

## **The NCLB School Facilities and Construction Negotiated Rulemaking Tribal Consultation Meetings\***

### **Summary of Key Points (related to the Report) from all Consultations & Submitted Comments (see Appendix A for Comment Key)**

#### **Broad issues:**

(1) Poor inter-agency communication, coordination, and planning and lack of responsiveness to state, tribal, and other guidelines:

- Communication and partnership between BIE and BIA is a serious problem. We need support for FMIS and facilities located at the ELO offices. (S, P, R) Move the facilities and operations budget from BIA to BIE. (10)
- Structural problem of too many different offices, programs, funding buckets, makes it difficult to get any problems solved in a comprehensive manner. (P, R, 9) Also, different agencies have different building, safety, and academic requirements and reporting lines, which confuses schools and delays funding. (R)
- There is a discrepancy between ages funded by ISEP (age 5 by Dec 31) and Kindergarten entry age in our state (SD – 5 by Sept 1). We have service for pre-K for those between those ages. But we were denied that classroom! This should be addressed as an educational facility deficiency, and added to space guidelines. (P)
- There is an impossible loop in getting a FACE program – can't have the space without the program, denied the program if you don't have the space. This needs to be fixed. (S, R)

(2) Strengthen recommendations; turn them into regulations or legislation:

- Needs stronger language on consequences for the Bureau to ensure this gets done. Report says schools “must” and “will”, but Bureau “should” and “may”. (S, R)
- Strong desire to see recommendations turned into regulations and statutes. (R)
- Concerns about clarity, transparency, and fairness in implementing the recommendations, and request that all processes be codified as regulations and/or statutes. (S, P, R)
- Stay away from one-size-fits-all formulas. Formulas will work differently in remote areas versus urban areas; tailor formulas to meet specific regional and tribal needs. (R) The government should honor its treaty to protect and educate the children of the Navajo Nation regardless of any formulas the committee has come up with. In the introduction, strongly emphasize the uniqueness of the Navajo Nation and Native American culture and their contribution to the country. Emphasize the government's treaty with the Navajo nation, and distinguish Native Americans from immigrant or minority populations and programs, with which they are often included. (W)

(4) Increase transparency and fairness in funding and negotiation process

- Some regions felt underrepresented or ignored and felt that others were overrepresented on the NCLB Committee, which led to unequal representation and

\*Five tribal consultations were held during the period of June 15 to July 19, 2011. The consultations took place in Window Rock, Arizona; Seattle, Washington; Phoenix, Arizona; Rapid City, South Dakota; and Miami, Florida.

bloc voting. (12, 3) Request for a viewing of all selection criteria for NCLB Committee members. (13)

- Concern that the consultations were not true consultations, but merely an information session since government decision makers such as Jack Rever and Emerson Eskeets were not present. (R)
- Many advocated for funding parity with DOD schools, and among tribal schools. (R, 15)
- More transparency in budget and spending for schools. Provide schools with a breakdown of the budget and spending. (W)

(5) Incentives for properly maintained schools:

- Concern that success in doing the best you can with your limited O&M to keep up your school – or using your own money to fix critical problems - is punished, not rewarded. There should be a way to reward success and provide incentives to keep schools in good repair. Tribes who put their own money in to keep their schools going are less likely to get a new school. (P, 4)

(6) Disappointment with budget for BIA school facilities

- Need more money. Need to fight for more money. More tribal leadership to fight for more facility money. (P, R, 1, 14, 6)
- Include options for cost-sharing in report, which might have positive impact on congressional funding decisions. (R)

***Potential issues for Committee discussion:***

- 1. Stronger recommendations about coordination between BIA and BIE***
- 2. Whether curriculum and coordination issues such as the FACE and ISEP issues, are within the Committee's charge and, if so, how to address them***
- 3. Additional and/or stronger language regarding increased funding from Congress***
- 4. Incentives that encourage or reward schools for maintenance***
- 5. Greater explanation about NCLB Committee selection, Tribal Consultation process***

**FMIS:**

(1) FMIS support for schools is not sufficient:

- Participants at all sessions echoed the committee's concerns about the lack of local FMIS expertise and lack of coordination between BIA and BIE, which they saw as a big problem. (W, S, P, R, 1)
- Provide additional guidance to schools to supplement face-to-face training for inputting information into FMIS (CD-ROM of step-by-step instructions, guidance on suggested monthly input activities, guidelines on time commitment required, etc). (W, M)
- Participants report on-going challenges getting access to FMIS at schools. Stories of submitting applications, getting no response, and of FMIS system being down. (P, R)

- Agreement that available FMIS training on a regular basis is very important. (S) FMIS trainings not offered at a time that is convenient for administrators. Offer trainings at a more convenient time. Suggest increasing the amount of trainings offered in the summer. (W)
- Develop Bureau manpower to assist schools with inputting their backlog data. (5) Facilities staff time is very limited; provide additional funding for schools to hire a data entry person for FMIS. (4)
- Strong agreement with putting FMIS on a web-based system so everyone has access to it. (W, R)
- Concerned that voluntary FMIS support committees will not be sufficient. Multiple recommendations that a FMIS expert be located at ELO offices. (P)
- Tribal members should be able to nominate whomever they choose to be on the FMIS committee without input or objection from OFMC, and tribal members should decide the amount of members on the committee. (R)

(2) Suggested changes to FMIS data entry and access:

- Report should include specific recommendations as to how to bring FMIS up to capacity, including a timetable for implementing solutions. (5)
- School-board members should be allowed to take the FMIS training and help with FMIS entry or oversight. (P, W, M)
- Consider adding “Geographic Location” as one of the factors in the facilities index, to account for risks of weather and seismographic conditions. Consider expanding FMIS to cover funding for liability and facilities insurance, security costs, housing, and certificate of occupancy issues. (W, R, 3, 13, 4)
- The formula for determining space needs should take into account birthrates of the reservation and the Special Needs population. (9)
- Revisit the Space Requirements in light of the growing size of students (obesity, also improved nutrition) and individual school needs for accreditation, mission and goals. (P, 6)
- FMIS should have a built-in depreciation factor as the schools age and require more maintenance, renovations, or replacement. (3)
- More weight given to educational environment factors such as class size, illumination, acoustical treatment, heating, cooling, ventilation, general educational space provisions, and age of facilities. (6)
- Explain more fully how “educational deficiencies” would be identified, evaluated, and entered into the database. Educational deficiencies should be established under a separate system from the FMIS system. (5)

(3) Increase transparency, responsiveness, and flexibility with contractors and inspectors:

- Too much time goes by without safety inspections. Ensure safety inspections every year – they aren’t happening, even when requested. (P) Allow tribal safety officers to enter S backlogs. (P) Use IHS fire/safety inspectors. (P)
- Contractor should be giving a report to schools after assessments, isn’t happening. (P) There is no accountability for the construction or work performed resulting in spending more funds to fix already funded projects. (1)

- Safety inspector should be giving a report to the school after assessment, which isn't happening. One school was told they could not have the report after requesting it. (P)

(4) Streamline system administration; increase agency transparency and communication

- Need better communication and transparency, and less bureaucracy (streamlining the funding!). Can't figure out who to contact to solve problems of getting quarters, getting a FMIS terminal, getting a safety inspection, etc. (P, R) Also, lack of communication between BIA, contractors, and schools leads to poorly constructed facilities that are not suited for the school's environment or needs; decisions are made at a distance with no true knowledge of the school or community that the facility will serve. (R, 3, 9)
- Concern about manipulation; there is a "good ole boy" network, allows some to upgrade their health and safety and other backlogs to more dire, worth more points. How can we assure that this doesn't happen? (P) FMIS can be manipulated by entering many backlogs into the system, which can affect school placement on the replacement list. (W) Politics affects FMIS funding—those closer to Albuquerque and are able to make frequent visits get more funding (R, 1)
- Data entered into FMIS just sits there until you make calls to the right people who push it through to the gatekeepers – this is a flaw in the system. (P) BIE personnel do not input data in a timely manner, if at all. (5) Recommend that schools receive a quarterly report on what is the status of the backlog items, possibly from the "Gatekeepers." (W, 5)
- Tribal chairs should be in charge of funds rather than regional offices-this would eliminate red tape and delays in funding and give schools more control over how money is spent. (R) Give some control over the FI&R funding to regional level for school input (3). Close down the regional office and re-direct funds to programs that serve students. (4)

