Page 27

3. As of February 21, 2020, CSJ's board of directors was not exercising its legal responsibility to review and approve "major policies" of CSJ and to fully participate in the development, planning, and evaluation of CSJ's Head Start programs.

The February 2020 Report identifies an additional governance failure – one that relates to CSJ's self-assessment. The Head Start performance standards provide that "[n]ot less frequently than once each program year," a Head Start grantee must conduct a "comprehensive self-assessment of its effectiveness and progress in meeting program goals and objectives [such as those relating to child health, nutrition, and school readiness] and in implementing and complying with" the Head Start performance standards. 42 U.S.C. § 9836a(g)(1); see also 45 C.F.R. § 1302.102(b)(2)(i) (requiring a Head Start agency to conduct a self-assessment); ACF Ex. 36, at 56 (governance training slide indicating that the annual self-assessment is a means of evaluating the grantee's progress in implementing an "action plan" and meeting Head Start programs goals). The

performance standards require the grantee’s governing body to “review[] and approv[e]” the annual self-assessment and other “major policies” of the grantee, such as its financial audit. 42 U.S.C. § 9837(c)(1)(E)(iv)(V)(aa).

ACF found, and record confirms, that as of February 2020, CSJ’s board had not reviewed or approved a Head Start self-assessment for the program year (PY) ending in July 2019 (PY 2018-2019).²² See ACF Ex. 3, at 4; MSJ at 2, 31. According to one of CSJ’s refunding applications, CSJ expected that the self-assessment would be completed in August or September 2019, after a delay caused by the illness and death of its former Executive Director. See ACF Ex. 41, at 127. On February 10, 2020, CSJ submitted to ACF what purports to be a completed self-assessment for PY 2018-19 for one of its three Head Start awards (number 02CH010501). See Opp. Br. at 27; CSJ Ex. 26; ACF Reply to Opp. Br. at 2; ACF Ex. 40, at 137. However, CSJ does not dispute the finding in the February 2020 Report that its board had not reviewed or approved self-assessments for PY 2018-2019 (or for any other recently completed program year) or state a credible reason for not having done so prior to, or contemporaneously with, the assessment’s submission to ACF. See ACF Ex. 3, at 4. CSJ blames former employees for that failure, alleging that its employees did not comply with a request by the board to share results of the assessment. Opp. Br. at 24-25, 27. CSJ proffered no evidence of any such request, however.

These circumstances not only show a failure by CSJ’s board to exercise its legal responsibility to review “major policies” of CSJ; they are also evidence that the board did not meet its statutory responsibility to “fully participate in the development, planning, and evaluation” of its Head Start programs (42 U.S.C. § 9837(c)(1)(E)(ii)) because the

Page 28

self-assessment provides data crucial for evaluating whether the programs are meeting their goals and for planning and implementing improvements to the quality of the programs’ services.²³ Indeed, the Head Start program performance standards explicitly require a grantee’s governing body to use the self-assessment and other information to “conduct its responsibilities” – which, as indicated, include “development” and “evaluation” of its Head Start programs. 45 C.F.R. § 1301.2(b)(2).

According to notes of the parties’ August 6, 2019 meeting (notes whose accuracy is not in dispute), the CSJ board president admitted that during the tenure of CSJ’s former Executive Director (who passed away in June 2019), the board was not actively involved in

overseeing CSJ's Head Start programs and that the former Executive Director controlled and made decisions for the organization. ACF Ex. 4, at 13. There is no evidence of any significant change in that state of affairs between August 2020 and ACF's issuance of the February 2020 Report: meeting minutes and other documents from that period reflect no significant discussion of, or participation in, Head Start program development, planning, or evaluation by CSJ's board. Although it is possible that the individual board members, such as the board president, may have addressed such matters in meetings with program staff or policy council members, there is no evidence that those matters were brought to the attention of the board as a whole for consideration.

4. CSJ's objections to ACF's deficiency finding do not undermine that finding.

CSJ suggests that it was improperly cited for a governance deficiency in February 2020 because when ACF removed CSJ's high-risk designation and permitted CSJ to resume drawing down funds in December 2019, it stated (in a December 6th letter) that CSJ had submitted "sufficient documentation demonstrating [that CSJ's] governing body [had] adopted revised practices ensuring effective oversight of the Head Start program in accordance with Head Start regulations." Opp. Br. at 21-22, 37-38 (quoting ACF Ex. 18). In other words, CSJ suggests that ACF's December 2019 decision to rescind the high-risk designation and allow CSJ to resume drawing down of funds was a determination that it had corrected the governance deficiency cited in the February 2020 report. See CSJ Br. at 8-9. However, the just-quoted statement from ACF's December 6th letter does not explicitly or clearly address the status of the CSJ board's compliance with the performance standards that ACF later cited as the legal grounds for its deficiency finding. Moreover, the record reflects that ACF's decision to cite CSJ for a governance deficiency in February 2020 stems in part from information obtained, or observations

Page 29

made by, ACF during site visits and interviews conducted *after* the removal of CSJ's high-risk designation. See, e.g., ACF Ex. 4, at 5 (containing notes of ACF's meetings with CSJ's board and policy council presidents and former employees). In short, ACF's decision to remove CSJ from high-risk status and allow it to again draw down funds was not a determination that CSJ had corrected any governance deficiency. See 42 U.S.C. § 9836a; 45 C.F.R. § 1304.2.

