

TRIBAL CONSULTATION



**DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN EDUCATION**

DECEMBER 15, 16 and 17, 2015

WRITTEN COMMENTS

Written comments must be received by January 15, 2016, at 4:30pm Eastern Standard Time and should be mailed, emailed or hand delivered to:

Bureau of Indian Education
1951 Constitution Avenue, NW
MS-312A-SIB
Washington, D.C. 20240
Attn: Jennifer Davis

Telefax responses may be sent to:
(202) 273-0030

Email responses may be sent to:
JOMComments@bia.gov

FOR FURTHER INFORMATION CONTACT

Jennifer L. Davis, M.Ed.
Program Analyst
Johnson O'Malley Program

Telephone: (202) 208-4397
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TRIBAL CONSULTATION MEETINGS

The BIE Tribal Consultations for the Johnson O'Malley (JOM) program will occur:

- Tuesday, December 15, 2015 (Webinar/Teleconference)
- Wednesday, December 16, 2015 (Webinar/Teleconference)
- Thursday, December 17, 2015 (Webinar/Teleconference)

DATES AND LOCATION OF CONSULTATION MEETINGS

Date	Time	Location
<p>Tuesday, December 15, 2015</p>	<p>1 p.m. – 4 p.m. (Eastern Standard Time)</p>	<p>Webinar/Teleconference 1951 Constitution Ave., NW. South Interior Building, Room 304 Washington, D.C. 20240</p> <p>Telephone Call-in #: 877-601-5705; Passcode: 2686962 Webinar Conference Access: URL: https://www.mymeetings.com/nc/join/ Conference number: PW5872129 Audience passcode: 2686962 Participants can join the event directly at: https://www.mymeetings.com/nc/join.php?i=PW5872129&p=2686962&t=c Local Contact: Jennifer Davis; Phone: (202) 208-4397</p>
<p>Wednesday, December 16, 2015</p>	<p>1 p.m. – 4 p.m. (Eastern Standard Time)</p>	<p>Webinar/Teleconference 1951 Constitution Ave., NW. South Interior Building, Room 304 Washington, D.C. 20240</p> <p>Telephone Call-in #: 877-601-5705; Passcode: 2686962 Webinar Conference Access: URL: https://www.mymeetings.com/nc/join/ Conference number: PW5872131 Audience passcode: 2686962 Participants can join the event directly at: https://www.mymeetings.com/nc/join.php?i=PW5872131&p=2686962&t=c Local Contact: Jennifer Davis; Phone: (202) 208-4397</p>
<p>Thursday, December 17, 2015</p>	<p>1 p.m. – 4 p.m. (Eastern Standard Time)</p>	<p>Webinar/Teleconference 1951 Constitution Ave., NW. South Interior Building, Room 304 Washington, D.C. 20240</p> <p>Telephone Call-in #: 877-601-5705; Passcode: 2686962 Webinar Conference Access: URL: https://www.mymeetings.com/nc/join/ Conference number: PW5975273 Audience passcode: 2686962 Participants can join the event directly at: https://www.mymeetings.com/nc/join.php?i=PW5975273&p=2686962&t=c Local Contact: Jennifer Davis; Phone: (202) 208-4397</p>



United States Department of the Interior

BUREAU OF INDIAN EDUCATION
Washington, D.C. 20240

NOV 19 2015

IN REPLY REFER TO:

Dear Tribal Leaders:

The Bureau of Indian Education is pleased to announce three Johnson O'Malley (JOM) Tribal Consultations during the month of December. The meetings are a continuation of the consultation sessions on the JOM program conducted by the Bureau of Indian Affairs and the Bureau of Indian Education in 2012 and 2015. We encourage you to review the Consultation Booklet, participate in the consultation meetings, and provide comment(s) on any or all of the consultation items.

Written comments must be received on or before 4:30 p.m., January 15, 2016. Written comments can be mailed to the Bureau of Indian Education, 1951 Constitution Avenue, NW, MS-312A-SIB, Washington, D.C., 20240; or emailed to JOMcomments@BIA.GOV, or hand delivered; or telefaxed to (202) 273-0030.

