



With Federal Funding Comes Risk: Liability and Criminal Charges in School Related Cases - *Violations Can Lead to Treble Damages, Penalties and Jail Time*

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A False Claims Bulletin

School districts in Ohio need all the funding help they can get. But some recent cases remind us that schools must be extremely careful in the way they handle federal funds.

Such funds can only be used to pay for allowable, allocable costs that fall within the parameters of the federal program under which they were awarded. A district that fails to comply with these limitations may be required to repay some or all of the funds. This can be a real hardship for a district that unexpectedly finds itself in the position of having to repay funds already expended at a time when the district has no spare funds on hand.

Even worse, in some cases the False Claims Act ("FCA") may be implicated if fraudulent statements have been made to the federal government. A district, or any person guilty of a violation of the FCA, can be liable for a penalty of between \$5,500 and \$11,000 plus three times the amount of damages sustained by the government for each claim. This means the district or individuals involved may have to pay the federal government substantially more money than the district received from the program. In addition, the criminal component can lead to other fines, penalties, and even jail time. Given the stakes, it is crucial that school districts understand what they can and cannot do as recipients of federal funds.

Whistleblowers

The FCA allows whistleblowers to file suit on behalf of the United States for false claims. To encourage whistleblowers to come forward with information about false claims, the statute allows these individuals to retain a percentage of any recovery. This is one of the most effective mechanisms for the government to ferret out fraud in the expenditures of federal funds. But it also means that there is an incentive for



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any disgruntled employee to prosecute allegations of fraud against your school district. The settlements described below began as whistleblower lawsuits (also known as "qui tam actions").

Texas E-Rate Fraud Cases

Non-Competitive Bidding Practices and Acceptance of Gratuities Lead to Loss of Millions of Dollars for Districts and Prison Time for Individuals

For several years, the federal government has been investigating allegations of fraud related to the E-rate program in Texas. Whistleblower lawsuits were filed against the Houston Independent School District ("HISD") and the Dallas Independent School District ("DISD") alleging that each district engaged in non-competitive bidding practices for E-rate contracts. The suits also alleged that school officials received gratuities from technology vendors, including trips, golf outings, and free use of a yacht. These two suits graphically illustrate the damage that can be done to a school district when its employees are involved in defrauding the government and have led to all of the following consequences:

In 2008, DISD's former chief technology director and the former CEO of a contractor were convicted on bribery charges stemming from the receipt of the federal funds. Both were sentenced to more than 10 years in prison. The district also faced significant sanctions when two years later DISD agreed to pay the federal government \$750,000 and relinquish \$150 million in requests for federal funds in order to settle its portion of the case. That same year, HISD agreed to pay \$850,000 and give up millions of dollars in pending requests as well. Hewlett-Packard agreed to pay \$16.25 million for its alleged involvement in the scheme, which included charges that it had supplied tickets to the 2004 Super Bowl.

Most recently, a Texas businessman agreed to pay \$400,000 to settle claims brought against him in the HISD suit. The federal government alleged that Larry Lehmann, the CEO and managing partner of one of the district's contractors supplying E-rate funded equipment and services, provided gifts and loans to HISD employees. This included \$66,750 in loans to a district employee who was involved in the procurement and administration of HISD's E-rate program.

Mr. Lehmann was also alleged to have helped devise a scheme in which HISD outsourced some of its employees to the contractor. This allowed the employees to work for HISD while rolling the cost of the employees into the cost of eligible goods and services. While the settlement resolved the claims in this matter, there was no admission of liability.

Contractors agree to \$4 million in settlements while criminal charges are filed against a teacher in New York Supplemental Educational Services tutoring case.

Continuing Consequences of Seeking Payment for Services Not Rendered

Another settlement involves the payment of federal funds for services that were never delivered. Between 2005 and 2012, the New York City Department of Education received federal funds to pay for Supplemental Educational Services ("SES"). These services included after-hour tutoring for students attending underperforming schools.

Contractors performing the services, including Testquest, Inc., were required to have each student sign a daily attendance sheet. The person who provided the tutoring was also required to sign the attendance sheet certifying that he/she had provided SES tutoring to the students whose signatures appeared on the attendance sheet. As part of their settlement of the claims brought against them, Testquest and one of its former managers, Michael Logan, admitted that these attendance sheets were falsified. As a result, Testquest was paid for SES tutoring that never took place.

Testquest agreed to pay \$1,725,000 in damages and penalties under the FCA. Testquest is also barred from participating in any federal transactions for three years. For his part, Mr. Logan agreed to pay a \$2.3 million dollar civil judgment and he previously pled guilty to criminal charges in this matter. He faces a maximum sentence of five years in prison for his guilty plea in the criminal case.

The government is also pursuing actions against district employees. The U.S. Attorney filed criminal charges against a teacher for conspiracy to defraud the government. Three teachers also face a pending civil action for their alleged participation in the scheme.

Conclusion

As these settlements demonstrate, there are several steps that districts should consider when dealing with federal funds. First, it is important to be familiar with all of the restrictions, conditions and other requirements that come with accepting federal funds. These can vary from program to program. Second, it is crucial that school districts have effective processes in place to ensure the proper use of federal funds. This includes the use of adequate procurement standards and systems to monitor the performance of contractors and the district's employees. Failure to do so can have major impacts on a district and its bottom line. Finally, when you have questions about how funds can or should be spent, consult with your legal counsel. It is more cost effective to avoid problems than it is to try to correct them later.