CSJ also notes that a “Program Performance Summary Report” containing findings of a July 2019 “Focus Area 1” (FA1) monitoring review expresses no concerns about Head Start program governance. Opp. Br. at 2, 21 (citing CSJ Exs. 13 and 45). However, the cited report indicates on its face that it is a “draft,” and there is no evidence in the record contradicting ACF’s assertion (MSJ at 39 n.28) that a final report was never issued and that the FA1 review was superseded by the August 2019 monitoring review and subsequent investigation that culminated in the issuance of the February 2020 Report.

In addition, CSJ suggests that ACF’s deficiency finding rests on misleading or “incorrect” information provided to ACF by disgruntled former employees or policy council members – including the former Executive Director (Manuela Velazquez), property manager (Maria Teresa Gonzalez), policy council president (Ineabelle González), Head Start Director (Johanna Urbaez), and Fiscal Officer (Madeline Alfonzo). Opp. Br. at 13-17. However, CSJ has not identified any examples of false or misleading information provided to ACF by these individuals, nor has it demonstrated that ACF relied on false or misleading information.

To summarize, the record shows that, in the months leading up to the issuance of the February 2020 Report, the CSJ board: (1) did not act in accordance with its own meeting and decision-making procedures; (2) did not meet its obligation under CSJ’s bylaws to determine its membership and ensure that members were qualified to serve; (3) did not involve or collaborate with CSJ’s policy council in making decisions about employment of Head Start staff (showing lack of understanding of, or appreciation for, the council’s involvement in, and responsibility for, overseeing operation of CSJ’s Head Start program); (4) approved hiring of key personnel in violation of the applicable grant administration requirements in 45 C.F.R. Part 75; and (5) did not review and approve the required annual Head Start self-assessment. These failures or omissions establish that CSJ’s board materially failed to exercise or meet its legal responsibilities under section 642(c)(1)(E) of the Head Start statute to: (1) adopt practices that assure active, independent, and informed governance of CSJ; (2) ensure CSJ’s compliance with federal law; (3) review and approve all major policies of the [Head Start] agency; and (4) fully participate in the development, planning, and evaluation of CSJ’s Head Start programs. We therefore conclude that, as of February 21, 2020, CSJ had a program governance “deficiency” (as defined in 42 U.S.C. § 9832(2)(B)) that needed to be corrected by April 27, 2020, the deadline for correction set by ACF.

Page 30**2. CSJ did not timely correct its program governance deficiency.**

Based on its April 2020 follow-up review and subsequent developments, ACF found that, as of April 27, 2020, CSJ still lacked a “trained, functioning” governing body that was meeting or exercising its legal responsibilities under the Head Start performance standards. ACF Ex. 2, at 4. The record supports that finding.

As discussed earlier, one aspect of the governance deficiency was the apparent failure of CSJ’s board to follow organizational bylaws, including rules about meetings, that promote informed and independent decision-making. Despite the February 2020 Report’s finding that CSJ’s board failed to provide advance notice of meetings and meeting agenda to its members, CSJ provided no evidence to ACF during the follow-up review that the board had taken steps to remedy that failure. According to copies of meeting minutes or “resolutions” supplied by the parties, CSJ’s board met on February 26, March 11, March 23, April 18, May 27, and September 1, 2020. See CSJ Ex. 47, at 33; CSJ Ex. 17; ACF Ex. 26; ACF Ex. 29; ACF Ex. 33; ACF Ex. 52; ACF Ex. 45, at 6, 58. None of those documents indicate that the board provided its members advance notice of meetings and meeting agenda, as CSJ’s bylaws required, or that the board had any established process, procedure, or protocol for communicating such notice. And when ACF asked CSJ for documentation that members had been notified in advance of the board’s September 1, 2020 meeting (see ACF Ex. 44) – a meeting during which the board purportedly voted to remove an absent member (as it did in July 2019) and elect a new president – CSJ failed to produce any (see ACF Ex. 45). Further persuading us that CSJ’s board had not corrected its failure to comply with the bylaws’ meeting-notice requirements is the fact that, as of September 2020, no member of the board had been elected or otherwise formally designated to serve as its secretary, the officer responsible for informing members about upcoming meetings and meeting agenda to ensure their “effective participation” and, more generally, for keeping members informed about the organization’s “activities” and the “matters . . . entrusted to it.” ACF Ex. 45, at 5, 68-69; see *also* ACF Ex. 4, at 21 (meeting notes reflecting a statement by the board president that the secretary was responsible for distributing meeting notices and agenda).

