

## **IEC DUTIES AND RESPONSIBILITIES-Annotated for emphasis**

Per 25 CFR INDIANS Part 273 Johnson-O'Malley Program

Indian Education Committee (IEC)

### **273.3 Revision or amendment of regulations.**

In order to make any substantive revision or amendments to regulations in this part, the Secretary shall take the following actions:

(a) Consult with the Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating requests for revisions or amendments subject to paragraphs (a), (b), and (c) of this section.

### **273.4 Policy of maximum Indian participation**

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

[\*NOTE: This means if a program is in compliance with this section, there should be no community members who feel they are not represented or heard by the IEC. If they feel that they are not allowed to participate, they may file a grievance, which the IEC must hear as required in their Organizational documents and By-Laws. If the grievant feels they were not served, their complaint then is forwarded to the appropriate Federal agency and it becomes involved to resolve the issue. If this were to continue, the JOM program may be required to cease and desist from spending until the community member's complaint is resolved to mutual satisfaction.]

## **Subpart B—Application Process**

### **273.11 Eligible applicants**

(a) Any State, school district, tribal organization or Indian corporation is eligible to apply for contracts for supplemental or operational support programs. For the purposes of this part, previously private schools as defined in S273.2(n) are considered tribal organizations.

(b) States, school districts, or Indian corporations shall apply for contracts for supplemental or operational support programs as required in this part.

(c) Tribal organizations must comply with the following requirements to obtain contracts for supplemental programs or operational support:

(1) The applications submitted by the tribal organizations shall meet the requirements in S273.20 in addition to those in S271.14 of this chapter.

(2) The requirements in Sections 271.1 through 271.27, 271.41 through 271.52, 271.54, 271.61 through 271.66, and 271.81 through 271.84 shall apply to such contracts with tribal organizations.

(3) The provisions in Sections 271.71 through 271.77 of this chapter concerning retrocession and reassumption of programs do not apply to a tribal organization retroceding a contract for supplemental programs or operational support as the Bureau does not operate education programs authorized to be contracted under the Johnson-O'Malley Act. However, the tribal organization may retrocede such a contract and the Bureau will then contract with a State, school district, or Indian corporation under this part for the supplemental programs or operational support.

(4) The requirements in Sections 273.12 through 273.18, 273.20, 273.21, 273.31 through 273.38, 273.41, 273.51 and 273.52 shall apply to such contracts with tribal organizations.

(5) The requirements in 41 CFR part 14H-70 shall apply to such contracts with tribal organizations.

[40 FR 51303, Nov. 4, 1975, as amended at 41 Fr 5098, Feb. 4, 1976]

### **S 273.12 Eligible students.**

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this part if they are ¼ or more degree Indian blood\* and recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts (a) which would serve Indian students on or near reservations and (b) where a majority of such Indian students will be members of the tribe(s) of such reservations (as defined in S 273.2(o)).

[\*NOTE: The eligibility section provides no mention of requirement for a Certificate of Indian Blood or CIB, other than the Indian blood must be from a Federally-recognized tribe.]

**273.13 Proposals eligible for contracts.**

(a) Any proposal to contract for funding a program which meets the definition of a supplemental program given in 273.2(t) will be considered an eligible proposal under this part.

(b)(1) To contract for operational support, a public school district shall be required to establish as part of the proposal that:

(i) It cannot meet the applicable minimum State standards or requirements without such funds.

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

(iii) It has fully utilized all other sources of financial aid, including all forms of State aid and Pub. L. 874 payments. The State aid contribution per pupil must be at least equal to the State average.

(iv) There is at least 70 percent eligible Indian enrollment within the school district.

(v) It shall clearly identify the educational needs of the students intended to benefit from the contract.

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

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

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

(c) At his discretion, the Commissioner may consider as eligible a proposal to contract under which a school district will be reimbursed for the full per capita costs of educating Indian students who meet all of the following:

(1) Are members of recognized Indian tribes.

(2) Do not normally reside in the State in which the school district is located.

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

**273.14 Preparing the education plan.**

A prospective contractor in consultation with its Indian Education Committee(s) shall formulate an education plan and submit it to the appropriate Area Director as

a part of the application to contract required by S 273.20. Such plan shall become a part of any contract awarded. The education plan shall contain:

(a) The education programs approved by the Indian Education Committee(s) as required in 273.17.

(b) Other requirements for the education plan given in 273.18.

**273.15 Establishment of an Indian Education Committee.**

(a) When a school district to be affected by a contract(s) for the education of Indians pursuant to this part has a local school board not comprised of a majority of Indians, the tribal governing body(s) of the Indian tribe(s) affected by the contract(s) under this part shall specify one of the following entities to serve as the Indian Education Committee for the purpose of this part:

(1) An Indian Education Committee to be elected from among the parents (including persons acting *in loco parentis* except school administrators or officials) of eligible Indian students enrolled in the school(s) affected by a contract(s) under this part; or

(2) A local Indian committee established pursuant to section 305(b)(2)(B)(ii) of the Act of January 23, 1972 (86 Stat. 235) and existing prior to January 4, 1975; or

(3) An Indian advisory school board or Indian Education Committee established pursuant to the Johnson-O'Malley Act and existing prior to January 4, 1975.

