

**The No Child Left Behind School Facilities and Construction Negotiated Rulemaking
Meeting 1 –January 5-7, 2010**

*Albuquerque, NM
Final Meeting Summary*

Consensus Agreements

The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee reached consensus on the following during the meeting:

1. The Committee unanimously approved the facilitation team from the Consensus Building Institute.
2. The Committee unanimously approved four Committee Co-Chairs, and one alternate Co-Chair, to provide leadership to the Committee with the DFO.
3. The Committee formed two subcommittees: catalog and dorm standards.

Invocation

Frank Lujan, Committee member, Pueblo of Isleta, opened the meeting with an invocation.

Welcome and Introductions of Committee Members

Kevin Skenandore, Bureau of Indian Education Acting Director, welcomed participants to the first meeting of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking (NCLB SFC Negotiated Rulemaking). He thanked NCLB SFC Negotiated Rulemaking Committee Members (the Committee) and Bureau of Indian Affairs (BIA) Office of Facilities Management and Construction (OFMC) for their participation in the process.

Michele Singer, Director, Office of Regulatory Affairs & Collaborative Action, Office of the Assistant Secretary—Indian Affairs, welcomed the Committee and public in her capacity as the Designated Federal Officer (DFO) for the NCLB SFC Negotiated Rulemaking process. She introduced Regina Gilbert, Office of Regulatory Affairs and Collaborative Action, who coordinated meeting logistics, and the meeting facilitation team from the Consensus Building Institute (CBI): Patrick Field, Stacie Smith, and Kate Harvey. A list of meeting participants is found in Attachment A.

Patrick Field welcomed the Committee and public. He gave an overview of the agenda for the three-day meeting. He also proposed and the Committee agreed to the use of provisional Groundrules until the Committee reviewed and adopted official Groundrules.

Overview of Requirements of the Federal Advisory Committee Act and the Negotiated Rulemaking Act

Jim Porter, Office of the Solicitor, Division of Indian Affairs, provided an overview of the legal requirements of the Committee and the legislation that provides guidance for Committee work. (On the NCLB Consensus Building Workspace, please see the [Legal Requirements](#) for slides used during the presentation).

Enabling Legislation

He explained that in the No Child Left Behind Act of 2001 (NCLB) Congress directed the Department of the Interior (DOI) to: 1) Improve education in Indian country; 2) Review the process for prioritizing repair and replacement of Indian education facilities; and 3) Ensure that Indian people are involved in review of DOI's prioritizing process. Mr. Porter elaborated that NCLB requires DOI to use the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to ensure involvement by Indian people, and that this has been done by the establishment of a rule-making committee with membership limited to federal employees and representatives of tribes with Bureau-funded schools.

The Committee Scope of Work

Mr. Porter explained that the charter for the "No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee" was submitted to Congress on January 4, 2010. The objective of the Committee is to prepare and submit to the Secretary of the Interior:

- A. A catalog of school facilities (25 U.S.C. § 2005(a)(5)(A)(i));
- B. A report on the school replacement and new construction needs of the interested parties, and a formula for the equitable distribution of funds to address those needs (25 U.S.C. § 2005(a)(5)(A)(ii));
- C. A report on the major and minor renovation needs of the interested parties, and a formula for the equitable distribution of funds to address such needs (25 U.S.C. § 2005(a)(5)(A)(iii)); and
- D. Revised national standards for heating, lighting, and cooling in home-living (dormitory) situations (25 U.S.C. 2002(a))

The Committee will also complete work left undone by a previous negotiated rulemaking committee including: to revise national standards relating to heating, lighting, and cooling for home-living (dormitory) situations.

Mr. Porter noted that while the report must include the elements described above, it could also include other recommendations of the Committee. He also clarified that the scope of work would include only Bureau-funded schools.

Designated Federal Officer

Mr. Porter described the DFO role. Committees chartered under FACA must have a DFO. The role of the DFO is to call or approve a meeting, approve the agenda, attend all meetings, and adjourn a meeting when he/she determines it to be in the public interest. Michele Singer is the DFO.

Porter added that the documents created in the course of the Committee's work, including Committee meeting summaries and reports, are federal records and must be preserved. Documents produced in caucuses or subcommittees would not be federal records. He explained that the DFO will post approved Committee documents on a DOI website for viewing and printing. It is available at <http://www.bia.gov/WhoWeAre/AS-IA/ORM/index.htm>

Committee members asked if the Committee would operate by consensus and how consensus would be defined. Mr. Porter explained that the Committee would need to discuss and agree on

Operating Procedures, which would include a definition of consensus.

Some Committee members requested independent legal assistance for Tribal Committee members, explaining that while Mr. Porter can offer legal interpretation to the whole Committee, ultimately he is accountable to the DFO. Committee members provided examples of situations that would require independent legal assistance for Tribal Committee members, such as when confronted with regulatory or legal interpretations Tribal and Federal agency attorneys might interpret differently. A Committee member requested independent legal assistance from an attorney with experience in Indian education. The DFO agreed to research options for providing independent legal assistance to the Committee, which she would discuss further with the Co-Chairs.