CSJ also failed to address ACF's concern, expressed in the February 2020 Report, about how membership of its governing board was determined and the lack of clear documentation of board action in that area. See ACF Ex. 3, at 4 (noting that it was unclear when or how members were elected); ACF Ex. 36 (Quality Improvement Plan). A March 11, 2020 "resolution" submitted by CSJ illustrates a continuing lack of transparency. See CSJ Ex. 17. The resolution purports to be a record of action taken at a March 11, 2020 board meeting. *Id.* According to the resolution, a quorum of three members unanimously approved the addition of two new members and the resignation (submitted on March 9th) of two existing members. However, the resolution omitted vital information: it did not indicate where or how the meeting was conducted (in person, by telephone, by videoconference); the resolution also failed to identify the names of the

Page 31

members who attended the meeting or the names of any absent members.²⁴ There is no other contemporaneous evidence corroborating the information contained in the resolution. The absence of clear and sufficiently detailed meeting minutes, resolutions, and other records of board action is no trivial matter. A governing body's records of official action should provide reasonable assurance that it is exercising care in decision-making and following both the organization's rules (such as corporate bylaws) and requirements of outside agencies (including grant-making bodies).

Another aspect of the governance deficiency that remained unaddressed as of April 27, 2020 was the CSJ board's failure to ensure compliance with an applicable legal requirement – namely, the requirement in 45 C.F.R. § 75.308(c)(1)(ii) that a grantee obtain the grantor agency's prior approval for a "[c]hange in a key person specified in the [award] application or the Federal award." Even though ACF advised CSJ during the post-February 2020 correction period that the prior-approval requirement applied to certain key positions, including Executive Director and Fiscal Officer (whose salaries were being financed primarily with Head Start funds), CSJ's board flouted the requirement again in September 2020 when it voted to appoint Mr. Garcia as Executive Director without ACF's prior approval for the appointment.

Yet another unaddressed aspect of CSJ's governance deficiency concerned the failure of its board to involve the policy council in hiring key Head Start program staff. CSJ's Quality Improvement Plan identified no corrective measures addressing the board's relationship

or interaction with the policy council. As of April 18, 2020, CSJ's bylaws called on the board to "[m]aintain a system of communication and participation in meetings and activities with the members of the Policy Council to ensure consultation and meaningful collaboration on program decisions." ACF Ex. 34, at 23 (Art. V, § I). CSJ proffered no evidence that it had implemented such a "system." CSJ's failure to address this aspect of the governance deficiency is illustrated by the board's (apparent) decision during September 2020 to offer the position of Executive Director (whose duties included serving as Head Start Director) to Jean Carlos Garcia Rosa. Although CSJ asserted in a letter to ACF that the policy council had participated in an "interview process" from which Mr. Garcia emerged as the preferred candidate (from a group of four interviewees) for the position, CSJ provided no details or evidence of council

Page 32

participation in such a process.²⁵ As ACF notes, and the available evidence reflects, the documented extent of the council's involvement in hiring Mr. Garcia was an opportunity at a September 21, 2020 meeting for members to express an "opinion" regarding his selection by the board. See ACF Ex. 48, at 5. There is no evidence that the policy council as a whole was notified of the selection in advance of the September 21st meeting, or that it had any role whatsoever in evaluating or weighing the qualifications of the candidates allegedly interviewed for the position. CSJ generally alleges that its board collaborated with the policy council in making decisions about Head Start program matters. Opp. Br. at 21, 25 (citing CSJ Ex. 50). However, CSJ does not point to any examples of board-council collaboration, and we see no credible evidence that such collaboration, assuming it occurred, extended to decisions about the hiring of key program staff.

