



No Child Left Behind Act of 2001

The Department of the Interior's (Department) Bureau of Indian Education (BIE) manages a national school system serving 42,000 Indian students, the majority residing on Indian reservations. Just as States across the Nation begin to make strides improving student achievement under the No Child Left Behind (NCLB) Act of 2001, the BIE schools need to make similar gains for Indian students.

How does the NCLB affect Indian students?

NCLB is a massive piece of legislation, one part of which is designed to ensure that Indian students being served by Bureau-funded schools are provided with educational opportunities that equal or exceed those for all other students in the United States.

What has the Department done to implement the NCLB?

The NCLB directs the Department to conduct negotiated rulemaking to address a number of specific issues affecting education at Bureau-funded schools (at 25 U.S.C. § 2018(b)(3) and 25 U.S.C. § 2005(a)(5)). The first Negotiated Rulemaking Committee was chartered on May 1, 2003. Final rules incorporating the work of that committee were published in the Federal Register on April 28, 2005 (70 FR 22178) and December 5, 2007 (72 FR 68491). However, additional work needs to be done that requires a committee to prepare and submit to the Secretary of the Interior (Secretary) a *catalog* of the conditions of Bureau-funded schools; a school replacement and new construction *report*; and a renovation and repairs *report*.

What is negotiated rulemaking?

Negotiated rulemaking is a process which brings together representatives of various interest groups and a Federal agency to negotiate and reach consensus on the text of a proposed rule and/or report. The use of negotiated rulemaking by the Department maximizes compliance with the Federal policy of consulting with Indian community when developing regulations and/or reports affecting them.

How does the NCLB mandate the involvement of Indian communities?

In the NCLB, Congress directed the Department to establish negotiated rulemaking committees complying with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). Congress mandated the use of a negotiated rulemaking committee to ensure that Indian communities are involved in reviewing and revising the methodology used in establishing the priorities for construction, improvements and repairs.

What is the Federal Advisory Committee Act?

The Federal Advisory Committee Act (5 U.S.C. appx. § 1-16), provides an orderly procedure for Federal agencies to seek advice and assistance from citizens and experts. Any time a Federal agency intends to establish, control, or manage an advisory group, the agency must comply with FACA and administrative guidelines developed by the General Services Administration and the Department.

What is the Negotiated Rulemaking Act?

The Negotiated Rulemaking Act (5 U.S.C. § 560 *et seq.*), establishes procedures for negotiated rulemaking. The goal of the Act is to enable those interested in, or affected by, regulations under development by a Federal agency to help shape those regulations prior to publication in the Federal Register. It was an explicit intent of Congress to have stakeholders with divergent interests—e.g., environmentalists and industry—represented on the committee.

How will the Department complete the work mandated by NCLB Act?

The Department established the No Child Left Behind School Facilities and Construction Negotiated Rule-making Committee (Committee), Chartered on January 4, 2010, in response to NCLB directives. The NCLB Act requires that, to the maximum extent possible, the percentage of the total committee membership allocated to representatives of a given tribe reflects the percentage of Bureau-funded school enrollment made up of students from that tribe.

Who has the Department selected to represent the negotiated rulemaking committee?

The Department published a Federal Register notice on December 11, 2009 (74 FR 65784) announcing the appointed members of the Committee by the Secretary. The Secretary considered the balance of representation with regard to geographical location, size, and type of school and facility, as well as the interest of parents, teachers, administrators, and school board members, in selecting tribal committee representatives.

Has the Committee begun its tasks set out by NCLB?

The Committee conducted its first official meeting January 5-7, 2010, at the National Indian Program Training Center, Albuquerque, New Mexico. The Committee has outlined the following objectives:

- Prepare a report containing: a catalog of the conditions of Bureau-funded schools; a school replacement and new construction report; a renovation and repairs report.

- The report must determine: the needs for replacement and renovation; and a formula for equitable distribution of funds to address these needs.

- Complete work left undone by a previous negotiated rulemaking committee including: revising national standards relating to heating, lighting, and cooling for home-living (dormitory) situations

What statement does the Committee want to share with the Indian communities and general public?

“To achieve the benchmarks identified in the NCLB Act, and thereby to ensure the success of our children, quality education facilities and exemplary educational programs must be provided for Indian, Native Hawaiian, and Alaska Native children. Research shows that there is a direct correlation between facility environment and student achievement. Congress must provide the necessary funding to provide such facilities and programs – otherwise, the goals and mandates set out in the NCLB Act cannot be achieved, and the Act itself becomes an empty promise”. Approved by the Committee April 15, 2010.

How can Indian communities get involved?

All meetings are open to the public; however, transportation, lodging and meals are the responsibility of the participating public. Comments for the Committee to consider should be directed through Michele Singer, Designated Federal Official, Assistant Secretary – Indian Affairs, Office of Regulatory Affairs and Collaborative Action, 1001 Indian School Road NW, Suite 312, Albuquerque, New Mexico 87104. Or you may fax to (505) 563-3811.

Where can I receive additional information?

The Department will maintain a web page to keep the public informed about the development of the Committee and the scheduling of upcoming meetings. In addition, we expect to post minutes, reports, and other documents that are made available to, or prepared by, the Committee. Please visit

<http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm>

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