We encourage all federally recognized tribes to attend these consultation sessions. We are also inviting existing JOM contractors, potential JOM contractors, JOM Indian Education Committee members, tribal organizations, employees of public schools serving American Indian students, urban Indian communities, the BIE's previously private schools, Indian school boards, parents, student organizations and other interested parties, to participate in these consultation sessions by attending one of the consultation sessions in person or by telephone or by submitting written comments on any of the consultation items.

Any questions about these consultation sessions should be directed to Ms. Jennifer Davis, Program Analyst-JOM, at (202) 208-4397. We look forward to hearing from you.

Sincerely,

Dr. Charles M. Roessel
Director, Bureau of Indian Education

LEGISLATIVE AUTHORITY AND IMPLEMENTATION PROCESS

Legislative authority to consult with Indian Country on education issues is provided by 25 U.S.C. 2011(b).

CONSULTATION TOPICS

The topics for the JOM Tribal Consultation are:

1. Use of the 2014 JOM student count.
2. The JOM funding methodology for 2015, 2016 and thereafter.

FORMAT OF CONSULTATION MEETINGS

The following general format will be followed during each of the consultation meetings:

1. The consultation item will be fully explained to the meeting participants, including the reason for proposing the TOPIC and the background of the issue.
2. Time will be provided for questions, answers and discussions.
3. Meeting participants may present verbally, or in writing, their points of view and comments on the consultation item.

FORMAT FOR COMMENTS AND VIEWPOINTS

Since comments from several hundred meeting participants are anticipated, it will be helpful if all comments and suggestions, written and oral, include the following information:

1. Consultation TOPIC being addressed.
2. Your comments and suggestions.
3. Name of the respondent AND Name and Address of the organization which the respondent represents.

CONSULTATION ITEM #1

CONSULTATION TOPIC:	Use of the 2014 JOM student count.
POTENTIAL ISSUE OR CHANGE:	The distribution of the 2015, 2016 and future years of JOM funding will be affected by the outcome of the JOM tribal consultation on how the BIE should finalize the 2014 student count to allocate JOM funding.
REASON FOR PROPOSING ISSUE OR CHANGE:	To provide information on how the 2014 JOM student count was obtained, the factors affecting the count, and the results of the count; and to consult on how BIE should finalize the 2014 JOM student count to allocate JOM funding.

CURRENT OPTION(S) BEING CONSIDERED BY THE BUREAU:	The BIE proposes to accept the JOM student counts collected from all original and prospective JOM contractors by December 31, 2014, and use those counts to allocate JOM funding for 2015, 2016 and thereafter.
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TOPIC #1: The 2014 updated JOM student count

BACKGROUND

Various factors affected the outcome of the 2014 JOM student count. Not all JOM contractors submitted a student count by the December 31, 2014, deadline. In addition, the 2014 count as of December 31, 2014 increased by 19,853 eligible students over the 2012 count. However, the number of JOM contractors that submitted a student count in 2014 decreased by 49 contractors from 2012. In 2012, the student count was 321,273 originating from 448 JOM contractors that submitted a count. In 2014, when the student count closed, a total of 341,126 students were counted originating from 399 JOM contractors that submitted a count. The BIE maintains a list of the contractors that submitted student count data in 1995, 2012 and 2014. The list now includes 556 contractors. Out of these 556 contractors, 399 JOM contractors provided BIE with 2014 student count data. Out of the 399 contractors, 249 were tribal contractors and 150 were non-tribal contractors. Contractors that did not submit a student count for 2014 included original contractors from 1995 and prospective contractors in 2012. In addition, some of the original 1995 JOM contractors' submissions showed a dramatic decrease of students from 1995 to 2014. Other original 1995 JOM contractors had a dramatic increase or decrease of students from 1995 to 2014. These counts will impact funding amounts in 2015, 2016 and thereafter depending on the funding formula.

THE BIE IS PROPOSING THE FOLLOWING:

The BIE proposes to accept all student counts submitted on or before the December 31, 2014 deadline. The BIE has submitted the results of the 2014 JOM student count to Congress.

Comments on the following questions would be appreciated

For purposes of providing funding for 2015, 2016 and thereafter, shall the BIE continue to accept student counts from JOM contractors (original or prospective) that did not submit a count before the December 31, 2014 deadline?

