

**The No Child Left Behind School Facilities and Construction Negotiated
Rulemaking
Committee Meeting 6 – Albuquerque, NM
April 27-29, 2011**

Meeting Summary

Consensus Agreements

The NCLB School Facilities and Construction Negotiated Rulemaking Committee reached consensus on the following matters during the meeting:

1. Committee members approved the Meeting 5 Summary, provided recommended changes are made;
2. Committee members approved the following revisions for the formula for school replacement:
 - a. Committee members agreed on an objective method for measuring Crowding in the New School Replacement formula.
 - b. Committee members agreed on an objective method for measuring Native Cultural Space needs
 - c. Committee members agreed to solicit suggestions for an objective means for measuring Constrained Enrollment during the public consultation sessions. Public feedback will be reviewed during the final NCLB meeting.
 - d. The Committee agreed to score all FMIS and formula data to points (rather than a mixture of points and percentages).
 - e. The Committee agreed to solicit public feedback on the Review Committee process during consultation. Public feedback will be reviewed during the final NCLB meeting, along with a review of previous OFMC committee selection processes for guidance.
3. The Committee agreed on a formula for FI&R:
 - a. The Committee agreed to include educational deficiencies within the current FI&R formula in the CHSci category, provided that the CHSci category is redefined to include educational deficiencies and scored as a 9.
 - b. The Committee agreed to normalize the API factor by assigning every building a score of 100.
 - c. The Committee agreed that all educational deficiencies would be treated equally, regardless of type.
4. The Committee agreed on a national-regional formula for MI&R.
5. The Committee agreed to the language of the revised draft report to be circulated as the draft for public review, provided suggested changes are implemented.
6. The Committee agreed to review the revised draft presentation and send feedback by Friday, May 6.

7. The Committee agreed that each public consultation team will prepare a bulleted list of meeting highlights, which will be discussed during one conference call to be held in August.

DAY 1

Invocation

Mr. Andrew Tah opened the meeting with an invocation.

Welcome and Introductions of Committee Members

Michele Singer, AS-IA, Office of Regulatory Affairs and Collaborative Action, and Designated Federal Officer (DFO), welcomed participants to the sixth meeting of the No Child Left behind School Facilities and Construction Negotiated Rulemaking (NCLB). A list of meeting participants is found in Appendix A.

Goals and Objectives for the Meeting

Michelle Singer and other Committee Co-Chairs reviewed expected outcomes of the meeting, which included:

- Consensus on the draft report that everyone can live with;
- Consensus on the tribal consultation presentation;
- Consensus on Committee answers to likely questions from the public; and,
- To reach consensus, in particular, on both the FI&R and MI&R formulas.

Stacie Smith, Facilitator, highlighted additional goals including:

- Determine location and dates of public consultation sessions; and,
- Planning for the final NCLB meeting -- tasks to accomplish after the public consultation process in order to reach final consensus on what will be submitted in the final report.

Committee Meeting Five

The Committee reviewed the draft summary from Committee meeting five, which was held in Nashville, TN. One participant pointed out several errors in the meeting summary, including:

- Page 15: At the top of the chart, total points awarded reads five points. It should read ten points
- Page 18: The percentage of students taught is missing a point value
- Page 20: in the last bullet point, change “bureau funded schools” to “bureau operated schools”
- Page 21: Remove the question mark in the fourth paragraph, third line from the bottom
- Page 24: remove advisory comment from the summary and incorporate suggested comment into the meeting summary

The Committee agreed to approve the meeting summary, provided recommended changes are made to the report.

Meeting Five Action Items: Stacie Smith, Facilitator, led a review of the action items from Committee meeting five. Action items and specific task updates are below:

Action Item	Who	Status
Confirm additional meeting funding, dates, and logistics	DFO with USIECR	Completed
Update chapters	CBI	Completed
Draft language summarizing Impact Aid for public and DOD schools impact for the Introduction	Jerry, Lester, Monty	In Progress
Get existing data on funding for DOD and public schools (from OIEP?)	David	Will try to find report, though information may be outdated.
Update FMIS roles and responsibilities chart	OFMC	Completed
Send Committee members a reminder to gather quotes and photos for the report	Regina	Completed
Run sample schools through proposed new school replacement and FI&R formulas to test impact	OFMC	Completed
Post photos for Committee Review	CBI	Completed. <i>Deadline extended</i>
Send Committee copy of RFP with new language requiring educational needs	OFMC/Regina	Completed
Update FCI list (check the updated list which had two new Navajo schools listed in poor condition)	OFMC	Completed
List of how many schools were what ages, in ten year increments, with the names of schools	OFMC	Completed
Overview of overview of environmental issues (asbestos, etc) (requested 1/9)	OFMC	Completed
Identify options for immediate action for schools not using FMIS	OFMC	Completed
Develop strategies for addressing collaboration/communication between OFMC and BIE	Jack and David	Meeting scheduled but has not yet taken place.
Distribute Committee budget	DFO	Completed
Send draft Dormitory Standards language to the Federal Register	DFO	Currently reviewing draft of

		approved language
Identify and secure technical reviewer for the report (Ken Ross)	Frank, Catherine, Jimmy Begay, Shirley	Completed
Draft meeting Summary	CBI	Completed

Facilities Improvement & Repair (FI&R) Formula and Process

Monty Roessel, Committee and Formula Subcommittee Co-Chair, led the Committee in a review of the proposed FI&R formula. One of the Committee's primary concerns is the lack of transparency, which leads many to perceive that funding decisions are biased or arbitrary. The Committee's goal was to ensure the FI&R process is transparent and that the reasoning behind FI&R decisions is clear. The Committee discussed outstanding issues from the previous meeting, including increased consideration of educational space deficiency in the FI&R formula.

OFMC Assessment of Educational Deficiencies: Jack Rever, OFMC, updated the group on the status of the survey of complementary educational facility needs in all Bureau-funded schools, regardless of condition rating. He stated that contractors have been selected and the report is due in six months. The assessment will address all accredited schools, including state and tribal accredited schools.