CSJ has also failed to demonstrate that its governing board remedied its failure to review and approve "major policies" of the organization, such as the annual Head Start self-assessment and "financial audit." See 42 U.S.C. § 9837(c)(1)(E)(iv)(V)(aa). As noted, in February 2020, CSJ apparently submitted to ACF an annual self-assessment for Head Start grant number 02CH010501 for program year 2018-2019. Opp. Br. at 27; ACF Reply to CSJ Opp. Br. at 1. However, there is no evidence that CSJ's board reviewed that self-assessment, either before or after submitting it to ACF. And there is no evidence that CSJ submitted, or that its board reviewed, annual self-assessments for 2018-2019 and for 2019-2020 for its other two Head Start awards (02CH010222 and 02CH010336) until after

the April 27, 2020 correction deadline. See ACF Ex. 41, at 1, 54, 70, 127; ACF Ex. 40, at 2, 44, 72, 111; ACF Reply to Opp. Br. at 2. CSJ acknowledges that it did not submit its self-assessment for the two awards for 2019-2020 until 2021. See Opp. Br. at 24, 25, 27.

The Head Start performance standards make a grantee's governing body "responsible for . . . establishing procedures and guidelines for accessing and collecting information described in" in 42 U.S.C. § 9837(d)(2), including the annual self-assessment and related findings, the financial audit, and the grantee's communitywide strategic planning and needs assessment. 42 U.S.C. § 9837(c)(1)(E)(iv)(IV); 45 C.F.R. § 1301.2(b)(1) (providing that the governing body is "responsible for activities specified in section 642(c)(1)(E) of the Head Start Act"). We see nothing in the record indicating that CSJ's board established or followed such "procedures and guidelines" in response to ACF's finding that the board had not reviewed the organization's Head Start self-assessment. See ACF Ex. 3, at 4 (stating that CSJ's board "did not collect and assess data from the annual Self-Assessment, including any conclusions related to it"). In a grant refunding

Page 33

application, submitted to ACF on May 28, 2020, CSJ stated that it would "implement an approved strategy for self-assessment for FY2019-20" and that a "comprehensive process [would] be completed between August and September 2020." ACF Ex. 40, at 1, 44. However, CSJ proffered no evidence that it followed through on that commitment, or that CSJ's board had taken any other concrete steps after February 2020 to ensure that self-assessments were timely performed, reviewed, and submitted.

An additional example of the CSJ board's failure to review and approve "major policies" concerns the 2018 financial audit. A Head Start grantee must undergo an annual audit that is conducted in accordance with the Single Audit Act (31 U.S.C. § 7501 *et seq.*) and regulations in 45 C.F.R. Part 75, subpart F. 45 C.F.R. § 75.501(a)-(b); 45 C.F.R. § 1303.3 (providing that the uniform audit requirements in 45 C.F.R. Part 75 apply to grants made under the Head Start Act). As noted above, CSJ's Single Audit report for fiscal year 2018 was initially due on June 30, 2019, nine months after the end of the audit period (September 30, 2018). See 45 C.F.R. § 75.512(a)(1) (providing that the audit must be completed, and audit report submitted, "within the earlier of 30 calendar days after receipt of the auditor's report(s), or [as relevant here] nine months after the end of the audit period"). ACF extended the deadline to April 30, 2020 (see MSJ at 34), but CSJ did

not submit the FY 2018 audit report until more than one year later (on May 11, 2021). ACF Ex. 54, at 1. Although ACF reminded the CSJ board president in early March 2020 that CSJ needed to submit the report of the fiscal year 2018 audit, there is no evidence that the board took any action to ensure that the audit report was timely completed and delivered for its review, despite the board's obligation under the Head Start Act to institute "procedures and guidelines" for obtaining audit reports and other critical documents or information. 42 U.S.C. § 9837(c)(1)(E)(iv)(IV) (making the governing body responsible for "accessing and collecting information described in" section 9837(d)(2)).

CSJ's failure to submit a cost allocation plan acceptable to ACF during 2020 is additional evidence of an ongoing failure by CSJ's board to meet its responsibilities under the Head Start Act to approve "major policies" and to ensure the organization's compliance with legal requirements (in 45 C.F.R. Part 75) for determining allowable costs under its Head Start awards. See 42 U.S.C. § 9837(c)(1)(E)(iii), (iv)(V). Beginning in January 2020, ACF repeatedly expressed concerns to CSJ about its existing or proposed cost allocation plans. However, CSJ's board did not address them and ensure that the organization's cost allocation policies met applicable federal requirements. The board's inattention to ACF's concerns hampered CSJ's ability to fill positions (such as Executive Director and Fiscal Officer) that were critical to the proper functioning of its Head Start programs. CSJ asserts that its board approved program budgets and cost allocation plans "as part of each Continuing Application of HS Grants" but submitted no evidence supporting that claim. Opp. Br. at 32.