- A. If so, what date should be the cut-off date for accepting student counts?
- B. If not, shall the BIE use the last reported student count (whether the 1995 reported count or the 2012 reported count) for those that did not submit a 2014 count?

CONSULTATION ITEM #2

CONSULTATION TOPIC:	The JOM funding methodology base for 2015, 2016 and thereafter.
POTENTIAL ISSUE OR CHANGE:	The JOM student count and funding for tribal and non-tribal contractors has not changed since 1995. Some tribes and organizations representing tribes perceive that the JOM student population has increased since 1995.
REASON FOR PROPOSING ISSUE OR CHANGE:	To determine the JOM funding methodology for 2015, 2016 and thereafter.
CURRENT OPTION (S) BEING CONSIDERED BY THE BUREAU:	The BIE is proposing: refer to pages 7-8 for more information.

TOPIC #2: The JOM funding methodology for 2015, 2016 and thereafter.

BACKGROUND

In 1995, the Bureau of Indian Affairs conducted a JOM student count for purposes of distribution of JOM program funds. The 1995 JOM student count showed 271,884 students. Each year, JOM funds are transmitted to tribes through self-determination contracts. JOM funds for public school contractors are distributed to the appropriate Education Line Office (ELO) to place in the state or school district's JOM contract. Funding for public school contractors and the transfer of JOM funds from tribes to public schools is based on the 1995 JOM student count.

All available JOM funds since 1996 have been fully disbursed to JOM contractors/providers based on the 1995 JOM student count. No new JOM contractors/providers have been approved since 1995.

House Report 112-151, accompanying the Department of the Interior's FY 2012 Appropriations Act, included the following directive: "*The House Appropriations Committee directs the Bureau, in coordination with the Department of Education, and in consultation with tribes, to update its count of students eligible for the Johnson-O'Malley Program funding and to report the results to this Committee within 180 days of enactment of this Act.*"

The BIE completed a 2012 and a 2014 JOM student count, as directed by the House Appropriations Committee.

House Report 114-170, included the following directive from the House Appropriations Committee: *The Bureau is directed to consult with Tribes and Congress before proposing any changes in the distribution of future funds or in the frequency of method of future counts*".

Not all JOM original contractors from 1995 or prospective contractors placed on the roster in 2012 submitted a 2014 updated student count before December 31, 2014. Some contractors may

have believed that if they submitted a 2012 count they didn't have to submit a 2014 student count. Some prospective contractors submitted a student count for the first time in 2014. Some of these prospective contractors submitted data after the December 31 2014 deadline. Some original 1995 JOM contractors may have believed their 1995 JOM student count was "grandfathered in" and, therefore, they did not submit a 2014 student count. Some JOM contractors may have believed if they submitted a new count, their funding level would decrease. In other cases, some contractors have advised they never received notice that BIE was conducting a 2014 student count. Some contractors had personnel changes and the new personnel may have missed the deadline because they did not know that a 2014 student count was being conducted. Some of the original 1995 JOM contractors noted a change in their 2014 student count which would impact their program's funding.

The Current JOM Funding Formula

In FY 1988, the BIE reviewed various methods of equitable fund distributions and recommended a new formula. The new formula was approved by Congress in Public Law 100-446 (the Appropriations Act of September 27, 1988) which states: *"Notwithstanding any other provision of law, the amounts available for assistance to public schools under the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.), shall be distributed on the basis of the formula recommended by the Assistant Secretary of Indian Affairs in a letter to the Committees on Appropriations dated June 27, 1988, except that for the fiscal year ending September 30, 1989, the minimum weight factor shall be 1.1 rather than 1.3 and for the fiscal year ending September 30, 1990, the minimum weight factor shall be 1.2 rather than 1.3."*

In the FY 1989 Interior and Related Agencies Appropriations Act, the minimum weight factor was phased in over a three year period. The phase-in began in FY 1989 with states receiving a minimum weight of 1.1. In FY 1990, the minimum weight factor was 1.2; and in FY 1991 the minimum weight factor was 1.3. During FY 1990 and FY 1991, calculations were based on FY 1989 student enrollment figures. Any state whose weight factor exceeds the minimum weight factor established by law (1.3) continues to receive the weight factor produced by this calculation.

