

**No Child Left Behind School Facilities and
Construction Negotiated Rulemaking
Committee Assessment and Convening**

January 2010
The Consensus Building Institute



OVERVIEW



- Review overall process
- Review Convening Report findings
- Review Convening of the Committee Process

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Process to Date



- No Child Left Behind Act: 2001
- NCLB Initial Reg Neg: 2003
- Assessment interviews on outstanding issues:
April to August 2007
- Draft Convening Report: October 2007
- Final Convening Report: March 2008

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Rulemaking after the Initial Reg Neg



- 69 FR 8752 - February 25, 2004 – Implementation Proposed Rule
- Proposed Rule 69 FR 20839 - April 19, 2004 - Resubmit Comments
- 69 FR 44476 - July 26, 2004 - Reopen Comments
- 70 FR 22178 - April 28, 2008 – BIA Implementation of NCLB_Final Rule
- 69 FR 41770 - July 12, 2004 - Home-Living Programs Proposed Rule
- 72 FR 68491 - December 5, 2007 – Home-Living Final Rule

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Process to Date



- 73 FR 63008 - October 22, 2008 - Notice of Intent to Proceed and Call for Nominations
- 74 FR 454 – January 6, 2009 – Nomination deadline extended from original December 8
- Nomination deadline: January 23, 2009
- 74 FR 65784 – December 11 - Charter and Final Membership published

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ASSESSMENT SCOPE



The scope of the convening report included soliciting views on the school facility topics identified from the No Child Left Behind Act. The topics include:

- Methods to catalog the conditions of school facilities
- Determining formulas for priority and funding for school replacement construction and new construction
- Determining formulas for priority and funding for school renovation and repair;
- Facilities standards for home living (dormitory) situations (*in promulgation from previous Reg Neg*)

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ASSESSMENT METHODOLOGY



- Through ELO-convened multiple school meetings, school interviews on-site, telephone interviews, interviews with past reg neg participants, Bureau staff & focus group's at the Bureau's Partnership Conference, interviewed:
 - 197 individuals, representing
 - 22 Line Offices/Geographies
 - 99 Different Schools

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ASSESSMENT TOPICS



- Overall Reflections
- Schools Conditions
- The FMIS
- Renovation and Repair Prioritization
- School Replacement
- Process Recommendations
- Next Steps

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WHAT WE HEARD



- The system is a *challenge to administer* due to broad geography, remote locations, divided authority, aging capital infrastructure.
- Numerous *physical plant challenges* such as plumbing, HVAC, historic preservation restrictions, new technologies not matching with older spaces, new safety, ADA and other requirements.
- *FMIS is generally working*, but hard to keep up, requires expertise, does not link physical space to educational programmatic needs

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REPAIR AND RENOVATION



- Stakeholders do not *understand* the process for ultimately prioritizing and receiving funds for projects
- *Sequencing* of related projects is problematic
 - Projects are often treated as discrete actions, thus leading to delayed, flawed, or more expensive outcomes
- *Emergencies* and failing/aged facilities often overwhelm the intended planning
- *Cost estimating* challenging due to high rural/remote costs, A&E underestimates, and inflation due to long wait period for action
- *Not transparent enough*, consistent or clear (which may be due to the complexity of the system)

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REPLACEMENT: Key Challenges



- Those who obtain new, replacement schools are *generally delighted* with the new facilities, however:
- *Prioritization* seen as primarily dynamic and political
 - It depends on who can muster the most political support
 - The list ranking frequently changes
- *Cost estimating* even greater problem than for R&R
- *Education programming* and needs often linked enough with replacement due to time to construction, cost escalation
- The *better at R&R*, the less likelihood of a new facility

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DRAFT RECOMMENDATIONS: Overview



- *Undertake Negotiated Rulemaking* because:
 - Provides tribes more assurance of active engagement, influence, and tribal/school engagement
 - Required by law
 - Specific, narrow set of issues at hand
 - Need for action in these areas
- But, undertake Negotiated Rulemaking *only if*:
 - The Bureau has sufficient funds to support robust process
 - Convening of balanced, representative Committee under Reg Neg and FACA is achieved

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DRAFT RECOMMENDATIONS: Convening



- Assign seats generally by “proportionate share of students from Tribes served by federal funds,” as required by law
- Add seats for diversity of interests, geographies, tribes
- Tribes nominate their representatives according to criteria, including:
 - Knowledge of school facilities construction & renovation
 - Authority to represent Tribal views and reach agreement on behalf of Tribes
 - Ability to coordinate among Tribes within coalition
 - Encourage that nominees be past or present: Superintendents, Principals, Facility Managers, School Board members

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Nomination Process



- 40 individuals were nominated by 57 entities for membership (some individuals received multiple nominations)
- 12 individuals were nominated by 14 entities as alternates (some individuals received multiple nominations)
- DFO followed up to receive full applications from all who were nominated

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Selection Process



- DOI team reviewed applicants and ranked according to criteria laid out in Convening Report
- DFO followed up on some nominations for more information and clarification
- Nominees vetted by White House (standard requirement under FACA)
- Secretary of the Interior made final selection

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Selected Seats (17) Proportionate by Student Population



Tribe	Number of seats
Navajo	7
Oglala Sioux of the Pine Ridge Reservation	2
Turtle Mountain Band of Chippewa Indians	1
MS Band of Choctaw Indians	1
Hopi Tribe	1
Cheyenne River Sioux	1
Rosebud Sioux Tribe	1
15 tribes in ND, SD, & NE	1
White Mountain Apache	1
Pueblo of Isleta	1

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Selected Seats (5) for Additional Representation



Tribe	Number of seats
Muscogee	1
Choctaw Nation of OK	1
Confederated Salish and Kootenai	1
Northern Arapaho, Wind River Reservation, Wyoming	1
Nez Perce Tribe	1

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Selected Federal Seats



- Designated Federal Official
- Office of Facilities Management and Construction
- DOI Office of the Solicitor
- Bureau of Indian Education

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PROCESS MAP


