



INTERIOR BOARD OF INDIAN APPEALS

Bismarck, North Dakota, Public School District No. 1 v. Director,
Office of Indian Education Programs, Bureau of Indian Affairs

31 IBIA 122 (09/04/1997)



United States Department of the Interior

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

BISMARCK, NORTH DAKOTA, PUBLIC SCHOOL DISTRICT NO. 1, Appellant	: Order Docketing, Dismissing, : and Referring Appeal to the : Assistant Secretary - Indian : Affairs
v.	:
DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS, BUREAU OF INDIAN AFFAIRS, Appellee	: Docket No. IBIA 97-168-A : : : September 4, 1997

This is an appeal from a July 29, 1997, decision of the Director, Office of Indian Education Programs, Bureau of Indian Affairs, concerning tuition payments for children in foster care. The Board received Appellant's notice of appeal on September 3, 1997.

The Director's decision states:

Pursuant to 25 C.F.R. Part 2, you have the right to appeal this decision. If you choose to appeal, a written notice must be filed within 30 days of receipt of this decision with this office, as well as the Interior Board of Indian Appeals and the Assistant Secretary for Indian Affairs pursuant to 25 C.F.R. § 2.9.

Under 25 C.F.R. Part 2, decisions of the Director, Office of Indian Education Programs, are appealable to the Assistant Secretary - Indian Affairs, rather than this Board. See 25 C.F.R. §§ 2.4(c), (e); 2.20(g). Accordingly, the Board lacks jurisdiction over this appeal.

It appears that Appellant has filed its notice of appeal with the Assistant Secretary as well as the Board. In an abundance of caution, however, the Board refers this notice of appeal to the Assistant Secretary. 1/

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, dismissed, and referred to the Assistant Secretary - Indian Affairs.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ The Board observes that, under 25 C.F.R. § 2.13(c), an appellant cannot be penalized for filing a notice of appeal in the wrong office if the misdirection is the fault of the government.