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REPORT TO THE CONGRESS

Administration Of Program For Aid To Public School Education Of Indian Children Being Improved

B-161468

Bureau of Indian Affairs
Department of the Interior

***BY THE COMPTROLLER GENERAL
OF THE UNITED STATES***

MAY 28, 1970



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This is our report entitled "Administration of Program for Aid to Public School Education of Indian Children Being Improved." The program is administered by the Bureau of Indian Affairs, Department of the Interior. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Secretary of the Interior.

A handwritten signature in cursive script that reads "James B. Stacks".

Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
JOM	Johnson - O'Malley

D I G E S T

WHY THE REVIEW WAS MADE

Under the Johnson-O'Malley program, the Bureau of Indian Affairs, through contractual arrangements with States and school districts, provides funds toward the cost of educating Indian children from reservations enrolled in public schools for:

- support of normal maintenance and operations of public schools;
- special services, such as special teachers and counselors, lunches, extra books and supplies, fees, and other services that are not furnished by school districts to all children; and
- State administrative and supervisory services support.

The program provides funds also for the education of Navajo children who are domiciled in Federal dormitories and who attend public schools.

The General Accounting Office (GAO) reviewed the program because in another review GAO had noted that some program payments were not being properly computed.

The review was conducted in Arizona, New Mexico, and South Dakota, where most of the program funds were being spent.

FINDINGS AND CONCLUSIONS

The program is based on the concept that education is a responsibility of the State and that Indian children from reservations are citizens of the State where the reservation is situated and are entitled to the same public education as is provided to other children in that State. The Bureau considers the program to be supplemental in that the funds are to be limited to school districts which, after exhausting all other sources of revenue including other Federal aid, are unable to operate the district schools at adequate State standards. (See p. 10.)

GAO believes that in Arizona the Bureau has not effectively implemented this concept. In Arizona certain program funds for normal maintenance and operations of public schools were distributed on a formula or entitlement basis which did not consider the ability of the school districts, the counties, and, to some extent, the State to meet all or a portion of the costs of these operations. As a result, funds were provided to counties and school districts in Arizona where needs may not have existed and the funds may not have benefited Indian children from reservations, but rather, may have reduced the local cost of educating all other children attending the public schools. (See p. 16.)

GAO believes that, to ensure that the Federal funds under the program are provided to the areas of greatest need, the Bureau should require the State, counties, and school districts to demonstrate that financial needs exist. (See p. 17.)

Under the Johnson-O'Malley program, the Bureau was paying the full cost of educating Navajo Indian children living in Federal dormitories while attending public schools. GAO's review indicated that most of the children attending school in Arizona and in one school district in New Mexico were residents of the State; included among these children were some who were residents of the county or school district in which they attended public school. Additionally, in computing the amount of money distributed to school districts in New Mexico under the program, no reduction was made for the State aid received by the school districts for the Indian children participating in the dormitory program. GAO believes that the school districts, counties, and States should share in the cost of educating these students. Assistance should be limited to meeting the financial needs of the districts that cannot be met from other revenue sources available for education. (See p. 26.)

GAO found that the Bureau had delegated the administration of the program to the States without (1) providing sufficient guidance for administering the program and (2) systematically monitoring State agency operations through adequate reporting and reviews. GAO found instances in each of the three States where the distribution of Federal funds to the school districts appeared to have been improper or where the Bureau could not be sure that the funds had been used for their intended purpose. For example:

- The South Dakota Division of Indian Education may not have evaluated adequately the need for \$245,000 given to one school district. (See p. 34.)
- A school district in New Mexico had received \$407,000 which was intended to provide special services and programs above those provided by the State for all its students, but Bureau, State, and school officials could not identify the special use that had been made of these funds. (See p. 37.)

- Program payments had been made to certain Arizona school districts for operating expenses on the basis of the districts' expenditures which included costs of special services provided to Indian children for which separate program payments also had been made. (See p. 41.)

RECOMMENDATIONS OR SUGGESTIONS

The Secretary of the Interior should require the Bureau to

- furnish program funds on the basis of demonstrated financial need (see p. 24),
- encourage State and local participation in the cost of educating Navajo children who live in Federal dormitories (see p. 28),
- implement additional methods of supervision and control over the distribution and use of funds by the school districts (see p. 42).

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department commented that steps being taken would provide improved supervision and control necessary in administering the program. These steps include:

- Revising the contractual agreements with States to require that, to be eligible for assistance, school districts have a tax levy at least equal to that of the average for the State. (See p. 24.)
- Revising contractual agreements with States to strengthen eligibility requirements and provide more adequate guidelines for program participation. (See p. 43.)
- Instructing Bureau and State officials to study and review district budget requests and to make careful assessments of the State, county, and local contributions in determining Federal assistance needed. (See p. 43.)
- Developing guidelines for budgeting, reporting, program review, and evaluation. (See p. 43.)
- Auditing by the Department to supplement the evaluations of the State administration of the program. (See p. 43.)

Although not yet implemented, the Bureau indicated that the dormitory agreements should be renegotiated with a view to a complete phaseout of these agreements within the shortest time possible and that the State and local districts should assume responsibility for sharing the cost of educating their resident students. (See p. 28.)

GAO has not reviewed Department plans in detail, but it believes that these plans represent steps toward major improvements in the operations of the program. The effectiveness of the improvements, however, can be fully assessed only after their implementation, and GAO plans to make further inquiries into the effectiveness of the Department's corrective actions during its continuing reviews of Department activities.

Officials of the three States covered in the GAO review generally did not disagree with GAO's findings except that the Arizona State Superintendent of Public Instruction stated the belief that little was to be gained at that time by reopening negotiations of the contracts pertaining to the dormitory program. Arizona and New Mexico State officials expressed the belief that the weaknesses noted in the report had been corrected. (See pp. 25, 29, and 44.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report is being issued to the Congress because of its general interest in Indian education.

CHAPTER 1

INTRODUCTION

The General Accounting Office has made a review of the policies, procedures, and practices of the Bureau of Indian Affairs for providing financial assistance under the act of April 16, 1934, as amended (25 U.S.C. 452), known as the Johnson-O'Malley (JOM) Act, to public schools educating Indian children. In our review, we examined into the administration of the JOM program in the States of Arizona, New Mexico, and South Dakota. The scope of our review is described on page 46.

The act authorized the Secretary of the Interior to enter into contracts with any State or political subdivision thereof for the education, medical attention, agricultural assistance, and social welfare of Indians. The act also authorized the Secretary to make such rules and regulations as he considered necessary and proper to achieve the purposes of the act.

The policies of the Secretary of the Interior with respect to the education of Indians in public schools are set forth in the Code of Federal Regulations (25 CFR 33). The regulations provide that JOM financial assistance for the public school education of Indian children from reservations be based on the need of a school district for supplemental funds to maintain an adequate school after evidence that it had made a reasonable tax effort and had exhausted all other sources of revenue. The regulations provide also that, when school districts are eligible for Federal impact funds under Public Law 874, Eighty-first Congress (64 Stat. 1100), as amended August 12, 1958 (72 Stat. 559), supplementary assistance for the education of Indian children under the JOM program be limited to that assistance which is required to meet educational problems under extraordinary or exceptional circumstances.

Some States have assumed financial responsibility for the education of Indian children living on reservations within their respective States on the same basis as for other federally connected State residents. Other States that have

reservation Indian children enrolled in their public school systems receive financial assistance under the JOM program.

In fiscal year 1967, the Bureau entered into contracts with 14 States and with individual school districts in three other States to provide financial aid to the States and the school districts in accordance with specific conditions under State plans approved by the Bureau. In addition, the Bureau entered into contracts with the State of Arizona and with certain school districts in New Mexico and Utah for the purpose of providing financial assistance for the education of about 2,300 Indian children from reservation homes who live in Bureau-operated dormitories in seven towns in Arizona, New Mexico, and Utah, on the periphery of the Navajo Reservation, and in Albuquerque, New Mexico. This aspect of the JOM program is commonly known as the peripheral dormitory program.

An interdepartmental report, prepared by representatives of the Departments of the Interior and Health, Education, and Welfare, pointed out that from 1960 Indians had been the beneficiaries of many new Federal programs which had come into being as a result of increased national awareness of the problems of disadvantaged citizens. The report also stated that:

"The principal programs of the U.S. Office of Education from which Indians derive direct benefit are those which provide assistance to local school districts enrolling large numbers of students from federally impacted areas. (For the purpose of these acts Indian reservations have been classified as federally impacted areas.) Public Law 81-874 provides financial assistance to such districts for school operation, and Public Law 81-815 provides financial help for school construction."

* * * * *

"Most U.S. Office of Education programs involve grants to State and local educational agencies. It is assumed that large numbers of Indian children in public schools have benefited from

services provided through Federal programs such as titles I, II, and III of the Elementary and Secondary Education Act."