Page 34

Finally, our conclusion that the governance deficiency remained uncorrected as of April 27, 2020 is supported by CSJ's failure to counter ACF's finding (in the October 2020 Report) that its board of directors was not a "trained" governing body, aware of its responsibilities regarding CSJ's Head Start programs and capable of providing effective oversight of those programs.²⁶ See ACF Ex. 2. In its QIP, CSJ stated that, in order to correct the governance deficiency identified in the February 2020 Report, it had provided "training" to board members about their Head Start-related responsibilities. ACF Ex. 36, at 3-4. CSJ alleged that this training occurred in March 2020 or on April 1, 2020, and it submitted an "Agenda" indicating that a two-and-one-half hour session had been scheduled for that date. ACF Ex. 36, at 3, 70-71; ACF Ex. 4, at 22; Hayes Decl. ¶ 5. However, CSJ furnished no evidence that board members received governance training on that date. ACF Ex. 36, at 70-71. CSJ

submitted copies of two attendance sheets for training sessions held on April 1, 2020, but these sheets indicate that the sessions involved “fiscal training” (“Adiestramiento Fiscal”), not governance training. *Id.* at 72, 73. Moreover, the attendance sheets list only three of the board’s six members – namely, the president (Mr. Garcia), vice-president (Brian Quiles), and interim executive director (Mr. Velez) (an *ex officio* member). *Id.*; see also CSJ Ex. 40 (showing the board’s membership as of mid-March 2020). There is no evidence that the board’s other three members as of late April 2020 (Lcda. Milkanyeliz Rosado, Yasara Alvarez Rivera, and Angel Guzman) received any type of Head Start program-related training. There is also no evidence that CSJ provided such training to the two persons purportedly elected to the board on September 1, 2020.

Based on the foregoing analysis, we conclude that a preponderance of evidence in the record demonstrates that CSJ did not timely correct its governance deficiency – that deficiency being the failure of CSJ’s board to meet certain of its legal responsibilities under the Head Start Act, including its responsibility adopt (and follow) practices to assure independent and informed governance; to review “major policies” of the organization; to ensure compliance with applicable legal requirements; and to fully participate in the development, planning, and evaluation of CSJ’s Head Start programs.

3. CSJ’s remaining arguments provide no basis to disturb ACF’s termination decision.

As noted earlier, CSJ attempts to blame former employees for its failure to review and approve self-assessments, alleging that they did not comply with a request by the board to share the results of the assessment. Opp. Br. at 24-25, 27. CSJ, as also noted, suggests that certain disgruntled former employees or policy council members were at fault for the

Page 35

deficiency finding because those individuals gave misleading or “incorrect” information to ACF. *Id.* at 13-17. CSJ moreover alleges that, in March 2020, its former Executive Director, Head Start Director, and others improperly attempted to take control of the organization, or force a change in the board’s membership, and that their actions led to the resignation of some board members. *Id.* at 16-19; see also ACF Ex. 29, at 5.

We need not delve into CSJ’s unsubstantiated allegations about former CSJ personnel because, even if true, they do not tend to show that CSJ timely corrected the deficiencies identified in the February 2020 Report. If anything, the allegations, if accepted as true,

would be consistent with what the evidence discussed above amply shows: that there was unrest and discord among high-level CSJ personnel that would hardly be conducive to effective and orderly governance consistent with Head Start program requirements. Moreover, since high-level CSJ personnel were responsible for recruiting, vetting, and hiring CSJ employees, CSJ's attempt now to shift some of the blame for the deficiency findings that culminated in the termination of Head Start grants on those employees' alleged shortcomings does not cast CSJ in a favorable light.

CSJ also asserts that it can submit evidence to the Board to prove various factual claims *if the Board requests such evidence*. See, e.g., Opp. Br. at 28, 32; CSJ Reply at 2, 3. This offer shows a misunderstanding of the Board's role, which is not to investigate a party's claims by soliciting potentially relevant evidence, but to adjudicate disputes based on the competing presentations of the parties. Cf. *Mo. Dep't of Social Servs.*, DAB No. 2681, at 10 (2016) (noting that "Board proceedings are intended to be adjudicatory in function, resolving disputes which are ripe for adjudication"). Under the regulations governing this proceeding, it was CSJ's responsibility to submit evidence supporting its positions on relevant issues. See 45 C.F.R. § 16.8(a) (providing that the appellant's "responsibility" in the appeal process is to submit "[a]n appeal file containing the documents supporting the claim"). The Board's December 7, 2020 acknowledgment letter clearly informed CSJ of that responsibility, instructing that its submissions "should be as complete a documentary record as possible," and that it "should submit *all documents which would assist the Board* in making findings of fact on disputed issues, as well as documents which provide necessary background information." Acknowledgment Letter at 3 (emphasis supplied). After the Board issued the acknowledgment letter, the Board gave CSJ additional time, even after CSJ had failed to comply with an extended due date, to enable CSJ to submit its written arguments and supporting documents. If any material factual allegation made by CSJ remains unsubstantiated to CSJ's detriment, that is a consequence of CSJ's failure to make optimal use of multiple opportunities given it to produce all of the documentation it wanted the Board to consider.

