

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 943, THE “JOHNSON-O’MALLEY SUPPLEMENTAL
INDIAN EDUCATION PROGRAM MODERNIZATION ACT”**

JULY 12, 2017

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. It is good to see you again. As Director of the Bureau of Indian Education (BIE), I am here today to provide the Department of the Interior’s (Department) views regarding S. 943, the Johnson-O’Malley (JOM) Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 943 and recommends some technical changes.

Background

The supplemental educational JOM Program is authorized by the Johnson-O’Malley Act of 1934 and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible Indian students not enrolled in Bureau- or sectarian-operated schools. A local JOM program operates under a BIE approved individual educational plan. JOM education plans include objectives designed to address the educational needs of eligible American Indian and Alaska Native students, offering students various opportunities, which may include cultural enrichment, tribal language support, academic assistance, and dropout prevention programs.

We understand that Indian students have unique educational and cultural needs, which include learning their languages, cultures, and histories. The supplemental JOM program has historically worked to address this need by assisting Indian students who often enter public school with an academic skills deficit. In short, JOM functions to help Indian students thrive in an environment suited to their strengths.

Tribal organizations, Indian corporations, school districts, or states may be eligible to receive such funds once they establish an Indian Education Committee. The role of such committees is to approve supplementary support programs. American Indian and Alaska Native students are eligible if they are members of a federally-recognized Indian tribe or one-fourth or more degree of Indian blood and recognized by the Secretary as being eligible for services from the Bureau. In addition, students must be age three through grade 12.

Student Counts

Most recently, BIE performed a student count as required by Congress in Fiscal Years (FYs) 2012 and 2014. After formal consultation with representatives from tribes, public schools, tribal organizations, and parents, a total of 448 entities submitted student count data. The FY 2012 JOM count identified 321,273 eligible Indian students as compared to the last official count from 1995, which identified 271,884 eligible Indian students. The FY 2014 count resulted in a final student count of 341,495 for the 399 JOM contractors that submitted data. Allowable under law, not all current JOM contractors submitted student count data to the BIE, which affected our ability to officially verify and update the student count. As such, the current official count of JOM-eligible students continues to be based on the number from 1995.

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An accurate illustration of need for students served by the JOM program is essential. To that end, the Department supports S. 943. For too long, the count has been considered inaccurate and therefore difficult to confirm true local needs of students served by the supplemental education program. As the BIE focuses on its core institutional mission – providing for the direct operation of schools and supporting classroom instruction for Indian students – we must ensure taxpayer dollars are being used efficiently and effectively. As such, it is critical that the Department utilizes funding in a way that minimizes waste and supports programs that can accurately portray need. This legislation works to accomplish this while ensuring accountability for contractors in reporting their number of students served under the program.

The Department has the following recommendations regarding S. 943, the JOM Supplemental Indian Education Program Modernization Act:

- **New Applicants.** Section 7(a)(4) defines “New Applicants” as an entity that applies to participate in a contract “not later than 240 days...” in coordination with S. 943’s reporting requirements for the Bureau. The Department believes this provision could potentially limit prospective applicants due to the period mentioned and suggests language that clarifies that new applicants will not be limited to a particular timeframe.
- **Hold Harmless.** Section 7(f) assumes sufficient funding will be available to meet the hold harmless requirement. The Department is concerned that the provision does not carve out an exception for potential appropriation reductions and recommends adding language that the hold harmless provision is contingent upon available funding.
- **Student Count Data.** Section 7(c)(1)(B)(i) directs the Department, through the BIE Director, to cross-check student count data with data from the U.S. Bureau of Census, the National Center for Education Statistics (NCES) in the U.S. Department of Education’s Institute for Education Sciences, and the U.S. Department of Education’s Office of Indian Education (OIE). The Department assumes that the bill is referring to the student count used for OIE formula grant payments under Title VI of the ESEA (formerly Title VII).

If that is the case, it should be noted that Title VI formula grants are based on student eligibility that is broader than the JOM eligibility, as OIE’s count includes members of state-recognized tribes, and children and grandchildren of members of federally recognized tribes without regard to blood quantum. The Department is also concerned

that U.S. Census Bureau data will include self-identified individuals who may not be eligible for services because BIE jurisdiction extends only to members of federally-recognized tribes or students who are identified as eligible under the Act. We look forward to working with the committee to ensure that the bill adequately protects the privacy rights of Indian students and their families.

Conclusion

Thank you for the opportunity to present testimony today on such important legislation. The Department and BIE look forward to continuing our work with this Committee, Indian tribes, and our important stakeholders. We also look forward to working with the sponsors of the legislation to address the aforementioned recommendations. Thank you for your time, and I would be honored to answer any questions you may have.