The following table shows, for fiscal years 1967-69, the JOM financial assistance available to the three States included in our review and the total JOM assistance available for the education of Indian children in public schools. The table indicates that most of the program funds were spent in the three States.

	<u>1967</u>	<u>1968</u>	<u>1969</u>
	——(000 omitted)——		
JOM financial assistance available to:			
Arizona	\$3,581	\$4,592	\$ 4,083
New Mexico	2,003	2,330	2,372
South Dakota	<u>641</u>	<u>630</u>	<u>754</u>
Total	<u>\$6,225</u>	<u>\$7,552</u>	<u>\$ 7,209</u>
Total JOM assistance to participating States	<u>\$9,510</u>	<u>\$9,941</u>	<u>\$11,538</u>

In addition, these three States received other Federal funds in support of public school education. For example, we estimate that in 1967 the three States received \$5.5 million of Federal impact funds provided under Public Law 874 for the education of eligible Indian children, and local school districts receiving JOM assistance also received \$10 million of Federal funds under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241a).

The Secretary of the Interior delegated authority for the negotiation and administration of contracts under the JOM program to the Commissioner of Indian Affairs who, in turn, redelegate the authority to the Directors of the Bureau's various area offices.

The JOM program in the States of Arizona, New Mexico, and South Dakota is administered by Division of Indian

Education offices within the department of each State that is responsible for public school education.

The principal officials of the Department of the Interior and the Bureau of Indian Affairs responsible for the administration of activities discussed in this report are listed in appendix V.

CHAPTER 2

NEED TO REVISE BASIS FOR

DISTRIBUTING FEDERAL FUNDS

TO LOCAL AGENCIES EDUCATING INDIAN CHILDREN

The Bureau's JOM program for the public school education of Indian children is based on the concept that education is a State responsibility and that Indian children from reservation homes are citizens of the State which embraces the reservation land and have a right to the same free public education that the State provides for other children. The Bureau, in applying its concept, recognizes the responsibility assumed by the Federal Government for financially assisting local agencies educating children in Federal impact areas and considers its JOM financial assistance program to be supplemental in nature and limited to meeting financial needs after all other available resources, including Federal impact funds, have been given appropriate consideration.

We believe that the Bureau had not effectively implemented this program concept. Under the Bureau's contractual arrangements with the State of Arizona, JOM financial assistance provided to school districts for operating costs were based on a formula or entitlement basis which did not consider the ability of the school districts, the counties, and, to some extent, the State to meet all or a portion of these costs. Also under contractual arrangements with the State of Arizona and with various school districts in New Mexico, the payments were for the estimated per capita cost of educating the Navajo children without any reduction for financial support which school districts received from the State and local governments.

We believe that the Bureau should apply its basic concept of the JOM program uniformly and should provide assistance under that program on a supplemental-financial-need basis. Providing assistance on that basis would reduce the amount of Federal assistance to the extent that State, counties, and school districts are able to pay the cost of

educating Indian children from reservation homes without creating an undue financial hardship on local taxpayers.

Our detailed comments are set forth below:

INTENT OF THE PROGRAM

Although the law does not spell out the congressional intent of the JOM legislation, the Bureau has held that JOM financial assistance for the education of Indian children is supplemental in nature and should be limited to meeting financial needs after all other resources have been exhausted. We have been informed by the Bureau that this policy was founded upon the belief that the responsibility for educating Indian children residing on Indian reservations vests in the State which embraces the reservation lands and that Indian children, as citizens of the State, are entitled to the same free public education that is provided to any other citizen children without any legal obligation on the Federal Government to pay for this service.

The legislative history of the JOM Act does not specify the criteria to be followed in providing financial assistance under the act. Rather, the act authorizes the Secretary of the Interior to enter into contracts with States for the education of Indians and to make such rules and regulations as may be necessary to carry out these contracts.

In 1950, the Congress enacted Public Law 874, to provide for Federal financial assistance to local educational agencies upon which the Federal Government had placed a financial burden because

- local revenues of such agencies had been reduced as a result of acquisition of real property by the United States, or
- such agencies provided education for children residing on Federal property, or
- such agencies provided education for children whose parents were employed on Federal property, or

--there had been a sudden and substantial increase in school attendance as a result of Federal activities.

Under Public Law 874, the financial assistance was not to be provided for Indian children eligible for educational services provided with funds furnished by the Bureau. Subsequent amendments to the act in 1953, 1955, and 1958, however, extended its benefits to local agencies educating JOM students.

In commenting on the proposed 1958 amendment, the House Committee on Education and Labor in House Report 1532, dated March 19, 1958, stated:

"H.R. 11378 makes a significant change in the treatment of school districts educating Indian children, by enabling them to accept payments under Public Law 874 without forfeiting the right to obtain payments under the Johnson-O'Malley Act for special services and for meeting educational problems under extraordinary or exceptional circumstances. Under present law, the Governor of each State must make a determination, in advance, whether all schools in a particular State shall seek assistance through Public Law 874 or the Johnson-O'Malley Act. H.R. 11378, in amending Public Law 874 in this connection, prevents any duplicate payments for the same services."

The regulations promulgated by the Secretary of the Interior for carrying out the JOM program, which are set forth in 25 CFR 33.4, provide, in part, that:

"(b) The program will be administered to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district and relatively large numbers of Indian children which create situations which local funds are inadequate to meet. This Federal assistance program shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable

tax effort and receipt of all other aids to the district without reflection on the status of Indian children.

"(c) When school districts educating Indian children are eligible for Federal aid under Public Law 874, 81st Congress (64 Stat. 1100), as amended, supplemental aid under the act of April 16, 1934, supra, will be limited to meeting educational problems under extraordinary or exceptional circumstances."

The Bureau's Indian Affairs Manual provides that, to be eligible to receive financial assistance under the JOM program, a school district (1) have eligible Indian children attending its schools, (2) maintain standards of educational services equivalent to those required by the State, (3) levy school taxes at a rate not less than the average for all similar-type school districts in the State, or otherwise show that local tax effort is all that can be reasonably required because of State constitutional tax limitations or other factors, and (4) show that tax-exempt Indian-owned land within the district is creating a financial burden that justifies assistance under the approved State plan. The manual further provides that:

"When school districts are eligible for Federal aid under Public Law 874, *** as amended, to meet partial costs of normal school operation, further supplemental aid under the Johnson-O'Malley program will be limited to meeting educational problems under extraordinary and exceptional circumstances including special services to Indian children that may best be met under an education contract. Such circumstances will be deemed to exist:

"A. In extreme hardship districts educating a substantial number (or percent) of Indian children and all sources of revenue including entitlements under all applicable sections of Public Law 874, as amended, are insufficient to operate the district schools at adequate State

standards, special consideration may be given on an individual district basis.

- "B. In districts that have very unusual problems in financing transportation and non-assistance would defeat the Bureau objective of an orderly transfer of Indian children to public schools.
- "C. When program funds for administration and supervision are justified for use by the State Department of Education to carry out Bureau objectives, supplemental aid may be provided on an interim basis.
- "D. When there are no other resources or local agencies to provide the cost of special services to needy Indian children. Assistance is limited to the cost of services not furnished by the district to all children and which are normally paid by the parent, such as school lunches, books, supplies, summer tuition and activity fees."

During the 1969 appropriation hearings before the Subcommittee on Department of the Interior and Related Agencies, House Committee on Appropriations, Bureau officials were asked to place in the record the Bureau's legal position concerning the responsibility for educating the Navajo Indian children on the reservation and for JOM payments to Arizona. The information that the Bureau inserted in the record reads, in part, as follows:

"*** the following statement we prepared in 1955 *** still applies as our position has not changed."

* * * * *

"EDUCATION A STATE RIGHT AND RESPONSIBILITY

"Thus the Bureau of Indian Affairs takes the position that the Indian child, as a citizen of the State, has a right to the same education program as the State provides for other citizen children. This is in keeping with the basic concept in this country; namely, that education is a responsibility of the State. The State of Arizona in article XX, section 7 of its constitution, has the same legal basis for this concept through 'Provision shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all children of the State and be free from sectarian control, and said schools shall always be conducted in English.'"

* * * * *

"*** This aid is provided on the basis of need. This basis of providing Federal assistance has the approval of the Congress, indicated in Senate Report 1941 which reads as follows:

"*** The committee commends the position taken by the Indian Bureau that Indian children, by virtue of their citizenship in a State and residence in a State and district, are entitled to the same free public education as rendered to any other citizen children, without any legal obligation resting on the Federal Government to pay tuition for this service. However, the committee also recognizes that the presence of large blocks of nontaxable Indian property within a local district, or unusually large numbers of Indian children, may create a situation which local funds are inadequate to meet. The committee therefore endorses the present policy of the Indian Bureau of recommending Federal financial assistance to these districts, based on evidence that the district is taxing itself to the maximum, and is still in need of supplementary funds in order to maintain an adequate school."

During its annual budget presentations before the congressional appropriations committees, the Bureau has repeatedly stated that JOM funds were used to assist school districts in which the tax-free status of Indian lands had created "unmanageable financial problems after all other financial resources to the district have been exhausted."

