

## Title 25: Indians

### PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

#### Contents

Subpart A—General Provisions and Definitions .....	4
§273.101 What is the purpose and scope of this part? .....	4
§273.102 How will revision or amendments be made to this part?.....	4
§273.103 What is the Secretary's policy of maximum Indian participation? .....	4
§273.104 How will the Secretary extend geographic coverage and enhance participation under the Johnson-O'Malley Act? .....	4
§273.105 How do these regulations affect existing Tribal rights?.....	4
§273.106 What key terms do I need to know? .....	5
Subpart B—Program Eligibility & Applicability .....	8
§273.110 Who is eligible to request contracts under the Johnson-O'Malley Act?.....	8
§273.111 How do the requirements for Tribal organizations differ from those for other eligible entities? .....	9
§273.112 Who is an eligible Indian student under the Johnson-O'Malley Act? .....	10
§273.113 How can the funds be used under the Johnson-O'Malley Act? .....	10
§273.114 What programs may be contracted under the Johnson-O'Malley Act? .....	11
Subpart C—Indian Education Committee .....	11
§273.115 Who determines the unique educational needs of eligible Indian students? .....	11
§273.116 Does an Indian Education Committee need to establish procedures and report to the BIE Director? .....	11
§273.117 What are the powers and duties of the Indian Education Committee? .....	11
§273.118 Are there additional authorities an Indian Education Committee can exercise? .....	12
Subpart D—Education Plan.....	13
§273.119 What is an education plan and what must it include?.....	13
§273.120 Does an education plan need to be approved by the BIE Director? .....	14
§273.121 When does the BIE Director approve the education plan? .....	15
Subpart E—Contract Proposal, Review, and Approval .....	15
§273.125 How may a new contracting party request a contract under the Johnson-O'Malley Act? ...	15
§273.126 What proposals are eligible for contracts under the Johnson-O'Malley Act? .....	15
§273.127 Can a contract include funds to support the duties of an Indian Education Committee? ...	15
§273.128 How are contracts prioritized?.....	16

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

§273.129	May the BIE Director reimburse a public school district for educating non-resident Indian students?.....	16
§273.130	What is required in the contract proposal for funding? .....	16
§273.131	What is required for a Tribal request for a contract? .....	17
§273.132	Who will review and approve the contract proposal?.....	17
§273.133	What is the process for review and decision? .....	17
§273.134	What is the timeframe for contract decision? .....	18
§273.135	Who will negotiate the contract? .....	18
Subpart F—Funding Provisions .....		18
§273.140	What is the funding formula to distribute funds? .....	18
§273.141	Will funding be prorated? .....	19
§273.142	Are advance payments on a contract allowed under the Johnson-O'Malley Act? .....	19
§273.143	Must other Federal, State, and local funds be used? .....	19
§273.144	Can Johnson-O'Malley funds be used for capital outlay or debt retirement?.....	20
§273.145	How can funds be used for subcontractors? .....	20
§273.146	Can funds be used outside of schools? .....	20
§273.147	Are there requirements of equal quality and standard of education? .....	20
Subpart G—Annual Reporting Requirements.....		20
§273.150	Does an existing contracting party need to submit any reports?.....	20
§273.151	What information must the existing contracting party provide in the annual report?.....	20
§273.152	When is the annual report due? .....	21
§273.153	Who else needs a copy of the annual report? .....	21
§273.154	What will happen if the existing contracting party fails to submit an annual report? .....	21
§273.155	How will the existing contracting party know when reports are due?.....	21
§273.156	Will technical assistance be available to comply with the annual reporting requirements?22	
§273.157	What is the process for requesting technical assistance and/or training? .....	22
§273.158	When should the existing contracting party request technical assistance and/or training?22	
§273.159	If the existing contracting party reported a decrease of eligible Indian students, how will funding be reduced? .....	22
§273.160	Can the Secretary apply a ratable reduction in Johnson-O'Malley program funding?.....	22
§273.161	What is the maximum decrease in funding allowed? .....	22
Subpart H—General Contract Requirements .....		23
§273.170	What special program provisions must be included in the contract? .....	23
§273.171	Can a contractor make changes to a program approved by an Indian Education Committee? .....	23

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

§273.172	May State employees enter Tribal lands, reservations, or allotments? .....	23
§273.173	What procurement requirements apply to contracts?.....	24
§273.174	Are there any Indian preference requirements for contracts and subcontracts? .....	24
§273.175	How will a Tribal governing body apply Indian preference requirements for contracts and subcontracts?.....	24
§273.176	May there be a use and transfer of Government property? .....	24
§273.177	Who will provide liability and motor vehicle insurance?.....	25
§273.178	Are there contract recordkeeping requirements?.....	25
§273.179	Are there contract audit and inspection requirements? .....	26
§273.180	Are there disclosure requirements for contracts?.....	26
§273.181	Are there Privacy Act requirements for contracts? .....	27
§273.182	Are there penalties for misusing funds or property?.....	28
§273.183	Can the Secretary investigate a potential Civil Rights Act violation?.....	28
Subpart I—Contract Renewal, Revisions, and Cancellations .....		28
§273.191	How may a contract be renewed for Johnson-O'Malley funding? .....	28
§273.192	What is required to renew a contract?.....	28
§273.193	May a contract be revised or amended? .....	29
§273.194	Does the Indian Education Committee have authority to cancel contracts? .....	29
§273.195	May a contract be cancelled for cause?.....	29
Subpart J—Responsibility and Accountability .....		30
§273.201	What is required for the Secretary to meet his or her reporting responsibilities? .....	30
§273.202	Does this part include an information collection?.....	30
Subpart K—Appeals .....		31
§273.206	May a contract be appealed?.....	31
§273.207	How does a contractor request dispute resolution? .....	31
§273.208	How does a Tribal organization request an appeal?.....	31
§273.209	How does a State, public school district, or an Indian corporation request an appeal? .....	31

