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REPORT BY THE

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Comptroller General

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OF THE UNITED STATES

Alternatives For The Bureau Of Indian Affairs Public School Financial Assistance Program

The Bureau of Indian Affairs, Department of the Interior, began a 3-year phaseout in 1976 of its Johnson O'Malley basic support program, which provides funds for public schools to assist in educating Indian children. However, the Congress enacted legislation in 1978 reinforcing it. Interior has not requested funding to continue the program since fiscal year 1978, and the program's future is uncertain.

This report offers three options to the Congress in deciding the program's future.



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

B-114868

The Honorable John M. Ashbrook
Ranking Minority Member
Committee on Education and Labor
House of Representatives

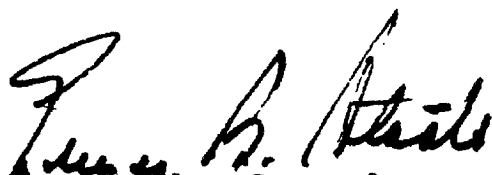
Dear Mr. Ashbrook:

This report assesses the Department of the Interior's Bureau of Indian Affairs administration of the basic support and tuition portions of the Johnson O'Malley program authorized by Public Law 73-167, as amended, April 16, 1934. It also identifies alternatives for the Congress to consider in deciding the basic support program's future. We prepared this report in response to your letter dated February 22, 1979, and meetings with your staff.

In accordance with your request, we informally discussed the report with officials of the Bureau of Indian Affairs and the Department of Health, Education, and Welfare's Office of Education, and we have incorporated their comments in appropriate sections of the report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 10 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,


Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE RANKING
MINORITY MEMBER
HOUSE COMMITTEE ON
EDUCATION AND LABOR

ALTERNATIVES FOR THE BUREAU OF
INDIAN AFFAIRS PUBLIC SCHOOL
FINANCIAL ASSISTANCE PROGRAM

D I G E S T

During fiscal years 1976-78, the Congress appropriated \$104 million for the Johnson O'Malley program whose purpose, among other things, was to make it possible for States to integrate Indian children into public schools and for the Federal Government to assist States in meeting the additional expenses.

The Bureau of Indian Affairs allotted about \$9 million of these funds for the Johnson O'Malley basic support program and estimated in its budget justifications that the program served about 23,000 to 25,000 Indian children during these years. However, the Bureau does not know the exact number of Indian children served, since it does not require school districts to identify or count them. (See p. 18.)

During the same period, the Bureau attempted to phase out the basic support program. However, in 1978, the Congress enacted legislation reinforcing it. The Bureau has not requested funding for fiscal years 1979 and 1980, and therefore the program's future is uncertain.

MATTERS FOR CONSIDERATION
BY THE CONGRESS

GAO identified the following options the the Congress will need to consider to determine the program's future.

--Appropriate funds in fiscal year 1980 to continue the Johnson O'Malley basic support program but require BIA to

improve its management of the program.
(See p. 12.)

- Incorporate the program into the Department of Health, Education, and Welfare's (HEW's) impact aid program, which also provides financial assistance to public school districts with Indian children. To do this, the Congress would have to amend the laws authorizing the Johnson O'Malley and impact aid programs. (See p. 6.)
- Let the program lapse by no longer appropriating funds for it.

REASON FOR PHASEOUT
AND POTENTIAL IMPACT

The Bureau attributes its decision to phase out the program to, among other things, criticisms in several congressional hearings and a 1971 report by the National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc., with the cooperation of The Center for Law and Education, Harvard University.

The report identified abuses and deficiencies under the Johnson O'Malley program and called for the phaseout of its basic support program. In hearings the congressional committees generally inquired about program funds, the rationale and justifications for these funds, and how they were being spent.

GAO discussed the report with the Deputy Assistant Secretary for Indian Affairs, who stated that the Bureau does not support continuation of the Johnson O'Malley basic support program at this time. The Bureau, therefore, did not request fiscal years 1979-80 funding. He further stated that increased funding authorized under HEW's impact aid program in fiscal year 1980 for school districts serving children residing on Indian lands should replace funding previously provided under the Bureau's basic support program.

None of the 15 schools GAO visited have closed or drastically reduced educational services because of the phaseout. However, three schools indicated that they will need additional funds to remain open. (See p. 5.)

HEW'S SCHOOL AID PROGRAM SIMILAR
TO THE JOHNSON O'MALLEY BASIC
SUPPORT PROGRAM

HEW's impact aid program is similar to the Johnson O'Malley basic support program because title I of the authorizing act provides funds to public school districts educating federally connected children, including those residing on Indian lands. These funds are to assist in meeting maintenance and operation costs and to supplement State and local funding. Also, the impact aid program requires tribal input on applications and on Indian children's educational needs. (See p. 6.)

Impact aid funds, although similar, do not duplicate basic support funds. The impact aid entitlement as well as State and local funds are deducted from the total anticipated revenues of a school district before the amount of basic support program funds needed by the school district is determined.

All of the schools and school districts GAO visited received impact aid and basic support funds. Impact aid funds most often exceeded those provided under BIA's basic support program during fiscal years 1976-79. Impact aid funding to school districts educating children residing on Indian lands should increase even more in 1980 as a result of the Education Amendments of 1978. (See apps. I and II.)

HEW's Office of Education officials commented that they do not advocate the option of incorporating the basic support program into the impact aid program. They added, however, that if

the Congress decides to do so, it should provide for a separate but clearly identified segment of funding to meet the special or dire needs of school districts educating Indian children. This funding would be above and beyond that provided under title I of the impact aid legislation and would benefit school districts educating Indian children only. To administer this segment, HEW officials stated that they would need about three additional staff members. (See p. 11.)