(5) Inaccuracy of existing data in FMIS:

- All the concerns raised by the committee about FMIS accuracy were echoed during the consultations. High turn-over, insufficient staffing, lack of connectivity, lack of capacity, etc. (P, S, R, W, 1, 3, 5)
- Additional infrastructure problems are often uncovered during renovation and new construction, but by then it is too late to enter into backlog-consider reworking FMIS to capture these issues. (R, 2)
- FMIS does not accurately reflect the deteriorating condition of the schools—many schools rated in good condition, but actually falling apart. (R, 3) Once safety and health concerns are addressed, the systems (fire alarms, smoke detectors) are obsolete within a decade (2, 4, 5)
- Concerns about whether the existing FMIS is tailored enough to the needs of schools to be the right mechanism. (P) Allow alternative methods of evaluating facility condition where FMIS may not be a reliable indicator. (5)
- Update FMIS backlog costs annually and verify accuracy of the costs of the backlogs (backlogs entered at the local level are often changed by those at the regional level). (W)

- School leaders still don't recognize the importance of FMIS. (S, R) Emphasize to grant schools the necessity and rationale for entering information into FMIS. (W) Grant and contract schools are experiencing considerably more difficulty entering in the data and would be more negatively affected if funding decisions are based on FMIS. (5)

***Potential issues for Committee discussion:***

- 1. Options for improving access to FMIS including hiring additional FMIS technical support, online FMIS entry, and supplemental training such as CD-ROMs, guidance documents.***
- 2. Development of criteria and selection process for the FMIS committee***
- 3. Increased reporting and distribution of FMIS data, contractor assessment reports, and safety inspection findings to schools***
- 4. Increased participation (including system access and funds distribution) of tribal chairs and school board members in the FMIS process***
- 5. Allow additional factors such as geographic location, liability insurance, housing, certificate of occupancy issues, and security costs to be entered into FMIS and calculated in the location score.***
- 6. Revise Space Guidelines.***

**MI&R:**

(1) Increase transparency and clarify misperceptions about formula:

- Support the idea of an annual report clarifying why our priorities aren't funded. (P)
- The most important word: transparency! Squeaky wheel gets help, not all principals know. Make sure the communication is clear! (S)
- Many participants mistakenly thought MI&R regional funds would be divided evenly among schools within each region, and feared this would cause undue competition among schools and unfair distribution to larger schools. (R)

(2) Reopen discussion on the recommended MI&R formula:

- Agree with the idea that schools funded for replacement are eligible for MI&R while they wait. (S, R)
- Support the formula because it removes politics and manipulation. (R)
- As a small school in a small region, we disagree with the funding of regions by square footage. (P, 12, 7)
- Concern that new MI&R formula does not take existing building age and condition into consideration. The repair needs and costs for older buildings are significantly greater than newer buildings. (12,7, R)
- Concern that new MI&R formula does not distinguish between building types or uses. Additionally, it does not allow different funding levels based on building type or use. (12, 7)
- Concern that new formula does not make any allowance for location conditions, climate, and weather, which can influence the rate of wear on a building. (12, 7)

- Concern that new MI&R formula bases funding on area, which will motivate schools to keep old, unused buildings that would otherwise be demolished in order to maintain maximum area. (12,7, R)
- A fairer method would be to assess relative need, e.g., by assessing the deferred maintenance backlog in each region and allocating funding according to the largest backlogs. (5)
- Formula does not take into account prior school replacement and repair funding from BIA or ARRA. (5)
- Concern that the presence of ELO's and BIA facilities managers on the regional committee will tip the allocation decisions toward Bureau operated schools. (5)
- Allow schools receiving funding to have some say on which backlog item to remedy first. (5)

