



DEPARTMENT OF THE INTERIOR HEARINGS DIVISION

Mariano Lake Community School Board v. Director, Office of Indian Education
Programs, Bureau of Indian Affairs

Docket No. IBIA 97-120-A (08/19/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

HEARINGS DIVISION / OKC
215 DEAN A. MCGEE, SUITE 820
OKLAHOMA CITY, OKLAHOMA 73102-3423

MARIANO LAKE COMMUNITY SCHOOL BOARD,)	CASE # IBIA 97-120-A
Appellant,)	
v.)	
)	
DIRECTOR, OFFICE OF INDIAN EDUCATION,)	ORDER
PROGRAMS, BUREAU OF INDIAN AFFAIRS)	<u>RECOMMENDING</u>
Appellee.)	<u>DISMISSAL</u>

This matter arises from a complaint of the Mariano Lake Community School, Inc. (Mariano Lake School or School) initiated by Mr. Young Jeff Tom, Sr. on May 2, 1997. The Interior Board of Indian Appeals' (IBIA) referred the matter to the Hearings Division of the Office of Hearings and Appeals, and the case was subsequently assigned to the Oklahoma City OHA.

After the case received in Oklahoma City, Orders for participation in Pre-Hearing conferences issued May 12, 1997, May 13, 1997 and June 12, 1997. No representative from the Mariano Lake School has ever participated in this case in any way. After this conspicuous absence of participation by the school, the Navajo Nation Department of Justice was contacted, and Deputy Attorney General, Tom Christie, was requested to participate in a telephonic conference because it was believed that the Navajo Nation might have an interest in the proceedings. Mr. Christie did participate in the conference, and he agreed to make independent efforts to contact a representative for the School and to pass information on to the School. The Navajo Nation also also was present for an additional conference that took place on July 18, 2001.

The Bureau of Indian Affairs (BIA) was represented by Dora Richards from the Albuquerque Office of the Regional Solicitor for the Department of the Interior. Ms. Richards submitted a Motion to Dismiss followed by a memorandum of authority in support of the Motion. The government's Motion was based on its position that there had been no final agency action (no declination) upon which the School could appeal. The School did not respond.

A pre-hearing conference took place July 18, 2001, again without the School's participation. During the conference, Ms. Richards stated that the matter had been "settled" by actions of the parties, that no issues needed to be resolved and that the case should – accordingly – be dismissed. Since the School was not respresented at the conference, an Order Providing Opportunity to Respond issued July 24, 2001. To the time of this writing, no response has been received.

While the government states that the matter has been settled by actions of the parties, I am unable to issue an order accepting a settlement agreement because no such written agreement exists.

25 U.S.C. § 450 provides for a hearing on the record. Absent participation of any kind by Appellant, however, there appears to be no realistic objective for either further proceedings or additional inquiry. The Appellant Tribe has evidenced no desire to engage in these proceedings. Moreover, it has not raised any genuine issue of either fact or law.

IT IS, THEREFORE, RECOMMENDED that this matter be dismissed.

Appeals. Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 801 North Quincy Street, Arlington, VA 22203

You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

Done at Oklahoma City, Oklahoma this August 19, 2002.

// original signed
Richard L. Reeh
Administrative Law Judge