Committee members also discussed the outcome of the negotiated rulemaking process. Committee members questioned how to ensure that their recommendations would be implemented, expressing that it would not be productive for them to negotiate rules that might not be implemented. Jim Porter explained that while the Committee cannot bind the Federal government to take any action on its recommendations, the NCLB statute requires the Committee's report to be submitted to the Secretary of the Interior and to six Congressional committees. Emerson Eskeets, OFMC, assured Committee members that OFMC is committed to designing and implementing a prioritization system that is better than the current system. A Committee member also recommended engaging other agencies, such as the Environmental Protection Agency, in this process to identify synergies and build support for the Committee's recommendations.

Committee members asked for clarification on the scope of their work. Mr. Porter explained that the previous rulemaking committee left the task of revising national standards relating to heating, lighting, and cooling for home-living (dormitory) situations unfinished because its members believed that this Committee would have the technical expertise to complete the task. He suggested that the details of this task, including the role of energy efficiency standards, were issues that a subcommittee might discuss at a later time. He also explained that the Committee must develop a formula for prioritizing schools, but that the Committee was not expected to prioritize schools or projects. He added that the Charter mandates these tasks be completed within two years of the Charter submission.

Committee members discussed challenges and failings of the current formula and prioritization system, and also acknowledged an underlying need for additional funding for Indian schools. Michele Singer clarified that the Committee cannot lobby Congress for additional funding, but that it can provide Congress information on funding gaps. A Committee member recommended that the Committee keep their respective tribal council representatives informed about Committee discussions and recommendations, noting that tribal council can lobby on behalf of the Committee's recommendations.

Committee members requested the following information and data:

- Options for independent legal assistance for Tribal Committee members
- Excerpts of additional relevant laws, including NCLB program requirements (see Attachment B: Action Items for list of documents requested)

Committee Expectations for the Process

Stacie Smith, Facilitator, with the Consensus Building Institute (CBI), asked Committee members to describe how a successful outcome to this process could be captured in a newspaper headline.

Common themes across Committee member responses included: fair, equitable and sufficient funding for facilities; tribal, agency, and Congressional support for NCLB Committee recommendations; more funding for Indian schools; and improved facilities and new schools for Indian children. A list of headlines is found in Attachment C.

Committee members also shared their backgrounds and expertise, which include experiences as: teachers, administrators, school board members, tribal leadership, state and federal lobbyists, policy makers, advocates, parents, facilities and construction managers, state and federal employees, lawyers, and community members. Committee members also bring their cultural background, traditions, and geographic diversity.

History of the Convening Process and Findings from the Convening Report

Stacie Smith provided an overview of the Convening Report prepared by CBI, which solicited views from a 197 individuals, representing 22 Line Offices/geographies and 99 different schools, on the school facility topics identified from NCLB. Ms. Smith summarized key findings from Convening Report on the Facilities Management Information System (FMIS) and the prioritization process, repair, renovation, and replacement challenges. (On the NCLB Consensus Building Workspace, please see the *Process Overview* for slides used during the presentation)

Ms. Smith explained that the report recommended undertaking a negotiated rulemaking and the seats be assigned generally by “proportionate share of students from Tribes served by federal funds,” as required by law, with national seats for diversity of interests, geographies, and tribes. She described the nomination process in which 40 individuals were nominated by 57 entities for membership (some individuals received multiple nominations) and 12 individuals were nominated by 14 entities as alternates (some individuals received multiple nominations). She explained that the DOI reviewed applicants and ranked according to criteria laid out in the Convening Report. The DFO then followed up with selected nominees for additional information to satisfy the vetted process conducted by the White House, a standard requirement under FACA, with a final selection made by the Secretary of the Interior.

Committee members asked about the tribal consultation that will form part of the rulemaking process. Ms. Smith explained that throughout the process Committee members should share information and solicit input from tribal leaders, parents, school administrators, and other stakeholders. Once the Committee negotiates draft recommendations, the recommendations will be vetted with tribal stakeholders through a consultation process. Committee members will need to decide what type of stakeholder consultation will be most effective.

Overview of Bureau of Indian Affairs Funded Schools

David Talayumptewa, Bureau of Indian Education (BIE), offered an overview of the existing status of school facilities, types, number, and distribution of Bureau-funded schools. (On the NCLB Consensus Building Workspace, please see the *Overview of Existing Schools* for slides used during the presentation).

Committee members asked for clarification on the moratoriums placed on Bureau-funded schools. Mr. Talayumptewa explained that since 1995 there has been a moratorium on space (i.e. new dormitory or classroom construction) and grade expansions. He clarified that Bureau schools may expand their space with Congressional approval. He also explained that the law authorized funding

for administrative cost grants for schools that are converting from Bureau controlled schools to tribal controlled schools. However, BIE receives Congressional appropriations for administrative cost grants for existing schools on an annual basis. If new schools enter the system, Congress does not automatically appropriate more money, and those schools must draw from existing funding. He explained that existing funding currently only covers approximately 66% of funds that schools are entitled to receive, excluding operations and maintenance which is covered by separate funding.