(b) When the local school board is not composed of a majority of Indians and the tribal governing body(s) of the Indian tribe(s) affected by a contract(s) under this part determine which of the entities provided for in paragraph (s) of this section is to serve as the Indian Education Committee for the purpose of this part, it shall notify the Area Director of such determination by January 15 preceding the school year for which the contract will be let.

(c) The Indian Education Committee established under paragraph (a) of this section and its members shall establish procedures under which the Committee shall serve. Such procedures shall be set forth in the Committee's organizational documents and by-laws. Each Committee shall file a copy of its organizational documents and by-laws with the appropriate Area director, together with a list of its officers and members as soon as practicable after the Committee is organized.

(d) The existence of an Indian Education Committee shall not limit the continuing participation\* of the rest of the Indian community in all aspects of programs contracted under this part.

[\*Note: Second mention of promoting community participation in all aspects of JOM program.]

### **273.16 Powers and duties of Indian Education Committee.**

- (a) Consistent with the purpose of the Indian Education Committee, each such Committee shall be vested with the authority to:
- (1) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this part. Such participation shall include further authority to:
    - i. Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs.
    - ii. Approve budget preparation and execution.
    - iii. Recommend criteria for employment in the program.
    - iv. Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select.
    - v. Evaluate staff performance and program results and recommend appropriate action to the contractor.
  - (2) Approve and disapprove all programs to be contracted under this part. All programs contracted pursuant to this part shall require the prior approval of the appropriate Indian Education Committee.
  - (3) Secure a copy of the negotiated contract(s) which include the program(s) approved by the Indian Education Committee.
  - (4) Recommend to the Commissioner through the appropriate Bureau contracting officer cancellation or suspension of a contract(s) which contains the program(s) approved by the Indian Education Committee if the contractor fails to permit such Committee to exercise its powers and duties as specified by this section.
- (b) The organizational papers and by-laws\* of the Indian Education Committee may\* include additional powers and duties which would permit the Committee to:

[\*Note: If the IEC wants "additional powers and duties" they need to exert a concerted effort in an official meeting to develop and adopt the organizational papers and by-laws operating procedures that state explicitly the parameters of their organization. Keep in mind this is an organic document and should be revisited periodically and the IEC should make the document fit them and the changing times.]

- (1) Participate in negotiations concerning all contracts under this part.

Note: This section is rarely used in practice. Usually because all parties are too busy and IECs leave this responsibility up to the Tribal Education Director or JOM Program Director to review the contract prior to signing. It is important for the IEC to review the proposal and proposed contract before signing. IECs are the authorized entity should the tribe go to court over a contractual problem.

- (2) Make an annual\* assessment of the learning needs of Indian children in the community affected.

[\*Note: "Annual" is under section qualified by "may include". Conclusion is Annual Needs Assessment is required only by those IECs explicitly stating it in their organizational papers and by-laws. If they have not stated it thusly, an annual needs assessment is not required.]

- (3) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out responsibilities, subject only to the provisions of Sections 273.49.

[Note:

- IECs should be aware of all facets of implementation of the educational plan they are responsible for. This section provides them with access to relevant program information.
- Conversely, IECs should allow the JOM program Director and staff to operate the program without being "micro-managed" by the IEC.
- IEC members have authority only when in an official meeting established with a quorum present; at all other times they are community members.]

- (4) Request periodic reports and evaluations regarding the Indian education program

[Note: Section (4) says "Request" reports and evaluations, meaning the IEC must put in writing any request for information.]

- (5) Hear grievances related to programs in the education plan

[Note: Third mention of a requirement to hear the community grievances. This is to ensure full participation by the community in JOM programs. This grievance clause is required to be included in the organizational papers and by-laws.]

- (6) Meet regularly with the professional staff serving Indian children and with the local education agency.

[Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (7) Hold committee meetings on a regular basis which are open to the public.

[Note: "regular" does not say monthly.. Regular can be as few as twice a year, quarterly, or whatever is determined to be "regular."]

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

[Note: This authorization to expand IEC authority "consistent with these [JOM] regulations" is rarely used by IECs. IECs apparently are unaware of the inherent potential to expand their jurisdiction.]

### **273.17 Programs approved by Indian Education Committee.**

- (a) All programs contracted under this part shall:
  - (1) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee as set out in Sections 273.16 and as may be contained in the Committee's organizational documents and by-laws.
  - (2) Be included as a part of the education plan provided for in Section 273.14.
- (b) No program contracted pursuant to this part shall be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Committee.
- (c) Programs developed or approved by the Indian Education Committee pursuant to this part may, at the option of such Committee, include funds for the performance of Committee duties, including the following:
  - (1) Member's attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.
  - (2) Such other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

[Note: This section authorizes IEC board members [note-"may"] to receive stipends for the above purposes from JOM funds for services provided. Amounts IECs receive range from \$0 to \$100 per meeting.]