BUREAU MANAGEMENT OF BASIC SUPPORT PROGRAM WAS WEAK AND INCONSISTENT

The Indian Self-Determination and Education Assistance Act (Public Law 93-638, Jan. 4, 1975), which amended the Johnson O'Malley Act, established a national goal of providing the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in life areas of their choice and to achieve the measure of self-determination essential to their social and economic well-being. Because of Bureau management weaknesses, the basic support program has not contributed as much as it could toward achieving this national goal.

The Bureau provided basic support program funds to public schools and school districts without ensuring that they met Indian students' educational needs. (See p. 12.) These funds were provided to schools and school districts even though some of them did not, as required by program regulations,

--have at least 70 percent Indian enrollment (see p. 17) or

--demonstrate that they needed basic support program funds to meet minimum State educational requirements and standards. (See p. 19.)

Also, it is not clear whether the program's regulations requiring school districts to demonstrate their need for basic support program funds to meet minimum State educational standards and requirements meet the intent of the Johnson O'Malley legislation.

RECOMMENDATIONS TO THE
SECRETARY OF THE INTERIOR

If the Congress decides that the Bureau should continue administering the basic support program, the Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

- Develop adequate criteria for determining whether basic support program funds are meeting the educational needs of Indian students attending public schools.
- Seek legislative clarification from the Congress on whether basic support program funds should be used to meet the minimum or higher educational standards and requirements of States.
- Strengthen the Bureau's procedures and practices to ensure that schools and school districts meet established criteria to qualify for funding.

The Deputy Assistant Secretary for Indian Affairs generally agreed with the thrust of GAO's report. (See p. 21.)

LEGALITY OF JOHNSON O'MALLEY
TUITION FUNDS FOR OUT-OF-DISTRICT,
IN-STATE STUDENTS

The Johnson O'Malley tuition program reimburses school districts for per capita costs of educating Indian students residing in Federal boarding facilities for the purpose of attending public schools. Before fiscal year 1979, the Bureau made tuition payments to public schools for these students regardless of their legal residence. In 1979, tuition payments were no longer made for students whose legal residence was in the State but outside of the school district

because opinions by Interior's Office of the Solicitor stated that such payments cannot be provided under present laws. The Bureau is drafting legislative proposals that would permit these payments. (See p. 22.)

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ABBREVIATIONS

BIA Bureau of Indian Affairs
GAO General Accounting Office
HEW Health, Education, and Welfare

CHAPTER 1

INTRODUCTION

On February 22, 1979, the Ranking Minority Member, House Committee on Education and Labor, requested that we review the Department of the Interior's Bureau of Indian Affairs (BIA) management of the basic support and tuition portions of the Johnson O'Malley program. As agreed with his office, our audit included

- identifying alternatives for the Congress to consider in deciding the Johnson O'Malley basic support program's future (See ch. 2),
- evaluating BIA's management of the basic support program (See ch. 3), and
- determining the legality of Johnson O'Malley tuition payments to school districts educating BIA dormitory students whose legal residence is in the same State but outside of the school district. (See ch. 4.)

The Johnson O'Malley program was authorized by Public Law 73-167, as amended, April 16, 1934, commonly known as the Johnson O'Malley Act. The Johnson O'Malley program's purpose was, among other things, to make it possible for States to integrate Indians with other children in public schools and for the Federal Government to assist States in bearing the additional expenses.

Under the program, BIA provided three categories of payments--basic or operational support, tuition, and supplemental--to States, school districts, tribal organizations, or Indian corporations to supplement educational funding of State and local governments and the Department of Health, Education, and Welfare's (HEW's) impact aid program. Basic support funds supplement school districts' regular operations and maintenance programs that are necessary to meet statewide requirements or State educational standards. Supplemental funds assist in meeting eligible Indian students' needs resulting from social and economic conditions, cultural or language differences, and other factors. Tuition payments reimburse school districts for per capita costs of educating BIA dormitory

students. During fiscal years 1976-78, the Congress appropriated \$104 million for the three categories of the Johnson O'Malley program.

The HEW School Assistance in Federally Affected Areas program, also known as impact aid, was authorized by Public Law 81-874, as amended September 30, 1950. Under title I of this law, HEW's Commissioner of Education provides financial assistance to local educational agencies to minimize the impact certain Federal activities have on the local educational agencies' current operating expenses. Like those under Johnson O'Malley basic support, impact aid program funds are provided to public schools with Indian students and others to help meet school districts' maintenance and operation costs and to supplement State and local funding. Tribal input on applications and Indian educational needs is also solicited and required by the impact aid program law.

SCOPE OF REVIEW

Our review was limited to the basic support and tuition portions of the Johnson O'Malley program and HEW's impact aid program. We visited 15 schools receiving Johnson O'Malley basic support and impact aid in South Dakota, Arizona, Minnesota, Iowa, and Nebraska. (See apps. I and II.) One of them also received Johnson O'Malley tuition payments. We also met with Federal officials and examined pertinent files, records, and reports at BIA headquarters and field offices; HEW in Washington; and Interior's Office of Inspector General in Washington, D.C., and Denver, Colorado.

CHAPTER 2

ALTERNATIVES FOR ASSISTING PUBLIC

SCHOOLS EDUCATING INDIAN CHILDREN

Funding for the Johnson O'Malley basic support program will end September 30, 1979, and BIA has not requested funds to continue the program in fiscal year 1980. Congressional decisions will be required to determine the status of the Johnson O'Malley basic support program. Options available are:

- Appropriate funds for fiscal year 1980 to continue the Johnson O'Malley basic support program but require BIA to improve its management of the program.
- Incorporate the program into HEW's impact aid program, which provides similar financial assistance to public school districts with Indian children. To do this, the Congress would have to amend the laws authorizing the Johnson O'Malley and impact aid programs.
- Let the program lapse by no longer appropriating funds for it.