A Committee member also asked how many Bureau-funded schools have met NCLB standards. Mr. Talayumptewa estimated that 51 or 52 schools have made adequate yearly progress (AYP). Committee members raised concerns that many schools have not been funded sufficiently to be able to reach AYP.

Committee members requested the following information and data:

- List of schools including enrollment and number of portables
- Directory of all schools in Committee members' areas

Presentation on Existing Status of Committee Task Items

Emerson Eskeets, Office of Facilities Management and Construction (OFMC) provided an overview of how OFMC currently catalogs facilities and makes prioritization and funding decisions for repair, renovation, and new construction. The presentation sought to educate the Committee about the current systems, and identify some of its challenges, from OFMC's perspective, that the Committee might improve upon. He emphasized that the Committee's work should focus on creating a process that is fair and levels the playing field for all schools regardless of technical expertise, while also considering the full range of contextual circumstances (such as land use and existing infrastructure) and funding limitations. (On the NCLB Consensus Building Workspace, please see the *Existing Status of School Facilities Catalogue and Processes* for slides used during the presentation)

Facility Management Information System (FMIS)

Mr. Eskeets described the key features of FMIS, the system currently used by OFMC to catalog school facility conditions. Committee members had the following questions and comments about FMIS:

- How much did this system cost to develop? *Approximately \$2 million.*
- What technology platforms does it use? *It is Oracle based and Windows driven.*
- How many locations are actively using the system? *Approximately 80% of Bureau schools use FMIS on site.*
- What happens if a school does not use FMIS? *If local facility managers do not input the data, the regional Education Line Office (ELO) will input it for them.*
- Does OFMC check that all ELOs are entering data? *Yes. No schools are left out of the system.*
- Do individuals have to be trained to do this to ensure that they are using FMIS correctly? *Yes. OFMC offers regular trainings on FMIS.*
- The Users Committee under previous systems was very helpful. It would be good for FMIS to have guidance from a Users Committee. Mr. Eskeets responded that OFMC currently receives input from a Users Committee.
- How do some buildings receive replacement funds while others that have safety problems receive facility improvement and repair (FI&R) funds? How are the data managed? *Safety and risk management professionals rank the severity of safety issues. Schools with multiple safety issues may*

receive higher priority than others, however it depends on the full set of data and conditions. This is something we will explore further as we talk about the ranking system.

- How are decisions about funding made? *The decisions that led to the existing New Replacement list were made by an ad-hoc committee, based on input from FMIS, applications, and available funding. We will describe this further in the following presentations.*

New Replacement School Process & Shortcomings

Mr. Eskeets described the origins of the replacement schools process, which determined the current list of schools recommended for replacement school funding. He also described the shortcomings of that process. Committee members had the following questions and comments about the replacement school process:

- Since 1989, how many schools have been replaced and how many have been renovated? How many were grant schools, Bureau-funded schools, or contract schools? *These are data that OFMC will provide the Committee.*
- FMIS is holding schools back and leading to schools being repaired when they should be replaced. *There is currently no process to add to the replacement list and the Committee is tasked with recommending a new process for school replacement prioritization.*
- The Committee should consider how to level the playing field so that schools that cannot afford technical consultants to write their application can still receive funding. *Yes, OFMC agrees.*
- Did the written application influence funding decisions? *Yes, OFMC considered the written application along with FMIS data and evaluations from facility consultants.*
- Does FMIS perform a life cycle cost analysis? *Yes.*
- Does FMIS consider Leadership In Energy and Environment (LEED) standards? *Yes.*
- Are matching funds and partnerships considered? *Yes, given limited resources, matching fundings have been considered in past decision-making processes.*

Mr Eskeets clarified that, for the new school replacement program, they considered the entire school. Since then, they have developed a new category for adding or replacing single structures within a school.

Facility Improvement and Repair (FI&R) Process & Shortcomings

Mr. Eskeets described the existing prioritization and decision-making process for FI&R and also highlighted what OFMC sees as some of the shortcomings of the current process. He also described the new Replacement Facility program. Committee members had the following questions and comments:

- How do you decided if a building is worth repairing, rather than replacing? *OFMC uses a 66% rule, which is an industry standard. After a certain point, it is not cost effective to repair a building because the value left in the building is less than the cost of the repair. DOI has decided that this threshold is 66% of the value left in the building.*
- Can the Committee make a recommendation on the 66% rule? *Yes, however this is a DOI rule, which the Committee may not be able to change.*
- Public schools may not use the 66% rule, which is why they receive more replacement schools.
- Is the 66% rule applicable across all DOI properties? *Conditions codes for schools/humans should be different than for park buildings. Some standards are basic construction standards, but others are different for schools.*

- What are the standards and processes for determining replacement at military schools, state funded schools (such as Arizona), or other federally funded schools? *We will look into different standards, although the Bureau budget is very different from the Department of Defense budget.*
- If a school meets the 66% threshold, when will it be funded for replacement? *It depends on available funding. A school that should be replaced might get funding for temporary repair if we do not have sufficient funding for replacement.*
- We have two years to work on creating a new system; will there be a continuation of funding for FI&R and Minor Improvement and Repair (MI&R) while we negotiate? *Yes.*
- When will the Committee's recommendations be implemented? *Due to budgetary cycles, it will likely be 2013 or 2014 before the recommendations are fully operational.*