## Subpart A—General Provisions and Definitions

### §273.101 What is the purpose and scope of this part?

The purpose of this part is to set forth the process by which the Secretary will enter into contracts for the education of Indian students under the Johnson-O'Malley Act. Such contracts are for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards.

### §273.102 How will revision or amendments be made to this part?

Prior to making any substantive revisions or amendments to this part, the Secretary will consult with Indian Tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and will consider their views in preparing the proposed revision or amendment. Nothing in this section precludes Indian Tribes or national or regional Indian organizations from initiating a request for revisions or amendments.

### §273.103 What is the Secretary's policy of maximum Indian participation?

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval, and implementation of all programs contracted under this part is required.

### §273.104 How will the Secretary extend geographic coverage and enhance participation under the Johnson-O'Malley Act?

The Secretary will, to the extent practicable, and subject to the availability of appropriations, ensure full geographic coverage and the full participation of all federally recognized Tribes and school districts, regardless of whether the school districts or Tribal organizations had entered into a contract under the Johnson-O'Malley Act before fiscal year 1995. To the maximum extent practicable, the Secretary will consult with Indian Tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract in the implementation of this section.

### §273.105 How do these regulations affect existing Tribal rights?

Nothing in these regulations may be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian Tribe;

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(b) Authorizing or requiring the termination, waiving, modifying, or reducing of any existing trust responsibility of the United States with respect to the Indian people;

(c) Permitting significant reduction in services to Indian people as a result of this part; or

(d) Mandating an Indian Tribe to request a contract or contracts. Such requests are strictly voluntary.

### §273.106 What key terms do I need to know?

Terms used in this part:

Academic year means the period of the year during which students attend an educational institution.

Appeal means a request for an administrative review of an adverse Agency decision.

Approving official means the BIE 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.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. This person can be a contracting officer or other authorized Federal official.

BIE Director means the Bureau of Indian Education Director or his or her designee.

Bureau or BIE means the Bureau of Indian Education.

Bureau-funded school means a Bureau-operated elementary or secondary day or boarding school; or a Bureau-operated dormitory for students attending a school other than a Bureau school; or a Tribally controlled elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act, as amended.

Calendar year means the period of 365 days (or 366 days in leap years) starting from January 1.

Capital outlay means money spent to acquire, maintain, repair, or upgrade capital asset. Capital assets, also known as fixed assets, may include machinery, land, facilities, or other business necessities that are not expended during normal use.

Contract means to transfer the funds in support of the efforts designed to meet the specialized and unique educational needs of Indian students in the Johnson-O'Malley program from the Federal Government to the contractor. Tribes availing themselves of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, may receive funds under Title I contracts or Title IV contracts.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

Contracting party means an entity that has a contract through a program authorized under the Johnson-O'Malley Act.

Contractor means any Tribal organization, State, school district, or Indian corporation to which a contract has been awarded.

Days means calendar days; except where a date specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day.

Debt retirement means the act of paying off debt completely to a lender.

Director means the Director of the Bureau of Indian Education.

Economic enterprise means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

Education plan means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students.

Eligible entity means a Tribal organization, State, public school district, or Indian corporation is eligible to request a contract for a supplemental or operational support program under this Act. For purposes of this part, previously private schools are considered Tribal organizations.

Existing contracting party means a contracting party that has a contract under this Act that is in effect on the date of the JOM Modernization Act (Pub. L. 115-404), enacted December 31, 2018.

Fiscal year means the period used by the Bureau for accounting and budget purposes. The Bureau's fiscal year begins October 1 and ends September 30.

Indian means a person who is a member of an Indian Tribe.

Indian Advisory School Board means an Indian advisory school board established pursuant to 25 U.S.C. 5342-5347 prior to January 4, 1975.

Indian corporation means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of "Tribal organization".

Indian Education Committee means one of the entities specified by §273.115.

Indian Tribe means any Indian Tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

Initial contract proposal and contract proposal means a proposal for education contracts under the Johnson-O'Malley Act for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

Johnson-O'Malley Act means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456), and by the Act of January 4, 1975 (88 Stat. 2203), and further amended by the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (Pub. L. 115-404), enacted December 31, 2018 (JOM Modernization Act).