STATUS OF PROGRAM

In 1976, BIA attempted to phase out the basic support program over a 3-year period. Using 1976 as the base year, BIA planned to reduce States' or contractors' funding levels by one-third of its fiscal year 1976 basic support allotments. Funding to States or contractors in fiscal year 1977 would be two-thirds of 1976 amounts and 1978 funding would be one-third of 1976 amounts. The phaseout was affected, however, when the Congress added \$1.9 million to BIA's fiscal year 1978 request and appropriated \$3.2 million for the program. In section 1103 (b) of the Education Amendments of 1978 (Public Law 95-561, Nov. 1, 1978), the Congress also reinforced the basic support program by authorizing funding to:

"* * * public schools educating Indian students, * * * whose total sum of Federal, State and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public

schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools."

REASON FOR PHASEOUT

BIA attributes the decision to phase out the program to, among other things, a report prepared by the National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc., with the cooperation of The Center for Law and Education, Harvard University, 1/ and to several congressional hearings.

The report identified several abuses and administrative deficiencies under the Johnson O'Malley program and stated that BIA has been derelict in administering the program's law. It called for phaseout of the basic support program. Our review of congressional hearings and discussions with BIA officials revealed that congressional committees did not specifically direct that the program be phased out. The committees generally inquired about the amount of funds needed for the program, the rationale and justifications for the amount, and how funds were being spent.

PROGRAM ADMINISTRATION

BIA's Office of Indian Education is responsible for administering the Johnson O'Malley program. This responsibility was divided between the Office of Indian Education's Division of Elementary and Secondary Education in Washington and the Division of Educational Assistance, Indian Education Resources Center, Albuquerque, New Mexico. Washington determined fiscal year 1978 basic support allotments for schools and school districts. Albuquerque was responsible for the supplemental program and Washington and Albuquerque the tuition program. Albuquerque also developed information on the number of children served by the program for BIA's budget justifications. Area offices, which comprise the second and perhaps most important level of BIA's management, were responsible for reviewing Johnson O'Malley basic support program applications for adequacy, accuracy, and compliance to regulations and for contracting with States, school districts, and tribes. States and tribes

1/"An Even Chance," 1971.

also contracted with school districts for up to the allotted amounts. Before this time, the Indian Education Resources Center allotted and coordinated funding to area offices and States, and area offices contracted with tribes which contracted with school districts for the program. States also contracted with school districts for the program.

Of the \$104 million appropriated by the Congress for the Johnson O'Malley program during fiscal years 1976-78, BIA allotted about \$9 million for basic support. In fiscal year 1979, BIA did not request funds from the Congress for the basic support program and none were appropriated.

Funds appropriated for the basic support program remain available for 2 fiscal years. As of May 1, 1979, all funds appropriated for basic support were allotted, except \$688,500 of the 1978 appropriation. Unless obligated to school districts by September 30, 1979, these funds will revert to the U.S. Treasury.

In 1976 and 1977, basic support funds were allotted for 27 schools located in Nebraska, South Dakota, Iowa, Minnesota, and Arizona. This number decreased to 26 in 1978 when the Fort Thomas school district in Arizona declined funding. During these years, BIA estimated that between 23,000-25,000 children were served by the basic support program. However, because BIA does not require school districts to count or identify children served by the program and performs limited verification of other figures reported on children served, it does not know the exact number of children served by the program.

Basic support funds often lose their identity when provided to school districts since these funds are commingled with other general operating funds. We were told and our review indicated, however, that these funds are primarily used for such things as salaries, student transportation, and plant operations.

POTENTIAL IMPACT OF PHASEOUT

The effect of the basic support program phaseout differed among schools and school districts. None of the 15 schools we visited have closed or drastically reduced educational services. However, at least three school districts--Macy and Santee in Nebraska and Indian Oasis in Arizona--indicated that they will need additional funds to

remain open. Many school districts stated, however, that staffing levels and curriculum offerings either remained the same or increased during the phaseout because some schools and school districts (1) received increased amounts under HEW's impact aid program, replacing funds previously provided by basic support, (2) received about the same amount of basic support funds and may have actually received increased amounts during the phaseout period, and (3) have not been phased out and did receive basic support in 1979. Also, Minnesota made a special appropriation for some of its school districts that had been receiving basic support. Several school district officials in Arizona also told us that their local taxes increased and in some cases replaced funding previously provided by basic support.

Several tribes and school districts objected to the phaseout provisions of the Johnson O'Malley regulations because they were not included in the proposed rules published in the Federal Register on September 4, 1975, and tribes and school districts did not have an opportunity to comment on them. They also requested waivers to these provisions, which were denied on the basis of an opinion by Interior's Office of the Solicitor.

HEW'S SCHOOL AID PROGRAM SIMILAR
TO BIA'S BASIC SUPPORT PROGRAM

All of the schools and school districts visited during our review received financial assistance under HEW's impact aid program. This program is similar to Johnson O'Malley basic support since funds provided (1) assist school districts serving Indian students in meeting maintenance and operations costs and (2) supplement State and local funding. In addition, school districts must provide opportunities to tribes and parents of Indian children to participate in planning, applying, and presenting their overall views on the school district's educational program, its operations, and other school district matters relating to impact aid.

Although similar, impact aid funds do not duplicate Johnson O'Malley basic support. Duplicate payments are avoided because school districts consider impact aid program payments when arriving at the amount of basic support program funds they need.

HEW's impact aid program was authorized by Public Law 81-874, as amended, September 30, 1950. In authorizing

the program, the Congress recognized the impact which certain Federal activities have on local educational agencies (public school boards of education or any other public authorities legally constituted by States to administer public schools). The Congress, therefore, declared a U.S. policy to provide financial assistance to local educational agencies upon which U.S. activities have placed a financial burden for such reasons as:

- Revenues available to such agencies from local sources have been reduced as the result of acquisition of real property by the United States.
- The local agencies provide education for children residing on Federal property.
- The agencies provide education for children whose parents are employed on Federal property.
- A sudden and substantial increase in school attendance has occurred as a result of Federal activities.

