



INTERIOR BOARD OF INDIAN APPEALS

Barbara Karr v. Office of Indian Education Programs, Bureau of Indian Affairs

8 IBIA 228 (02/17/1981)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

BARBARA KARR : Order Docketing and Dismissing
: Appeal
v. :
: Docket No. IBIA 81-13-A
OFFICE OF INDIAN EDUCATION :
PROGRAMS : February 17, 1981

ORDER

On February 5, 1981, the Board of Indian Appeals received a notice of appeal from Barbara Risling Karr regarding the failure of the Bureau of Indian Affairs (BIA) to approve her request for an educational grant for the 1978-79 school year. The appeal is hereby docketed under the above case name and docket number. However, for reasons set forth below, the appeal is not within the jurisdiction of this Board to resolve and it must therefore be dismissed.

New procedural rules governing the Board of Indian Appeals were published January 23, 1981. See 46 Fed. Reg. 7334-7338 (1981), a copy of which is enclosed for appellant. At section 4.330(b)(4) of these new rules (to be codified in Volume 43, Code of Federal Regulations), it is stated that decisions of the Office of Indian Education Programs shall not be appealable to the Board of Indian Appeals, where Secretarial review is otherwise available. In promulgating this rule, the Board accepted a recommendation from the Office of the Solicitor and stated in its preface to the rulemaking:

A comment was received [subsequent to publication of Board rules in proposed form] suggesting that decisions of the Office of Indian Education Programs, Bureau of Indian Affairs, should be expressly excluded from the review authority of the Board since Education program decisions are presently reviewable by the Assistant Secretary - Indian Affairs. This suggestion is adopted.

See 46 Fed. Reg. 7334, 733S.

In addition to the above authority which precludes acceptance of the subject appeal by the Board, the regulations of the BIA and the Board of Indian Appeals prohibit Board review of BIA decisionmaking based on exercise of discretionary authority, unless otherwise allowed by the Bureau on a case-by-case basis. See section 4.330, supra. (46 Fed. Reg. 7334, 7337). The awarding of educational grants is regarded by the Board as a discretionary authority of the Bureau.

IBIA 81-13-A

In accordance with the above, the Board of Indian Appeals holds that it lacks jurisdiction to decide the appeal filed by Barbara Karr. The appeal is therefore dismissed.

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Franklin Arness
Administrative Judge