Explaining the FI&R Process: Margie Morin, OFMC, gave a brief explanation on how schools are ranked with the FI&R formula. She noted that educational deficiencies are not generally considered in the current formula because the data is rarely entered into the FMIS system. When this information is entered, it had previously been entered in the Code Compliance Capital Improvement (CCci) category, which receives a weighting score of 4. OFMC feels that, instead, educational deficiencies should be cataloged under the Critical Health and Safety Capital Improvement (CHSci) category, which is given a weighting score of 9 in the FI&R formula. The high weighting score of this factor, coupled with the high project cost of most facility replacements makes educational space deficiency count for a large portion of the total FI&R project score.

Current OFMC formula versus Committee's proposed formula: The Committee compared the current OFMC formula – adding educational deficiencies – with the Committee's proposed formula in order to determine which formula would give more weight to educational deficiencies:

Existing OFMC Formula adding educational space deficiency data	<p>Overall Project Score = (Relative weighed score (based on FMIS backlogs)* 75%) (weighted educational space deficiency score would be included in formula weighed at 9 out of 10)</p> <p>+</p> <p>(API * 25%)</p>
Previously Proposed Committee Formula	<p>Overall Project Score = (Relative weighed score (based on FMIS backlogs) * 50%)</p> <p>+</p> <p>(Educational space deficiency Score * 25%) (educational space deficiency backlogs)</p> <p>+</p> <p>(API * 25%)</p>

The following issues were raised:

- *Clear communication of information to the public:* There needs to be an easier way to explain the FI&R formula. One member noted how difficult it was to explain the current MI&R and FI&R formulas and the Committee's proposed changes to the public, which may lead to confusion and decreased transparency. Another member countered that the formula is easier to explain when using actual numbers and a worksheet.
- *Support for the current OFMC formula:* Several participants were in favor of keeping the educational space deficiency factor in the current FI&R formula. Using the current formula will make it easier for the department to implement changes, and it will not interfere with Attachment G rules. A weighting score of 9 is a great advantage and is better than the 25% proposed in the Committee formula.
- *Support for the proposed Committee formula:* Some participants were in favor of the proposed Committee formula, and desired a formula different from the current OFMC process even if it might make it more difficult to get their recommendations implemented. Participants asked OFMC to run a comparison test of the two options using real life examples, but the OFMC was not able to comply on such short notice.
- *Impact of Attachment G on FI&R formula:* OFMC is required to use the Attachment G formula, used by all agencies in the Department of the Interior, even though some factors, such as CRPdm and CRPci, are not used in the FI&R calculation. One participant suggested proposing a recommendation in the report that describes how Attachment G is not applicable for school related issues and propose another formula that better fits the needs of the schools. DOI

recognizes that bureaus have different needs and is exploring modifications that would allow more flexible application of Attachment G.

- *Clarify or Redefine CHSci factor:* One participant suggested changing the name of the CHSci factor to Critical Educational space deficiency, and recommending in the report that the OFCM department rename the factor.
- *Remove API variable:* The API Variable in the FI&R formula ranks each building based on " the importance of that asset to the organization's mission." (Attachment G) Typically, educational facilities are ranked higher than maintenance facilities, but employee quarters and dormitories are not ranked at all. One member noted that all school buildings should be ranked equally, and encouraged committee members to change the API variable to make it more suitable to their needs. Another member noted that since API does not rank dormitories, schools with dorms would get higher scores, creating an unequal playing field. Members considered the possibility of removing the API variable from the formula.

Testing of Proposed Replacement School Formula

Margie Morin, OFMC, presented the results of a pilot test of the new School Replacement formula that was proposed by the Committee during meeting 5. The purpose of the test was for the Committee to see the impacts of including the 35 additional points (from several factors including crowding, constrained enrollment, inappropriate educational space, accreditation citations, school age, and cultural space) to the FMIS Location score.

Committee's Proposed School Replacement Formula (presented in Meeting 5)		
Total Score = 100 pts	Description	Method for Calculating
65 points	FMIS ranking for Overall School Location Score fixed at date of application process	(Location Score from FMIS/1000) x .65 Date picked to "fix" data
5 points	Crowding	Points based on the last 3 Years Avg. Enrollment per NASIS/total square feet that is core educational space
5 points	Declining or Constrained Enrollment associated with Poor Facilities	Points based on narrative provided on this criterion.
5 points	Inappropriate Educational Space	Points based on % students in inappropriate educational space in portables, dormitory space, leased space
10 points	Accreditation Risk	Points based on the number and severity of citations in the accreditation

5 points	School age	Points based on the average age of school's educational and dormitory buildings
5 points	Cultural space needs	Points based on: 1) is there a specific tribal requirement; 2) is there a program; 3) is there a lack of space for that program or requirement.

The following conclusions were drawn from the test results¹, based on actual figures from six schools in Poor condition with different criteria and locations:

- Adding educational deficiencies into the Ranking Score (score based on current FMIS backlog information, with educational deficiencies added) had the potential to dramatically impact the score. However, it did not overshadow schools with a large number of highest priority backlogs in the FMIS system.
- The risk assessment category of the backlog has a large impact on the ranking score (for example, S2 weighs less than C1). It is very important that backlogs are placed within the correct category.
- The user does not have access to the information required for the crowding factor (number of students divided by the total square footage of core educational space), and calculation of this factor is too complicated for the average user.
- Declining enrollment and cultural space are subjective factors entered in a narrative format. Therefore, points were assigned randomly since no information existed on which to base points.
- Scores were reported with two decimal places in order to avoid equal rankings among schools.
- While the Location Score formula complies with Attachment G, the additional factors are not in Attachment G; nothing precludes the Committee from recommending them however.

The presentation prompted the following concerns and questions.

- **One participant asked how this formula was related to the 25% educational space deficiency factor proposed in the Committee's FI&R formula.** The test did not use the Committee's proposed FI&R formula. Instead, it integrated educational space deficiencies into OFMC's existing FI&R formula, giving each educational space deficiency a rank of 9. The ranking score allows OFMC to list schools from worst-to-first and helps decide whether the school qualifies for a replacement school, a replacement facility, or facilities repair. Additionally, API was not considered in the test.