Local Indian Committee means any committee established pursuant to 20 U.S.C. 7424(c)(4), which provides that the committee must be composed of and selected by parents and family members of Indian children; representatives of Indian Tribes on Indian lands located within fifty miles; teachers in the schools; and if appropriate, Indian students attending secondary schools.

New contracting party means an entity that enters into a contract under this Act after the date of enactment of the JOM Modernization Act (Pub. L. 115-404), enacted December 31, 2018.

Operational support means those expenditures for school operational costs in order to meet established State educational standards or Statewide requirements and as specified in §273.126.

Parent means the lawful father or mother of someone, and may include:

- (1) Either the natural father or the natural mother of a child;
- (2) The adoptive father or adoptive mother of a child;
- (3) A child's putative blood parent who has expressly acknowledged paternity;
- (4) An individual or agency whose status as guardian has been established by judicial decree.

Previously private school means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian Tribe(s).

Public school district means a State-funded school district that:

- (1) Serves public elementary schools or public secondary schools; and
- (b) Has established or will establish local committees or is using a committee or Indian advisory school board to approve supplementary or operational support programs beneficial to Indian students.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

Reservation or Indian reservation means any Indian Tribe's reservation, pueblo, colony, or rancharia, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

School district or local education agency means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

Scope of work means a framework document that will outline the work that will be performed under a contract and detail the expectations for the Johnson-O'Malley program.

Secretary means the Secretary of the Interior.

Sectarian school means a school sponsored or supported, at least in part, by a religious denomination; also commonly known as a parochial school.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and each of the outlying areas, or any political subdivision of the 50 States.

School official or school administrator means a person employed by the school in an administration, supervisory, academic, or support staff position.

Supplemental program means a program designed to meet the specialized and unique educational needs of eligible Indian students that may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors. Programs may also provide academic assistance to Indian students for the improvement of student learning, increase the quality of instruction, and as provided by §273.143(b).

System of record means a system of record that contains information that is retrieved by an individual name or other unique identifiers.

Tribal government, Tribal governing body and Tribal Council means the recognized governing body of an Indian Tribe.

Tribal organization means the recognized governing body of any Indian Tribe or any legally established organization of Indians or Tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; provided that in any case where a contract is let to an organization to perform services benefitting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting of the contract.

## Subpart B—Program Eligibility & Applicability

§273.110 Who is eligible to request contracts under the Johnson-O'Malley Act?



**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

The following entities are eligible to enter into an education contract under the Johnson-O'Malley Act for the purpose of financially assisting efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards:

- (a) Tribal organizations;
- (b) States;
- (c) Public school districts that:
  - (1) Serve public elementary schools or public secondary schools; and
  - (2) Have a local school board composed of a majority of Indians or have established or will establish an Indian Education Committee, as described in §273.115 to approve supplementary or operational support programs beneficial to Indian students; and
- (d) Indian corporations.

§273.111 How do the requirements for Tribal organizations differ from those for other eligible entities?

- (a) States, public school districts, or Indian corporations must comply with the requirements in this part.
- (b) The requirements of this part apply to Tribal organizations (including but not limited to provisions regarding how funds can be used under the Johnson-O'Malley Act and reporting requirements), except that Tribal organizations do not need to comply with:
  - (1) Sections 273.120—273.121, regarding approval of an education plan by the Director;
  - (2) Section 273.125, regarding entering into a contract as a new contracting party;
  - (3) Sections 273.132—273.135, regarding review, approval, and negotiation of the contract;
  - (4) Section 273.142, regarding advance payments;
  - (5) Any section in subpart H (other than the following sections, which still apply: §273.170, regarding special program provisions to be included in a contract, §273.172, regarding State employees' access to Tribal lands, reservations or allotments, and §273.182, regarding penalties for misusing funds or property);
  - (6) Any section in subpart I (other than §273.194, regarding the Indian Education Committee's authority to recommend cancellation or suspension of contracts, which still applies);
  - (7) Any section in subpart K (other than §273.208).

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(c) The contract proposal submitted by the Tribal organization must meet the requirements in part 900 or 1000 of this chapter, in addition to those in §273.130 except that education plans must be submitted to the BIE Director for approval in accordance with §273.170. The requirements in part 900 or 1000 of this chapter apply to contracts and compacts with Tribal organizations, except for the provisions in §§900.240 through 900.256, 1000.300, and 1000.330 of this chapter concerning retrocession and reassumption of programs. If a Tribal organization retrocedes a contract, the Bureau will then contract with a State, public school district, or Indian corporation for the supplemental programs or operational support. Redesign and reallocation under either Title I contracts or Title IV compacts must be done with approval in accordance with §900.8(g)(6) of this chapter.

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

An Indian student is eligible for benefits provided by a Johnson O'Malley contract if the student is:

- (a) From age three (3) years through grade(s) twelve (12);
- (b) Not enrolled in a Bureau-funded school or sectarian school (except the student is eligible if enrolled in a previously private school controlled by an Indian Tribe or Tribal organization); and
- (c) Is either:
  - (1) At least one-fourth (1/4 ) degree Indian blood descendant of a member of an Indian Tribe as defined in §273.106; or
  - (2) A member of an Indian Tribe as defined in §273.106.