The Bureau stated also that JOM funds were provided to school districts (1) which did not qualify for Federal impact funds under Public Law 874, (2) located on Indian reservations, which had little or no local tax resources and which were unable to operate at acceptable State standards without assistance over and above their entitlement under Public Law 874, (3) for other extraordinary or exceptional circumstances, after all other aids had been fully exhausted, and (4) to meet the full per capita costs for education of Navajo children living in Federal dormitories in school districts of which they were not residents.

FINANCIAL ASSISTANCE FOR NORMAL
PUBLIC SCHOOL OPERATIONS IN ARIZONA

The Bureau's objective under the JOM program is to limit financial assistance for the maintenance and operation of schools in Indian-impacted areas to those districts which, after exhausting all other available sources of revenues including other Federal aid, are still unable to operate their schools at acceptable State standards without additional assistance. We found, however, that the Bureau, instead of specifically determining whether a financial need existed, had determined its participation in the costs of maintenance and operation of certain schools in the State of Arizona on the basis of a formula set forth in the State plan the Bureau had approved.

The formula method for determining the amount of Federal financial assistance under the JOM program essentially eliminated any consideration of county and school district support of the school operating costs of educating eligible Indian children and has resulted in the JOM program's being administered on an entitlement basis rather than on a demonstrated- or actual-need basis.

We believe that in Arizona the basis provided for determining the amount of Federal assistance under the JOM program did not conform with the Bureau's concept of the program because it did not require that the amount of assistance to a school district be limited to the amount necessary to meet its financial needs after exhausting all available sources of revenue.

During our review of the JOM financial assistance program for the State of Arizona, we found instances where JOM funds had been provided through the State to counties and school districts where, in our opinion, a need may not have existed and where the JOM funds may not have benefited Indian children from reservations, but rather, reduced the local costs of educating non-JOM children attending public schools. Our review, however, was directed primarily to evaluating the Bureau's determinations, and we did not attempt to independently establish whether a justifiable financial need did, in fact, exist.

We believe that, to assure that financial assistance under the JOM program is channeled into areas where the greatest need exists, the Bureau, before providing JOM assistance, should require the State, counties, and school districts to demonstrate that a financial need exists.

The Arizona State plan for fiscal year 1967 provided for the JOM payment to be equivalent to the per capita cost of educating children who are of one fourth or more Indian blood and who reside on tax-exempt Indian reservation land, which cost, after deducting the financial assistance received under Public Law 874, would ordinarily be paid for by local and county taxes.

Pursuant to the State plan, JOM financial assistance, amounting to \$3.8 million, was provided in fiscal year 1967 through the State Department of Public Instruction. Under the formula segment of the plan, \$2.2 million was for school districts and about \$279,000 was for counties.

Under the formula, the amount of the financial assistance to each school district was computed by multiplying the expected average daily attendance of eligible Indian children by the per student cost for the preceding school year. The school district's per student cost for the preceding year was computed on the basis of the school district's net operating costs (excess of expenditures over revenues from sources outside the district) and the average daily attendance of pupils as shown in reports by the State Department of Public Instruction. The revenues from outside the district for each school district included (1) State and county aid-to-education payments except those portions of the payments designated as tax reduction payments (State and county payments of \$12.50 and \$7.50 per student, respectively) and (2) Federal financial assistance payments received under Public Law 874 and Public Law 89-10.

JOM assistance was provided also to those counties in which the average daily attendance of Indian children equaled or exceeded 3 percent of the total average daily attendance of all public school children of the county. Specifically, the eligible counties were provided (1) an amount equal to the payments to school districts for the education of Indian children from funds raised by county taxes and

(2) a portion of the payments to the Teacher Retirement Fund computed on the basis of the ratio of the number of eligible Indian children in attendance at schools in the county to all children attending county schools.

The Arizona Revised Statutes provided for payments to local school districts of \$20 a student--\$12.50 by the State and \$7.50 by the county--for the reduction of school district taxes. These payments were based on the average daily attendance of public school children in the county, including Indian children eligible for JOM-payment purposes. These payments, however, were not included as revenues from sources outside the school district in determining the amount of JOM financial assistance (see p. 17) and as a result did not financially assist the education of eligible Indian children, but rather, reduced the school districts' costs for the education of other than eligible Indian children. In the case of the county payments to the school districts of \$7.50 a student, the payments were actually provided under the JOM program.

Of greater significance is the fact that the formula for computing the JOM financial assistance for the education of eligible Indian children essentially eliminates the need for the counties and school districts to support the cost of educating these Indian children. We believe that a county or a school district should share in the cost of educating eligible Indian children to the extent that it does not impose an undue hardship on the taxpayers. Such sharing in the responsibility for educating Indian children would, in our opinion, be appropriate, particularly in those cases where tax revenues are derived from improvements on Indian lands.

Indications that local tax efforts
could be increased

If the Arizona State plan had provided for making JOM financial assistance available to school districts and counties on a supplemental-need basis, the JOM assistance provided would have been reduced to the extent that the local taxing entity would have been able to support the education of Indian children through taxes without causing an undue hardship to the taxpayers.

As provided for in the Department's regulations, the JOM program should be based on the need of the school district for supplemental funds to maintain an adequate school after evidence that a reasonable tax effort had been made. Our review, however, indicated that the Bureau had not been requiring the State or the school districts to demonstrate that all reasonable tax efforts had been made and that a need still existed for supplemental funds.

To obtain some indication as to whether the school districts that received JOM financial assistance could have reasonably increased their tax revenues, we compared the tax rates of those school districts with the weighted average tax rate for all school districts in the State--a method of evaluation similar to the one provided for in the Bureau's operating instructions.

In Arizona, property values for tax purposes generally were not uniformly established, because the assessors' valuation practices varied from county to county. A report by the Division of Appraisal and Assessment Standards, State of Arizona, dated May 16, 1966, showed that taxes were levied against several classes of property and that the ratio of assessed value to full cash value varied between classes of property and within each class of property varied from county to county. Accordingly, our comparison of a school district's tax rates with the average school district tax rate in the State does not result in a precise measure of the tax effort made by a school district.

Our review showed that JOM funds in Arizona during school year 1966-67, totaling \$1,506,000, had been distributed to 31 school districts that had tax rates below the

average tax rate for all similar school districts in the State. If these school districts could have raised revenues on the basis of the average rate for all school districts in the State without causing an undue financial hardship to the taxpayers and could have applied the revenues to finance the cost of educating all students, the JOM financial assistance provided for could have been reduced by \$363,000. Under such circumstances, at least 20 of these school districts would not have needed JOM assistance to meet their operational costs because the additional revenue would have more than offset the financial assistance under the JOM program.

We believe that the following examples illustrate the need for the Bureau to make determinations as to whether school districts are making reasonable tax efforts to raise revenues for operating their school systems before they request JOM financial assistance.

1. A school district that received JOM funds of \$58,779 for school year 1966-67 had a tax rate of \$0.527 per \$100 of assessed valuation compared with the State's average school district rate of \$2.681. An increase in the school district's tax rate to \$1.55 would have resulted in sufficient additional revenues to finance its school operating costs and to eliminate the need for JOM funds.

2. A school district that received JOM funds amounting to \$2,573 for school year 1966-67 had a tax rate of \$0.109 per \$100 of assessed valuation compared with the State's average school district rate of \$2.681. An increase in the school district's tax rate to \$0.207 would have resulted in sufficient additional revenues to eliminate the need for JOM funds.

3. A school district that had a tax rate of \$0.867 per \$100 of assessed valuation compared with the State's average school district rate of \$2.681 received JOM funds of \$2,482 for school year 1966-67. An increase in the school district's tax rate to \$0.881 would have resulted in sufficient additional revenues to eliminate the need for JOM funds.

4. A school district that had a tax rate of \$0.332 per \$100 of assessed valuation received JOM funds of \$4,085 for school year 1966-67. An increase in the tax rate to \$0.538 would have brought in sufficient additional revenues to eliminate the need for JOM funds.

5. A school district that had a tax rate of \$0.291 per \$100 of assessed valuation received JOM funds of \$9,693 for school year 1966-67. An increase in its tax rate to \$0.669 would have resulted in sufficient additional revenues to eliminate the need for JOM funds.

Some indication of the potential for school districts that are receiving JOM financial assistance to increase their tax efforts is indicated by the substantial variance in the tax rates of school districts within the same county. For example, in one county for school year 1966-67, we noted the following variations in property tax rates levied on elementary school district taxpayers both by the district and by all taxing entities within the county.