In addition, CSJ alludes to hurricanes that struck Puerto Rico in 2017, and earthquakes that struck there in late 2019 or early 2020. Opp. Br. at 32-33. CSJ asserts that it had all "standard operating procedures . . . on physical paper" but lost some documentation due to a hurricane, and later had to "reconstruct several transactions." *Id.* at 32. However,

CSJ does not contend that the natural disasters excuse the governance deficiency or its failure to timely correct it. While it is conceivable that a natural disaster could disrupt a grantee’s operations, we cannot overturn deficiency findings that are grounded in law and fact based on nothing more than vague references to the “problems” and “concerns” allegedly “created” by such events and mere assurances that the grantee nevertheless “function[ed]” without letting those problems and concerns impede its ability to deliver Head Start services. CSJ’s Dec. 3, 2020 notice of appeal at 9.

Finally, CSJ states that, during the COVID-19 pandemic, the Puerto Rico government imposed a “Lock-Down Order,” which “imped[ed]” CSJ employees’ ability “to work physically at CSJ,” and that ACF’s performance of its monitoring review during the pandemic made “several processes” “difficult[.]” Opp. Br. at 32-33; CSJ Reply at 5. But CSJ proffered no evidence that the pandemic adversely affected the ability of its board of directors to meet its responsibilities under the Head Start Act, which ACF was authorized to, and had an obligation to, assess.

Conclusion

Because a preponderance of evidence in the record demonstrates that CSJ failed to timely correct the governance deficiency specified in the February 2020 Report, we affirm ACF’s October 30, 2020 decision to terminate CSJ’s status as a Head Start grantee.

Endnotes

¹ Unless otherwise indicated, references in this decision to CSJ’s “Head Start” programs include both its Head Start and Early Head Start programs.

² The governing body’s responsibilities also include “us[ing] ongoing monitoring results, data on school readiness goals, other information described in § 1302.102, and information described at section 642(d)(2) of the Act [such as the annual self-assessment and the grantee’s “communitywide strategic planning and needs assessment”] to conduct its responsibilities.” 45 C.F.R. § 1301.2(b)(2).

³ The term “internal controls” is defined in the Uniform Administrative Requirements to mean “a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (1)

Effectiveness and efficiency of operations; (2) Reliability of reporting for internal and external use; and (3) Compliance with applicable laws and regulations.” 45 C.F.R. § 75.2. Internal controls include processes to properly record and account for transactions (to ensure reliable financial reporting and demonstrate compliance with applicable legal requirements), and to safeguard funds, property, and other assets against loss from unauthorized use or disposition. *Id.* (defining the term “Internal control over compliance requirements for Federal awards”).

⁴ An “unresolved area of compliance” is a “failure to correct a noncompliance item [that was not initially cited as a deficiency] within 120 days, or within such additional time (if any) as is authorized by the Secretary. . . .” 42 U.S.C. § 9832(26); *see also* 45 C.F.R. § 1304.2(a) and (b) (setting out separate notice requirements for “deficiencies” and “areas of noncompliance”).

⁵ In a July 8, 2019 email to members of CSJ’s board, Jean Carlos Garcia Rosa (then the board’s treasurer) stated that the board had voted to “remove[]” two members (including Alma Garcia Perez) during the June 18, 2019 meeting (ACF Ex. 5, at 6), but minutes of the June 18th meeting do not corroborate that assertion. The minutes indicate only that Alma Garcia Perez “resigned” and that, as a result of her resignation, the board’s membership was reduced from seven to six. CSJ Ex. 5, at 1.

⁶ According to minutes of the July 13th meeting, the board acted to remove Mr. Cruz because, after the death of CSJ’s Executive Director, Mr. Cruz convened a board meeting without notifying members in advance and “went on vacation,” leaving CSJ “in a state of emergency” with “several urgent decisions to be made by the [board].” ACF Ex. 6, at 5. Those minutes also imply that Mr. Cruz had acted unilaterally and refused or failed to participate in an “emergency” board meeting held on July 3, 2019. *Id.* at 5, 6 (stating that although Mr. Cruz was the board president, “he is not the one who makes the decisions of the [board], as has happened in the past months”).

⁷ Minutes of a February 10, 2020 policy council meeting reflect that Laura Alicea told attendees that she had recently participated in an “interview process” to fill key positions, including CSJ’s Executive Director and Fiscal Officer. ACF Ex. 23, at 8. However, the minutes do not specify the nature and extent of her participation in that process, and it is unclear whether she communicated with council members about the process prior to the January 25th joint board-council meeting during which candidates selected by the

“interview committee” were purportedly considered and voted upon. The minutes of the February 10th council meeting also state that attendees “unanimously approved” the appointment of the new Executive Director, although it is unclear why such approval was necessary if, as other records show, the appointment had already been approved by the board and council during a January 25th meeting.