#### §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 educational benefits to eligible Indian students to:

- (a) Establish, carry out programs or expand programs in existence before the contract period that provide:
  - (1) Remedial instruction, career, academic, and college-readiness counseling, and cultural programs;
  - (2) Selected courses related to the academic and professional disciplines; or
  - (3) Important needs, such as school supplies and items that enable recipients to participate in curricular and extra-curricular programs; and
- (b) Purchase equipment to facilitate training for professional trade skills and intensified college preparation programs.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

§273.114 What programs may be contracted under the Johnson-O'Malley Act?

All programs contracted under this part must:

- (a) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee and as may be contained in the Committee's organizational documents and bylaws.
- (b) Be included as a part of the education plan.

## Subpart C—Indian Education Committee

§273.115 Who determines the unique educational needs of eligible Indian students?

(a) When a school district to be affected by a contract(s) for the education of Indians has a local school board composed of a majority of Indians, the local school board may act as the Indian Education Committee; otherwise, the parents of Indian children may elect an Indian Education Committee from among their number or a Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the following entities to serve as the Indian Education Committee:

- (1) A Local Indian Committee or Committees; or
- (2) An Indian Advisory School Board or Boards.

(b) The Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the entities in paragraph (a)(1) or (2) of this section at its discretion if the Indian Education Committee was established prior to January 4, 1975.

§273.116 Does an Indian Education Committee need to establish procedures and report to the BIE Director?

The Indian Education Committee and its members must establish procedures under which the Committee serves. Such procedures must be set forth in the Committee's organizational documents and by-laws.

- (a) Each Committee must file a copy of its organizational documents and by-laws with the BIE Director, together with a list of its officers and members.
- (b) The existence of an Indian Education Committee may not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this part.

§273.117 What are the powers and duties of the Indian Education Committee?

Consistent with the purpose of the Indian Education Committee, each such Committee is vested with the authority to undertake the activities in paragraphs (a) through (d) of this section.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(a) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this part. Such participation includes further authority to:

(1) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs;

(2) Approve budget preparation and execution;

(3) Recommend criteria for employment in the program;

(4) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select; and

(5) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(b) Approve and disapprove all programs to be contracted under this part. All programs contracted require the prior approval of the appropriate Indian Education Committee.

(c) Secure a copy of the negotiated contract(s) that includes the program(s) approved by the Indian Education Committee.

(d) Recommend cancellation or suspension of a contract(s) under §273.194.

**§273.118 Are there additional authorities an Indian Education Committee can exercise?**

The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties that would permit the Committee to:

(a) Participate in negotiations concerning all contracts;

(b) Make an annual assessment of the learning needs of Indian children in the community affected;

(c) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of §273.180;

(d) Request periodic reports and evaluations regarding the Indian education program;

(e) Establish a local grievance policy and procedures related to programs in the education plan;

(f) Meet regularly with the professional staff serving Indian children and with the local education agency;

(g) Hold committee meetings on a regular basis which are open to the public; and

(h) Have such additional powers as are consistent with these regulations.

## Subpart D—Education Plan

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

A prospective contractor in consultation with its Indian Education Committee(s) must formulate an education plan that contains educational objectives that adequately address the educational needs of the Indian students and assures that the contract is capable of meeting such objectives. The education plan must contain:

- (a) The education programs developed and approved by the Indian Education Committee(s);
- (b) Educational goals and objectives that adequately address the educational needs of the Indian students to be served by the contract;
- (c) Procedures for addressing hearing grievances from Indian students, parents, guardians, community members, and Tribal representatives relating to the program(s) contracted. Such procedures must provide for adequate advance notice of the hearing;
- (d) Established State standards and requirements that must be maintained in operating the contracted programs and services;
- (e) A description of how the State standards and requirements will be maintained;
- (f) A requirement that the contractor comply in full with the requirements concerning meaningful participation by the Indian Education Committee;
- (g) A requirement that education facilities receiving funds be open to visits and consultations by the Indian Education Committee(s), Tribal representatives, Indian parents and guardians in the community, and by duly authorized representatives of the Federal and State Governments;
- (h) An outline of administrative and fiscal management procedures to be used by the contractor;
- (i) Justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in §273.126(b). The information given should include records of receipt of local, State, and Federal funds;
- (j) Budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:
  - (1) State and district average operational cost per pupil;
  - (2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding;

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Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

- (3) Administrative costs involved, total number of employees, and total number of Indian employees;
- (4) Costs that parents normally are expected to pay for each school;
- (5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability; and
- (6) Total number of employees for each special program and number of Indian employees for that program;
- (k) The total enrollment of school or district, by age and grade level;
- (l) The eligible Indian enrollment—total and classification by Tribal affiliation(s) and by age and grade level;
- (m) The total number of school board members and number of Indian school board members;
- (n) Government equipment needed to carry out the contract;
- (o) The period of contract term requested;
- (p) The signature of the authorized representative of applicant; and
- (q) Written information regarding:
  - (1) Program goals and objectives related to the learning needs of potential target students;
  - (2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities;
  - (3) Overall program implementation including staffing practices, parental and community involvement, evaluation of program results, and dissemination thereof; and
  - (4) Determination of staff and program effectiveness in meeting the stated needs of target students.

