



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

IN THE MATTER OF

Round Valley Indian Tribes,

Applicant.

Docket No. 07-20-O

Native American Career and  
Technical Education Program  
Proceeding

DECISION

Appearances: Bernadine Whipple, Grant Director, Covelo, California, for the Round Valley Indian Tribes.

Daphna Krim, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for the Assistant Secretary for Vocational and Adult Education.

Before: Allan C. Lewis, Chief Administrative Law Judge

The Round Valley Indian Tribes (Round Valley) seek a review of a decision by the Secretary not to include Round Valley among the 30 applicants selected in a competitive grant process for an award of a grant under the Native American Career and Technical Education Program. 77 Fed. Reg. 13,770 (2007). Round Valley challenges the numerical score assigned by the panel members in three of the nine categories used to assess its application. Based upon a review of its arguments, *infra*, no adjustment in its final rating is warranted.

I. OPINION

The Native American Career and Technical Education Program provides grants for projects that provide career and technical education and training for the benefit of Native Americans and is authorized by Section 116 of the Carl D. Perkins Career and Technical Education Act of 2006. 20 U.S.C. § 2326. Pursuant to this mandate, the Secretary published on March 23, 2007, a notification that solicited applications for a limited number of grants to be awarded under a competitive process. 77 Fed. Reg. 13,770. As a result, 57 applications were received.

In the selection process, the Secretary employed nine panels to evaluate the applications. Each panel had three members and evaluated approximately six applications. With respect to each application, it was read separately by each member who then completed a review form wherein the panel member articulated his or her comments concerning each of the nine rating categories, positive and negative, and assigned a score to each category. 34 C.F.R. §§ 401.20 and 401.22. Thereafter, a discussion among the panel members was held and each panel member determined his or her final score for each category and, ultimately, the application. These scores were then averaged and represented the applicant's final score. Ultimately, the final scores were consolidated in a list and the top 30 applicants were selected for grants.

With respect to Round Valley, its application received raw scores of 74, 67, and 78 from the panel members. The average of these scores was 73 and this score ranked its application 49<sup>th</sup> among the 57 applicants. The lowest three qualifying scores were 128, 121, and 114.33. As such, the Secretary did not select Round Valley's application for funding.

In its appeal, Round Valley addresses the scores determined by the panel members in three categories. Under the quality of the project design category, worth a maximum of 25 points, it received an averaged score of 9.67 points. In the quality of project personnel category, it received an averaged score of 5 points of a possible 15 points. Lastly, under the quality of project evaluation category, its averaged score was 3 points of a maximum of 25 points. While Round Valley does not dispute the scores it received in each category, it proffers additional information with respect to each category. This information to the extent it is relevant may not be considered in this appeal because it was not included in Round Valley's application for the grant and, therefore, was not available and considered by the panel members. As noted in In re Washoe Tribe of Nevada and California, Dkt. No. 01-16-O, U.S. Dep't of Education (July 24, 2001) at 2 and 3, the tribunal's function is to review the rating process and the evaluations by the panel members for significant error based upon the information submitted in the application. It does not reevaluate an application based on existing or new information and supplant the judgment of the panel members with its judgment. In re Miccosukee Corporation, Dkt. No. 97-7-O, U.S. Dep't of Education (March 24, 1997) at 5.

Round Valley also explains why its application omitted significant information in various categories that the panel members felt was necessary and appropriate. According to Round Valley, the author of its application was a recent hire, was inexperienced in writing grant applications, and had many other duties to perform that absorbed much of her time. Her support staff was ineffective. Requisite information and data was unavailable due to poor records or in an unusable form. Her working conditions were substandard. She perceived a lack of cooperation by the tribal counsel and the United States Department of Education in her effort to gather information or to prepare the application. She found the Department's regulations and information on its website vague. Despite these short-comings, Round Valley believes it should be awarded a grant because its tribal people will suffer from lack of educational opportunities, the economic

and social benefits accrued under the prior competitive grant will be lost, and its grant writer and her staff have learned from this experience and have implemented changes that will improve its record keeping and preservation of data in the future.

The tribunal appreciates the candor of Round Valley in its appeal. The Secretary, however, has limited financial resources and cannot fund every application. In this context, the competitive process provides a means to treat all tribes on a fair and equal basis in selecting those applicants that will be awarded grants. Unfortunately, Round Valley's final score was insufficient to qualify for a grant.

## II. ORDER

In light of the above, it is **HEREBY ORDERED** that the appeal by Round Valley Indian Tribes is dismissed with prejudice

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Allan C. Lewis  
Chief Administrative Law Judge

Issued: August 2, 2007  
Washington, D.C.