Local educational agencies educating children residing on Indian lands are compensated under title I, section 3, of the impact aid program law. Indian children generally benefit from these funds because they reside on Indian lands and these lands are not subject to taxation by States or their political subdivisions. Impact aid is intended to compensate local educational agencies because federally connected children, including Indians, increase school enrollment without proportionately increasing the local tax base. HEW's Office of Education administers the program.

To determine a local educational agency's entitlement, the Commissioner of Education computes the federally connected average daily attendance and the agency's local contribution rate. The federally connected average daily attendance multiplied by the local contribution rate is the agency's entitlement. The federally connected average daily attendance is determined by identifying the (1) number of federally connected pupils in attendance on the survey date, (2) total school enrollment on that date, adjusted to exclude certain pupils such as those for whom the local educational agency is paid tuition and prekindergarten pupils, and (3) total average daily attendance at yearend, adjusted to exclude pupils noted in (2). The resulting formula is:

Federally con- nected pupils X at survey date	Adjusted yearend average daily attendance <u>Adjusted total school enroll- ment at survey day</u>	= Federally connected average daily attendance
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The local contribution rate is based on

- the amounts private owners in generally comparable local educational agencies pay toward the cost of educating children or
- a minimum payment rate which is equal to the higher of either one-half the national or one-half the State average expenditure per pupil.

However, in no case may the minimum rate exceed the State average expenditure per pupil. The amount of aid provided to a local educational agency may not be based on a rate lower than the applicable minimum rate.

During fiscal years 1976-79, all of the schools and school districts served by the Johnson O'Malley basic support program also received impact aid funding. These funds often exceeded amounts provided under the basic support program. In 1980, these schools are projected to receive even higher impact aid funding because the Education Amendments of 1978 provided for increased funding of local educational agencies serving children residing on Indian lands. (See app. II.)

Several school districts we visited pointed out that impact aid was often received after the beginning and sometimes after the end of the school year. These delays should be minimized in 1980, however, because the Education Amendments of 1978 also required that 75 percent of a local educational agency's estimated entitlement be provided no later than 30 days after the beginning of the fiscal year.

MATTERS FOR CONSIDERATION
BY THE CONGRESS

The Johnson O'Malley basic support program is in limbo. We identified three options the Congress should consider in deciding the program's future; advantages and disadvantages of each option are discussed below.

Appropriate funds to BIA
in fiscal year 1980

The Congress could appropriate funds for BIA to continue administering the program in fiscal year 1980.

Advantages

Provide funds to school districts that claim they need them.

Indian tribes will continue to have input on the use of Johnson O'Malley basic support program funds.

Disadvantages

BIA's management of the basic support program was weak and inconsistent. (See ch. 3.) BIA has had problems managing its programs, 1/ and if this program continues, its management must be improved. Improvement would include making determinations as to whether school districts actually need future basic support program funds and whether the funds will be effectively used to meet the educational needs of Indian children.

Incorporate program under
HEW's impact aid program

The Congress could amend the laws authorizing the two programs and incorporate the Johnson O'Malley basic support program into HEW's program.

Advantages

Financial assistance to school districts educating Indian children would be administered by one Federal agency, thereby avoiding similar payments by two Federal agencies and possibly reducing program and administrative costs. This option may also

Disadvantages

Indian tribes may lose input on the use of Johnson O'Malley basic support program funds.

1/"Federal Management Weaknesses Cry Out for Alternatives to Deliver Programs and Services to Indians to Improve Their Quality of Life." (CED-78-166, Oct. 31, 1978.)

Advantages

eliminate dual applications by school districts for funds to educate Indian children attending public schools and reduce school districts' administrative costs and burdens.

Increased funding is projected for school districts serving Indian students, and this may provide needed funds to the school districts that claim they need them.

Take no action

The Congress could take no action and let the program lapse.

Advantages

Federal funds would be saved.

BIA would not need to spend a lot of time improving its management of the basic support program. It could concentrate on improving its management of other BIA programs.

Disadvantages

Some school districts may have valid needs for Johnson O'Malley basic support funds that may not be provided under HEW's impact aid program or the supplemental and tuition portions of the Johnson O'Malley program.

The Deputy Assistant Secretary for Indian Affairs stated that BIA does not support the continuation of the Johnson O'Malley basic support program at this time. BIA, therefore, has not requested funding for the program in fiscal years 1979-80. The regulations establishing the phase-out also have not changed. He said that increased funding authorized under HEW's impact aid program in fiscal year 1980 for school districts serving children residing on Indian lands should replace funding previously provided under the basic support program.

HEW's Office of Education officials generally agreed with our discussion of the impact aid program and its similarities to the Johnson O'Malley basic support program. The officials also stated that they do not advocate that the Johnson O'Malley basic support program be automatically added to the impact aid program. However, they stated that if the Congress decides to incorporate Johnson O'Malley basic support into HEW's impact aid program, it should provide for a separate but clearly identified segment of funding to meet the special or dire needs of school districts educating Indian children. This funding would be above and beyond that provided under title I of the impact aid legislation and would benefit only school districts educating Indian children. To administer this segment, HEW officials stated that they would need about three additional staff members.

CHAPTER 3

BIA'S MANAGEMENT OF BASIC SUPPORT PROGRAM

WAS WEAK AND INCONSISTENT

The purpose of the Johnson O'Malley program was, among other things, to make it possible for States to integrate Indians with other children in public schools and for the Federal Government to assist States in meeting the additional expenses.

The Congress established in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, Jan. 4, 1975), which amended the Johnson O'Malley Act, a national goal to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in life areas of their choice and to achieve the measure of self-determination essential to their social and economic well-being. The Johnson O'Malley basic support program has not contributed as much as it could toward achieving this national goal because of management weaknesses.