Formula Description

Weight factors for each state serving eligible Indian students are determined by a mathematical calculation.

Step 1: Divide the State Average Per Pupil Cost by the National Average Per Pupil Cost.

Formula: State Average Per Pupil Cost ÷ National Average Pupil Cost = Weight Factor

Any state whose weight factor exceeds the minimum weight factor established by law (1.3) continues to receive the weight factor produced by this calculation. All other states receive the minimum weight factor. Determination of each state's weight factor is step one in implementing the formula.

Step 2: The weight factor for each state is multiplied by the actual student count for each state, the result being a Weighted Student Count.

Formula: State Actual Student Count X State Weight Factor = Weighted Student Count

Step 3: The Weighted Student Counts for all of the participating states are totaled.

Step 4: The JOM funds appropriated for the applicable fiscal year are divided by the total Weighted Student Count, the result being a Weighted Per Student Amount.

Formula: JOM Appropriations ÷ Total Weighted Student Count = Weighted Per Student Amount

Step 5: The State Weight Factor for each state is multiplied by the Weighted Per Student Amount producing a State Per Student Amount.

Formula: State Weight Factor X Weighted Per Student Amount = State Per Student Amount

Step 6: The State Per Pupil Amount is then multiplied by the Actual Number of Students for each state, the result being the allocation of funds for each state.

Formula: State Per Pupil Amount X Actual Number of Students = State Allocation

Step 7: Funds are allocated back to the Bureau of Indian Affairs Regional Offices or Education Line Offices and are distributed to contractors based on their approved student counts and the state per student amount. All funds are distributed to the approved JOM contractors.

THE BUREAU IS PROPOSING THE FOLLOWING FUNDING METHODOLOGY:

For FYs 2015 and 2016, the BIE will begin by applying the JOM funding formula to JOM contractors that receive JOM funding through Indian Self-Determination Act contracts (we shall refer to these contractors as Group A). BIE will run the JOM funding formula based on each contractor's highest submitted student count (1995, 2012 or 2014 student counts) to obtain the amount to award to each contract in Group A. Group A contractors will receive as a floor the JOM funding amount currently in their contracts and will receive additional funding above that amount to the extent merited by their highest submitted student count. The remaining JOM contractors are public schools and new JOM contractors (we shall refer to these contractors as Group B). BIE will run the JOM funding formula based on each contractor's highest submitted student count (1995, 2012 or 2014 student counts) to obtain the final amount to award to each contract in Group B. Awards to Group B contractors will be made on a *pro rata* basis if remaining funds are insufficient to award to each contract in Group B the full amount that is generated by the JOM funding formula.

For years after 2016, Group A will continue to receive as a floor the JOM funding amount in the previous year's contract and will receive additional funding above that amount to the extent merited by their most current submitted student count. After the BIE determines the amounts to be awarded to Group A contractors, remaining funds will be awarded to Group B contractors based on the most current submitted student count. Awards to Group B contractors will be made

on a *pro rata* basis if remaining funds are insufficient to award to each contract in Group B the full amount that is generated by the JOM funding formula.

Comments on the following topics would be appreciated

1. How shall the JOM funding for FY 2015 and FY 2016 be distributed to JOM contractors? Shall BIE run the JOM funding formula based on each JOM contractor's highest submitted student count (1995, 2012 or 2014 student count). (A) awarding Group A JOM contractors as a floor the JOM funding amount currently in their contracts and additional funding above that amount to the extent merited by their highest submitted student count (1995, 2012, 2014 student count) and (B) awarding the remaining funds to Group B contractors, on a *pro rata* basis, based on their highest submitted student count (1995, 2012, 2014 student count)?
2. How shall JOM funding be distributed to JOM contractors after 2016? Shall BIE distribute funding by running the JOM funding formula based on each contractor's most current submitted student count, with (A) Group A contractors' receiving as a floor the JOM funding amount currently in their contracts and receiving additional funding above that amount to the extent merited by their most current submitted student count, and Group B contractors receiving the remaining funding, awarded on a *pro rata* basis, based on their most current student count?