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

The Secretary will not enter into any contract for the education of Indians unless:

- (a) The contractor has submitted an education plan to the BIE Director; and
- (b) The BIE 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.

§273.121 When does the BIE Director approve the education plan?

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

## Subpart E—Contract Proposal, Review, and Approval

§273.125 How may a new contracting party request a contract under the Johnson-O'Malley Act?

Subject to the availability of appropriations, eligible entities who have not previously entered into a contract for the Johnson-O'Malley program may submit an initial contract proposal.

§273.126 What proposals are eligible for contracts under the Johnson-O'Malley Act?

(a) Any proposal to contract for funding a supplemental program will be considered an eligible proposal.

(b)(1) To contract for operational support, a public school district is required to establish in the proposal that it:

(i) Cannot meet the minimum State or other applicable standards or requirements without such funds;

(ii) Has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs;

(iii) Has fully utilized all other sources of financial aid, including all forms of State aid and Public Law 874 payments, and the State aid contribution per pupil is at least equal to the State average;

(iv) Has at least 50 percent eligible Indian enrollment;

(v) Has clearly identified the educational needs of the students intended to benefit from the contract;

(vi) Has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this part; and

(vii) Will not budget or project a deficit by using contract funds pursuant to this part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

§273.127 Can a contract include funds to support the duties of an Indian Education Committee?

Programs developed or approved by the Indian Education Committee may, at the option of such Committee, include funds for the performance of Committee duties to include:

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(a) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.

(b) Other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

§273.128 How are contracts prioritized?

Priority will be given to contracts:

(a) Which would serve Indian students on or near reservations; and

(b) Where a majority of the Indian students will be members of the Tribe(s) of those reservations.

§273.129 May the BIE Director reimburse a public school district for educating non-resident Indian students?

The BIE 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:

(a) Are members of recognized Indian Tribes;

(b) Do not normally reside in the State in which the school district is located; and

(c) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

§273.130 What is required in the contract proposal for funding?

A contract proposal must be in writing and contain the following:

(a) Name, address, and telephone number of the proposed contractor;

(b) Name, address, and telephone number of the Tribe(s) to be served by the contract;

(c) Descriptive narrative of the contract proposal;

(d) The education plan approved by the Indian Education Committee;

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability;

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address; and



**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(g) Documentation of the requirements for operational support in §273.126(b)(1).

§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 BIE Director no later than February 1 preceding the school year for the contract.

(b) If the BIE Director does not receive the Tribal governing body's notice by the date in paragraph (a) of this section, the BIE Director may contract with the State, public school district, or Indian corporation under this part.

(c) The Tribal governing body has the option to contract with the State, public school district, or Indian corporation.

§273.132 Who will review and approve the contract proposal?

Each approving official within each Bureau Region is authorized to approve the contract(s) submitted by the State, public school district, or Indian corporation to provide services to Indian children within that approving official's region.

§273.133 What is the process for review and decision?

Upon receiving a contract proposal, the approving official will:

(a) Notify the applicant in writing that the contract proposal has been received, within 14 days after receiving the contract proposal.

(b) Review the contract proposal for completeness and request, within 20 days after receiving the contract proposal, any additional information from the applicant which will be needed to reach a decision.

(c) On receiving the contract proposal for operational support, make a formal written determination and findings supporting the need for such funds. In arriving at such a determination, the approving official must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested.

(d) Assess the completed contract proposal to determine if the proposal is feasible and if the proposal complies with the appropriate requirements of the Johnson-O'Malley Act and this part.

(e) Approve or disapprove the contract proposal after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the contract proposal.

(g) If the contract proposal is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to subpart K of this part.

#### §273.134 What is the timeframe for contract decision?

The approving official will approve or disapprove the contract proposal within 90 days after the approving official receives the contract proposal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the applicant.

#### §273.135 Who will negotiate the contract?

After the approving official has approved the contract proposal, the awarding official, assisted by Bureau education personnel, will negotiate the contract.

## Subpart F—Funding Provisions

#### §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.

(a) The funding formula to determine the funding to be distributed to each contractor is the Weight Factor multiplied by the number of eligible Indian students, where the Weight Factor is:

(1) The State average cost per pupil count divided by the national average cost per pupil count; or

(2) A default weight factor of 1.3, if the calculation in paragraph (a)(1) of this section results in a weight factor of less than 1.3.

(b) Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose will be allotted pro rata in accordance with the distribution method outlined in this formula.

(c) For four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018):

(1) Existing contractors will not receive an amount that is less than the amount received for Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act), unless:

(i) The existing contractor fails to submit a complete annual report;

(ii) The Secretary has found that the existing contractor has violated the terms of a contract under this part; or

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(iii) The number of eligible Indian students reported in the annual report has decreased below the number of eligible Indian students served by the existing contractor in Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act).