⁸ The Payment Management System (PMS), operated by the Department of Health and Human Services, enables federal award recipients to request and obtain approved federal funding and tracks disbursements made under an award.

⁹ Those measures were:

- On March 30, 2020, CSJ’s board and policy council approved a revised Fiscal Policies and Procedures Manual specifying “better internal control procedures to ensure fiscal and administrative compliance”;
- As of March 31, 2020, “all staff” were trained on the revised fiscal policies and procedures;
- On April 7, 2020, the CSJ board, policy council, Executive Director, and “fiscal staff” received training on the following topics: “Strengthening Financial Management Systems”; “Bridging the Gap between Program and Fiscal Operations”; and “Internal Control and Fiscal Management”;
- By May 2020, all “fiscal staff” would receive training to “strengthen their fiscal knowledge and ensure fiscal compliance” in the following areas: Administrative and Fiscal Requirements of the new Head Start Program Performance Standards; Cost Principles; Cost Allocation; Non-Federal Match; Procurement; and other topics.

ACF Ex. 36, at 6-11.

¹⁰ The “Quality Improvement Plan” we have admitted as CSJ Exhibit 56 appears to duplicate the 11-page “Quality Improvement Plan” submitted as ACF Exhibit 36, pages 2-12, with minor differences – namely, CSJ’s Exhibit 56 includes additional information at the top of each page (header), identifying the grantee by name and the three award numbers. We have considered the version CSJ submitted but need not cite to both versions.

¹¹ ACF Exhibit 17 and other ACF exhibits included documents written in Spanish. ACF provided English-language translations of most of the documents in its exhibits that were written in Spanish, along with the May 18, 2021 “Certification of Translation” of the individual who had provided English-language translations for ACF (ACF Ex. 53). CSJ did not raise any objection concerning the English-language translations of ACF’s exhibits provided by ACF.

¹² In its March 8, 2023 response, CSJ did not specifically identify any translation error or inaccuracy by exhibit and page number or by describing any specific document, affirmatively stating whether any error or inaccuracy is material or prejudicial to CSJ and why. We have determined that CSJ’s response does not raise any concern about the translations on any issue material to our decision.

¹³ The performance standards further provide that a governing body’s responsibilities include “us[ing] ongoing monitoring results, data on school readiness goals, other information described in [45 C.F.R.] § 1302.102, and information described at section 642(d)(2) of the Act [such as the grantee’s annual self-assessment and “communitywide strategic planning and needs assessment”] to conduct its responsibilities.” 45 C.F.R. § 1301.2(b)(2).

¹⁴ Mr. Cruz’s removal apparently violated other provisions of CSJ’s bylaws. One version of those bylaws, adopted in November 2016 (and submitted by CSJ), required that, in order to remove a member, written charges and a petition for the member’s removal signed by ten percent of the board’s members be filed with the board secretary at least twenty days prior to the meeting at which the charges were to be considered. CSJ Ex. 10, at 3 (Art. VI, § 6). Meeting minutes do not reflect that CSJ’s board followed those requirements in removing Mr. Cruz. See ACF Ex. 6, at 4-7; ACF Ex. 7, at 3-4. CSJ maintains that Mr. Cruz’s conduct warranted his removal (Opp. Br. at 6-7, 9-10), but his conduct is irrelevant here. The basis for ACF’s deficiency finding was not Mr. Cruz’s conduct but whether the board as a whole was properly exercising its legal responsibilities under the Head Start statute.

¹⁵ CSJ cites its Exhibit 15 (Opp. Br. at 10 n.20), a copy of an email purportedly sent to the board president (and others), but this document relates to a July 3, 2019 board meeting, not to the July 13th and July 20th meetings during which members voted to remove the president.

¹⁶ It appears that at least one method used by CSJ's board to verify the accuracy of its meeting minutes – namely, the approval by attending members of the previous meeting's minutes – was abandoned, or at least inconsistently followed, after 2019. Minutes of the August 22, 2019 meeting reflect that, during that meeting, the board secretary read the previous meeting's minutes and that the board “accepted [them] unanimously.” ACF Ex. 11, at 7; see *also* CSJ Ex. 47, at 61 (minutes of November 16, 2019 board meeting stating that the minutes of a previous meeting had been approved). Minutes of board meetings held during January and February 2020 do not indicate that the attending members reviewed or approved the previous meeting's minutes or that a draft of the previous meeting's minutes had been circulated to members. See, e.g., ACF Ex. 21 (Jan. 25, 2020 board meeting minutes); CSJ Ex. 47, at 33 (Feb. 26, 2020 board meeting minutes). (Under CSJ's bylaws, the board secretary is responsible for writing meeting minutes and submitting them to the board for its consideration. See, e.g., ACF Ex. 16 (bylaws approved Oct. 12, 2019), at 23 (Art. VI, § 4, specifying the secretary's duties)).