BIA provided basic support program funds to public schools and school districts to make up the difference when expenditures exceeded revenues without ensuring that they meet Indian students' educational needs. These funds were provided to schools and school districts even though some of them did not (1) have at least 70 percent Indian enrollment or (2) demonstrate that they needed basic support program funds to meet minimum State educational requirements and standards, as required by Johnson O'Malley program regulations. (See p. 17.) Furthermore, it is not clear whether the program's regulations requiring schools to demonstrate their need for basic support program funds to meet minimum State educational standards and requirements meet the intent of the Johnson O'Malley legislation.

FUNDS PROVIDED TO MEET EXCESS OF EXPENDITURES OVER REVENUES

Generally, BIA determined schools' funding needs by examining actual and estimated expenditures and revenues. If expenditures exceeded revenues, BIA provided basic support funds to make up the difference. BIA has not

established adequate criteria for determining whether basic support program funds meet the educational needs of Indian students attending public schools.

In 1977, the Indian Education Resources Center determined school districts' funding needs and allotted basic support program funds, by State, to BIA area offices and States. Area offices negotiated and contracted with tribes, which contracted with school districts. States also contracted with school districts for the program funds.

In fiscal year 1978, BIA's central office determined the amount of funds school districts needed. Area offices were responsible for contracting with school districts, tribes, and States. Tribes and States also contracted with school districts for up to the allotted amounts.

In fiscal year 1978, the Congress increased the basic support appropriation by \$1.9 million--for public schools in States that refused to provide adequate resources for school operations, where property tax and "ability to pay" are very low, and where public schools would close or reduce their educational programs. The Acting Chief of the Division of Elementary and Secondary Education stated that school districts' needs for basic support funds in fiscal year 1978 were determined primarily through telephone conversations with area officials. BIA allotted 50 percent of these amounts for schools and school districts after tribal and school officials stated that their schools would close or drastically reduce programs and operations without funding assistance. BIA also requested that Interior's Office of Inspector General determine school districts' eligibility for the program and actual and estimated expenditures and revenues for fiscal year 1978 so that it could determine whether school districts needed future basic support funds. (See p. 14.)

Several school officials said that basic support funds requested and received before and during 1976 were merely needed to balance their budgets, or were the difference between anticipated expenditures and revenues. In 1977, because of the program phaseout, BIA generally reduced funding to States and contractors by one-third as required by regulations for the program. However, the Macy and Winnebago school districts in Nebraska, the Chinle school district in Arizona, and the Pine Point school in Minnesota

received allotments in addition to those initially allotted in fiscal year 1977.

The Acting Chief of BIA's Division of Elementary and Secondary Education stated that additional allotments were made in fiscal year 1977 for the school districts in Nebraska because they needed these funds to balance their budgets. After visiting these school districts, he concluded that Winnebago needed an additional \$50,000 and Macy \$100,000, all of which was allotted. He also determined that the Santee school district in Nebraska needed an additional \$20,000 to balance its budget, but it did not receive these funds. He said that additional funds totaling \$125,000 were allotted for Pine Point because its expenditures exceeded revenues by that amount. The official could not recall why Chinle received the additional allotment.

Inspector General's audits

As requested by BIA, Interior's Office of Inspector General performed audits of the 26 schools and school districts receiving basic support funds. The audits were made to determine school districts' eligibility for the program and actual and estimated expenditures and revenues for fiscal year 1978 so that BIA could determine whether schools needed basic support funds. The Inspector General did not determine whether the schools were managing or utilizing resources economically and efficiently or whether they were budgeting and spending more than was necessary to meet applicable State standards or requirements. Fieldwork for these audits was performed during February and April 1978.

The audit reports showed that the Inspector General determined yearend cash balances at 21 school districts. For four others, the Inspector General's report did not show yearend cash balances but did show that the schools did not meet BIA's eligibility criteria. The Inspector General's report pointed out that the remaining school's financial records were so poor that it could not determine its yearend cash balance. An official of the Inspector General's office stated that although the auditors only reported reasons why the 4 schools did not meet eligibility criteria, they reviewed actual and estimated expenditures and revenues and computed yearend cash balances for all 25 schools and school districts.

When computing school districts' yearend cash balances, the Inspector General did not include 50 percent of fiscal year 1978 allotments which BIA initially made for school districts, although this information was known at the time of the audits. We noted that including this information would have changed the computed yearend cash balance for the Indian Oasis school district in Arizona from the deficit shown in the Inspector General's report to a surplus. An official of the Inspector General's Office stated that the allotted amounts were not included because school districts had not contracted for these amounts at the time of the audit. Until contracts were signed, he added, these amounts could change.

Audit results not followed

The Inspector General's audit reports showed that at 4 of the 21 schools, expenditures would exceed revenues. BIA allotted additional funds to only three of the four schools. BIA also allotted funds to the South Tama school district in Iowa and the Pine Point school in Minnesota. The Inspector General's audit reports showed that South Tama was ineligible for basic support program funds. Pine Point's financial position could not be determined because its financial records were in poor condition.

Schedule of Schools' and School Districts' Deficits as Shown by the Inspector General Audits and BIA's Total Allotment for Them in Fiscal Year 1978

<u>Inspector General audits</u>	<u>Deficits</u>	<u>BIA's allotments</u>	<u>Total</u>
Keams Canyon, Arizona	\$148,122	Keams Canyon, Arizona	\$151,122
Indian Oasis, Arizona	96,109	Indian Oasis, Arizona	225,000
Waubay, South Dakota	118,329	Waubay, South Dakota	100,000
McIntosh, South Dakota	7,963	McIntosh, South Dakota	7,000

Pine Point, Minnesota	Determination not made	Pine Point, Minnesota	143,000
South Tama, Iowa	Ineligible	South Tama, Iowa	84,000

A BIA official stated that Pine Point received the additional funding after it provided financial information showing that its expenditures exceeded revenues. The official stated that South Tama received additional funds because BIA is under court order to keep the Sac and Fox settlement school open. McIntosh, according to the official, did not receive an additional allotment because the deficit of \$7,963 shown in the Inspector General's report did not include the initial 1978 allotment of \$7,000. When this allotment was deducted, McIntosh's deficit was \$963. The official could not explain why this amount was not allotted for McIntosh.

