



INTERIOR BOARD OF INDIAN APPEALS

Delaware Tribe of Western Oklahoma v. Deputy to the Assistant Secretary/  
Director - Indian Affairs (Indian Education Programs)

15 IBIA 140 (03/26/1987)



# United States Department of the Interior

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

DELAWARE TRIBE OF WESTERN	:	Order Dismissing Appeal and
OKLAHOMA,	:	Remanding Case
Appellant	:	
	:	
v.	:	
	:	
DEPUTY TO THE ASSISTANT	:	Docket No. IBIA 86-63-A
SECRETARY/DIRECTOR--INDIAN	:	
AFFAIRS (INDIAN EDUCATION	:	
PROGRAMS),	:	
Appellee	:	March 26, 1987

On September 8, 1986, the Board of Indian Appeals (Board) received a request on behalf of the Delaware, Apache, Fort Sill Apache, Caddo, and Wichita Tribes of Oklahoma (appellants) to assume jurisdiction over an appeal filed with the Washington office of the Bureau of Indian Affairs pursuant to 25 CFR Part 2. The appeal concerned a July 10, 1986, decision of the Deputy to the Assistant Secretary/Director-Indian Affairs (Indian Education Programs) (appellee) to approve the inclusion of Adult Education Program funds for the Comanche Tribe within that tribe's fiscal year 1987 Consolidated Tribal Government Program grant. Appellants allege this decision violates regulations in 25 CFR Part 271, by reducing the level of services provided to them without their consent. By order dated September 9, 1986, the Board made a preliminary determination that it had jurisdiction over the case under 25 CFR 2.19, 1/ and requested the administrative record.

The record was received on October 14, 1986. On November 12, 1986, the Board received a motion to dismiss and remand from appellee. Appellee alleged the request for the Board to assume jurisdiction was premature because briefing had not been concluded before BIA. By order dated November 14, 1986, the Board gave appellants an opportunity to respond to appellee's motion either in their opening brief or in a separate filing.

Appellants' opening brief was received on November 24, 1986. No further filings were made. Appellants have not responded to appellee's statement that their motion to assume jurisdiction was premature. Accordingly, in view of

---

1/ Section 2.19 provides in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the [Bureau of Indian Affairs official exercising the administrative review authority of the] Commissioner of Indian Affairs shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

appellee's undisputed statement, the Board finds that it assumed jurisdiction prematurely, and this appeal should be dismissed without prejudice and remanded to BIA for consideration.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed without prejudice as premature and the case is remanded to the Bureau of Indian Affairs for further consideration.

//original signed

Kathryn A. Lynn  
Administrative Judge

//original signed

Anita Vogt  
Acting Chief Administrative Judge