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**[EXTERNAL] JOM comments From SWO Education Dept**

1 message

**Sherry Johnson** <SherryJ@swo-nsn.gov>

Mon, Aug 26, 2019 at 3:26 PM

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Here are the JOM Tribal Consultation Comments from the Sisseton-Wahpeton Oyate. Thank you. Pidamayaye.

Dr. Sherry Johnson

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# Sisseton Wahpeton Oyate

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## **Sisseton-Wahpeton Oyate Comments to the Johnson O'Malley Program proposed rule changes.**

**The attached submittals from the Sisseton-Wahpeton Oyate are requested for consideration and/or revision for the Johnson O'Malley Program according to Tribal Consultation.**

**Dr. Sherry Johnson  
Education Director  
Sisseton-Wahpeton Oyate  
Education Consultation Representative**

**Date**

**8-26-19**



## Johnson O'Malley Consultation

### 273.106 What Key terms do I need to know?

*Approving Official:* means the Regional Director, or Agency Superintendents (for Tribes assigned under their management), has the responsibility and duties to review, approve or decline the contract in accordance with the Act.

**Remark: In most instances the Regional Director or Agency Superintendent is not an expert in education matters. We believe it should be the BIE JOM Director.**

*Regional Director* means the Bureau of Indian Affairs Regional Director or Bureau of Indian Education Associate Deputy, as applicable.

**Remark: We believe it should be the Bureau of Indian Education Associate Deputy as applicable.**

### 273.112 Who is an eligible Indian student under Johnson-O'Malley Act?

(a) From age three (3) years through grade(s) twelve (12);

**Remark: We believe this should be consistent either by age or by grade. A child of ages eighteen (18) through twenty-one (21) shall be entitled to all of the rights given to children and parents.**

### 273.113 How can the funds be used under the Johnson-O'Malley Act:

An eligible entity may use the funds available under the contract to provide education benefits to eligible Indian students to: (a) 1-3, (b)(c)

**Remark: We suggest the funds be consistent with past manual allowable and unallowable expenditures. Schools rely on this funding to support culture and or language programs, does this eliminate that allowable cost?**

**In (b) Does that mean only dropout prevention activities are the only activities that are cultural. We suggest that culture should be included in all activities.**

### 273.116 Does an Indian Education Committee need to establish procedures and report to the Regional Director?

(a) Each Committee must file a copy of its organizational documents and by-laws with the Regional Director, together with a list of its officers and members.



**Remark:** We do not support the Regional Director being the named person to submit a copy of its organizational documents and by-laws. We support these documents being filed with the BIE JOM Director.

273.119 What is an education plan and what must it include?

(d) Established State standards and requirements that must be maintained in operating the contracted programs and services;

**Remark:** Why are we talking state standards? Not all schools work with their state standards but rather as set by their accrediting agency.

(e) A description of how the State standards and requirements that must be maintained in operating the contracted programs and services:

**Remark:** This is a small supplement program for schools for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students. This requirement is for the school general fund budget to address. There could be a fluctuation in funding as appropriated funds are subject to Congressional approval each year; the supplemental JOM funding may not have enough funding to maintain the specialized and unique needs of eligible Indian students.

Again. Why are we talking state standards? Not all schools work with their state standards but rather as set by their accrediting agency.

(4) Costs that parents normally are expected to pay for each school;

**Remark:** We are wondering why this question is required as part of the education plan; Native American parents normally cannot pay for their children's additional education costs and JOM is the supplemental program to support the Native children's school needs.

273.120 Does an education plan need to be approved by the Regional Director?

(a) The contactor has submitted an education plan to the Regional Director; and

(b) The Regional Director has determined that the education plan contains educational objectives that adequately address the educational needs of the Indian students who are to be beneficiaries of the contract, and that the contract is capable of meeting such objectives.

**Remark:** Take the Regional Director out and the approval goes to the BIE JOM Director.

273.121 The Regional Director approves the education plan when a contractor submits a contract proposal for funding.

**Remark:** Take the Regional Director out and the approval goes to the BIE JOM Director.



273.126 (b)(1)(i) Cannot meet the minimum state standards or requirements without such funds.