<u>School district</u>	<u>JOM assistance for cost of operation</u>	<u>Elementary school district tax rate per \$100 of assessed valuation</u>	<u>Total tax rate per \$100 of assessed valuation</u>
A	\$ 2,573	\$0.1092	\$ 5.1681
B	58,779	0.5267	5.5856
C	239,641	1.0711	6.1300
D	382,496	1.1560	6.2149
E	5,420	5.1549	10.2138
F	442,702	5.3141	10.3730

We noted also that the distribution of JOM funds to school districts during school year 1966-67 may not have resulted in limiting assistance to only those school districts that needed assistance to support an adequate educational program. For example, one district had 32 eligible Indian children from reservation homes in attendance at public schools that had a total enrollment of 28,500 children. This school district received JOM assistance of about \$10,700 for school operating costs, although the attendance

of the 32 Indian children represented only one tenth of one percent of the total number of children in attendance. The school district's total operating expenditures amounted to \$17.5 million. It appears to us that the school district could not have incurred the degree of financial hardship contemplated by the objectives of the JOM program.

Although the amount of JOM funds distributed to school districts such as the one described above may not be large, we believe that a revision of the State plan to limit JOM assistance to unmet school needs, after the districts exhaust all other resources, would permit the channeling of JOM assistance to those school districts in greatest need. The present State plan permits some school districts to receive assistance although the financial impact attributed to Indian students in attendance at schools may not be significant.

We also found indications that certain Arizona counties receiving JOM assistance might have been able to increase their tax efforts without causing an undue hardship to the taxpayers. For example, of the total JOM funds paid to counties in reimbursement of aid-to-education payments to school districts and of teacher retirement benefits, about \$225,000 was paid to five counties that had tax rates below the average tax rate for all counties in the State. For example, one county that received reimbursements totaling \$39,457 had a tax rate of \$0.841 per \$100 of assessed valuation compared with the average rate of \$1.662 for all counties in the State. An increase in the county's tax rate to \$0.912 would have resulted in sufficient additional revenues to eliminate the need for JOM assistance.

Taxes collected on improvements on Indian reservation lands

During our review we noted that in several school districts a significant portion of district and county tax revenues was being derived from taxable improvements on Indian reservation lands. Some of these school districts had relatively low tax rates. For example, one school district that received JOM assistance of \$239,641 for school year 1966-67 had a tax base that consisted entirely of improvements on Indian lands. These improvements had an

assessed valuation of about \$3.9 million and were taxed at the rate of \$1.071 per \$100 of assessed valuation. This rate was relatively low compared with the average district rate of \$2.681 for similar school districts for the same period.

Under the Arizona plan, such school districts limit their taxes to the amounts needed for the education of non-JOM students, regardless of the location of the property comprising the district's tax base. In situations such as the one cited above, where the taxable improvements are located on reservation lands, it appears especially appropriate for JOM students residing on the reservation to benefit from revenues resulting from taxes levied on such improvements. Furthermore, in our opinion an increase in the school district's tax rate to finance a part of the cost of educating JOM students probably would not have created hardship. Essentially all the improvements were on business-owned property.

Conclusion

Our review in the State of Arizona showed that, by providing financial assistance under the JOM program for the education of eligible Indian children on a formula basis, rather than on a demonstrated need basis, the Bureau had not adhered to its program concept that the education of Indian children is a State responsibility and that assistance under the program should be limited to meeting school districts' needs after all the available resources have been exhausted. The formula basis for determining the financial assistance essentially eliminates the need for counties and school districts to support the education of eligible Indian children.

We are of the view that financial assistance under the JOM program should be provided to those school districts which have eligible Indian children from reservation homes in attendance on the basis of financial needs that cannot be met without causing an undue hardship to the taxpayers.

Recommendation to the Secretary of the Interior

We recommend that the Secretary of the Interior require the Bureau to review its contractual arrangements for JOM financial assistance with the view to revising the arrangements, where needed, to provide that the financial assistance be furnished on the basis of demonstrated financial need. The determination of need should be based on the ability of the counties and the school districts to contribute, without causing a financial hardship to the local taxpayers, to the support of their educational program without regard to the status of Indians.

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In commenting on our draft report, the Department of the Interior, in a letter dated January 23, 1970 (see app. I), and the Arizona State Superintendent of Public Instruction, in a letter dated December 2, 1969 (see app. II), indicated that actions consistent with the above recommendation had been taken or initiated. We believe that these

actions, when fully consumated, should result in the implementation of the concept that the JOM financial assistance program is supplemental in nature.

The Department of the Interior advised us that the Bureau had reviewed its contractual arrangements with nine of the 14 States participating in the JOM program and that these plans had been revised to require that, for a school district to be eligible for assistance, the school district tax levy be at least equal to that of the average district tax levy for the State and that the district tax contribution from Indian residents and from improvements on Indian lands be used as a credit when computing JOM aid. The Department advised us further that the Bureau's review of the JOM contractual agreements would be continued until completed.

The Arizona State Superintendent of Public Instruction informed us that:

"We are in general agreement with the findings and offer no serious objections to the recommendations, although we believe the faults of the Arizona program have been corrected already."

The Superintendent pointed out that the State JOM plan for school year 1968-69, with further refinements in the 1969-70 plan, essentially dropped the formula method for determining the amount of JOM assistance and provided that the funds be distributed on a deficit-budget-need basis.

PERIPHERAL DORMITORY PROGRAM

In 1954 the Bureau, as part of its JOM program, initiated a peripheral dormitory program for the public school education of Navajo Indian children. Under this program the Bureau maintains dormitory facilities for eligible Indian children from remote rural areas to enable them to attend public schools. The Bureau made initial payments for public school building costs and makes payments to the school districts for the annual educational cost associated with these children. To carry out this program, the Bureau entered into arrangements with school districts in Albuquerque, Aztec, and Gallup, New Mexico; Flagstaff, Holbrook, Winslow, and Snowflake, Arizona; and Richfield, Utah.

The Bureau agreed to pay the districts from JOM funds (1) an initial payment of as much as \$1,000 for each Indian child enrolled under the program for use in construction of additional facilities necessary for the education of the children and (2) the instructional costs of the Indian children in accordance with the terms of annual contracts entered into with the State or district. Bureau officials advised us that, to protect the Federal Government's capital investment, the contracts provided that the school districts furnish educational services to Indian children for at least 20 years, unless freed from such obligation by the Bureau's area director.

Under annual contracts for school year 1966-67, the Bureau paid the school districts from JOM funds for the full per capita cost of educating these children. These costs amounted to \$689,000 in Arizona and \$476,000 in New Mexico.

The Bureau and the States involved in the peripheral dormitory program appear to be in agreement with the concept that the education of Indian children is a responsibility of the States and that, as a resident of a State, an Indian child has a right to the same education program that the State provides for other citizen children. For example, this principle is stated in the New Mexico plan for JOM financial assistance to public schools in the education of Indian children residing on reservation lands. The Office of the Attorney General for Arizona advised the State

Superintendent of Public Instruction on March 24, 1954, that, insofar as education was concerned, Indian children, even though they resided on an Indian reservation, occupied exactly the same status as did children of other races.

Our analysis of information furnished to us by the Bureau's Navajo Area Office indicates that 97 percent of the 1,200 Indian children participating in the Arizona peripheral dormitory program were residents of the State and that many of the children were also residents of the county in which they attended school; included among these children were some who were residents of the school district in which they attended school.

Under the Arizona State plan, the Bureau provides JOM funds for the educational cost of the peripheral dormitory Indian children. Had the State provided aid for the education of the Indian children in school year 1966-67 on the same per capita basis that it provided aid for other students who were residents of the State, the Bureau's JOM payments to the school districts could have been reduced by about \$180,000.

In New Mexico, State aid to education was paid to the school districts for the Indian children participating in the New Mexico peripheral dormitory program. Information furnished to us by the Bureau's area office showed that, of the 498 Indian dormitory children attending schools in one school district participating in the program, 459 children, or about 92 percent, were residents of New Mexico and about 79 percent of these Indian children were residents of the county and school district. Although the school district received State aid in school year 1966-67 for the education of these Indian students, in the amount of \$177,000, including \$163,000 applicable to Indian children who were residents of the State, the Bureau's JOM payments to the school districts were for the full per capita cost of educating these Indian children.

The Bureau's Navajo Area Office officials advised us that they were aware that the JOM payments to the school districts for the full per capita cost of educating the peripheral dormitory Indian children overlapped the State aid

to the districts but that they were reluctant to take any corrective action because the Government was morally obligated to honor the 20-year peripheral dormitory arrangements.

Conclusion

In summary, our review of the peripheral dormitory program in Arizona and New Mexico for school year 1966-67 indicated that a significant number of the Indian children came from reservation homes in the States in which they attended school. In addition, some of these Indian children were residents of the county or school district in which they attended school.

Under the Bureau's concept that a State is responsible for the education of Indian children resident in the State, it appears appropriate that JOM funds should not be provided for the full per capita cost of educating those children who attend school in their State of residence. We believe that State, counties, and school districts should participate in supporting the costs of educating their resident Indian children and that JOM assistance should be provided on a supplemental-need basis.