Committee members requested the following information and data:

- List of schools replaced over the last 10 to 15 years;
- Current list of replacement schools;
- Names of schools ranked 15 and below in the previous replacement schools process, and any info on reason for ranking;
- "Matrix" of key elements of different systems approach to school facilities funding (DoD, AZ, WY, others);
- List of variables and weighting in current FI&R formula and final selection process, and an example of how it works;
- Provide presentation of detailed case examples of FMIS regarding a building and a school and all the various inputs and outputs; and
- Summary/overview of current condition of schools, backlogs, etc (per school/ \$value total back log, conditions).

Negotiation Capacity Building

Patrick Field and Stacie Smith, Facilitators, shared some communication and negotiation skills with the Committee. They emphasized effective communication, understanding differences and why people believe what they do, and avoiding being distracted by issues that are outside the scope of the Committee's work.

Committee members emphasized the need for all members to negotiate in good faith and asked that the federal Committee members be flexible and respectful in their negotiation. Jack Rever, Director, Assistant Secretary – Indian Affairs, Office of Facilities, Environmental and Cultural Resources, OFMC, asked the Committee for their help to change the prioritization process so that it is needs-based and fair for all schools. He explained that the past priority list was ranked largely on school conditions, but that it is missing some important considerations, including the impact of facilities on education. He asked that the Committee consider how program issues should and can fit into the prioritization process. Mr. Rever also thanked the Committee members for their time and assured them that OFMC is committed to introducing an enhanced methodology for setting priorities.

Role of Facilitators U.S. Institute of Environmental Conflict Resolution

Sarah Palmer, U.S. Institute of Environmental Conflict Resolution (USIECR), described the role of USIECR, an independent Federal agency, in contracting the facilitation team and supporting the Committee. Ms. Palmer described that the facilitation team is accountable to USIECR and that if Committee members have concerns about the performance of the facilitators during the negotiated rulemaking process, they should let the facilitation team know directly or contact USIECR staff.

Ms. Palmer discussed the facilitation team's qualifications and Committee members agreed that the CBI should continue to serve as Committee facilitators.

Ms. Palmer also introduced Tamara Underwood, USIECR, who would process reimbursement paperwork with Committee members.

Operating Protocols

The Committee reviewed draft Operating Protocols that had been prepared by the DFO and CBI facilitators as a starting point for committee input. The facilitators clarified that the Committee was invited to suggest revisions so that these Operating Protocols were acceptable to all. (Please see the revised Operating Protocols for complete information.).

The following key topics were discussed:

Clarification of the authorization of the Committee

The Committee discussed referencing additional supportive legislation and guidance from public laws that govern Bureau-funded schools. The Committee also discussed Executive Order 13175, dated November 6, 2000, on Tribal Consultation and agreed that the Executive Order should be referenced in the Operating Protocols.

Clarification of the scope of work of Committee

The Committee discussed the scope of work outlined in NCLB. A Committee member questioned if the Committee was tasked with developing a formula for prioritization of new school replacement and/or the prioritization list of schools that should receive new buildings. Jim Porter explained that NCLB directs the Committee to develop a formula which will help OFMC to prioritize new school replacement. He elaborated that OFMC would then use the formula to develop a new prioritization list.

The definition of consensus and determining when consensus is reached

The Committee was asked to give input on how the group should define consensus. Participants suggested that they draw on the traditional use of deliberation and consensus building by tribal councils.

Participation of the Secretary, Assistant Secretary-Indian Affairs, and other policymakers at Committee meetings

A Committee member requested the participation of the Secretary and/or the Assistant Secretary - Indian Affairs in Committee meetings, particularly if the Committee cannot reach agreement on a specific issue. Brian Newland, Office of the Assistant Secretary - Indian Affairs, introduced himself to the Committee. Mr. Newland explained his role is to keep the Assistant Secretary informed of the Committee's progress and that his Office will provide assistance to the Committee as needed. The DFO agreed that she would request the attendance of the Secretary and/or the Assistant Secretary - Indian Affairs if requested by the Committee.

Selection of tribal Co-Chairs

The Committee discussed selecting tribal Co-Chairs who would play a leadership role in Committee work. A Committee member explained that the tribal Co-Chairs played an important role in the previous negotiated rulemaking committee. The Committee agreed that the Co-Chairs, with the DFO would have the responsibility to:

- Plan agendas and work plans
- Resolve impasses
- Help enforce protocols and procedures
- Assist in general group “problem solving”
- Develop a media protocol

The Committee agreed that criteria for tribal Co-Chairs would include:

- Principal on the Committee
- Time available between meetings for calls/emails
- Skill in chairing/facilitating/strategizing
- Diverse by: region/geography/tribe/interest/skill/expertise/gender

After a process of providing nominations and followed by further discussion, tribal Committee members selected the following members to serve as tribal Co-Chairs:

- Gregory Anderson, Muscogee (Creek) Nation of Oklahoma
- Jerry Brown, Confederated Salish and Kootenai Tribe
- Monty Roessel, Navajo Nation
- Merrie Miller White Bull, Cheyenne River Sioux Tribe
- (Co Chair Alternate) Lorena Zah Bahe, Navajo Nation

Delivery of the final report to Congress and the Secretary of the Interior

The Committee discussed how their final report would be delivered to Congress and the Secretary of the Interior (Secretary). Jim Porter and the DFO clarified that the report would be submitted to Congress without alterations from the Secretary. They explained that if the Secretary had comments on the report, then he could submit an addendum to the report explaining his recommendations. The Committee requested opportunity to discuss any suggested comments with the Secretary prior to his submitting them to Congress. The DFO agreed that the Committee could include this request, but clarified that they did not have the authority to compel the Secretary.

Media inquires

The Committee agreed that the Co-Chairs should develop a protocol for media inquires.

Final approval of Operating Protocols

The Committee asked the Co-Chairs to review changes to the Operating Protocols and to make a recommendation to the Committee about their final approval.

Visioning

CBI facilitators led Committee members in a visioning exercise, in which members were asked to reflect on the outcomes of their work. Committee members’ responses are summarized in Attachment D.

Review of work plan

Committee members reviewed a draft work plan prepared by CBI with the DFO. The work plan envisions five Committee meetings, ongoing work by several subcommittees, and a period of consultation with tribal constituents. Committee members agreed that the work plan provided a useful roadmap, and cautioned that there is a lot of work to be done in the next two-years. (On the NCLB Consensus Building Workspace, please see the *Draft Workplan* for slides used during the presentation).

Ongoing communication with constituents and decision-makers

Committee members discussed options for ensuring that their final report meets the needs of tribal leaders, and is persuasive to Federal and Tribal decision-makers. Committee members suggested sending meeting summaries and updates to key leaders on a periodic basis so that congressional and tribal leaders might support the Committee's final report and recommendations. Committee members also discussed involving other Federal agencies, such as the US Department of Agriculture or the Environmental Protection Agency, so that they may find ways to support the Committee's recommendations.

Committee members recommended that the DFO and Co-Chairs organize outreach to key constituents, including tribal leadership with information on:

- Meeting minutes, agenda, and relevant background documents
- General description of Committee work
- Opportunities to submit comments and suggestions on Committee work topics

Participants agreed to each send a list of key individuals, along with their contact information, to develop an outreach data base for regular updates.

Organized consultations

Committee members offered ideas for how to manage consultations with tribal representatives, schools, and parents. The purpose of the consultations would be to share and receive input on the Committee's draft recommendations. Committee members suggested presenting at scheduled regional and national organizations' annual meetings. They recommended that the Co-Chairs or Committee representatives facilitate conversations with their constituents. The group agreed to continue to shape these consultations as the process goes on.

Subcommittees

Committee members discussed the subcommittees that they would need to form at this phase of the process. The facilitators clarified that subcommittees will play an advisory role only, and will develop recommendations that the Committee will discuss and decide on. The Committee agreed that primary members and alternates could volunteer for subcommittees and that subcommittees could receive support from non-committee member technical experts as needed. In addition to the Co-Chairs, the Committee agreed to form two subcommittees: the Catalog subcommittee and the Dorm Standards subcommittee.

The Catalog subcommittee will develop options and alternatives on: FMIS as basis; FMIS case study of building/school; changes/additions needed; other options; keeping information up-to-date; other issues. Catalog subcommittee volunteers include.

- Judy DeHose (primary Committee member)
- Shirley Gross (primary Committee member)
- Scott House (alternate Committee member)
- Fred Leader Charge (alternate Committee member)
- Frank Lujan (primary Committee member)
- Arthur Maxwell Taylor (primary Committee member)
- Willie Tracey Jr (alternate Committee member)
- Jerome Wayne Whit (primary Committee member)
- Catherine Wright (primary Committee member)

- Dr. Kenneth York (primary Committee member)
- Fred Colhoff (primary Committee member)
- Margie Morin, OFMC (technical liaison)
- Stacie Smith, CBI (facilitator)

The Dorm Standards subcommittee: will develop options/alternatives for dorms standards related to heating, cooling, and HVAC. Dorm Standard subcommittee volunteers include.

- Greg Anderson (primary Committee member)
- Jimmy Begay (primary Committee member)
- Margie Begay (alternate Committee member)
- Jerry Brown (primary Committee member)
- Emerson Eskeets (alternate Committee member)
- James Hogan (primary Committee member)
- Merrie Miller White Bull (primary Committee member)
- Betty Ojaye (primary Committee member)
- Jim Porter (primary Committee member)
- Kate Harvey, CBI (facilitator)

Other subcommittees will be formed as needed. A Committee member suggested forming a budget subcommittee to look at funding for Bureau schools, which the Committee agreed to consider at a later meeting.