¹⁷ Bylaws adopted by CSJ in 2010 provided that CSJ's board “shall . . . ensure the approval of the Regulatory Policy Council” of the hiring of an Executive Director, “Fiscal Specialist,” and “Human Resources Officer.” ACF Ex. 8, at 21 (Art. XI, §§ 1, 2). Bylaws adopted on October 12, 2019 required the board to “ensure the approval by the Regulatory Policy Council” of the appointment of a Fiscal Specialist and Human Resources Officer. ACF Ex. 16, at 25 (Art. XI, § 2).

¹⁸ Minutes of CSJ board meetings held from July 2019 through February 2020 reflect only two instances – on November 30, 2019 and January 25, 2020 – in which one or more policy council members attended a board meeting. See ACF Exs. 7, 10, 11, 12, 15, 20, 21; CSJ Ex. 8; CSJ Ex. 9; CSJ Ex. 47, at 25, 30, 33, 60-61. There is no evidence that any CSJ board member attended a policy council meeting during that period. See ACF Ex. 17, at 101, 145 (minutes of July 10 and August 14, 2019 council meetings); ACF Ex. 13 (minutes and other records of September 13, 2019 council meeting); CSJ Ex. 50, at 1-20 (minutes of council meetings during October, November, and December 2019); ACF Ex. 23 (minutes of February 10, 2020 council meeting). Nor is there evidence that board and council members met or exchanged information or views outside formal meetings.

¹⁹ ACF's exhibits include minutes of a February 10, 2020 policy council meeting during which, according to the minutes, Laura Alicea, who was then the “Interim Chair” of the council, reported that she had participated in the “interview process” for selecting the

new Executive Director and Fiscal Officer. ACF Ex. 23, at 8. The minutes do not further describe the “interview process,” and there is no indication that Ms. Alicea communicated with the council about the candidates for those positions until after the board acted to fill them on January 25, 2020.

²⁰ CSJ admits that its board appointed a temporary Executive Director in July 2019, but asserts it did so without ACF’s prior approval because “CSJ had several other programs that required” the board to take that action when it did. Opp. Br. at 23. CSJ provided no evidence that its board acted for that reason, however, and any non-Head Start-program requirement would not have superseded CSJ’s obligation under the Head Start performance standards to comply with the prior-approval requirement.

²¹ Consistent with section 642(c)(1)(E)(iii) of the Head Start Act (42 U.S.C. § 9837(c)(1)(E)(iii)), the bylaws adopted by CSJ’s board on October 12, 2019 provided that the CSJ’s board was “responsible for ensuring compliance with Federal laws (including applicable regulations) and applicable State and local laws (including regulations).” ACF Ex. 16, at 18.

²² CSJ’s Head Start program year begins in August. See CSJ Ex. 26, at 67.

²³ The performance standards provide that a Head Start program, “in collaboration with the governing body and policy council, must establish goals and measurable objectives” that address the program’s responsiveness to community needs; the provision of educational, health, nutrition, and other services; school readiness; and child health and safety. 45 C.F.R. § 1302.102(a).

²⁴ The shortcomings in the documentation of the CSJ board’s March 11, 2020 meeting are also evident in the minutes of the board’s September 2020 meetings. As noted, those minutes do not state how or where the meetings were conducted, do not identify the names of the members who attended (other than the board president), and do not indicate that members had received relevant background information about the meeting topics. Nor do the documents bear any credible signs that board members had reviewed and approved their content, as contemplated in CSJ’s bylaws. See ACF Ex. 34, at 25 (indicating that board secretary’s duties included submitting meeting minutes to the board for its consideration and “prepar[ing]” the minutes “[o]nce approved”).

²⁵ CSJ cites videos in its Exhibit 55 as evidence that it interviewed candidates for the Executive Director position during September 2020 (see Opp. Br. at 35) but does not describe what they show or explain how they demonstrate policy council involvement in the process of choosing its Executive Director.

²⁶ The Head Start program performance standards require a grantee to “provide appropriate training and technical assistance or orientation to the governing body . . . to ensure the members understand the information they receive and can effectively oversee and participate in the programs in the Head Start agency.” 45 C.F.R. § 1301.5.

/s/

Jeffrey Sacks
Board Member

/s/

Constance B. Tobias
Board Member

/s/

Susan S. Yim
Presiding Board Member