Recommendation to the Secretary of the Interior

We recommend that the Secretary of the Interior require the Bureau to undertake negotiations with the State of Arizona and the school districts in the States of New Mexico and Utah involved in the public school education of the peripheral dormitory Indian children with the view of encouraging State and local participation in the costs of educating those Indian children who are from reservation homes within the State, county, and school districts in which they attend school.

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The Department of the Interior informed us that the Bureau of Indian Affairs believed that the peripheral dormitory program agreements should be renegotiated with a view to a complete phaseout of these agreements within the

shortest time possible and that the State and local school districts should assume responsibility for sharing the cost of educating their resident students.

The Arizona State Superintendent of Public Instruction stated that he believed that there was little to be gained by reopening negotiations of the contracts pertaining to the peripheral dormitory program at that time. The Superintendent pointed out that:

"To meet a severe emergency education condition, the BIA developed twenty year agreements with certain peripheral school districts pertaining to the education of out-of district, and in many instances, out-of-state Indian children. The agreements were made in good faith and are achieving the purposes for which they were intended. They have only four more years to run. School districts and states are fully aware that renegotiations will be in order at that time. Negotiations now would be premature and we recommend against them."

CHAPTER 3

NEED FOR IMPROVEMENT IN CONTROLS

OVER PROGRAM ADMINISTRATION

We believe that there is a need for the Bureau to improve its control over the States' administration of the JOM program. In our review of the administration of the JOM program in the three States, we found instances where the State educational agencies had distributed JOM funds to counties and school districts on what appeared to be improper bases or where there was a lack of assurance that the funds were needed or were used for their intended purposes. For example:

- Although JOM assistance of \$245,000 was distributed to one school district in South Dakota to assist in meeting its school operating costs for school year 1966-67, we found indications that the State Division of Indian Education and the Bureau might not have adequately evaluated the reasonableness of this district's tax efforts and its need for financial assistance.
- In Arizona, we found that the same expenditures had been considered in determining JOM payments to school districts under different provisions of the State plan. We estimated that, as a result JOM aid had been about \$80,000 in excess of what it should have been under the State plan.
- In New Mexico, we found that neither the State education agency nor the Bureau had adequate assurance that JOM funds distributed to public schools had been used for their intended purposes.

We believe that problems such as those cited above were attributable to the Bureau's delegating the administration of the JOM programs to the States under annual contracts and State plans without providing sufficient guidelines for the administration of the program. In addition, we were told that neither the Bureau officials nor the Department's

auditors had reviewed or analyzed the States' administration of the JOM program.

ADMINISTRATIVE PROCEDURES FOLLOWED

The Commissioner of Indian Affairs delegated the authority to negotiate and administer JOM contracts to the directors of the Bureau's area offices. Within the area offices, responsibility for matters pertaining to the education of Indian children is assigned to the Division of Education, under the direction and supervision of the Assistant Area Director (Education). The primary functions of each Division of Education are (1) the planning and developing of program objectives, policies, and procedures for the operation and maintenance of the areawide Federal Indian school system and (2) the administration of the JOM program.

The Division of Indian Education offices were established within the various State Departments of Public Instruction for the express purpose of administering the JOM programs within the States. JOM funds are used to pay the operating costs of the State Divisions of Indian Education. Bureau approval must be obtained for the appointment or termination of the services of any State administrator or supervisor responsible for carrying out the terms of the State JOM contracts if any part of his salary is paid out of JOM funds.

We were advised by Bureau officials that, because of limited staff resources, Divisions of Education in the Bureau's area offices concentrate their management efforts on administration of the areawide Bureau Indian school system and that they relied almost entirely upon the various States for proper administration of their respective JOM programs. One Assistant Area Director (Education) stated that he had very little to do with the financial aspects of the program and that he depended upon the State Director of Indian Education to handle the matter for him. Another Assistant Area Director (Education) stated that, although he left the administration of the program up to the State Division of Indian Education, he was available to advise the State Director if problems arose. A third Assistant Area Director (Education) stated that JOM funds were

turned over to the State and that his office did not exercise any control over the use of the funds.

The Bureau's Indian Affairs Manual requires the States to submit to the Bureau's area offices specific data in the form of (1) itemized budgets for each participating school district prior to execution of the JOM contract and (2) annual reports at the end of each school year. We believe that the required data would have provided the Bureau with some of the data needed to adequately monitor the States' administration of the JOM program. We found, however, that the States did not furnish the Bureau's area offices with the itemized budgets and that the annual reports that were furnished did not contain all the required data.

Our review showed that, except for the criteria included in the approved State plans, which, for the most part, were extremely general in nature, the Bureau did not provide the State Divisions of Indian Education with written instructions and guidelines as to the policies and procedures to be followed in administering the JOM program and distributing the funds to the school districts.

We noted a number of instances in each of the three States where the State's determinations on the distribution of aid to school districts appeared to be improper or where there was a lack of assurance that the funds were being used for their intended purposes. The examples set forth below are, in our opinion, illustrative of the need for the Bureau to provide more effective guidance on, and monitoring of, the State administration of JOM activities.

South Dakota

In South Dakota, JOM assistance for the school year 1966-67 was distributed to school districts under a 1965 revision of a State plan that had been formulated about 1949. The plan's stated purpose was to establish a uniform method for distributing JOM funds to school districts and to provide assistance to districts for normal school operating costs (instructional service), lunches, milk, and transportation. The plan provided that the payments to school districts be determined in accordance with (1) a formula set forth in the plan, (2) special agreements tailored to the specific circumstances of the districts, or (3) other arrangements for the reimbursement of certain lunch, transportation, and administrative costs.

Under the formula basis, the JOM assistance to a school district for normal school operating costs was determined by reducing the costs associated with Indian children that would normally have to be borne by local taxpayers by a factor which gave consideration to the extent of the district's nontaxable Indian land, the local tax effort, the enrollment of Indian children, the educational programs and services available to the Indian children, and the amount of assistance received for Indian children eligible under Public Law 874. Subsequent to our fieldwork, we were advised by Bureau and State officials that the State plan had been revised as of July 1, 1968, to discontinue the distribution of JOM assistance on the formula basis and to provide that, in the future, all JOM assistance be made on a deficit-need basis.

Although the purpose of the State plan formula was to provide a uniform method of distributing funds to eligible school districts, the greater part of JOM financial assistance for normal school operations in school year 1966-67 was provided to individual school districts under special agreements. During the year, the State Division of Indian Education distributed JOM funds of \$333,000 for normal operating costs, of which \$78,000 was distributed to 15 districts under the formula portion of the State plan and \$255,000 was distributed to three districts under special agreements. An additional \$260,000 was distributed under

the State plan principally for lunches, transportation, and administrative costs.

With respect to the distribution of funds to school districts under special agreements, the State plan provided that the amounts be determined on deficit-need bases after careful consideration of the districts' resources and financial position or that the amounts be determined on other bases specified in the special agreements.

We were advised by a Bureau official that, in determining the districts' entitlement to JOM assistance, the special agreements with school districts were based on consideration of the districts' tax rates and that the State Division of Indian Education encouraged the districts to increase their tax rates.

To ascertain the extent that the State Division of Indian Education and the Bureau area office required school districts to make reasonable tax efforts before requesting JOM assistance, we attempted to examine into one school district's eligibility to receive JOM assistance in school year 1966-67 for school costs that had been provided in the amount of \$245,221--about 44 percent of the JOM funds distributed in the State during that school year.

We were, however, unable to obtain any documentation or written justification from the school district, State, or Bureau that showed the considerations that had been given to local tax efforts when entering into an agreement with the district. Although the State Division of Indian Education stated that it had not insisted that a school district's tax rate meet the State average district tax rate in order to receive JOM assistance, we were unable to ascertain by discussions with State officials the extent to which the State Division had considered the district's tax effort in determining the district's eligibility for JOM assistance.

To obtain some indication of the reasonableness of the district's tax efforts, we compared the district's 1966 tax rates and assessment valuations with those of similar school districts in the State--essentially the estimated financial needs for school year 1966-67 had been based on prior revenues and expenditures.

Prior to July 1, 1967, South Dakota school districts assessed taxes on the basis of two separate tax rates, one rate for agricultural land and the other rate for "other property," both real and personal. State and county officials considered the assessed valuations of personal property in all school districts to be fairly uniform due to the general use of the State Personal Property Price Guide; therefore, we considered a simple average rate to be reasonable for use in making our comparison of personal property tax rates.

A State taxable assessment-sales ratio study for real property assessments for other real property and agricultural land showed wide variations in assessments for these properties compared to their true and full value. To compute the State average tax rate for real property, we therefore adjusted each district's tax rates by use of taxable assessment-sales ratios established by the State and obtained an adjusted tax rate based on true and full property values. Using the adjusted tax rates for all districts, we computed the State average tax rate.