¹ For full presentation of New School Replacement (test results) Presentation, see <http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm>

- **The narrative nature of several additional factors makes it difficult to score and hard to justify.** The Committee agreed to consider making the additional factors more structured and objective by applying qualifying questions and assigning a point value to each answer. One participant suggested a chart that quantifies the characteristics of each category.
- **Some schools received an identical or lower score in the test of the new school replacement formula.** These results were due to either mis-categorized backlogs or the low number of educational space backlogs entered into the system. OFMC plans to review and correct such FMIS entries during the OFMC conditions assessment.
- **The additional factors appear to have a large effect on the total score and can change a schools ranking by a few points.** One participant was concerned that the ranking can change based on one point from the additional factors. Participants responded with the following comments: that this makes it even more important to remove any subjectivity from the factors. The factors are very important and are in response to what people want. Changing the rank is fine because it reflects what people want. The categories were decided on after months of discussion and hard work so it is good to see that including these categories makes a difference. It's what the Committee hoped would happen.

FI&R Formula Discussion Continued

Review of the Existing FI&R Process: To increase the Committee's understanding of the FI&R calculation process, Margie Morin, OFMC, explained the different categories and levels of backlogs, provided examples of each type, and reviewed respective rank codes and point values. She explained that the monetary value of each backlog is weighted according to its respective rank code, and compared against the total cost of backlogs in each category to determine the school's Total Project Score, worth 75% of the total FI&R score. The Total Project Score is added to the Asset Priority Index (API) score, an average score of buildings on the school campus ranked according to mission-criticality, and worth 25% of the FI&R score.

Consideration of the API factor: Jack Reeve, OFMC, pointed out several challenges that stem from the API ranking process: (1) the process lowers the score for school that have more low-priority facilities, regardless of whether these structures are related to the deficiencies or not; (2) the score can change widely depending on the types and number of facilities on campus; and (3) the ranking process does not consider functionality of the space. Jack explained that the API was developed as part of the Asset Management Program within the Department of the Interior to get rid of low priority facilities, and was not relevant for Bureau-related funding decisions. He stated that, in his opinion, all buildings that are part of schools are highest priority buildings.

The Committee discussed options for mitigating the influence of the API score including normalizing (assigning all buildings the same score) or eliminating the API factor.

- Some participants questioned whether it was possible to change the API calculation.
- OFMC noted that the API does not skew numbers tremendously, but it can be influential in some locations, particularly if a school has many unused buildings (for example, outhouses) that remain on its facilities inventory.
- One participant suggested updating the rankings on the API list to reflect facilities that are important to the schools.

New Schools in Poor Condition: Participants asked about several relatively new schools that were categorized as Poor. Margie Morin, OFMC, noted that not all schools that are characterized as poor need a school replacement. Of the schools in question, one of the schools was not a Bureau-operated school, and the other schools were in need of renovation, not whole school replacement.

New School Replacement Formula, Continued

After lunch, the Committee continued to discuss the New School Replacement formula. Monty Roessel, Committee and Formula Subcommittee Co-Chair, suggested that the Committee address the problems identified in several factors including the crowding factor, cultural space, and constrained enrollment.

Crowding: The Committee expressed concerns that the crowding formula was too complicated for the user to apply. For the Crowding factor, each school must calculate student per square feet based on the last 3-years average enrollment (as determined by NASIS) divided by the total square feet that is core educational space. The crowding factor is then determined by comparing the ratio of actual students-per-square feet against the standard of students-per-square-foot set by the Space Guidelines, which varies depending on grade levels served. This would be multiplied by 100 to measure the extent to which the actual student population exceeds the expected population for the facility.

To reduce complexity of the crowding factor, the Committee decided that the schools should provide the following information: 1) the average number of students in each grade (based on the three year NASIS average); 2) the square footage of the core educational space; and 3) the standard square foot per student, by grade (based on contractor information). OFMC will verify the information provided by the schools (or provide it themselves), and use it to calculate the overcrowding formula. Points for overcrowding would remain the same.

Participants raised the following questions:

- **Are portable classrooms factored into overcrowding?** Yes, portable classrooms are still included in the overall square footage, even though they are also considered under the inappropriate educational space factor.
- **What about schools that have extra space?** Schools with extra space will be treated the same as schools with exactly the right amount of space – neither will receive additional points for this criterion. The goal is to give more priority to schools with too little space.
- **Schools must provide data on students per grade level.** Margie Morin, OFMC, emphasized the need to list the number of students per grade level since this information is needed to calculate the Program of Requirements for space needs.

The Committee agreed that the schools or OFMC will provide the necessary information, and OFMC will verify the information and calculate the Crowding score.

Cultural Space: In the proposed New School Replacement formula, up to 5 points can be awarded for cultural space needs based on narrative answers to the following questions: 1) is there an educational program in place? 2) is there a tribal requirement for cultural education? (please provide the Tribal Council law/ordinance) and 3) is there a lack of space to support this program and/or requirement?

Based on the results from the New School Replacement formula test, the Committee discussed several options for making the Cultural Space factor more structured and objective. The following options were proposed:

- If the applicant answers yes to all three questions, they receive 5 points; if yes to two of the questions, they receive 3 points; if yes to only one question, then they receive 1 point. Some participants responded that this option gives equal weight to all of the questions and does not take into account the importance of question three.
- Questions one and two should be treated as threshold questions, and shouldn't be given a point value. The applicant must answer yes to either of the first two questions *and* question three in order to receive a score of five. If the applicant cannot answer yes to either question one or two, then the applicant receives a score of zero.
- Rearrange this factor into the following two questions: (1) "Is there a requirement for native language or cultural education?" and (2) "Is there a lack of adequate or sufficient space to support this program and/or requirement?" Applicants receive five points if they answer both questions positively; they receive zero points if they answer either question negatively.
- Include a provision for schools that choose not to have a language or cultural program, even though it is required and they have room. To prevent these schools from getting points for additional space, the formula should award

four points for schools who answer yes to both questions, and a fifth point for those who actually have a program in place.

- Additional notes:
 - Cultural Space should be defined in the glossary of the report so it is clear that the Committee is referencing the Native American culture.
 - The term *resolution* in the original formula was changed to *requirement* so it covers laws ordinances, regulations, and other related terms.