Consensus Building Workspace

Stacie Smith provided an overview of the online Consensus Building Workspace, which was developed for Committee use. The workspace is located at <https://nclb.consensusbuildingworkspace.org/>, and is accessible only to Committee members. The workspace includes areas for posting documents, communicating with Committee and subcommittee members, viewing upcoming events, and discussing ideas. The workspace is password protected and each Committee member will receive a password and username. Ms. Smith encouraged Committee members to review the tutorials, which are posted on the workspace. Committee members indicated that they have access to the Internet and agreed to try to the workspace.

Committee Reports

The Co-Chairs, Dorm Standards Subcommittee, and Catalog Subcommittee convened to scope their work and identify immediate next steps. The Subcommittees offered the following update:

Co-Chairs

The Co-Chairs discussed meeting logistics, sites, and possible dates. They agreed that it would be important to meet near airport hubs and in diverse geographic regions. They also noted that it would be valuable to arrange school visits during Committee meetings, especially during early meetings. The Committee agreed with Sunday travel if needed. The Co-Chairs will finalize and distribute a meeting schedule as soon as possible.

Catalog Subcommittee

The Catalog Subcommittee discussed FMIS challenges, including data accuracy, the time and complexity of FMIS and FMIS training, the role of consultants in updating information, and turnover in school staff who know how to use FMIS. The Subcommittee also recommended that

OFMC provide a tailored two-day training for the Committee on FMIS to better understand how the system gathers and uses data to guide decisions. The Subcommittee recommended that the training be scheduled before the next Committee meeting. OFMC agreed to provide such training, and the DFO agreed to look into funding to confirm the possibility.

Dormitory Standards Subcommittee

The Dormitory Standards Subcommittee discussed and confirmed that the scope of work is limited to heating, lighting, and cooling. The Subcommittee will evaluate the national standards that must be complied with and other relevant standards, including energy efficiency. The Subcommittee will hold a conference call on February 10, 2010 at 3:00 pm EST (1:00 pm MST).

- The Dormitory Standards Subcommittee requested background information on the Dorms Standards developed by the last rulemaking committee and a list of standards currently used by OFMC.

Invocation

Frank Lujan closed the meeting with an invocation.

Attachments

Attachment A: Meeting participants

Attachment B: Action Items

Attachment C: Committee “Headlines” of Success

Attachment D: Draft Committee Criteria

Attachment A: List of Meeting 1 Attendees

<i>L_Name</i>	<i>F_Name</i>	<i>Representing</i>	<i>Alt/PriM</i>	<i>Attended</i>
Anderson	Gregory	Muscogee (Creek) Nation of Oklahoma	Primary	Jan 5, 6, 7
Azure	Janice	Turtle Mountain Band of Chippewa	Primary	Jan 5, 6, 7
Begay	Jimmy	Navajo Nation	Primary	Jan 5, 6, 7
Begay	Margie R.S.	Navajo Nation	Alternate	Jan 5, 6, 7
Brown	Jerry	Confederated Salish and Kootenai Tribe	Primary	Jan 5, 6, 7
Cheek	Jackie	Bureau of Indian Education	Alternate	Jan 5, 6, 7
Colhoff	Fred	Oglala Sioux Tribe	Primary	Jan 5, 6, 7
Culbreath	Joy	Choctaw Nation of Oklahoma	Primary	Jan 5, 6, 7
DeHose	Judy	White Mountain Apache Tribe	Primary	Jan 5, 6, 7
Eskeets	Emerson	Office of Facilities Management and Construction	Alternate	Jan 5, 6, 7
Gross	Shirley	15 Tribes of ND, SD and NE	Primary	Jan 5, 6, 7
Hogan	James	Rosebud Sioux Tribe	Primary	Jan 5, 6, 7
House	Jerald Scott	Navajo Nation	Alternate	Jan 5, 6, 7
Gilbert	Regina	Division of Indian Affairs	Alternate	Jan 5, 6, 7
In the Woods	Bryce	Cheyenne River Sioux Tribe	Alternate	Jan 5, 6, 7
Leader Charge	Fred	Rosebud Sioux Tribe	Alternate	Jan 5, 6, 7
Lujan	Frank	Pueblo of Isleta	Primary	Jan 5, 7
Martine-Alonzo	Nancy	Navajo Nation	Alternate	Jan 5, 6, 7
Maxwell Taylor	Arthur	Nez Perce Tribe	Primary	Jan 5, 6, 7
Miller White Bull	Merrie	Cheyenne River Sioux Tribe	Primary	Jan 5, 6, 7
Ojaye	Betty	Navajo Nation	Primary	Jan 5, 6, 7
Porter	Jim	Office of the Solicitor	Primary	Jan 5, 6, 7
Redman, Sr.	Alfred	Northern Arapaho Tribe	Primary	Jan 5, 6, 7
Rever	Jack	Office of Facilities, Environmental and Cultural Resources	Primary	Jan 6
Roessel	Monty	Navajo Nation	Primary	Jan 5, 6, 7
Singer	Michele	DFO/ Office of Regulatory Affairs and Collaborative Action	Primary	Jan 5, 6, 7
Tah	Andrew	Navajo Nation	Primary	Jan 5, 6, 7
Talayumptewa	David	Bureau of Indian Education	Primary	Jan 5, 6, 7
Tracey, Jr.	Willie	Navajo Nation	Alternate	Jan 5, 6, 7
Wayne Witt	Jerome	Oglala Sioux Tribe	Primary	Jan 5, 6, 7
Wright	Catherine	Hopi Tribe	Primary	Jan 5, 6, 7
Yazzie	Albert	Navajo Nation	Primary	Jan 5
York	Kennith	Mississippi Band of Choctaw Indians	Primary	Jan 5, 6, 7
Zah Bahe	Lorena	Navajo Nation	Primary	Jan 5, 6, 7

