



INTERIOR BOARD OF INDIAN APPEALS

Rocky Boy Schools v. Acting Billings Area Director, Bureau of Indian Affairs

21 IBIA 112 (12/19/1991)



United States Department of the Interior

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

ROCKY BOY SCHOOLS

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-90-A

Decided December 19, 1991

Appeal from a decision concerning payment for special services for a handicapped student.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Mandatory Time Limit

Regulations promulgated by the Bureau of Indian Affairs in 25 CFR 2.10 (1988) established a 30-day time period for filing notices of appeal.

APPEARANCES: Sandra Murie, appellant's Superintendent, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Rocky Boy Schools seeks review of an April 18, 1991, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), dismissing as untimely an appeal concerning funding for special services for a handicapped student. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

In the spring of 1988, in connection with its request for overall funding for the school year 1988-89, appellant sought funds from BIA to cover the cost of special services for a handicapped student during that year. Appellant's request for the special funds was denied by the Billings Area Education Officer, who apparently suggested, however, that funding might be available under a "cooperative agreement" between the Billings Area education and social services program offices.

On June 7, 1988, appellant entered into a contract with Regional Living Services, Inc. (RLS), Havre, Montana, under which appellant agreed to pay RLS the sum of \$10,200 for special services to the handicapped

student during the school year 1988-89. 1/ Although RLS began providing the services in September 1988 and began billing appellant, appellant did not make any payments to RLS.

On November 23, 1988, appellant contacted the Branch of Social Services, Rocky Boy's Agency, BIA, concerning funding for the special services. The agency Social Services Representative notified appellant by letter of December 21, 1988, that the student was ineligible for assistance. The letter concluded: "Therefore, Social Services is unable to provide for his food and shelter costs at Regional Living Services." A copy of the letter was sent to the student's mother. Neither appellant nor the student's mother appealed the decision.

Following appellant's continued failure to pay for the special services, the successor in interest to RLS filed suit against appellant to recover the amount of \$10,200 plus interest. Havre Day Activity Center, Inc. v. Rocky Boy Tribal High School, No. DV-90-117, 12th Judicial Dist. Ct. (Mont.) (complaint filed May 15, 1990). On November 9, 1990, the parties reached a settlement under which appellant agreed to pay \$7,500.

On December 14, 1990, appellant wrote to the Supervisory Social Services Representative, Rocky Boy's Agency, stating that it was appealing concerning funding for the special services to the handicapped student during 1988-89. On February 18, 1991, it wrote to the Area Director, stating that it had not received a response from the agency and was appealing the agency's inaction.

On April 18, 1991, the Area Director dismissed appellant's appeal as untimely.

Appellant's notice of appeal, including a statement of reasons, was received by the Board on May 14, 1991. No other briefs or statements were filed.

Discussion and Conclusions

Appellant contends that neither it nor the student's mother were informed of the time deadlines for filing appeals. Further, appellant continues to contend, as it did before BIA, that BIA should pay for the special services.

25 CFR 2.10(a) (1988) provided: "[A] notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant." 2/

1/ There is an indication in the record that appellant may have entered into the contract with RLS in reliance on the representations concerning the purported "cooperative agreement" made to it by the Area Education Officer. There is no evidence in the record that such an agreement actually exists.

2/ BIA social services regulations, at 25 CFR 20.30, provide specific appeal procedures, which may be invoked by "[a]ny applicant or recipient

There is no evidence in the record showing when appellant received the December 21, 1988, decision. Nevertheless, it seems apparent that appellant must have received it more than 30 days prior to December 14, 1990, when it attempted to appeal the matter.

Even if the decision letter went astray, it appears unlikely, given appellant's obvious interest in the matter, that it would have failed to make inquiries after a reasonable amount of time had passed. ^{3/} Further, under 25 CFR 20.12(a)(3), decisions on applications for financial assistance must be made within 30 days of the application. Appellant was therefore on notice of the approximate time a decision should have been issued. Under these circumstances, if it had not received the decision within a reasonable amount of time after a decision should have been issued, appellant had some obligation to make inquiries about the matter. Cf. Gillette v. Aberdeen Area Director, 14 IBIA 187 (1986).

In any event, appellant does not contend that it did not receive the decision, only that it did not receive appeal instructions. Under the circumstances present in this case, it is reasonable to assume that appellant received notice of the December 21, 1988, decision more than 30 days prior to filing its notice of appeal.

[1] Unlike BIA's present appeal regulations, ^{4/} 25 CFR Part 2 (1988) did not toll the running of the appeal period until notice of appeal procedures was given. Under the regulations in effect in 1988, appellant was required to file its notice of appeal from the agency's December 21, 1988, decision within 30 days after it received that decision. 25 CFR 2.10(b) provided: "No extension will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed." BIA must dismiss an appeal when the notice of appeal is not timely filed. E.g., Cahoon v. Portland Area Director, 17 IBIA 187 (1989), and cases cited therein.

fn. 2 (continued)

of financial assistance under this part." The Area Director concluded that these procedures were not available to appellant because it did not fall into this category. He therefore considered appellant's appeal under BIA's general appeal regulations in 25 CFR Part 2.

The Board agrees that appellant's appeal was properly considered under Part 2. ^{3/} It seems inconceivable, for instance, that the filing of a lawsuit against appellant in May 1990 would not have caused it to make inquiries to BIA, if in fact it believed the matter was still pending before BIA.

^{4/} Present 25 CFR 2.7 provides:

"(a) The official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.

"(b) Failure to give such notice shall not affect the validity of the decision or action but the time to file a notice of appeal regarding such a decision shall not begin to run until notice has been given in accordance with paragraph (c) of this section.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 18, 1991, decision of the Acting Billings Area Director is affirmed. 5/

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge

fn. 4 (continued)

"(c) All written decisions * * * shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal."

5/ Because of this disposition, the Board does not reach appellant's other arguments.