Based on the discussion of the above options, the Committee agreed to recommend the following Cultural Space test:

Cultural Space (5 total)		
0 Points	4 Points	5 Points
THERE IS NOT a requirement for native language/cultural education OR THERE IS NOT a lack of adequate or sufficient space to support this program and/or requirement.	THERE IS a requirement for native language/cultural education AND THERE IS a lack of adequate or sufficient space to support this program and/or requirement.	THERE IS a requirement for native language/cultural education AND THERE IS a lack of adequate or sufficient space to support this program and/or requirement. AND The school has a program in place.

Declining or Constrained Enrollment: The Committee discussed the following options for creating more objective criteria to score the constrained enrollment factor. The following comments and suggestions were made.

- Schools that have closed academic or residential space due to safety conditions should receive five points because of the direct impact on school enrollment. Schools that have student transfers because of lack of facilities should receive three points.
- Constrained enrollment can be measured if the school has a waiting list. However, waiting lists are subject to manipulation and may contain invalid student names. Though using spot checks to verify the validity of names on the waiting lists was recommended, it was unclear who would conduct the spot checks.
- Leave this factor as subjective and have schools justify their responses on the application before the Review Committee. Require schools to support their arguments with data.

- Consider removing this factor, as it may lead to unfairness and favoritism. One participant expressed concern that some schools in poor condition may not receive these points because their education program is strong and they are not experiencing declining enrollment. OFMC pointed out that points from this factor was not strong enough to knock out the schools at the top of the replacement list. Another participant expressed concern that schools will receive extra points for this factor, since declining enrollment is also accounted for in other factors such as school age, condition of facilities, and educational deficiencies. Several participants agreed that although schools will receive points for those factors, the extra points from this factor show that the condition is so extreme that it stands out even more.
- Consider awarding points for schools in need of demolition of old, unusable facilities, which remain in the school's inventory. Such schools should be on a priority list for new schools as well as receive funding for demolition.
- One participant reminded the Committee that students are free to transfer, and it is not always due to poor facilities. Therefore, schools need to prove that students are not enrolling or are transferring because of the poor condition of the school and/or lack of educational programming. Two suggestions include: (1) schools prove they have classrooms that were rated as poor condition; and (2) the Review Committee can do a verification of the condition of the school.
- To ensure accurate waiting list data, one participant suggested checking each school's enrollment list on the 11th day of school. Since students are given ten days to enroll in a school, data from NASIS can be compared with enrollment data on the 10th day to prove lack of space. Any names left over on the 11th day would constitute a waiting list and would not require verification.
- Send this variable out for public feedback during the public consultation process. Present the public with the options Committee has come up with and ask them to weigh in or provide alternative solutions.

The Committee agreed to send this issue out to consultation and solicit suggestions from the public. Recommendations from the public will be gathered and reviewed at the final NCLB meeting.

It was suggested to clarify the numbers used in the formulas, which are reported as both points and percentages. *The Committee agreed to change all FMIS and formula data to points.*

Review Committee: During meeting 5, the Committee proposed establishing a Review Committee to make the final choices regarding new school selection in order to prevent bias and increase transparency. However, there were concerns about the committee process, as well as possible tensions caused by the makeup of committee and increased transaction costs. During this session, the Committee suggested and

reviewed different options for the purpose, process, and panel selection of the Review Committee.

Review Committee Purpose: The Committee discussed the Review Committee and made the following comments and suggestions.

- After OFMC publishes its initial ranking, the last ten finalists would be invited to a public Review Committee meeting. This process is distinguished from current OFMC process because the meeting is public and schools are given an opportunity to increase their points and initial ranking based on additional factors not considered in the current formula.
- The Review committee would review the top schools ranked by OFMC and determine who is the first to the fifth.
- The public is very interested in the priority list for new school construction. The process would clarify things for schools to keep everyone updated on everything that is going on.
- Public review of the subjective factors allows schools to see the rationale behind the additional factors and increases transparency and fairness in the decision making process.
- While only schools that input their data in FMIS and pass a certain threshold would be considered, all schools are welcome to attend the hearing. Public hearings would prove to schools lower on the list what factors are important.
- Each school is given an opportunity to present its case. Establish time limits and guidelines for presenting information in order to get through all cases in one day.

Review Committee Process: Committee members proposed many different ideas for reviewing the additional factors and selecting the final schools. The following is a summary of Committee comments and suggestions by topic.

➤ **Publicizing the school ranking list**

- The Committee discussed whether to publish the school rankings, especially given the reactions from schools if their rankings change after the list has been published.
- One participant suggested publishing the school ranking with language advising applicants that they may or may not get in top ten. Educate applicants on FMIS and this process and communicate clearly that the final selection is not determined by the published list.
- Some participants supported not publishing the school ranking, but rather, notify each applicant individually if they are in top ten or not. However, one participant cautioned that the process risks losing transparency if ranking list is not published.

➤ **Establish a multi-step review process**

- Two-step review processes:

- (1) First meeting to verify top ten out of all Poor condition schools that apply; (2) second meeting to rank top five out of selected ten applicants.
 - BIE and OFMC will provide FMIS information to the Review Committee. The Committee will meet for the first time to rank top ten and then again to rank top five out of top ten.
 - Three-step review process: (1) top three schools are selected at the local level; (2) top three schools from local nominations selected at the regional level; (3) top schools selected by OFMC at national level. This process was criticized as unfair and failing to consider the initial list of schools ranked as Poor.
 - Concerns about transaction costs were raised. Only one hearing is necessary because only five of the additional 35 points (the constrained enrollment factor) is subjective. The Review Committee should only meet once to consider those five points, and try to accomplish the task in the least costly process possible.
- **Review entire application (FMIS and additional factors together)**
- The Review Committee reviews all applications and has a public meeting to review the ranking and ask OFMC questions. Then the schools are jointly ranked by the Review Committee and OFMC.
 - OFMC and BIE should screen entire application first and then send to Review Committee. Concerns were raised that the public would have difficulty with OFMC reviewing the 35 subjective points. While OFMC could do it technically, they will likely be accused of favoritism or bias.
 - Hold a full review committee meeting and have applicants come in to champion their case before ranking is finalized and publicized.
- **Review FMIS and additional factors separately**
- Use published ranking from OFMC to choose top ten schools. Invite those schools to a hearing in which they are given thirty minutes to plead their case. Re-order ranking or leave ranking as is depending on information presented during the meeting. OFMC was concerned that it would be a politically very difficult to change ranking after list is published. Even if top ten schools are listed alphabetically, schools will still view it as ranking order.
 - BIE and OFMC rank all schools based on initial 65 points. The additional points will be figured in at the committee hearing. One participant pointed out the risk that the additional factors will change the OFMC ranking order. However, another noted that the additional factors will only be a small percentage of the final score, so changes to ranking are expected to be minimal.
 - OFMC uses the objective data in FMIS backlog to rank schools. Review committee reviews just the subjective factors. School personnel from top ten worst schools present their case before the review committee, and present facts and figures.