In 1979, BIA also allotted some of the remaining fiscal year 1978 funds to the Indian Oasis school district in Arizona, the Macy and Santee school districts in Nebraska, and the South Tama school district in Iowa. According to the Inspector General's audits, none of these school districts, except Indian Oasis, would have deficits at the end of 1978. According to a BIA official, allotments were made for Indian Oasis, Macy, and Santee after they voluntarily submitted information indicating financial need. The official stated again that South Tama received additional funds because BIA is under court order to keep the Sac and Fox settlement school open.

Conflicts and concerns regarding
funding allotments

Many school officials expressed concern over BIA's interpretation of the Inspector General's audits and failure to allow carryovers or positive cash balances. These officials stated that carryovers are needed because most revenues, including basic support and HEW's impact aid program funds, were not received until after the first few months of the school year and in some cases were as much as a year late. For example, in Arizona school districts contracting with the State Department of Education in school year 1977-78 did not receive their fiscal year 1978 operational support allotment in that year. In another case, a school district official, whose school

contracted with the Navajo tribe, stated that delays in payments from the tribe caused the school district to have a negative yearend cash balance. BIA regulations for the basic support program do not require States or contractors to provide basic support funds to schools and school districts by a specific date.

We noted an instance where BIA's position on carryover funds conflicted with that of its area office. In an April 12, 1977, letter to the Sisseton school district, BIA's Aberdeen area director stated that a school district needs a carryover balance because:

"When a school district has a large portion of their funding from Federal resources there is usually a delay of the school's first allowance and difficulty of meeting the first payments occurs * * *. A carryover of up to 25 percent depending on the amount of federal resources in the district has been determined a reasonable carryover * * *."

Also, the Waubay school district, which did not meet BIA's eligibility criteria requiring that school districts have at least 70 percent Indian enrollment, received a \$100,000 commitment from BIA on March 4, 1977, before the Inspector General's audit of the school district. The Waubay school district superintendant stated that the political pressure the school exerted on BIA because of the letter of commitment was a more important reason for its receiving the total allotment.

ENROLLMENT CRITERIA NOT MET

Regulations for the Johnson O'Malley program required that school districts have at least 70 percent Indian enrollment in order to receive basic support program funds. Several South Dakota school districts under BIA's Aberdeen area office could not meet the 70-percent Indian enrollment requirement. Until fiscal year 1979, BIA waived the requirement for some school districts, and some with as little as 19 percent Indian enrollment received basic support funds. In a June 23, 1978, letter, BIA advised Waubay school district in South Dakota that it would not receive additional basic support funds in fiscal year 1979 (school year 1978-79) because it did not meet the 70-percent eligibility requirement. BIA had consistently waived this requirement for Waubay until fiscal

year 1979. Interior's Office of Inspector General audit reports of schools receiving basic support also stated that the schools and school districts in Minnesota (Grand Portage, Naytahwaush, and White Earth Attendance Centers) and Iowa (South Tama) did not meet the 70-percent requirement and were ineligible for basic support program funds.

We also noted that the South Tama school district does not meet other eligibility criteria for the program and question basic support program payments to the school district. BIA officials in the Minneapolis area office responsible for the South Tama school district contract stated that South Tama should not receive basic support funds. A BIA central office official also questioned basic support program payments to the school district. (See app. III.)

Number of Indian children
served not known

BIA does not know the number of children served by the basic support program because it did not require school districts to count or identify the children and performed limited verification of other reported figures.

BIA regulations for the program only required school districts to identify the total number of children eligible for the Johnson O'Malley program. In addition, BIA required school districts to identify children served by the Johnson O'Malley supplemental and not the basic support program. BIA assumed the number of students served under the supplemental program was the same as under basic support. Officials told us they performed limited verification of supplemental figures and relied on school districts' and tribal officials' certifications for accuracy of the count.

BIA used a compilation of these figures, with adjustments, to develop actual and estimated information on the number of children served by the program for its budget justifications. To develop this information, an Indian Education Resources Center official said he used actual count information submitted by schools and school districts as much as 2 years before the budget year because this was the only information available when BIA began preparing its budget. The official stated that, to develop estimates on the number of children to be served by the program, the actual count was adjusted up or down by the Indian

Education Resources Center and the Washington office based on their knowledge and experience of children served by the program in the past and on future projections. This figure was further adjusted as more current information became available.

Actual counts of the number of children served by the program were also adjusted. For example, a BIA Phoenix area official stated that the reported child count was 24,000, but because he considered the figure high, he negotiated with the contractor and reduced it to 21,000. Subsequently, he and the Chief, Division of Educational Assistance, Indian Education Resources Center, mutually agreed to reduce it to 17,500 as the final count because he believed the figure was still high.

MINIMUM STANDARDS CRITERIA NOT MET

Regulations for the Johnson O'Malley program required school districts to demonstrate their need for basic support program funds to meet minimum State educational standards and requirements. Several school district officials questioned this provision of the regulations because the Johnson O'Malley program's legislation authorized the Secretary of the Interior:

"* * * to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of this act into effect: Provided, That such minimum standards of service are not less than the highest maintained by the States or Territories with which said contract or contracts, as herein provided, are executed."
(Emphasis added.)