(2) Paragraph (c)(1)(iii) of this section notwithstanding, no existing contractor will receive an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student that the existing contractor received for Fiscal Year 2018 (the fiscal year preceding the enactment of the JOM Modernization Act).

(d) Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party will receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous year.

#### §273.141 Will funding be prorated?

All monies provided by a contract may be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted, money expended under the contract will be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimis. Such de minimis participation must be approved by the Indian Education Committee.

#### §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 made in advance or by way of reimbursement and in such installments and on such conditions as the BIE Director deems necessary to carry out the purposes of the Act.

#### §273.143 Must other Federal, State, and local funds be used?

(a) Contract funds under this part supplement, and do not supplant, Federal, State and local funds. Each contract must require that the use of these contract funds will not result in a decrease in State, local, or Federal funds that would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) constitutes the only federally funded school lunch program for Indian students in public schools. Where Indian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to §273.119 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible Indian students under §273.112.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

§273.144 Can Johnson-O'Malley funds be used for capital outlay or debt retirement?

In no instance may contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§273.145 How can funds be used for subcontractors?

The Bureau may make contract funds under the Johnson-O'Malley Act available directly only to Tribal organizations, States, public school districts, and Indian corporations. However, Tribal organizations, States, public school districts, and Indian corporations receiving funds may use the funds to subcontract for necessary services with any appropriate individual, organization, or corporation.

§273.146 Can funds be used outside of schools?

Nothing in this part prevents the BIE 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.

§273.147 Are there requirements of equal quality and standard of education?

Contracts with State education agencies or public school districts receiving funds must provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students as long as it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs. Public school districts receiving funds must ensure that Indian children receive all aid from the State, and proper sources other than the Johnson-O'Malley contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance may there be discrimination against Indians or the schools enrolling Indians.

## Subpart G—Annual Reporting Requirements

§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 BIE Director.

§273.151 What information must the existing contracting party provide in the annual report?

Existing contracting parties who receive Johnson-O'Malley funding must submit the following information in the annual report:

- (a) General information about the contractor;

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

- (b) General information about the number and names of the schools;
- (c) The number of eligible Indian students who were served using amounts allocated under the contract during the previous fiscal year;
- (d) An accounting of the amounts and purposes for which the contract funds were expended;
- (e) Information on the conduct of the program;
- (f) A quantitative evaluation of the effectiveness of the contract program in meeting the stated objectives contained in the educational plans; and
- (g) A complete accounting of actual receipts at the end of the fiscal year for which the contract funds were expended.

#### §273.152 When is the annual report due?

All existing contracting parties must submit the annual report to the BIE Director on or before September 15 of each year and covering the previous academic year.

#### §273.153 Who else needs a copy of the annual report?

All existing contracting parties must send copies of the annual reports to the Indian Education Committee(s) and to the Tribe(s) under the contract at the same time as the reports are sent to the BIE Director.

#### §273.154 What will happen if the existing contracting party fails to submit an annual report?

Any existing contracting party that fails to submit the annual report will receive no amounts under this Act for the fiscal year following the academic year for which the annual report should have been submitted.

#### §273.155 How will the existing contracting party know when reports are due?

The BIE Director will provide existing contracting parties with timely information relating to:

- (a) Initial and final reporting deadlines; and
- (b) The consequences of failure to comply.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

§273.156 Will technical assistance be available to comply with the annual reporting requirements?

The Bureau will provide technical assistance and training on compliance with the reporting requirements to existing contracting parties. The Bureau will provide such technical assistance and training on an ongoing and timely basis.

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

(a) Existing contracting parties may request technical assistance and/or training by addressing the request in writing to the BIE Director.

(b) The BIE Director, or designee, will acknowledge receipt of a request for technical assistance and/or training.

(c) No later than 30 days after receiving the original request, the BIE Director will identify a point of contact and begin the process of providing technical assistance and/or training. The BIE Director and requesting contracting party will work together to identify the form, substance, and timeline for the assistance.

§273.158 When should the existing contracting party request technical assistance and/or training?

The existing contracting party is encouraged to request technical assistance and/or training before annual reporting requirements are due in order to avoid the consequences for failure to comply.

§273.159 If the existing contracting party reported a decrease of eligible Indian students, how will funding be reduced?

Except as provided in §273.140(c) and (d) of this part, for four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018) an existing contracting party's funding will not be reduced to a level that is less than the amount of funding per eligible Indian student that the existing contracting party received for Fiscal Year 2017 (the fiscal year preceding the date of enactment of the Johnson-O'Malley Modernization Act).

§273.160 Can the Secretary apply a ratable reduction in Johnson-O'Malley program funding?

If the funds available under the Johnson-O'Malley Act for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive under for the fiscal year, the Secretary will ratably reduce those amounts for the fiscal year.

§273.161 What is the maximum decrease in funding allowed?

Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party may receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

## Subpart H—General Contract Requirements

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

All contracts must contain the following:

- (a) The education plan containing the education programs approved by the Indian Education Committee(s);
- (b) Any formal written determination and findings made by the BIE Director supporting the need for operational support as required by §273.133(c); and
- (c) A provision that State, local, and other Federal Funds will be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in §273.143(b).
- (d) Public Laws 102-477 and 93-638 Self-Governance Tribes must submit their education plan as required by paragraph (a) of this section to the BIE Director for review. The BIE Director will forward copies of the education plans to the 477 office or the Office of Tribal Self-Governance, as appropriate.

### §273.171 Can a contractor make changes to a program approved by an Indian Education Committee?

No program contracted may be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Indian Education Committee.

### §273.172 May State employees enter Tribal lands, reservations, or allotments?

In those States where Public Law 83-280 (18 U.S.C. 1162 and 28 U.S.C. 1360) do not confer civil jurisdiction, State employees may be permitted to enter upon Indian Tribal lands, reservations, or allotments in an official capacity in connection with a contract under this part if the duly constituted governing body of the Tribe adopts a resolution of consent for the following purposes:

- (a) Inspecting school conditions in the public schools located on Indian Tribal lands, reservations, or allotments; or
- (b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in loco parentis.

### §273.173 What procurement requirements apply to contracts?

States, public school districts, or Indian corporations wanting to contract with the Bureau must comply with the applicable requirements in the Federal Acquisition Regulations at 48 CFR part 1.

### §273.174 Are there any Indian preference requirements for contracts and subcontracts?

(a) Any contract made with a State, public school district, or Indian corporation for the benefit of Indian students must require that the contractor, to the greatest extent feasible:

(1) Give preference in and opportunities for employment and training to Indians in connection with the administration of such contract(s); and

(2) Give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(b) All subcontractors employed by the contractor must, to the extent possible, give preference to Indians for employment and training and must include in their bid submission a plan to achieve maximum use of Indian personnel.

### §273.175 How will a Tribal governing body apply Indian preference requirements for contracts and subcontracts?

A Tribal governing body may develop its own Indian preference requirements for its contracts and subcontracts.

### §273.176 May there be a use and transfer of Government property?

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the Tribal government if such property is located on a reservation.

(b) In carrying out a contract, the BIE Director may, with the approval of the Tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within its jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee must insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire,



**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

rain, windstorm, vandalism, snow, or tornado, the insurance money collected may be expended only for repair or replacement of property. Otherwise, insurance proceeds must be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the BIE Director, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee will maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

#### §273.177 Who will provide liability and motor vehicle insurance?

(a) States, school districts, and Indian corporations must obtain public liability insurance under contracts entered into with the Bureau, unless the Bureau approving official determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of how small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the approving official, liability and motor vehicle insurance will not be required.

#### §273.178 Are there contract recordkeeping requirements?

A contractor will be required to maintain a recordkeeping system that allows the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.). Such a record system must:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner that will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data;

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(b) Reflect the amounts and sources of funds other than Bureau contract funds that may be included in the operation of the contract;

(c) Provide for the creation, maintenance, and safeguarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts; and

(d) Provide for the orderly retirement of permanent records in accordance with Department Records Schedule (Bureau of Indian Affairs (075)), when there is no established system set up by the State, public school district, or Indian corporation.

§273.179 Are there contract audit and inspection requirements?

(a) During the term of a contract and for three (3) years after the project or undertaking is completed, the BIE Director, or any duly authorized representative, must have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records that, in the BIE Director's or representative's opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor is responsible for maintaining invoices, purchase orders, canceled checks, balance sheets and all other documents relating to financial transactions in a manner that will facilitate auditing. The contractor is responsible for maintaining files of correspondence and other documents relating to the administration of the contract, properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds is responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned must be further maintained until a final determination is made on the questioned expenditures.

(e) The contractor and local school officials must make available to each member of the Indian Education Committee and to members of the public upon request: all contracts, non-confidential records concerning students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract program in the preceding and current years. The contractor or local school official must provide, free of charge, single copies of such documents upon request.

§273.180 Are there disclosure requirements for contracts?

(a) Unless otherwise required by law, the Bureau may not place restrictions on contractors that will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor must make all reports and information concerning the contract available to the Indian people that the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

- (i) Specifically required by statute or Executive Order to be kept secret;
  - (ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis; or
  - (iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy; and
- (2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.
- (c) A request to inspect or copy reports and information must be in writing and reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within 10 working days after receiving the request, the contractor must determine whether to grant or deny the request and immediately notify the request of the determination.
- (d) The time limit for making a determination may be extended up to an additional 10 working days for good reason. The requester must be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§273.181 Are there Privacy Act requirements for contracts?

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor must comply with subpart K of 43 CFR part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

- (1) To continue maintaining systems of records declared by the Bureau to be subject to the Privacy Act;
- (2) To make such records available to individuals involved;
- (3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains, and in accordance with the exceptions listed in 43 CFR 2.231;
- (4) To establish a procedure to account for access, disclosures, denials, and amendments to records; and
- (5) To provide safeguards for the protection of the records.

(b) The contractor may not, without prior approval of the Bureau:

- (1) Discontinue or alter any established systems of records;
- (2) Deny requests for notification or access of records; or
- (3) Approve or deny requests for amendments of records.