**Remark: Why are we talking state standards? Not all schools work with their state standards but rather as set by their accrediting agency.**

273.126 (b)(1)(iv) Has at least 70 percent eligible Indian Enrollment.

Remark: Should be at least 50 percent eligible Indian Enrollment.

273.129 May the Regional Director reimburse a public-school district for educating nonresident Indian students?

The Regional Director may consider a contract proposal to reimburse a public school district for the full per capita costs of educating Indian students who meet all of the following:

**Remarks: Take the Regional Director out and the approval goes to the BIE JOM Director. This proposal could further deteriorate the JOM funding allocation.**

The Regional Director may consider a contract proposal to reimburse a public-school district for the full per capita costs of educating Indian students who meet all of the following:

**Remark: Take the Regional Director out and the authority goes to the BIE JOM Director.**

273.131 What is required for a Tribal request for a contract?

(a) An Indian Tribal governing body that desires that a contract be entered into with a Tribal organization must notify the Regional Director.

**Remark: Take the Regional Director out and the notify the BIE JOM Director.**

273.140 What is the funding formula to distribute funds?

Funds will be distributed to contractors based upon a funding formula. The funding formula is calculated using data obtained by the Department of Education from the previous year.

**Remark: The formula has a weight factor of 1.3 minimal funding for the established programs. We do not understand how the per pupil amount is determined. The existing contractors have a safeguard for four years; should other schools be allowed to apply for Johnson O'Malley funds there is no assurance the funding will increase to accommodate the programs.**

**The programs could be subject to a 10% decrease in funding; the funding is not economically feasible to continue the program that was established to meet the specialized and unique educational needs of eligible Indian students. And, if the schools are required to meet the State Standards, the**



**funding is treated like general funding for students and not specialized and unique funding as intended. The counts will increase; but the funding may not, what have we accomplished to meet the specialized and unique funding needs of eligible Indian students. More information is required. The Fiscal Year 2020 Budget justification also states that Priority is given to programs that are on or adjacent to Indian Reservations located in Oklahoma and Alaska. We disagree with this priority as stated as the funding should be for all Indian students who have specialized and unique needs.**

**273.142 Are advance payments on a contract allowed under the Johnson O'Malley Act?**

Payments to States, public school districts and Indian corporations will be paid in advance or by way of reimbursement and in such installments and on such conditions as the Regional Director deems necessary to carry out the purposes of the Act.

**Remark: We support that payments be made in advance for schools. Take the Regional Director out and the authority goes to the BIE JOM Director.**

**273.146 Can funds be used outside of schools?**

Nothing in this part prevents the Regional Director from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

**Remark: Take the Regional Director out and the authority goes to the BIE JOM Director.**

**273.150 Does an existing contracting party need to submit any reports?**

Each existing contracting party must submit an annual report based on the JOM funding received and other contract-related reports as required by the Regional Director.

**Remark: Take out the Regional Director and submit the annual report to the BIE JOM Director.**

**273.157 What is the process for requesting technical assistance and/or training?**

**(a), (b), (c)**

**Remark: Take the Regional Director out and the requests go to the BIE JOM Director.**

**273.170 What special program provisions must be included in the contract?**

All contracts must contain the following: (b)

**Remark: Take the Regional Director out and any formal written determination and findings will be made by the BIE JOM Director.**



273.179 Are there contract audit and inspection requirements?

(a)

**Remark: Take the Regional Director out and the audit and inspection requirements are made by the BIE JOM Director.**

273.194 Does the Indian Education Committee have authority to cancel contracts?

The Indian Education Committee may recommend to the Regional Director....

**Remark: Take the Regional Director out and recommendations are submitted to the BIE JOM Director. Where does the tribe fit into this? If the tribe is the contractor they should be have final authority rather than the Indian Education Committee.**

273.195 May a contract be cancelled for cause?

(b) Before canceling the contract, the Regional Director will provide the contractor with written notice, including:..

**Remark: Take the Regional Director out and provide the written notice to the BIE JOM Director.**

273.207 How does a contractor request dispute resolution?

The contractor may request dispute resolution in writing to the Regional Director.

**Remark: Take the Regional Director out and the request will be made in writing to the BIE JOM Director.**

