

Appearances: Bruce J. Friedman, Esq., of Hoopa, California, for Hoopa Valley Tribe.

Patrick D. Sisneros, Esq. of Eureka, California, for Klamath-Trinity Joint Unified School District.

Before: Judge Richard F. O'Hair

#### INTERIM FINDINGS OF FACT AND RECOMMENDATIONS

In accordance with 20 U.S.C. §§ 240(b)(3)(C) and 1221e-3(a)(1), and 34 C.F.R. Part 223, Subpart D, the Hearing Examiner hereby submits his Interim Findings of Fact and Recommendations concerning appropriate remedial action to the Assistant Secretary for Elementary and Secondary Education.

#### PRELIMINARY STATEMENT

This proceeding originated with a complaint dated April 1, 1994, as supplemented by a letter dated August 22, 1994, filed by the Hoopa Valley Tribe (tribe) against the Klamath-Trinity Joint Unified School District, California (school district). This complaint alleges the school district violated special impact aid provisions found in 20 U.S.C. § 240. This statute provides that upon application by a local educational agency (LEA), federal impact aid may be awarded to a LEA if it educates Indian children who reside on tax exempt federal property, such as Indian reservations.

In order to receive this impact aid, the LEA must establish and implement certain policies and procedures which are designed to ensure that: (1) Indian children educated by the LEA participate on an equal basis in the school program with all other children, (2) all applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children, and (3) the local Indian tribes and parents of the Indian children are afforded an opportunity to present their views as to the needs of their children and are involved in the planning and development of educational programs. 20 U.S.C. § 240(b)(3)(B); 34 C.F.R. Part 223, Subpart B.

In this case, the Hoopa Valley Tribe complaint alleges the school district has:

1. failed to adhere to the American Indian Policies and Procedures that were adopted by the school district on November 28, 1988, in compliance with 34 C.F.R. §§ 223.10 - 223.11, and

2. failed to take into consideration meaningful Indian input in designing the education program, as required by 34 C.F.R. § 223.11 and § 223.20(a)(3).

On September 2, 1994, the Assistant Secretary for Elementary and Secondary Education received and accepted the Complaint and granted the Request for a Hearing pursuant to the appropriate regulations. Thereafter, the undersigned was appointed as Hearing Examiner. 34 C.F.R. § 223.24 and § 223.33. After concluding pre-hearing matters, a hearing was scheduled for October 12, 1994, but at the request of the tribe it was rescheduled for November 15, 1994. On November 15 the parties requested, and were granted, a delay in the convening of the hearing to allow them an opportunity to engage in settlement negotiations. The hearing convened on November 16 and the parties announced that a settlement agreement had been reached whereby the services of an independent contractor were to be procured for a period of 18 months. (A copy of the transcription of that hearing is attached.) This independent contractor was expected to assist the school district and the tribe in resolving compliance concerns regarding the policies and procedures requirements.

Recognizing that this agreement had to be approved by the leaders of the tribe as well as the school district Board of Trustees, counsel for both parties requested that the hearing be adjourned until late January, 1995, to allow time for such approval. On a later occasion, the hearing was scheduled to reconvene on January 24, 1995. On January 23, 1995, the parties adopted a formal Impact Aid Complaint Settlement Agreement (attached) and, upon their joint request, the January 24, 1995, hearing was cancelled. This settlement agreement affirms the parties' basic desire to comply with the American Indian Policies and Procedures. To assist them in this effort, the parties will jointly contract with an individual to act as an Impact Aid Compliance Liaison for a period of 18 months. This individual's duties will be to "develop, plan and implement the Indian Policies and Procedures assessment...."

Furthermore, commencing on May 1, 1995, the parties will prepare a quarterly report on the status of the implementation of this settlement agreement, and this report will be distributed to the tribe, the school district, and the undersigned. They will prepare a final report on August 1, 1996.

#### FINDINGS AND RECOMMENDATIONS

I have reviewed the settlement agreement executed by the leaders of the Hoopa Valley Tribe and the Klamath-Trinity Joint Unified School District Board of Trustees. It fully addresses the issues contained in the Hoopa Valley Tribe complaint submitted to the Assistant Secretary for Elementary and Secondary Education and represents a good faith effort on behalf of the parties to resolve those same issues. The parties have an agenda which is agreeable to both sides. It is my recommendation that this case remain in an open status and that any further action by the U.S. Department of Education on this complaint be held in abeyance until such time as either party requests additional assistance, or the expiration of this settlement agreement

on August 1, 1996, whichever occurs earlier.

---

Judge Richard F. O'Hair  
Hearing Examiner

Issued: February 10, 1995  
Washington, D.C.

---

---

S E R V I C E

---

A copy of the attached document was sent to the following:

Assistant Secretary Thomas W. Payzant  
Office of Elementary and Secondary Education  
U.S. Department of Education  
600 Independence Avenue, S.W.  
Room 4000, PRTL  
Washington, D.C. 20202-6100

Bruce J. Friedman, Esq.  
Office of Tribal Attorney  
Hoopa Valley Tribe  
P.O. Box 188  
Hoopa, CA 95546

Patrick D. Sisneros, Esq.  
Associate General Counsel  
School and College Legal Services  
Humboldt County Office of Education  
901 Myrtle Avenue  
Eureka, CA 95501