Other Participants

<i>L_Name</i>	<i>F_Name</i>	<i>Representing</i>	<i>Alt/PriM</i>	<i>Attended</i>
Carpenter	Kathy	Choctaw Nation of Oklahoma	Public	Jan 5
Field	Patrick	Consensus Building Institute	Facilitator	Jan 5, 6, 7
Harvey	Kate	Consensus Building Institute	Facilitator	Jan 5, 6, 7
Morin	Margie	Office of Facilities Management and Construction		Jan 5, 6, 7
Newland	Bryan	Office of the Assistant Secretary of Indian Affairs		Jan 5, 6, 7
Palmer	Sarah	U.S. Institute for Environmental Conflict Resolution	Facilitator	Jan 5, 6, 7
Smith	Stacie	Consensus Building Institute	Facilitator	Jan 5, 6, 7

Tubby	Julia	Choctaw Agency	Public	Jan 5, 6
Underwood	Tamara	U.S. Institute for Environmental Conflict Resolution		Jan 6,7

Attachment B: Action Items from Meeting 1: January 5-7, 2010 Albuquerque, NM (last updated Jan 13, 2010)

Who	Action Item	Purpose	When	Status
OFMC	List of schools replaced over the last 10 to 15 years	<ul style="list-style-type: none"> To Co-Chairs for meeting scheduling For Committee for general info 	ASAP	Done
OFMC	Current list of replacement schools	<ul style="list-style-type: none"> To Co-Chairs for meeting scheduling For Committee for general info 	ASAP	Done
OFMC	Names of schools ranked 15 and below in the previous replacement schools process, and any info on reason for ranking.	<ul style="list-style-type: none"> To Co-Chairs for meeting scheduling For Committee for general info 	ASAP	
OFMC	Develop a “matrix” of key elements of different systems approach to school facilities funding (DoD, AZ, WY, others)	<ul style="list-style-type: none"> For Committee to help understand ranking 	Before next Committee meeting in April	
OFMC	Short White paper to include - List of variables and weighting in current FI&R formula and final selection process, and an example of how it works	<ul style="list-style-type: none"> For Committee FMIS training 	by FMIS training (early March)	
OFMC	Provide presentation of detailed case examples of FMIS regarding a building and a school and all the various inputs and outputs	<ul style="list-style-type: none"> For Committee FMIS training 	by FMIS training (early March)	
OFMC	Develop cost estimating process fact sheet	<ul style="list-style-type: none"> For Committee FMIS training 	by FMIS training (early March)	
OFMC	List of relevant state and national standards/codes (lighting and heating, safety etc.)	<ul style="list-style-type: none"> For Committee general info For Heating/Cooling Subcommittee 	By Feb 1, 2010	Done
OFMC	2005 Space Guidelines Document	<ul style="list-style-type: none"> For Heating/Cooling Subcommittee For Committee general info 		Done
OFMC	Summary/overview of current condition of schools, backlogs, etc (per school/ \$value total back log, conditions)	<ul style="list-style-type: none"> For Committee general info 	By FMIS training (March)	
BIE	Program of educational requirements document	<ul style="list-style-type: none"> For Committee general info 	Feb 1	Done

BIE	GAO recommendations to Congress	• For Committee general info	Feb 1	
BIE	Inspector General report/review of dorms	• For Committee general info		Done
BIE	List of schools including enrollment and number of portables	• For Committee general info	Feb 1	
BIE	Directory of all schools in Committee members' areas	• For Committee general info	Feb 1	
BIE	Relevant sections of NCLB – Native American Education Improvement	• For Committee general info	Feb 1	
CBI/Co-Chairs	Report outline draft		Jan 25	
CBI/Co-Chairs	List of all documents and links to CBI Workspace		ASAP	Done
CBI/Co-Chairs	Select meeting locations		Done	Done
CBI	Meeting summary draft		Jan 28 or earlier	
CBI/Co-Chairs	Solicit outreach contacts from Committee members. Contact info, conferences or trade associations to have listening session (dates/list). Send passwords.	• Master list for ongoing outreach	ASAP	Ongoing
CBI/Co-Chairs	Organize FMIS training		ASAP	
OFMC/CBI	Training agenda for FMIS training	• Per Co-chair request	Jan 25	Done
CBI	Groundrules and principles with redline strikeout (send to co-chairs)		ASAP	Done

Other Information Requests from Meeting 1, for exploration pending scope:

- Flow chart of construction project process from approval through completion
- Requirements for Certificate of Occupancy: How many are built but unoccupied and why – list from Division of Safety
- List of construction contracting vendors
- Overview of standards, funding for Bureau schools v. other schools.