Our comparison of the school district's tax rates with the State average tax rates showed that the district's tax rate of 5.77 mills for real property was lower than the State average tax rate of 13.53 mills and that the district's tax rate of 18.99 mills for personal property was lower than the State average tax rate of 31.79 mills. If the school district could have levied taxes at the State average rates without creating an undue hardship to local taxpayers, additional revenues of about \$210,000 would have been raised that would have reduced the need for JOM financial assistance by a similar amount.

New Mexico

The New Mexico State plan provided that JOM funds be distributed by the Division of Indian Education of the State Department of Public Instruction to school districts on a need basis after giving the fullest possible consideration of total local, State, and Federal resources. Further, the plan provided that the State Division of Indian Education be responsible for seeing that the special needs of Indian students were met.

Officials of the Bureau's Navajo Area Office--the office responsible for negotiating and administering the JOM contracts with the State of New Mexico--informed us that the amount of JOM financial assistance provided under the State plan for school year 1966-67 had been based on the amount of JOM funds that had been provided in school year 1961-62, adjusted by a factor for additional costs attributable to the increase in eligible Indian students attending public schools since 1962. The officials stated that the amount of JOM financial assistance determined on that basis had been paid to the State Division of Indian Education for distribution to the school districts on a special-need basis without further Bureau approval. Bureau and State officials told us that the JOM funds provided to New Mexico were used only for providing eligible Indian students with special services and programs which were over and above the basic educational services provided by the State for all its students.

Officials of the Navajo Area Office told us that the office relied on the State Division of Indian Education to properly administer the program, although area office officials furnished advice to the Division upon request. Although the Bureau had received an annual statistical and financial report on the JOM program in New Mexico, the financial data contained in the report was of a very general nature and, we believe, did not provide data adequate for determining whether JOM funds were used to meet the needs of Indian students. Moreover, the amounts reported as expenditures were the amounts distributed to school districts, rather than the actual expenditures by the schools or school districts.

The Director of the Division of Indian Education informed us that he was responsible for allocating the JOM funds to the various New Mexico school districts. He informed us also that the allocations were based on his first-hand knowledge of individual school district needs; discussions with district personnel; and written itemized requests for funds from the school districts, although itemized requests were not always required. The Director also stated that he had not been provided with any written instructions by the Bureau concerning the administration of the JOM program or the operation of the Division of Indian Education.

The Director said that he relied on the school districts to restrict the use of JOM funds to meet the unique needs of eligible Indian students who qualify for JOM assistance. He stated that the Division of Indian Education did not review the school districts' operations to determine whether the JOM funds provided were used only for meeting Indian educational problems nor did it require or receive reports from the school districts detailing the use made of JOM funds.

We visited one school district which had received about 29 percent of the total JOM funds provided to the State of New Mexico for school year 1966-67, to inquire into the use made of the funds. We were told that the JOM funds had been commingled with other school funds and deposited into the regular school operating fund and the State textbook fund. The district was not required by the State to account for, or to report on the use made of, the funds or to demonstrate that the services provided were required to meet the unique needs of eligible Indian students that could not be met by local, State, or other Federal resources.

A schedule maintained by the Division of Indian Education showed that JOM funds distributed to the school district during school year 1966-67 had been for the following activities.

Instruction:	
Teachers' salaries	\$119,107
General instructional supplies	30,357
Attendance officer:	
Salaries	9,900
Supplies and services	2,000
Nurse:	
Salaries	6,300
Supplies and services	2,000
Summer school	3,000
Activity transportation	5,000
Textbooks	18,551
Activity admissions	1,006
Course fees	513
Physical education and health clothing	3,417
Meals	<u>205,782</u>
 Total	 <u>\$406,933</u>

We inquired into the use made of these funds for some of the items shown above. The State Director of Indian Education informed us that the \$30,357 for general instructional supplies and the \$18,551 for textbooks had been based on his personal estimate of the school district's needs of \$9 and \$5.50, respectively, for each Indian student. He informed us also that the purpose of granting assistance for general instructional supplies was to provide funds so that the schools could furnish school supplies to needy Indian students who were unable to furnish their own supplies. The funds for textbooks were to be used for supplemental language textbooks that the State did not provide to all students and for workbooks normally paid for by the parents. A school district official, however, was able to identify only expenditures totaling \$5,165 for school supplies provided to Indian students; another school district official stated that it was impossible to determine which books had been purchased with JOM funds.

With regard to the \$119,107 for teachers' salaries, we were told that these funds had been used to pay a portion of the salary costs of eight kindergarten and 13 pre-first-grade teachers whose classes were attended, for the most part, by eligible Indian students. A district official stated that the kindergarten classes were considered to be

special services because the State did not require the district to provide kindergarten classes and therefore did not provide any State aid for kindergarten students. He stated that the pre-first-grade classes comprised first-grade Indian students who were subject to the State compulsory attendance law but who had been placed in classes separate from other first-grade students because of language problems. Another district official stated that the pre-first-grade classes were considered special services for the following reasons.

1. Pre-first-grade classes had higher per capita costs than the regular first-grade classes because of lower teacher-student ratios.
2. Pre-first-grade students received about \$4.75 worth of school supplies more than did regular first-grade students.
3. The district had to provide an extra year of schooling for pre-first-grade students since most of them repeat the first grade.

Our review showed, however, that the school district's average pre-first-grade teacher-student ratio was only 1 to 24 compared with the regular first-grade ratio of 1 to 25 and that half of the schools in the district with pre-first-grade classes had a higher teacher-student ratio in the pre-first-grade class than they had in their first-grade class. For example, one school had a pre-first-grade teacher-student ratio of 1 to 34 compared with a 1 to 22 ratio in the first grade.

We noted that, although the pre-first-grade students received an extra year of schooling, the district had received Public Law 874 payments and State and county aid for the pre-first-grade students and that the revenue from these sources, exclusive of JOM aid, had exceeded the school district's operating cost on a per capita basis. A Bureau official stated that, in view of matters found in our review, it did not appear that the school district should have received JOM assistance for the pre-first-grade classes.

The district also received aid under Public Law 874 for the JOM kindergarten students. Although there may be some justification for considering a portion of the costs of the kindergarten and possibly the pre-first-grade classes as special services, the district did not have any records identifying the services and related costs which were over and above its regular educational program and which were not financed from other sources. Our review of available school district records showed a similar lack of support for the use of other JOM funds distributed to the district.

Arizona

The Arizona State Department of Public Instruction determines the amount of JOM assistance to be provided to school districts for school operating expenses on the basis of the districts' expenditures which included certain operational costs for special services provided to Indian students and for which separate JOM funds had been provided. The inclusion of these costs in the base on which the amount of JOM assistance was determined resulted in an overstatement of the JOM assistance.

In school year 1966-67, JOM financial assistance totaling \$167,000 was provided to school districts for costs classified as additional operational costs, including the costs for special services, such as special counseling and remedial teaching, and for the acquisition of buses for transporting Indian students.

These costs were also included as part of the school districts' 1966-67 costs that were used as a basis for determining the JOM assistance to the school districts 1967-68 school operating costs. The effect of including the additional operating and special service costs in the basis for computing the JOM assistance for 1967-68 cannot be precisely determined because of changes in the average daily attendance of Indian children between the 2 school years. If the school districts' average daily attendance of Indian children was the same in both school years, however, we estimate that the JOM assistance provided in 1967-68 for school operating costs was about \$80,000 in excess of what it should have been.

We reviewed our computations with the Bureau's area office officials who agreed that the basis for our computations was correct. They stated that the State JOM plan would be revised so that these costs would not be included in school districts' expenditures used as the bases for determining JOM assistance for school operating costs.

INTERNAL AUDIT OF PROGRAM

The Department of the Interior internal audit function is a responsibility of the Office of Audit Operations, a

component of the Office of Survey and Review, under the Assistant Secretary for Administration. The Director, Office of Audit Operations, advised us that the departmental auditors had not made any audits of the States' administration of the JOM program after that Office was established in July 1966.

As described in detail in earlier sections of this report, our review showed that there were numerous weaknesses in the administration of the JOM program. In view of these weaknesses, we believe that a more effective system of management control in the Department could be achieved through the increased use of internal auditing.

CONCLUSIONS

We believe that the Bureau would have greater assurance that funds appropriated for the JOM program are being used to achieve Bureau objectives if it were to strengthen its control over the State agencies responsible for distributing JOM financial assistance to school districts. We believe also that the Bureau should provide State agencies with meaningful criteria and guidelines for determining and evaluating the school districts' need for JOM assistance. Also, we believe that systematic monitoring of the State agencies' operations by the Bureau and the Department through improved reporting and reviews by Bureau educational offices and Department internal auditors is essential to improve and maintain an effective program and to ensure compliance with contracts, State plans, and Department and Bureau directives.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior direct the Bureau to develop and implement additional methods of supervision and control over the distribution to, and utilization by, school districts of JOM assistance, to provide reasonable assurance that it is being used for the intended purposes. The additional methods should include better criteria, guidelines, and instructions for determining eligibility for assistance; submission of full justification demonstrating the need for assistance; and review and

analysis by the Bureau of the justifications to ensure that a valid need exists.