- The review committee will only look at the top ten schools based on ranking from FMIS. However, this process raised concerns because only the top ten would qualify for the additional 35 points, and completing an application for the rest would be meaningless. The committee agreed that everyone should have a chance to qualify for all the points.

Based on the above discussion, the Committee settled on the following processes for New School Selection and Review Committee selection, to be finalized after public feedback during the public consultation sessions.

Review of Applications for New School Selection	
Step 1	OFMC to review applications and assign location score (also known as facility score) (65 points max)
Step 2	Review Committee to assess other criteria (35 points max) and determine top ten.
Step 3	Publish 10 highest scores in alphabetical order. Invite all applicants to public meeting in Albuquerque.
Step 4	During meeting, top 10 candidates present arguments and answer Committee questions
Step 5	After meeting, Committee ranks top five, with explanations
Step 6	Committee recommendation reviewed by Asst. Secretary for final approval.

Review Committee Member Selection: Committee members discussed the need to determine the number of Review Committee members, criteria for Review Committee membership, and the method for selecting the Committee members, and made the following comments.

- Committee should be made up of experts in education, facilities, and Native American culture
- Need some idea of who would be appointing the committee but the Committee noted that likely to be carried out by a federal agency.
- Perhaps have a committee member from each region.
- Determine whether selection process will be through application, nomination, or a selection process similar to other federal committees, such as previous OFMC committees.

The Committee agreed to develop more detailed recommendations before the final report is issued, with guidance from OFMC procedures, regarding the committee make-up including number of members, selection criteria, and selection process. They further agreed to get input on these issues during Tribal consultations on the Committee's draft report. Committee members also agree to review previous OFMC committee selection processes for guidance.

Discussion of FI&R Formula continued

The Committee discussed outstanding issues in the FI&R formula including the best means of incorporating the educational space deficiencies factor and whether to include the API factor.

Educational Space Deficiencies Factor: The Committee continued to discuss whether to keep educational space deficiency in the current FI&R formula or calculate it as a separate factor. The following arguments were put forth:

- Keep educational space deficiencies in the ranking score, but clarify CHSci category.
 - CHSci category appears arbitrary because it is not clear that it refers to educational space deficiencies.
 - Clarify CHSci category definition to include educational space deficiencies.
 - Clearly state in the report that all educational space deficiencies will be categorized as CHSci and rated as 9 points.
- Document that CHSci category includes educational space deficiencies.
 - Recommend that this definition is recorded in agency's policy documents so that different agency heads cannot change process in the future.
 - In order to ensure this keeps going when the current OFMC representatives leave, OFMC offered to build it into the table in FMIS. OFMC can plug it in so it's imbedded in the formula process, and will have it appended to the draft report.
 - There needs to be documentation to show changes to formula when the administration changes in order to show it is part of the policy.
- The FI&R formula needs to be translated to plain English for lay people. OFMC agreed to provide a table explaining each category and a chart, also written in plain English, that removes the factors that FI&R formula does not use.
- One participant noted that the Committee is charged with creating a formula, so including it in the current OFMC formula does not go far enough. However, other participants argued that the Committee did get educational space deficiencies measured and captured in FMIS and included in the FI&R formula. Additionally, the proposed changes alter the existing formula and influence how the formula is calculated.
- Department approval is required if we calculate educational space deficiency as a separate factor. Another participant noted that department approval may be necessary in either case since it may require a rewrite of attachment G.

The Committee agreed to incorporate educational space deficiencies within the current FI&R formula, as long as the CHSci category is codified to reflect that it includes all educational space deficiencies. The new formula would be as follows.

Overall Project Score =

1. (Relative weighed score (based on FMIS backlogs)* 75% (weighed educational space deficiency score is included in above)

+

2. (API * 25%)

Retain or eliminate API factor?: The Committee discussed whether to eliminate or normalize the API factor in the FI&R formula so it had less influence on the overall score. Some supported removing the API factor because its original use was not intended to guide funding decisions for Indian schools and justice centers. Many participants agreed to remove the API factor. However, several participants were uncertain of the impact that normalizing or removing the API factor would have on school funding, and the Committee agreed to table the issue until the following day.

Evening Session: Review of Draft Report

Committee members reconvened at 7:00 pm to review the draft report and make necessary substantive and grammatical changes. Members attending worked collectively and individually to make changes to the draft. The Committee members completed review of the Glossary, Introduction, and the Catalog of Facilities chapter. Committee members agreed to review the rest of the draft report on the following day.

DAY 2

MI&R Presentation²

On the second day of the meeting, Dennis Rodriguez, OFMC, conducted a brief presentation to describe the new MI&R process, which relies on collaboration and input from local and regional facility staff, BIE, and OFMC. The primary feature of the MI&R system is the Risk Assessment System, which uses a Risk Assessment Code (RAC) to rank and prioritize issues in Poor and near-Poor schools. Key steps in the new process include: (1) regional facility managers work with local workers in their region to fill out a Risk Assessment; (2) Risk Assessment Code (RAC) is assigned based on Probability and Severity; (3) Schools are prioritized based on a Risk Assessment Code of 1-5, in decreasing levels of risk. OFMC will prioritize 69 schools (63 in Poor condition and 6 in near-Poor condition) in the new MI&R process.