Attachment C: Committee “Headlines” of Success

- Tribes champion NCLB Committee and set course to meet those goals
- Committee serves all Indians (on and off reservation), including public schools
- NCLB sets fair equitable and sufficient facilities funding regulations for facilities programs
- Successfully completed thorough policy that will positively impact school facility construction
- Obama hears voice of Indian students. Congress adopts recommendations for funding
- Newly negotiated process and formulas heralded by tribal leaders and educators
- Committee success spurs Congress to increase funding for school construction
- NCLB Committee complete status of conditions and easy transparent formula that leads Congress to increase funding for dire needs
- Major school takes a giant leap in Indian Country due to report
- Congress has Heard our Needs: Due to 2 year NCLB Committee work
- Billions go to Indian school construction with tribal blessing
- School facilities for all Indian children provide equal opportunity and success
- Brings new hope to thousands of children in BIE schools
- NCLB out does itself: all BIE funded schools are scheduled to receive new schools
- NCLB puts all schools on level playing field
- Mission accomplished which will positively affect school construction
- Committee announces priority list by most needy
- 2025 all 183 schools were replaced or renovated by NCLB Committee study and formula established 15 years ago
- Successful advocacy of tribal leadership in educating Congress to appropriate more funds for construction using report as basis
- Funding increases for Indian school construction
- Committee successfully completes tasks for needs for Tribes
- Indian Country achieves outstanding collaboration and results in the recent NCLB rulemaking for prioritizing funding
- Building a nation through unity as Committee fine tunes existing laws to provide decent facilities
- Committee establishes new ranking process fair for all
- Tribes and feds have new plan for facilities for construction and replacement
- Tackles inequitable resources and establishes plan to bring and sustain BIE school facilities into healthy living standards for Native children
- Accomplishes all requirements for betterment of tribal children and environment and full funding set by Congress
- Educates Congress and results in 183 schools being built
- Provides no parent left behind with NCLB with \$1 billion appropriate for new school facilities and programs
- Unanimously agrees on proposed regulations
- Consensus building for quality construction and unlimited funding for 21st century schools: goals set; goals accomplished
- Successful consultation among tribes to focus on Bureau funded schools

Attachment D: Draft Committee Criteria

The following are suggested criteria for guiding the development of options and recommendations by the Committee. The Committee sought to identify the qualities and characteristics that any final products (reports, catalog, standards, formulas) should embody.

CRITERIA for the CATALOG

- User-friendly
 - Usable by those with a diversity of skills
 - Clear and understandable
 - Transparent
 - Concise
- Comprehensive of all problems and schools
- Based on site-based data
- Accurate
- Consistent across schools
- Minimizes loopholes
- Flexible and adaptable to NCLB requirement changes
- Efficient and minimizing administrative costs
-

CRITERIA for HEATING, LIGHTING, and COOLING STANDARDS

- Account for cutting edge standards like energy efficiency and LEED

CRITERIA for replacement/new construction *and* renovation/repair PROCESS and FORMULA

- Fair
 - Highest standards in government buildings
 - Unbiased
 - Criteria-based
 - Level playing field of all Bureau-funded schools
 - Everyone shares in some benefit and sometimes, some pain
- Defensible
 - Legally and by policy
 - Research-based
- Needs-based
- Consistent with health and safety standards
- Immune from political influence
- Used consistently from ranking to award
- Transparent and clear
- Streamlined and efficient
- Flexible and adaptable to NCLB requirement changes
- Considers multiple resources/funding streams
- Responsive to academic (i.e. educational program) needs
- Implementable and practicable

CRITERIA for the REPORT

- Compelling and persuasive to Congress and the public
- Visual
- Identifies benefits and return on investment of action

- Implementable
- and practicable
- Responsive to the urgency of situation

Successful implementation of a quality agreement would help lead to the following:

- Buildings that are:
 - Energy efficient
 - Culturally appropriate
 - Technological savvy
 - Forward thinking
 - Community friendly
 - ADA compliant
 - Sustainable
- AYP or equivalent in all schools
- Students surrounded by beauty and culture and as good or better than surrounding communities
- More voice for schools/educators in process
- Safe and secure facilities conducive to learning
- Schools that attract quality personnel
- Schools that increase attendance
- Schools that improve discipline
- Schools that encourage attendance/pride
- Reflect fulfillment of treaty obligations
- Integrate culture into education
- All facilities up to date with funding and technology
- More dollars for schools
- No backlogs
- Safer schools

The Committee identified the following reasons why reaching an agreement is important.

- Process of reaching agreement itself builds respect and relationships
- An agreement reached will provide greater certainty for schools in planning for their future
- An agreement reached will help funds reach children in need
- Board agreement will be far more compelling to Congress and the Public
- Ensure the fair distribution of funds to schools in need
- An agreement reached will help funds reach children in need
- Increases trust among tribes and among tribes and the federal government
- Will help tribal schools and their cultural significance to survive and thrive
- Increase the effectiveness and accountability of the trust responsibility to Tribes