***Potential issues for Committee discussion:***

- 1. Revisit the 2/3 regional -1/3 national distribution of funds.***
- 2. Clarify the recommendation to make clear that funding within regions will be based on critical health and safety backlogs from FMIS, and not distributed to each school based on square footage***
- 3. Consider addition of suggested criteria to the MI&R formula including building characteristics (e.g., age, condition, type, and usage), climate and weather conditions.***

**FI&R:**

(1) Additional criteria that the formula should take into account:

- Accreditation risk should be a factor for FI&R, it is one of the most important things – without accreditation, we aren't a school. Also, important given student mobility. (S, P)
- Formula should take modular spaces, unusable spaces, age of schools, and new school funding into account. (R)
- Concern that undersized academic spaces will not be given enough points. (P)
- Allow schools to supplement facilities data with other evidence including the FCI, environmental reports, inspections and regions by Bureau safety officers, etc. (5)

***Potential issues for Committee discussion:***

- 1. Consider adding accreditation risk, inadequate or inappropriate spaces, school age, and new school funding as factors in the FI&R formula***

**Replacement School:**

(1) Include schools not ranked as poor:

- If you have a significant number of students in Portables, even if the school overall is rated as “good” or “fair”, you should still be eligible to be considered for a new school. (P)
- Highly over-crowded schools should be able to apply for new school even if not ranked as poor by FCI. (P)

(2) Additional criteria to consider in the formula:

- Some participants supported using AYP as a factor, to reward success. Others commented that they supported not using AYP as a factor. (P, R, 1)
- Willingness to combine two schools into one should provide some extra points. (P)
- Consider awarding more points (two or three) to account for conditions that are either unique to the individual school or have not been anticipated by the Committee (e.g., lack of comparable educational facilities, availability of alternative dormitory space). (5)
- Consider excluding schools accused of mismanagement, at risk of losing grant status, in restructuring under NCLB, or who don't have land from application process. (P)
- Accreditation risk deserves more points. Even if not many schools in that situation, if they were, it would deserve more points. (S) Others oppose using accreditation risk since each state's method is different. (1)
- The Cultural Space criteria is too narrow – our whole school is a cultural space. There are many space needs schools have due to their unique relationships with tribal communities – for example, schools serving older kids need a day-care. These should be included. (BUT, needs to correlate with what OFMC will actually build.) (S)
- Space in portable buildings should not be calculated as part of the space in any of the formulas (i.e., Crowding, Average Age of Building criteria) since portable buildings are temporary. However it should be a major factor in the “Inappropriate Space” criteria. (1)
- “*Severely overcrowded schools*”: Severely overcrowded schools should be treated the same as “schools in worst condition” for the purposes of eligibility and scoring. Severely overcrowded schools should be defined as “schools in which 50% or more of the school’s ISEP enrollment is housed in temporary structures” or “schools whose square footage needs for new school replacement equals or exceeds their current permanent construction in the FMIS inventory.” (8)
- Consider weighting the average age of instructional and residential buildings higher than storage and other secondary use building in the “School Age” criteria. (1)
- Concern that data on “Declining Enrollment” criteria could be subjective and easily manipulated since it is not captured as hard data. (1)
- More consideration should be given to schools that have been out of compliance for major safety violations. (1)

(3) Schools undergoing the construction process face many concerns:

- There needs to be a way to account for significant increases in enrollment in newly constructed schools. (R, 9)
- Recommend that parents’ and community’s choice of site for new school be honored. (W)
- Dorms should be included as part of the construction of new schools. (W)
- Include a cost of living increase in the replacement funds since backlogs are often in the system for years and the original cost does not reflect the impact of inflation. (W)

- The formula should take into account environmental and infrastructure factors that affect the schools, and these repairs should be factored into new construction funding. (M)
- Allow newly constructed schools to build facilities for new programs that they did not have in old school. (R)
- Make sure every region has an Education Construction Line Officer, and provide clear lines of authority in the roles of engineers. Ensure timely response from BIE during entire construction process, particularly responses to prefunding, preconstruction and construction process letters. (9)