Summary of New 2011 MI&R Process			
Step 1	Step 2	Step 3	Step 4
Focus on worst 69	Local schools	Agencies and	OFMC to distribute

² The full presentation can be accessed online at <http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm> (BIA website)

schools, though not limited exclusively to them	prioritize highest priorities based on severity and risk	regions collect these and rank	funds nationally, regardless of region.
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The Committee discussed the new MI&R process and raised the following questions and concerns:

- *Will staff overtime costs be reimbursed within the emergency program?* Any non-routine costs that are incurred from urgent repairs will be covered, including overtime.
- *Can the Committee propose a different MI&R process?* The new MI&R plan is intended to make the best use of limited funds to address the most pressing issues for the schools in most urgent need. However, OFMC is open to the Committee's ideas.
- *Many locations are unaware of the new MI&R process; favoritism still exists and the process is not transparent.* OFMC has informed ELOs, regional managers, and education sites of the new process. OFMC will increase its outreach efforts to ensure schools are informed of the new process.
- *What about the schools that aren't in Poor condition?* In addition to the MI&R funding for schools in Poor condition, reserved funding is available for all schools, regardless of their facilities condition index rating.
- *Educational space deficiencies are not considered in the Risk Assessment Code (RAC) assessment.* Jack Rever, OFMC, disagreed. He stated that sending students home due to school repairs is an important consequence, which gets the highest priority score and results in a high RAC, depending on the probability and severity of the risk.
- *Funding for Security issues versus MI&R issues.* There was confusion regarding funding for Homeland Security Threat Assessments, which are currently being conducted at some schools. Committee members were concerned that they would have to choose between funding of MI&R or Security issues. It was clarified that separate funding sources exist for Security issues and MI&R issues, and the two needs do not compete for the same pot of money.
- *Better communication between administration and schools.* One participant noted that schools are not receiving important information, such as the security funding information and deficiency reports information, and some regional offices are still not in contact with their schools. OFMC agreed that it is important for schools to have up-to-date information because their feedback is critical to MI&R decision-making. BIE committed to making sure that schools receive this information.
- *RAC level 4 and RAC level 5 appear to be immaterial.* One participant noted that Level 4 and 5 labels appear to be irrelevant because they identify repairs to be addressed over a two-year period, yet MI&R funding only applies to the current year. Dennis responded that Level 4 and 5 risks may increase over time and become Level 1 and 2 risks. Also, the process of labeling risks helps

schools define the threat and the severity of the threat instead of just classifying everything as S1.

- *Local level input is key in the new MI&R process.* Some participants noted that there is little difference between the old system and the new system, except that it focuses on the “worst of the worst” schools. OFMC pointed out that local schools are required to establish the backlog, and rank severity and risk of deficiencies. OFMC also noted that the new process is more of a prioritization system than a distribution system.
- *Effective communication of new MI&R process:* Facility managers, not just schools in general, need to be directly informed of the new changes via WebEx or other conference methods.
- *Non-Poor Schools do not receive equal treatment:* One participant noted that schools that are not in the poor category yet would not receive funding, and are they just expected to continue to deteriorate until they reach poor status? OFMC noted that other schools do get funding on an urgent basis for unpredictable emergencies.
- *The Poorest schools need school replacement, not MI&R.* One participant noted that it’s a waste of resources to make repairs on the worst of the worst schools. He suggested that the twenty poorest schools should be isolated for school replacement, and the new MI&R process begin after those twenty schools are removed.
- *Clarify terminology.* One participant suggested changing the term from “worst of the worst” to “immediate health and safety needs” since funds are available for all schools (not just the poorest 69) on an emergency basis.
- *How will government changes impact Committee efforts?* One participant noted that the Committee was not informed of changes to Attachment G and the MI&R process. The Committee should be apprised of changes as they are made so they can consider them as they develop new policies. OFMC agreed to keep the Committee apprised of federal developments. OFMC did note in previous meetings they had stated they intended to bring a revised MI&R approach to the Committee.
- *O&M funding does not impact MI&R funding.* There was confusion about whether O&M spending affects MI&R funding. OFMC stated that O&M is distributed differently and draws from a different funding source than MI&R funding.
- *MI&R repairs will change priority list for new school replacement.* It is expected that some of the MI&R fixes will end up disqualifying schools for new school replacement. Jack Rever, OFMC, confirmed this and explained that repairing facilities will change schools from poor to good condition which may change priority for new schools; schools must choose between immediate repairs or waiting up to 20 years for a new school given the current highly constrained funding for full school replacement.
- *Access to FMIS remains a challenge.* The lack of web-based access presents a major barrier to accessing FMIS for many schools. All of the changes the

Committee recommends depend on FMIS, so if schools do not have access to FMIS, they are back to square one.

- *Committee ideas are welcome.* Dennis emphasized that the new MI&R process was for the immediate year, and he encouraged Committee members to use parts of the current plan along with their own ideas to come up with the best plan.
- *Request for public listing of FMIS backlogs.* Committee members requested a public listing of schools so they can communicate to their schools that there is \$15 million worth of funding, and impress upon them the significance of entering backlog into the system. Dennis promised to pass out a list as well as a presentation, and also committed to pass the MI&R information through the appropriate channels to make sure it gets to the local level.

Review and Discussion of MI&R Options

The purpose of this session was to reach consensus on one of several proposed MI&R processes, described in the following chart:

MI&R Options considered during Meeting 6	
New Current Approach: OFMC Process	<ul style="list-style-type: none"> • Focus on worst 69 schools, though not limited exclusively to them • Local schools prioritize highest priorities based on severity & risk • Agencies and regions collect these and rank • OFMC to distribute funds nationally, regardless of region.
Option A: Regional Approach	<ul style="list-style-type: none"> • 100% funding regionally • Regional distribution based on square footage of all schools' educational and dormitory space in that region based on FMIS • Decisions made by Regional Committee. Made up of ELOs, regional facility managers, superintendents from schools, facility managers
Option B: National Approach	<ul style="list-style-type: none"> • 2/3rds of money allocated to schools with FCI mid-fair to poor; 1/3rd to others with severe backlogs • Regional ELOs submit regional priorities to national review • Diverse national committee (education, facility, geography) reviews and selects funded projects for the year
Option C: Regional-National Approach	<ul style="list-style-type: none"> • 2/3rds funding regionally. Regional distribution based on square footage of all schools' educational and dormitory space in that region based on FMIS • 1/3rd funded nationally • Regional Decisions made by Regional Committee made up of ELOs, regional facility managers, superintendents from schools, facility managers • Prioritized projects not funded by regional funds; forwarded to OFMC • OFMC takes regional priorities across country not funded by regional funds and funds greatest needs across all prioritized

Greg Anderson, Committee Co-Chair, Muscogee Nation of Oklahoma, reviewed the four options with the committee. The Committee used a worksheet developed by CBI to help compare and prioritize the options. The majority of the discussion focused on Option C, which was viewed by most Committee members as a reasonable combination of Options A and B.