These officials stated that they interpreted the legislation--such minimum standards of service are not less than the highest maintained by States or Territories--to mean the highest State educational standards should be used in demonstrating need for basic support rather than the minimum standards required by BIA's regulations.

On its face, the above argument of school district officials appears sound. However, administration interpretation and legislative history cast doubt upon this argument. The meaning of the phrase "highest maintained by the States" is not clear.

BIA had problems implementing this requirement. Although its program regulations required school districts to demonstrate their need for basic support program funds to meet minimum State educational standards and requirements, BIA did not consistently adhere to this requirement. In South Dakota, for example, BIA provided basic support funds to schools and school districts to meet different levels of accreditation. This resulted in some South Dakota schools and school districts receiving basic support to meet the highest levels of accreditation in the State, while others received funding based on lower levels of accreditation. Further, several Arizona school districts that received basic support funds meet the requirements of the North Central Association of Colleges and Schools. We were told that these requirements exceeded the minimum required in Arizona.

CONCLUSIONS

Because of management weaknesses, the Johnson O'Malley basic support program has not contributed as much as it could toward achieving the national goal to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in life areas of their choice and to achieve the measure of self-determination essential to their social and economic well-being.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

If the Congress decides that BIA should continue its administration of the basic support program, the Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

- Develop adequate criteria for determining whether basic support program funds are meeting the educational needs of Indian students attending public schools.
- Seek legislative clarification from the Congress on whether basic support program funds should be used to meet the minimum or higher educational standards and requirements of States.

--Strengthen BIA's procedures and practices to ensure that schools and school districts meet established criteria to qualify for funding.

- - - -

We discussed the contents of this report with the Deputy Assistant Secretary for Indian Affairs and he generally agreed with the thrust of the report. He stated that BIA has not effectively managed the Johnson O'Malley basic support program because it lacks adequate staffing, funding, and more importantly an understanding of public school financing systems.

CHAPTER 4

LEGALITY OF JOHNSON O'MALLEY TUITION FUNDS

FOR OUT-OF-DISTRICT, IN-STATE STUDENTS

As agreed with the Ranking Minority Member, House Committee on Education and Labor staff, we determined why certain Johnson O'Malley tuition program payments were not made in fiscal year 1979 and whether Interior's reasons for not providing these payments were correct. In 1979, tuition payments were not provided to school districts educating BIA dormitory students whose legal residence is in the same State but outside of the school district because Interior's Office of the Solicitor opinions stated that these payments were not legally authorized.

Over the years, BIA contracted with school districts for the tuition program. Tuition funds reimbursed school districts for educating BIA students residing in Federal dormitories for the purpose of attending public schools. In the past, BIA provided up to full reimbursement to school districts for these students regardless of whether their legal residence was outside of the school district but in the same State or outside of the State.

In 1977 and 1978, BIA allotted tuition funds totaling about \$658,000 and \$683,000, respectively, for school districts in South Dakota, Minnesota, Arizona, New Mexico, and Utah regardless of whether the tuition students' legal residence was outside of the school district but in the same State or outside of the State. In 1979, about \$148,000 was allotted for only those students with legal residences outside of the State.

Current regulations identifying eligibility criteria for the tuition program became effective in November 1975 (25 C.F.R. 273). These regulations state that school districts will be reimbursed for per capita costs of educating Indian students residing in Federal boarding facilities for the purpose of attending public schools. As required by the Johnson O'Malley Act, the regulations provide that eligible students must be members of recognized Indian tribes and have legal residences in a State other than that of the school district.

The Commissioner of Indian Affairs waived the residency requirement for some school districts so that tuition payments could be provided for dormitory students with legal residences in the same State but outside of the school district. Waivers, however, were no longer granted for these students after the Solicitor advised BIA that these statutory requirements cannot be waived.

We agree with Interior's legal opinion. In May 1979, BIA was developing legislative proposals to amend the Johnson O'Malley law so that tuition payments for out-of-district, in-State students could be provided in the future.

BIA'S JOHNSON O'MALLEY BASIC SUPPORT PROGRAM FUNDS

ALLOTTED FOR SCHOOLS AND SCHOOL DISTRICTS

FISCAL YEARS 1976-79 (note a)

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>d/1979</u>
Aberdeen area				
	- - - - (000 omitted) - - - -			
Nebraska:				
Macy (note b)	\$216	\$244	\$122	\$160
Santee (note b)	62	41	83	43
Winnebago (note b)	48	82	46	
South Dakota:				
McIntosh	40	27	7	
Sisseton	368	245	123	
Smee (note b)	65	43	25	
Todd County (note b)	290	193	125	
Waubay (note b)	64	43	c/100	
West River	50	33	9	
White River	50	33	9	
Minneapolis area				
Iowa:				
South Tama (note b)	124	83	c/ 84	84
Minnesota:				
Grand Portage	30	23	13	
Mahnomon (Naytahwaush)	40	30	17	
Nett Lake	30	33	21	
Pine Point	120	268	c/143	
Red Lake (note b)	225	145	100	
Waubun (White Earth)	40	36	18	
Navajo area				
Arizona:				
Chinle	491	339	170	
Ganado (note b)	203	129	65	
Kayenta	200	124	63	
Tuba City (note b)	314	224	113	
Window Rock (note b)	336	211	106	
Phoenix Area				
Arizona:				
Alchesay (note b)	84	56	28	
Keams Canyon (Hopi)				
(note b)	38	25	c/151	
Indian Oasis (note b)	260	174	c/225	225
Sacaton (note b)	126	84	38	
Fort Thomas	36	23		

a/Figures rounded to the nearest thousand. BIA's fiscal years 1976 and 1977 advice of allotment sheets only identified allotments for each area office and did not specifically identify those for individual schools and school districts. Figures shown were provided by BIA's Office of Indian Education. In its opinions these figures represent fiscal years 1976 and 1977 allotments for schools and school districts.

b/Schools and school districts we visited.

c/Schools and school districts receiving additional funds in fiscal year 1978.

d/Funds appropriated in fiscal year 1978 but allotted by BIA in fiscal year 1979.