We recommend also that departmental auditors be required to undertake periodic reviews of the State administration of the JOM program.

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The Department of the Interior agreed with our proposals to improve controls over the administration of the JOM program. The Department stated that:

"The Bureau is aware of the need for better criteria, guidelines and instructions for determining eligibility for assisting Indian children enrolled in public schools. State plans have recently been revised in Arizona, New Mexico, Washington, Minnesota, North and South Dakota, and Oklahoma. Revised plans for Idaho and Nebraska are presently being reviewed. These revisions have strengthened eligibility requirements and provided more adequate guidelines for JOM participation.

"Bureau and State officials have been instructed to study and review district budget requests, and to make careful assessments of the State, county and local contributions in determining assistance needed from JOM funds.

"The meeting just concluded with program officials will result in the development of even further guidelines in the area of budgeting, reporting, program review, and evaluation. Evaluation is to be provided on a periodic basis so that assessments could be made more frequently of the school programs and their relation to funds expended in behalf of Indian children.

"Audits by the Department will be arranged or provided within staff capability to supplement the evaluations of the State administration of the JOM program."

The Arizona State Superintendent of Public Instruction indicated general agreement with our findings and offered no serious objections to our proposals, although he believed that the weaknesses noted in our review had been corrected. He pointed out, however, that he could see little reason for better criteria, guidelines, and instructions for determining eligibility for JOM assistance. He stated that there had been a minimal increase in the Federal staff for the JOM program operations in the past few years and that this staff maintained as close supervision of the program operations as was prudent and wise without imposing Federal domination.

The Director of the Division of Indian Education, in a letter dated November 3, 1969, commenting on a draft of this report for the New Mexico State Superintendent of Public Instruction, stated that he believed that the criticisms noted in our draft report were no longer applicable. (See app. III.) He stated also that:

"It is now the policy of this division to request from each school district requesting funds, a written narrative, itemizing and supporting each item of funding with substantial reason for the implementation or continuation of such a 'need' program.

"This division can now review the operation of each of the twenty school districts involved, and determine the proper expenditure of Johnson-O'Malley funds. Johnson-O'Malley funds are now earmarked by line item and no longer co-mingle with other school monies. There is no longer any money provided from JOM funds for the State textbook fund for it is the opinion of the director that such funds would represent dual payment for similar items.

"This division no longer supports the pre-first program except where there is proven need, and all school districts have been notified that they will begin a phasing out of all pre-first classes as such."

The South Dakota State Superintendent of Public Instruction, in a letter dated November 24, 1969 (see app. IV), stated that all JOM assistance would be made on a deficit-need basis, taking into consideration the several specific conditions that must be met.

CHAPTER 4

SCOPE OF REVIEW

Our review covered principally the policies, procedures, and practices of the Bureau for providing financial assistance under the JOM program to public schools educating Indian children residing on tax-exempt Indian land in the States of Arizona, New Mexico, and South Dakota. We directed our efforts toward those areas of the JOM program that appeared to need attention. We did not make a general review of the Bureau's overall administration of the Indian education program.

Our review was made at Bureau headquarters, Washington, D.C.; at Bureau area offices in Phoenix and Window Rock, Arizona, and in Aberdeen, South Dakota; at State Division of Indian Education offices in Phoenix, Arizona, Santa Fe, New Mexico, and Pierre, South Dakota; and at selected school districts and county tax offices in the three States. Our work included:

1. A review of the basic legislation and related legislative history of the JOM program, the regulations promulgated by the Secretary of the Interior under authority of the JOM act, and the Bureau's implementing regulations.
2. A review of applicable State agency policies, procedures, and controls related to the distribution and use of JOM funds.
3. An inquiry into the Bureau's procedures for reviewing and monitoring the State agencies' administration of the distribution of JOM funds, to determine whether Federal objectives and eligibility criteria for receiving JOM assistance were being met.
4. An examination into the basis for JOM assistance to selected school districts and counties during school year 1966-67, for compliance with Federal objectives and eligibility criteria.

APPENDIXES

BLANK



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 23 1970

Mr. Allen R. Voss
Associate Director, Civil Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Voss:

The Department of the Interior has reviewed with interest your draft report "Need to Improve Administration of Federal Assistance Program for the Education of Indian Children in Public Schools, Bureau of Indian Affairs, Department of the Interior." With the concurrence of your audit staff, our reply has been delayed until a meeting of Bureau officials and State Directors of the Johnson-O'Malley Program had concluded and the results were analyzed as it related to your recommendation.

The Commissioner advises us that steps now being taken will provide improved supervision and control necessary in administering the program.

As recommended, the Bureau has reviewed contractual agreements with nine of the fourteen States participating in the JOM program, and have revised these plans to require that to be eligible for assistance, school districts must have a tax levy at least equal to that of the average for the State. Such plans also require that the tax contributions made by Indian residents and those for improvements on Indian lands are used as a credit when computing JOM aid. The review will continue until completed.

While yet to be implemented, the Bureau agrees that peripheral dormitory program agreements should be renegotiated towards a complete phase-out of these agreements within the shortest time possible and the assumption of State and local districts of the responsibility for sharing the cost of education for their resident students.

The Bureau is aware of the need for better criteria, guidelines and instructions for determining eligibility for assisting Indian children enrolled in public schools. State plans have recently been revised in Arizona, New Mexico, Washington, Minnesota, North and South Dakota, and Oklahoma. Revised plans for Idaho and Nebraska are presently being reviewed. These revisions have strengthened eligibility requirements and provided more adequate guidelines for JOM participation.

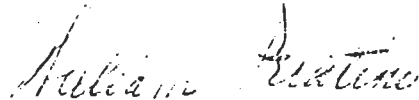
Bureau and State officials have been instructed to study and review district budget requests, and to make careful assessments of the State, county and local contributions in determining assistance needed from JOM funds.

The meeting just concluded with program officials will result in the development of even further guidelines in the area of budgeting, reporting, program review, and evaluation. Evaluation is to be provided on a periodic basis so that assessments could be made more frequently of the school programs and their relation to funds expanded in behalf of Indian children.

Audits by the Department will be arranged or provided within staff capability to supplement the evaluations of the State administration of the JOM program.

We appreciate the opportunity to comment on the draft report and found the information useful in conjunction with the program and State plan reviews.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William H. Hartman".

Acting Director of Survey and Review



State of Arizona
Department of Public Instruction
W. P. SHOFSTALL, SUPERINTENDENT
State Capitol
Phoenix

December 2, 1969

Mr. Allen R. Voss
Associate Director
United States General
Accounting Office
Civil Division
Washington, D. C. 20548

Dear Mr. Voss:

We appreciate the opportunity afforded us to comment on the operation of the Johnson-O'Malley Act program in Arizona, as it relates to the proposed report to the Congress, forwarded with your letter of October 17. Members of my staff advise me that the audit was conducted in a most thorough manner, eliciting the local cooperation of both the State and BIA personnel. There was the fullest possible discussion of findings and especially the controversial points of conclusion. The field conduct of the audit was commendable.

We are in general agreement with the findings and offer no serious objections to the recommendations, although we believe the "faults" of the Arizona program have been corrected already. Also, we believe there is little to be gained by reopening negotiations pertaining to the Peripheral Dormitory Program at this time. Specific comments on the proposed report follow:

Federal versus State Responsibility:

The Constitution of the State of Arizona, like all other states, does provide State responsibility for the education of its citizens. This, however, does not preclude the Federal Government from making heavy investments in education, both in cooperation with the states and through unilateral action. The latter has been especially true in connection with Indians. In this State alone nearly one-half of all the Indian children are enrolled in federally operated schools. Thus, to talk exclusive State responsibility for the education of Indians is inconsistent with long time Federal action.

It is our understanding that Federal policy has been and continues to be, to shift the basic responsibility to the states for the education of Indian children. We believe the JOM Act program has contributed greatly to the achievement of that policy goal in our State. We hasten to add that the development of local school districts on reservations and the operation of these schools, largely by Indian school boards, would not have been possible without extensive Federal aid, and especially the great flexibility in administering the JOM Act program. Since the

goal of an available public school for all Indian children like other children is only one-half accomplished in this State, it would seem that the Congress or the Federal agencies would not want to impose restrictions which might result in "winning the battle, but losing the war".

Formula versus Need - Basis for Distribution of Funds:

The audit is correct in that the use of a formula method for determining the amount of federal assistance does tend to promote the entitlement concept rather than a demonstrated need. This was recognized, and in close cooperation with the BIA a new State JOM Plan was drafted and approved for the operation of the school year 1968-69. Further refinements to this plan were made early this year for the 1969-70 school year. Under the new plan the formula has been dropped except in a modified form in providing aid to minor impact districts. Under the new plan 93% of all the funds were provided last year to major impact districts on a deficit budget need basis rather than under the formula method previously used. Seven per cent of the education funds were provided to minor impact districts under a modified formula. This formula takes into consideration the income derived by the district from improvements on reservation Indian lands. There will be even a less percentage of overall funds provided this current year to minor impact districts on this basis. (Minor impact districts are those which include a portion of reservation land but usually have only a comparatively few Indian children in proportion to the total school district population). The use of the modified formula as a means of determining need holds down undue pressure for proportionately large amounts of federal aid funds only remotely related to the education of reservation Indian children. However, we have no serious objection to eliminating even this modified formula and arriving at a need amount on other justifiable criteria.