Several members raised the following comments about Option C.

Regional committees: Many showed support for regional committees because regional level workers have more current information on the status of the school so they could better distribute the money. However, several participants voiced some concerns about regional committees:

- There is a need for better communication and distribution of information between regional offices and schools for Option C to work.
- A public ranking list may address concerns regarding unresponsive regional committees. Jack Rever, OFMC, agreed to publish school priority listing at the beginning of every fiscal year, before funding decisions are made in order to demonstrate that the need outweighs the available funding.
- Even if OFMC posts a public priority list, regional committees would still be necessary because it gives small schools an opportunity to be heard. Otherwise some schools could be left out.
- Regional committees would be too cumbersome.
- Some regions do not have an effective regional committee. One needs good regions and line offices if schools must depend on them for funding decisions.

Distribution process for Option C

- One participant noted that the distribution process is confusing and could be interpreted in multiple ways, depending on how it was read.
- The Committee discussed whether to distribute regional funds according to all backlogs, backlogs for the worst of the worst schools, or whether to reserve a certain percentage for the worst schools and use the remainder for the remaining schools.
- One participant noted that grant schools are usually left out of priorities list. OFMC agreed that there is a discrepancy between Bureau funded schools and grant schools, and acknowledged that it has more work to do in that area.

Option C process may result in unequal distribution

- There are several regions with small square footage, and other regions that have several brand new schools who would receive money based on square footage.
- There needs to be a factor included for new school square footage so they do not receive funding.

- Several suggestions to address potential inequalities included setting aside a certain percentage for small regions, basing regional distribution on F1, M1, and S1 backlogs, making sure superintendents and tribal representatives are on the regional committees, and basing regional distribution on square footage of schools in Poor condition.
- Margie Morin, OFMC, agreed to run a test to show how Option C would affect schools in small regions.

The Committee agreed to select Option C for the MI&R formula. The Committee agreed to revisit the question of whether to set money aside for small regions after Margie Morin, OFMC, presents test results.

FI&R Formula and API factor revisited

The Committee considered again whether to include the API variable in the FI&R formula. The Committee received handouts that listed the API score of various buildings types.³ Committee members discussed whether to leave the API factor as is, eliminate the API factor, or normalize the API factor so every building is scored as 100. Committee members were uncertain about the impact of eliminating or normalizing the API factor on funding decisions. OFMC noted that the API does not affect their budgeting decisions or ranking order. OFMC also noted that the school ranking order would be the same whether the Committee eliminated or normalized the factor.

The Committee agreed to normalize the API factor by assigning every building a score of 100. The Committee recommended the following revised FI&R Formula:

Overall Project Score =

1) (Relative weighted score (based on FMIS backlogs)* 75% (weighed education deficiency score is included in above)

+

2) (API * 25%) (normalized so that all school buildings are worth 100 points)

Review of Committee Comments to Draft Report

Committee members provided substantive feedback on the report draft. Committee members were encouraged to discuss any grammatical or language changes with facilitators individually. The following changes were suggested:

- Change the term “Native American children” and other references to Native Americans to “Native American Nations’ Children” where applicable, since

³ The API handout is available online at <http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm> (BIA website)

treaties were made with the Native American nation and not individual children.

- Add ELO (Education Line Officers) to Glossary.
- Include both 2010 and 2011 MI&R process in the draft report.
- Address budget shortfalls and emphasize the need for additional funding. Include a section that specifies how much money should be appropriated in the budget on a yearly basis in the Introduction and Executive Summary.
- Create an Executive Summary, to be completed after the Public Consultation period.
- Recheck numbers and figures for consistency and accuracy.
- Update formulas and agreements according to Committee recommendations.
- Review “terms of art.”
- Include missing citations; fix incorrect citation formats.
- Create appendices.
- Create a chart that breaks down funding needs according to the number of schools in individual states. Place chart in introduction, Executive Summary, and in the Overview of the Conditions of School Facilities section (pp. 12 and 13) of the draft report.

The Committee agreed on the revised draft report, provided suggested changes are implemented. See Action Items (Appendix B) for individuals responsible for making the above changes.

Public Consultation Planning

The Committee reviewed potential locations and dates for five public consultation sessions. The Committee discussed the feasibility of holding the public consultation sessions in conjunction with other regional tribal meetings or relevant conferences. However, the Committee determined that the dates and locations of the proposed conferences were not suitable. The Committee did agree to hold informal presentations at national or regional conferences where possible, in addition to the separate, dedicated, and formal consultations. The Committee agreed to the following public consultation schedule.

NCLB Tribal Consultation Location w/Tenative Dates				
Location	Date	Co-Chair	Committee Members	Physical Location
Window Rock, AZ	June 15, 2011 (Wed)	Monty Loreana	Cathy Jimmie Andrew	Navajo Education Center
Seattle, WA	June 16, 2011 (Th)	Jerry Merrie	Wayne Betty Art	Suggested --- Muckleshoot Tribal School (location to be confirmed)
Phoenix, AZ	June 30, 2011 (Th)	Monty Merrie	Betty Lester Cathy Art	Suggested --- Gila River Indian Community (location to be confirmed)
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Rapid City, SD	Week of July 11, 2011 [exact date TBD]	Merrie	Shirley Fred C. Fred L. Wayne	Suggested --- Best Western Ramkota Hotel (location to be confirmed)
Florida	Week of July 18, 2011 [exact date TBD]	Greg	Kennith Art Cathy Shirley	Suggested --- Seminole Hard Rock (location to be confirmed)
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FINAL NCLB Meeting - wk of September 19, 2011 in Washington, DC				(location to be confirmed)

The following logistical points were clarified.