HEW'S IMPACT AID PROGRAM ENTITLEMENTSFOR SCHOOLS AND SCHOOL DISTRICTSFISCAL YEARS 1976-80 (note a)

Aberdeen area	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
	- - - - (000 omitted) - - - -				
Nebraska:					
Macy	\$ 244	\$ 298	\$ 560	\$ 614	\$ 814
Santee	54	160	223	246	330
Winnebago	206	253	322	351	449
South Dakota:					
McIntosh	76	83	77	77	67
Sisseton	275	265	321	335	374
Smee	123	110	129	142	189
Todd County	846	904	1,104	1,211	1,604
Waubay	63	69	114	127	168
West River	93	87	120	134	170
White River	137	141	209	226	278
Minneapolis area					
Iowa:					
South Tama	117	127	147	163	241
Minnesota:					
Grand Portage (note b)	36	52	65	69	79
Mahnomon (Naytahwaush)	52	85	89	101	145
Nett Lake	76	80	94	104	139
Pine Point (note c)	79	102	79	90	130
Red Lake	490	518	680	748	1,003
Waubun (White Earth)	101	112	139	150	202
Navajo area					
Arizona:					
Chinle	2,148	2,590	2,493	2,743	3,678
Ganado	810	935	1,078	1,186	1,590
Kayenta	804	1,846	2,949	3,244	4,349
Tuba City	1,339	1,687	1,964	2,161	2,898
Window Rock	1,449	1,801	1,980	2,177	2,911
Phoenix area					
Arizona:					
Alchesay	168	201	226	249	333
Keams Canyon (Hopi)	368	437	468	515	691
Indian Oasis	599	741	742	817	1,095
Sacaton	487	596	549	603	809
Fort Thomas	199	221	224	246	330

a/Figures rounded to the nearest thousand. Entitlements identified for fiscal years 1979-80 represent HEW's projected funds for schools and school districts in these years.

b/Impact aid funds for this school are provided to the Grand Marais school district.

c/Impact aid funds for this school are provided to the Park Rapids school district.

QUESTIONABLE USE OF BASIC SUPPORTFUNDS TO SOUTH TAMA

The Bureau of Indian Affairs contracted with the South Tama school district for the operation of the Sac and Fox settlement school in Iowa. Under the Johnson O'Malley basic support program, BIA allotted \$124,000 for the South Tama school district's management of the Sac and Fox settlement school in 1976, \$82,667 in 1977, \$84,000 in 1978, and \$84,000 in 1979.

According to BIA, a court order required it to keep the nearby Sac and Fox settlement school open. BIA provided Johnson O'Malley basic support funds to South Tama for the settlement school to comply with this order. The Inspector General audit reports stated that since the Sac and Fox settlement is not a part of the South Tama school district and South Tama is not responsible for educating the children of the settlement, the school is not eligible for basic support program funds. We also question the use of basic support program funds for the settlement school because it is not a part of the South Tama district and, when combined with the South Tama district, it does not meet the 70-percent enrollment required by the program regulations. Also, we were told that the settlement school is essentially a BIA school that has contracted out the academic portion of its operations, and BIA schools are not eligible for basic support program funds.

BIA officials in the Minneapolis area office responsible for the South Tama school district contract agreed that South Tama should not receive basic support funds for the settlement school because it is a BIA school. The Acting Chief of the Division of Elementary and Secondary Education also questioned the use of basic support funds for the school.

CARRYOVER FUNDS AT THE SETTLEMENT SCHOOL

Surplus and carryover funds have existed at the Sac and Fox settlement school since 1972. BIA, however, allotted additional basic support funds for the settlement school in 1978 after the Inspector General's audit indicated that the South Tama school district was ineligible for basic support funds because the settlement

school is not a part of the South Tama school district. This allotment also conflicted with BIA's interpretation of the Inspector General's audit reports for other schools and school districts of not providing additional basic support funds in fiscal year 1978 when they had carryover funds.

A school district official stated that approximately \$90,000 will be available for carryover at the end of the current school year. She also stated that the school district will not educate Indian children at the Sac and Fox school unless BIA provides enough financial assistance to cover costs not recoverable under State and local aid and HEW's impact aid program.

HISTORY OF THE SAC AND FOX SETTLEMENT SCHOOL

The Sac and Fox settlement day school is located on the Mesquaki Indian settlement in central Iowa. The day school has been operated by BIA since 1940 and included grades one through eight until 1954. At that time, BIA began phasing out the settlement school by transferring the eighth grade to the local public school in nearby Tama, Iowa. By 1968, the day school had been reduced to grades one through four, and BIA notified the tribal officials that it intended to close the school. BIA did not open the school the following year.

In September 1968, the tribe filed a lawsuit in the Federal district court to stop the closure. An injunction was issued and the court ordered that the school be re-opened by October 31, 1968, and that both the tribe and BIA submit proposals to resolve the problems. After being denied a motion for dismissal of the lawsuit, BIA proposed a contract with the South Tama school district for operation of the settlement day school. The contract stated that the remaining grades at the school would not be transferred without approval by a referendum of the Mesquaki people. This was accepted by the tribe, and the lawsuit was withdrawn.

Currently, the South Tama school district maintains a kindergarten through fourth grade educational program for about 40 students at the day school. Basic support funds are used for salaries and administrative costs as well as tuition costs for the Mesquaki children attending

South Tama public schools. Building maintenance and capital expenses at the day school are paid by BIA from its facilities management fund. The purpose of this fund is to plan, construct, operate, and maintain BIA-owned buildings and related facilities and services needed for BIA programs where such buildings and related facilities and services are not available on a reasonable basis from the General Services Administration or other sources.

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