Tax Effort

We believe an average tax effort is reasonable and fair when large amounts of federal funds are provided to school districts. All the major impact districts require this effort. We caution against restrictions which would prevent the BIA and State to waive this rule when it is in the overall program interest to do so. Our experience shows that most reservation school districts, at one time, had little or no local tax effort. The entire expansion program involving an increase of over ten thousand Indian children in reservation public schools would not have taken place had this requirement been rigidly enforced. We still have situations surrounding Indian reservations where there is both interest and willingness on the part of the Indians and their neighbors to discuss school district expansions to include remaining reservation areas not now in a school district. Some of these districts are operating their local schools with less than an average tax effort, and unless the State and BIA can continue to make judicious exceptions, progress in this direction is stymied.

We are pleased to advise that the State now has completed its uniform tax evaluation program. Therefore, a comparison of tax rates of one district with another and with State average rates, is meaningful.

County Aid

Under Arizona law, counties are required to make a substantial effort to the cost of education of children in public schools by taxing real property. This was

Mr. Voss

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December 2, 1969

recognized between the State and Bureau at the outset of the JOM program. In the beginning the total county effort cost was borne by the JOM program for Indian children. This has been modified until the counties now make a significant effort toward the cost of educating reservation Indian children principally through the payment of OASI funds. This effort approximates the amount of funds raised for teacher retirement costs on which JOM aid is received. Under the new plan it should be noted that in providing JOM aid to counties credit is taken for funds received through taxing the improvements on reservation lands. We believe the present program is fair and equitable.

Recommendations - Pages 21, 25 and 41

We believe the new plan, copy enclosed, meets the principal objections raised in the audit and no further review is needed or warranted at this time.

To meet a severe emergency education condition, the BIA developed twenty year agreements with certain peripheral school districts pertaining to the education of out-of-district, and in many instances, out-of-state Indian children. The agreements were made in good faith and are achieving the purposes for which they were intended. They have only four more years to run. School districts and states are fully aware that renegotiations will be in order at that time. Negotiations now would be premature and we recommend against them.

Finally, we see little reason for better criteria, guidelines and instructions for determining eligibility for assistance. There has been a minimal increase in the Federal staff for the JOM program operations the past few years. As far as our State is concerned this staff maintains as close supervision of the program operations as is prudent and wise without federal domination.

Sincerely yours,



W. P. Shofstall
State Superintendent of Public Instruction

enclosure - 1



STATE OF NEW MEXICO

DEPARTMENT OF EDUCATION

CAPITOL BUILDING

SANTA FE

LEONARD J. DE LAYO
SUPERINTENDENT OF PUBLIC INSTRUCTION

November 3, 1969

WILLARD A. SCOTT
GUIDANCE SPECIALIST
INDIAN EDUCATION

Mr. Allen R. Voss
Associate Director
United States General Accounting Office
Civil Division
Washington, D. C. 20548

Re: Proposed report - Administration of Johnson-O'Malley Act

Dear Sir:

As requested by Mr. Leonard J. De Layo, Superintendent of Public Instruction, I wish to comment on your proposed report to the Congress as follows:

Pages 22 - 25

The peripheral dormitory contracts in the state of New Mexico are separate contracts negotiated between Albuquerque, Aztec and Gallup school districts and the federal government. These contracts are direct negotiations in which the Division of Indian Education is not involved.

Pages 33 - 37

The information contained in this report is for school year 1966-67 and is consequently quite outdated. Many of the statements contained herein refer to conditions which have changed.

It is now the policy of this division to request from each school district requesting funds, a written narrative, itemizing and supporting each item of funding with substantial reason for the implementation or continuation of such a "need" program.

Mr. Allen R. Voss

Page 2

Nov. 3, 1969

This division can now review the operation of each of the twenty school districts involved, and determine the proper expenditure of Johnson-O'Malley funds. Johnson-O'Malley funds are now earmarked by line item and no longer co-mingle with other school monies. There is no longer any money provided from JOM funds for the State textbook fund for it is the opinion of the director that such funds would represent dual payment for similar items.

This division no longer supports the pre-first program except where there is proven need, and all school districts have been notified that they will begin a phasing out of all pre-first classes as such.

It is the belief of the director that the criticisms noted in this report are no longer applicable.

Sincerely yours,



Willard A. Scott, Director
Division of Indian Education

WAS/vat



STATE OF SOUTH DAKOTA
DEPARTMENT OF PUBLIC INSTRUCTION

DR. GORDON A. DIEDTRICH
STATE SUPERINTENDENT

AC 605 224-5911

November 24, 1969

Dr. Allen R. Voss
Associate Director
United States General Accounting Office
Washington, D. C. 20548

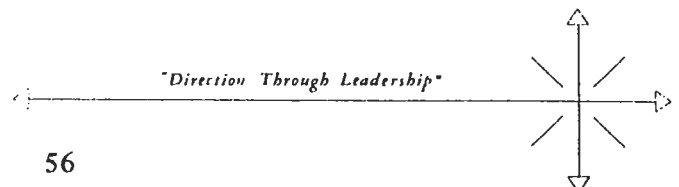
Dear Dr. Voss:

Below is a possible insert in the proposed Report to the Congress sent to me in draft form October 17th.

After the first paragraph, Page 30, ending with . . . "all JOM assistance would be made on a deficit need basis", insert the following:

All JOM assistance would be made on a deficit need basis taking into consideration that the specific conditions must be met.

1. Non-taxable Indian or Tribal-owned land is present within the boundaries of the school district.
2. The number of eligible Indian students in average daily attendance creates an unusual burden on the school district. (The school district must have at least 10 eligible Indian students in average daily attendance and these students must make up at least three per cent (3%) of the total school enrollment.)
3. Educational opportunities and programs are provided Indian students on the same basis as for other students in the school.
4. The local school district recognizes and makes provisions for the special needs of all students.
5. School taxes are levied at a rate not less than the average for all similar *type school districts in the State, or otherwise show that local tax effort is all that can be reasonably required because of State constitutional top limitations.



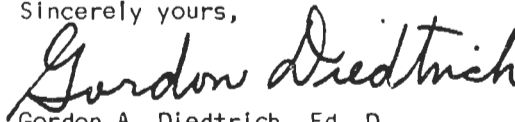
Dr. Allen R. Voss

-2-

November 24, 1969

6. Tax-exempt Indian owned land within the district is creating a financial burden that justifies assistance under the approved State Plan.
 7. Other factors in justifying need and computing amounts of aid are:
 - a. The extent to which education is financed from property taxes.
 - b. The amount of taxable evaluation behind each child.
 - c. Ratio of eligible Indian children to other children.
 - d. Ratio of tax-free Indian land to taxable land in the district.
 - e. Taxable resources on tax-free Indian lands (oil, utilities, railroads, etc.)
 - f. Unique program needs of Indian children.
 - g. Immediate program objectives as pertains to the education of eligible Indian children in the state.
 8. School boards will consult with Indian Tribal representatives.
- * Use similar type districts when there are separate classes or types of districts under State law.

Sincerely yours,



Gordon A. Diedtrich, Ed. D.
State Superintendent

GAD:nh

PRINCIPAL OFFICIALS OF THE
DEPARTMENT OF THE INTERIOR
AND THE BUREAU OF INDIAN AFFAIRS
RESPONSIBLE FOR THE ADMINISTRATION OF
ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>DEPARTMENT OF THE INTERIOR</u>		
SECRETARY OF THE INTERIOR:		
Walter J. Hickel	Jan. 1969	Present
Stewart L. Udall	Jan. 1961	Jan. 1969
ASSISTANT SECRETARY OF THE INTERIOR (PUBLIC LAND MANAGEMENT):		
Harrison Loesch	Apr. 1969	Present
Vacant	Jan. 1969	Apr. 1969
Harry R. Anderson	July 1965	Jan. 1969
ASSISTANT SECRETARY FOR ADMINIS- TRATION:		
Lawrence H. Dunn	July 1969	Present
Vacant	Feb. 1969	July 1969
Robert C. McConnell	Aug. 1967	Feb. 1969
Vacant	Dec. 1965	Aug. 1967
<u>BUREAU OF INDIAN AFFAIRS</u>		
COMMISSIONER OF INDIAN AFFAIRS:		
Louis R. Bruce	Aug. 1969	Present
T. W. Taylor (acting)	June 1969	Aug. 1969
Robert L. Bennett	Apr. 1966	May 1969
Philleo Nash	Sept. 1961	Mar. 1966