(4) Suggestions for making new school selection process clearer, more transparent, and more fair:

- Establish clear, published criteria for how the top 5 will be ordered for allocation. (P) Provide technical assistance to schools in completing the new school application and guide them through the process. (11)
- Confusion over rankings – “I was on the list, then wasn’t”. (S, P, R) This could be made worse by the proposal to publish the scores of all schools who apply for but are not granted new schools. (S, P)
- Create a historical process document to educate people about new school replacement lists – what happened and where we are now? (S)
- Recommend going back to ten year school replacement period (rather than 5 year period) since school staff turnover is very high and information is not carried over from one administrator to the next, which causes a great deal of information loss. (W)
- Objection to listing first five schools in alphabetical order rather than by priority—there was concern that schools in most dire need may end up at end of alphabetical list, which will harm their chances of school replacement. (W)
- Application process for replacement schools should be an online process-not paper and pencil. (W)
- Create an automatic system that schedules anticipated replacement based on the projected life of facilities. Include a factor for unforeseen catastrophes. (3)
- Ensure that certain criteria are not double-weighted in the scoring process (For example, cultural space is included in the FMIS score and also receives additional points in the new school formula). (5)
- The Review Committee should be required to conduct site visits at each of the ten finalist schools before the public meeting. (5, 1)
- Allow the five unsuccessful schools to be grandfathered into the next round so that they do not have to apply again; they will compete against five newly qualified schools. Provide the five unsuccessful schools with any excess or unused construction funds. (5)
- Concern about presenting at the public meeting in Albuquerque: schools with more eloquent speakers could influence the ranking, and schools in remote locations need funding to pay for travel. (1)
- Clear definition and criteria of how the 65 points from FMIS will be awarded, similar to the classification in the previous formula. (1)



- (5) Suggestions for selection criteria and process of Review committee members:
- Make sure that the people who make up the ranking committee will be neutral. (W, R) Put school board members on the committee because, unlike ELOs and administrators who just follow orders from headquarters, school board members are the most likely to be neutral. (W)
  - Rotate new members onto Review Committee every five years. Have committee members come from the tribes of the selected schools. (R)
  - Committee member nominations should be automatically accepted, as long as they meet Review Committee criteria. (R)

***Potential issues for Committee discussion:***

- 1. Allow schools that are not ranked in poor condition to apply if they meet other criteria - overcrowded, inappropriately housed, over a certain age***
- 2. Consider additional criteria such as willingness to combine schools, mismanagement, accreditation risk, and broaden culture criteria in the New School formula***
- 3. Add section with recommendations to address concerns after selection - contracting and construction process.***
- 4. Increase education and transparency mechanisms regarding replacement list and ranking process***
- 5. Consider keeping or changing alphabetical approach to replacement school listing***
- 6. Develop selection criteria for New School Review committee***
- 7. Develop section clear criteria for ordering the top 5 schools***

## **Appendix A**

### **Key to Tribal Consultation Comments:**

- M=Miami, FL
- P=Phoenix, AZ
- R=Rapid City, SD
- S=Seattle, WA
- W= Window Rock, AZ
- 1 = Cheyenne River Sioux Tribe
- 2 = Marty Indian School\_South Dakota
- 3 = Hannahville Indian School\_Michigan (Nah Tah Wahsh Public School Academy )
- 4 = Sicangu Owayawa Oti
- 5 = Hobbs, Strauss, Dean, & Walker (Dzilh-Na-O-Dith-Hle Community Grant School)
- 6 = Hopi Tribe Comments
- 7 = Muscogee Creek Nation
- 8 = Blackwater Community School
- 9 = Sisseton Wahpeton Oyate
- 10 = Aneth Community School Board 6-14-11
- 11 = Borrego Pass School Resolution 2011
- 12 = E OK Tribal Schools Facilities 7-14-11/ Choctaw Nation of OK
- 13 = Fond du Lac Education 7-19-11
- 14 = Laguna Elementary Middle School 6-16-11
- 15 = NCAI Resolution RAP-10-056