

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. **Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. **Performance Measures:** Under the Government Performance and Results Act (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of the HEP: (1) The percentage of HEP program exiters receiving a General Education Development (GED) credential, and (2) the percentage of HEP GED recipients who enter postsecondary education programs, upgraded employment, or the military.

Applicants may wish to demonstrate a sound capacity to provide reliable data on these measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the OMB approved annual performance report that is included in the application package.

All grantees will be required to submit, as part of their annual

performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202-6135. Telephone Number: (202) 260-8103, or by e-mail: david.de.soto@ed.gov.

If you use a TDD, you may call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large print, audiotope, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: December 18, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8-30583 Filed 12-22-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on August 20, 2008, an arbitration panel rendered a decision in the matter of *Dwayne Zuppardo v. Louisiana*

Department of Social Services, Rehabilitation Services, Case no. R-S/06-5. This panel was convened by the Department under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, Dwayne Zuppardo.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Mr. Dwayne Zuppardo (Complainant) alleged violations by the Louisiana Department of Social Services, Rehabilitation Services, the state licensing agency (SLA), of the Act and the implementing regulations in 34 CFR part 395. Specifically, Complainant alleged that the SLA improperly administered the Randolph-Sheppard Vending Facility Program concerning his management of a snack bar in the East Pavilion of Charity Hospital (Charity Hospital) in New Orleans, Louisiana. From November 1991 until March 2004, Complainant managed the snack bar. In March 2004, the snack bar at Charity Hospital was closed. In April 2004, Complainant sent a letter to the SLA requesting a determination as to whether he should be treated as a Displaced Manager rather than being given another vending facility in the main building of Charity Hospital. The SLA denied Complainant's request for a determination on his Displaced Manager status. Thereafter, Complainant requested a state fair hearing. A hearing was held on this matter.

In June 2004, the Administrative Law Judge (ALJ) issued an opinion supporting Complainant's right to the new vending facility in the main building of Charity Hospital. The SLA

did not appeal and adopted the ALJ's decision. Following the ALJ's opinion, Complainant also alleged that the opinion required the SLA to pay him for his lost income at his former snack bar facility until he was placed as the manager of the new vending facility in the main building of Charity Hospital.

For the period of November 1991 until July 1997, while managing the snack bar, Complainant made monthly utility payments, each in the amount of \$2,000, to Charity Hospital as directed by the SLA. While there was no requirement for Complainant to make these payments under his Vendor Operating Agreement with the SLA, the permit agreement to operate the snack bar between the SLA and Charity Hospital contained a requirement that the SLA would pay Charity Hospital for utilities at the rate of \$2,000 per month.

In March 2005, Complainant learned that the SLA had reimbursed the previous operator of the snack bar for his utility payments to Charity Hospital. At this time, Complainant believed that he also was entitled to reimbursement by the SLA of his utility payments to Charity Hospital. Additionally, Complainant believed that the SLA should reimburse him for loss of income when the snack bar was closed.

On May 27, 2005 Complainant filed a request with the SLA to bypass the administrative review process and proceed with a state fair hearing on the issues of reimbursement for utility payments to Charity Hospital and loss of income as the result of the snack bar closure. On June 10, 2005, the Administrative Law Judge Supervisor denied Complainant's hearing request, citing time limitations for vendors to file for a hearing with the SLA.

It was this decision Complainant sought review of by a Federal arbitration panel. Due to Hurricane Katrina, a hearing on this matter was not held until April 26, 2007.

According to the arbitration panel, the issues to be resolved were as follows: (1) Whether the Complainant is entitled to reimbursement for utility payments paid to Charity Hospital while he operated the snack bar; and (2) whether Complainant is entitled to recover lost earnings from the time his snack bar was closed in March 2004 until he was given a new vending facility in September 2004.

Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled as follows: On issue number one, the panel found that the SLA was obligated to treat Complainant in the same manner as the

previous snack bar manager when it reimbursed the previous snack bar manager for utility payments paid to Charity Hospital. Thus, the panel majority directed that the SLA promptly pay Complainant the sum of \$138,000 as reimbursement for utility payments Complainant paid to Charity Hospital while he was the licensed manager at the snack bar facility for the period November 1991 to March 2004.

Regarding issue number two, the panel majority ruled that the SLA complied with the June 2004 ruling of the ALJ and expeditiously provided Complainant with a new vending facility in the main building of Charity Hospital. However, the panel majority concluded that the ALJ's ruling did not require the SLA to pay the Complainant for lost earnings from the time he was displaced from the snack bar facility until the time he began to manage the new facility. Hence, the panel majority denied Complainant's claim on the merits, ruling that there was no basis for the SLA to pay Complainant for lost earnings from the time when the snack bar facility closed until he was placed in the new vending facility.

One panel member concurred in part and dissented in part. The panel member dissented from the panel majority on issue number one stating that, "the imposition of fees for utility service upon blind vendors is not prohibited by either state or federal law." The panel member concurred with the panel majority on issue number two in denying the payment of lost earnings to Complainant.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document

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Dated: December 18, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.060A.

DATES: *Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available:* December 23, 2008.

Deadline for Transmittal of Part I Applications: January 30, 2009.

Part II of the Formula Grant (EASIE) Applications Available: March 16, 2009.

Deadline for Transmittal of Part II Applications: April 22, 2009.

Applications not meeting the deadline for Part I applications will not be considered for funding in the initial allocation of awards. Part II applications or data submissions will be accepted only from those eligible applicants that meet the Part I application deadline.

Deadline for Intergovernmental Review: June 22, 2009.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Indian Education Formula Grants to Local Educational Agencies program provides grants to support local educational agencies (LEAs) and other eligible entities described in this notice in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The Department funds programs designed to help Indian students meet the same challenging State academic content and student academic achievement standards used for all students. In addition, under section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, authorize the entity receiving the funds under this program to consolidate, in accordance with the entity's plan, the funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula to the entity, for the purpose of providing