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(c) The contractor may not establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(d) The contractor may not collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(e) The contractor is subject to 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions.

#### §273.182 Are there penalties for misusing funds or property?

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he or she will be subject to the following penalties:

(a) If the amount involved does not exceed \$100, person(s) will be fined not more than \$1,000 or imprisoned not more than one (1) year, or both.

(b) If the amount involved exceeds \$100, person(s) will be fined not more than \$10,000 or imprisoned for not more than two (2) years, or both.

#### §273.183 Can the Secretary investigate a potential Civil Rights Act violation?

In no instance may there be discrimination against Indians or schools enrolling Indians. When informed by a complainant or through its own discovery that a possible violation of title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds, the Secretary will, in accordance with Federal requirements, notify the Department of Education of the possible violation. The Department of Education will conduct an investigation into the matters alleged. If the report of the investigation conducted by the Department of Education discloses a failure or threatened failure to comply with this part, and if the non-compliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law.

### Subpart I—Contract Renewal, Revisions, and Cancellations

#### §273.191 How may a contract be renewed for Johnson-O'Malley funding?

An awarding official will notify the existing contracting party in advance of the contract's expiration and ask if the existing contracting party wants to renew the contract. The renewal must be in writing from the existing contracting party and the awarding official.

#### §273.192 What is required to renew a contract?

(a) The existing contracting party seeking to renew a contract will submit to the awarding official:

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

- (1) A written request to renew;
  - (2) The current education plan approved by the Indian Education Committee, if expired;
  - (3) A scope of work; and
  - (4) A budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.
- (b) The awarding official will send the existing contracting party an acknowledgment letter and specify if any information is required to complete renewal package.
- (c) The approving official will approve or disapprove a renewal within 90 days after the approving official receives the renewal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the existing contracting party.

§273.193 [May a contract be revised or amended?](#)

Any contract may be revised or amended as deemed necessary to carry out the purposes of the program being contracted.

- (a) A contractor may submit a written request for a revision or amendment of a contract to the awarding official.
- (b) The written approval of the Indian Education Committee is required if the contract revision or amendment will alter a program that has been approved by the Indian Education Committee.

§273.194 [Does the Indian Education Committee have authority to cancel contracts?](#)

The Indian Education Committee may recommend to the BIE Director, through the appropriate awarding official, cancellation or suspension of a contract(s) that contains the program(s) approved by the Indian Education Committee, if the contractor fails to permit such Committee to exercise its powers and duties.

§273.195 [May a contract be cancelled for cause?](#)

- (a) Any contract may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties.
- (b) Before cancelling the contract, the BIE Director will provide the contractor with written notice, including:
  - (1) The reasons why the Bureau is considering cancelling the contract; and

**Johnson O'Malley**  
Part 273 of Title 25, Code of Federal Regulations  
<https://www.ecfr.gov>

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice will give the reasons for the cancellation and the right of the contractor to appeal under subpart K of this part.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) that led to the cancellation have been remedied before it will be considered for another contract.

## Subpart J—Responsibility and Accountability

### §273.201 What is required for the Secretary to meet his or her reporting responsibilities?

(a) The Secretary has the following reporting responsibilities to the Committee on Indian Affairs in the Senate; the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate; the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives:

(1) In order to provide information about the Johnson-O'Malley Program, the Bureau must obtain from all existing contracting parties the most recent determination of the number of eligible Indian students served by each contracting party.

(2) The Bureau will make recommendations on appropriate funding levels for the program based on such determination.

(3) The Bureau will make an assessment of the contracts under this Act.

(b) The Bureau will make such reports as described in paragraph (a) of this section publicly available.

### §273.202 Does this part include an information collection?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-0193. Responses is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

## Subpart K—Appeals

### §273.206 May a contract be appealed?

(a) A contractor may appeal:

- (1) An adverse decision or action of the Bureau regarding a contract; or
- (2) A decision to cancel a contract for cause.

(b) The Secretary encourages contractors to seek all means of dispute resolution before a formal appeal.

### §273.207 How does a contractor request dispute resolution?

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

(a) The Bureau has in place an alternative dispute resolution (ADR) process.

(1) The ADR process is intended to be a supplement to, and not a replacement for, the normal appeal process.

(2) Participation as a complainant in the ADR process is voluntary.

(3) Should a contractor participate in an ADR process, the pre-complaint process may extend to 90 days.

(b) The ADR process may result in an informal resolution of the complaint;

(c) If the ADR process does not result in an informal resolution of the complaint, the contractor still has the right to continue to pursue an appeal.

### §273.208 How does a Tribal organization request an appeal?

A Tribal organization may request an appeal pursuant to part 900 or 1000 of this chapter, as applicable.

### §273.209 How does a State, public school district, or an Indian corporation request an appeal?

The State, public school district, or an Indian corporation may request an appeal by filing an appeal with the Civilian Board of Contract Appeals under the Contract Disputes Act, 41 U.S.C. 7101-7109, no later than 90 calendar days after the date the contractor receives the decision.