### **273.18 Additional requirements for education plan**

In addition to incorporating the programs approved by the Indian Education Committee(s) as required by Sections 273.14(a), the education plan prepared by the prospective contractor shall:

- (a) Contain educational goals and objectives which adequately address the educational needs\* of the Indian students to be served by the contract.

[Note: This section is where the IEC describes the key educational plan components designed "to meet the specialized and unique educational needs of eligible Indian students.") This section is sometimes referred to as the "Statement of Work"]

(b) Incorporate the program or programs developed and approved by the Indian Education Committee(s). As provided in Sections 273.17(b), changes in such programs must have prior written approval of the Indian Education Committee(s).

(c) Contain procedures for hearing grievances\* from Indian students, parents, community members, and tribal representatives relating to the programs contracted under this part. Such procedures shall provide for adequate advance notice of the hearing.

[\*Note: Fourth mention of requirement for procedures for hearing grievances from the Indian community served by the JOM program. This section requires that it be stated in the education plan.]

(d) Identify established State standards and requirements which shall be maintained in operating programs and services contracted under this part.

[Note: This section contains language from when JOM programs were largely operated by public school districts.) Citing respective state education standards to comply with enhances scope and depth of education plan.]

(e) Describe how the State standards and requirements will be maintained.

[Note: This section contains language from when JOM programs were largely operated by public school districts.) Citing respective state education standards to comply with enhances scope and depth of education plan.]

(f) Provide that the contractor shall comply in full with the requirements concerning meaningful participation by the Indian Education Committee as required by Section 273.4.

[Note: This section contains language from when JOM programs were largely operated by public school districts.]

(g) Provide that educational facilities receiving funds shall be open to visits and consultations by the Indian Education Committee(s), tribal representatives, Indian parents in the community, and by duly authorized representatives of the Federal and State Governments.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

(h) Outline procedures of administrative and fiscal management to be used by the contractor.

[Note: 25 CFR Part 900 (Implementation Regulations for P.L. 93-638) Subpart F- provides required Standards for Tribal or Tribal Organization Management Systems for tribe wanting to contract under Public Law 93-638.)

- Part 900.35-41 provides General information on required standards;
- Part 900.42-46 provides Standards for Financial Management Systems;
- Part 900.47-50 provides Procurement Management System Standards; and
- Part 900-51-60 provides Property Management System Standards.]

- (i) Contain justifications for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in Section 273.13(b). The information given should include records of receipt of local, State, and Federal funds.\*

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (j) Include budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

- (1) State and district average operational cost per pupil.\*

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.)

(However, We do want to know the number of eligible Indian students served.)

- (3) Administrative costs involved, total number of employees, and total number of Indian employees.

- (4) Costs which parents normally are expected to pay for each school.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (6) Total number of employees for each special program and number of Indian employees for that program.

- (k) State the total enrollment of school or district, by age and grade level.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

- (l) State the eligible Indian enrollment-total and classification by tribal affiliation(s) and by age and grade level.

- (m) State the total number of school board members and number of Indian school board members.

[\*Note: This section contains language from when JOM programs were largely operated by public school districts.]

(n) List Government equipment needed to carry out the contract.

(Note: Tribes can request in writing to their local BIA agency, a list of available equipment the tribe may need to perform contract services to eligible Indian students.)

(o) State the period of contract term requested.

[Note: State in terms of Fiscal Year, Calendar Year, School Year or other period preferred by tribe and negotiated with BIA agency.]

(p) Include the signature of the authorized\* representative of applicant.

[\*Note: "Authorized" in terms of P.L. 93-638 contracts means the authorized tribal leader: i.e., Pueblo Governor, President, Chairperson official signatory, since the tribe is the "contractor."]

(q) Provide written information regarding:

(1) Program goals and objectives related to the learning needs of potential target students.

[Note: It is recommended that stated programs goals be limited to not more than three or four and should be stated in terms of achievable goals attainable within the contract year.

Correspondingly, program objectives might be stated in terms of quarterly objectives with behavioral or performance milestones set in quantifiable terms.]

(2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities.

[Note: The information on recommended procedures and methods to be used to achieve program objectives should reflect input provided by community parents and students.]

(3) Overall program implementation including staffing practices, parental and community involvement, evaluation of program results, and dissemination thereof.

[Note: Implementation of the JOM program education plan should provide:

- how the staffing will provide JOM services to students,
- how the program will keep the community informed and involved to foster ownership,
- how the program will evaluate the projected outcomes of the education plan, and
- methods of sharing program achievements and failures with the Indian community.]

- (4) Determination of staff and program effectiveness in meeting the stated needs of target students.

[Note: The JOM education plan should provide information on how program effectiveness will be determined in terms of staff performance and provision of direct JOM services to students.]