

UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, D.C. 20202

Application of

MARTY INDIAN SCHOOL (S.D.),  
Marty, South Dakota

Docket No. 89-8-R

Recovery of Funds

ACN: 08-72116

**DECISION**

This matter came before the undersigned for hearing on the 7th day of May 1990. Counsel for the United States Department of Education, Richard Mellman, appeared at the hearing. Counsel for the Marty Indian School, John M. Peebles, was not present for the hearing.

**PRELIMINARY MATTER**

On May 5, 1990, a request was filed with the Office of Hearings and Appeals at 5:10 P.M. Eastern time to cancel the hearing scheduled May 7, 1990. In a letter FAXED to the undersigned and counsel for the Department of Education, Mr. Peebles indicated, in addition to his request for a cancellation of the hearing, the following

- 1.) On or before May 15, 1990, the Marty Indian School would withdrawal its application for review;
- 2.) the school would provide by June 30, 1990, a report on the schools current fiscal management;
- 3.) the future report would require the Department of Education's approval;
- 4.) the three items above would not preclude the Department of Education from taking action to collect the \$9,598. identified in the March 30, 1989, final audit determination as misspent funds.

A review of the parties proposed stipulation indicates that the essence of the letter is a request for a continuance of the hearing to a later date. However, the parties have no agreement as to the disputed facts and no resolution of the issues raised by the case. The Marty Indian School merely states that it wishes more time to provide an updated financial report of its current fiscal management.

The school has been unable to present any evidence to show that this request for a continuance would provide any new insight into the facts. I find that any additional delay is unwarranted. The

reasons given by the school are not good cause for a continuance in this matter. The request for a continuation of the hearing scheduled today May 7, 1990, is denied.

### **DISCUSSION AND CONCLUSION**

No additional evidence was presented by either party for consideration at the hearing May 7, 1990.

I have reviewed the documents submitted in this case and find the following facts to be true. The school's request for review was filed May 9, 1989. A letter was received by the Office of Administrative Law Judges on May 11, 1989, from Everdell Wright, Superintendent of the Marty Indian School, which states "We do not dispute the findings of said report, but our ability to pay is contingent upon restitution from persons convicted of embezzlement of said funds." The Superintendent is referring to the \$9,598. of funds in an audit conducted by Jaime C. Arrobba. It is the Arrobba audit that the Department of Education has relied upon in their demand for \$9598 set out in the determination letter issued March 30, 1989.

At the request of the parties, an order to stay the proceedings pending mediation was issued June 23, 1989, by Judge Thomas W. Reilly. Even though an extended period of time was granted for the resolution of the case through mediation, the mediator was not able to finalize an agreement. On December 22, 1989, the mediator,, Judith Ballard indicated that she had no authority from the parties to extend the mediation. Therefore, on the 29th of December 1989, I terminated the mediation process and established a briefing schedule.

A hearing date that was scheduled for February 15, 1990, was continued at the request of the Department of Education to February 28, 1990. Later, on February 26, 1990, I stayed the proceedings for a period of thirty days based upon the parties representation that they had an agreement of all issues in dispute and that a delay was required to execute the tentative agreement.

After the passing of the thirty day period granted above, the failure to produce a signed settlement agreement or a dismissal of the action by the parties, I, on April 4, 1990, scheduled a hearing for May 7, 1990.

From the record of the proceedings in this matter, it is clear that this case has been one of continual delay. The school has been given ample opportunity to present its position and to either mediate or to settle the case.

Furthermore, I find that the school has been unable to produce any evidence to rebut the Department of Education's prima facie case established by the final determination letter of March 30, 1989. The only evidence that was submitted by the school is an admission of the obligation for \$9,598.

Therefore, it is ordered that the Department of Education's request for the recovery of \$9,598. from the Marty Indian School (S.D.) be granted. The Department of Education is directed to

refer the matter to the Chief of Loans and Accounts Receivable Branch of the Financial Management Service for collection.

Daniel R. Shell  
Administrative Law Judge

Issued: May 8, 1990  
Washington, D. C.