- The consultation should be limited to one day.
- Participants were encouraged to set up informal meetings or presentations at national or regional conferences such as BIE (June 20) or NCAI (June 13-16, Milwaukee).
- Committee members' travel expenses will be covered.
- Federal representatives, BIE and OFMC, are expected to attend.
- David Talayumptewa, BIE, committed to ask if NCLB Committee members can present during one of the BIE pre-conference meetings
- Committee Co-chairs and members will lead the meetings. It would help if people from diverse subcommittees were there so different kinds of experience were represented.
- CBI facilitators will take notes at the meetings. Phone calls can be set up to prepare materials and review agenda beforehand.
- Committee members can attend more than one public consultation session.
- RACA will provide note takers, court reporters, and translators as needed.

Anticipated Questions for Public Consultation Session

Committee members discussed questions and reactions received from the general public during informal public meetings and presentations. Committee members also discussed questions they expected to be asked during the public consultation process. Some of the questions considered were as follows.

- **What will be done with the recommendations?** Committee members discussed the expected consequence of the rulemaking process, which is unclear. The Committee cannot compel the Secretary to approve the recommendations or Congress to implement them. It is a positive sign that OFMC is participating, requesting committee feedback, and committed to implementing the recommendations. Congress may call a hearing, but it is not likely that recommendations will be made into regulations during this administration because of the regulatory cycle. The Committee can recommend that recommendations are included in regulations or legislation or CFR. Committee members discussed composing and submitting an official letter to that effect. Committee members were encouraged to ask consultation participants to identify which specific sections should be codified during the consultation meetings.
- **Confusion regarding NCLB Committee's Charge:** Committee members encountered a general lack of understanding about the Committee's objective. Many believe the Committee is preparing regulations, not recommendations. Committee members were advised to clarify the difference between the current rulemaking process and the prior NCLB rulemaking process, which was charged with developing regulations for numerous non-facilities educational issues. [Committee members might be well-advised to have a copy of the Committee charter on hand, and to re-familiarize themselves with it. ¶ 4: "The duties of this Committee are solely advisory."]
- **Concern regarding school replacement list ranking:** Committee members reported that some schools are concerned that they will be kicked off of the School Replacement list if they fix the items in their backlog. Some schools question if it is better, unfortunately, to allow their school to remain in poor condition so they can stay on the priority list for a new school.
- **What is the Facilities Management Information System (FMIS) and how does it work?** Questions and reactions from participants in informal meetings reveal that many school board members and administrators are not aware of the FMIS system, FMIS and lack of connectivity remains a huge issue in the schools, and many schools lack staff who can operate FMIS.
- **Concern regarding lack of funding and services in Native American education:** While the draft report addresses the budget shortfall and the fact that Native American schools feel underserved, it does so less emphatically than some would like. Committee members were advised to adjust public expectations of the scope of the report accordingly.

- **Questions regarding the need for increased appropriations to Native American schools:** Committee members were advised to explain that the proposed formulas will help clarify the need for more money and guide future development of a budget.
- **How do schools transferring from Bureau-funded schools to Grant-funded schools ensure that they know how to use FMIS?** OFMC will work to include those schools in the FMIS training process.

Committee members noted additional topics of interest raised by audience members during informal meetings, including the following.

- State of communication and collaboration between BIE and BIA
- Identity and location of schools in poor condition
- Impact of Committee recommendations and agency changes on individual schools
- Transparency in MI&R and FI&R process
- Information about the school replacement process
- Significance and function of formulas
- Ranking process for facilities (all facilities or just those being repaired?)
- Reporting on age of school buildings

Several Committee members gave helpful suggestions, drawn from past experience, about running an effective consultation:

- **Tailor presentation to audience needs:**
 - Be flexible about agenda
 - Limit presentation to essential slides that are of interest to participants
 - Tailor the presentation to suit the needs of your participants.
 - Use key words to help initiate discussion on topics that the public is eager to discuss.
- **Send meeting materials ahead of time:**
 - The report will be available online and through hard copy, so audience members will have time to review the information before the consultation sessions
 - Prior review of meeting materials may cut down on some of the questions and may create a more educated audience
 - When materials are sent ahead of time, audience members typically present well-prepared resolutions and ask relevant questions
- **Highlight key terms and concepts:**
 - Highlight key words, particularly on slides with legislative and technical information
- **Be prepared for tribal pressure:**
 - Presenting and explaining unpopular decisions in front of one's own tribe can be challenging
 - Consultation leaders may experience great pressure if the tribe does not agree with the Committee's decisions or recommendations

- Consider presenting the presentation before your tribal council, which provides a chance to rehearse
- Consider presenting with another local member of the Committee who can back you up and help defend or support the Committee's decisions
- **Learn from other consultations:**
 - Audiences are likely to raise similar questions
 - Consultation teams can learn from each other by sharing questions raised in consultation sessions
 - Consultation leaders are encouraged to pass questions along to leaders of the next consultation so they are better able to address audience concerns.

The Committee also discussed several logistical tasks, including increased awareness and outreach, to prepare for the consultation sessions and noted the following.

- *Send out pre-consultation materials:* prepare handouts on CDs and send out to schools; make materials available online; send out hard copies of materials to each Committee member so they can distribute handouts. Committee members can help with outreach and help publicize the consultation to their contacts. Federal register notice will be posted with locations, dates, and Committee contact information.
- *Address invitation letters to all relevant stakeholders:* Send invitation letter to tribal chairman or governor of all federally-recognized tribes, ELOs, department chairs, and all school administrators. One participant requested that the letter be addressed to all stakeholders (not just the tribal chief) to ensure that the letter is distributed to all intended recipients.
- *Prepare summary sheets:* Prepare a summary sheet for each section of the report (modeled after BIE consultation summary sheets). Each summary sheet has four boxes that summarize (1) existing policy; (2) problems; (3) proposed changes; and, (4) expected impact of proposed changes.

Review and Discussion of Public Consultation Presentation

The Committee provided suggestions for streamlining slides including reduce text on each slide; increase use of bullets and visual graphics; move text from slides to notes section; refer people to appropriate pages in draft report for more details. During the discussion, Stacie Smith, facilitator, updated the presentation slides where possible to reflect the changes suggested by participants.

BIE Liaison, Glen Allison

David Talayumptewa, BIE, introduced Glen Allison, recently reassigned to serve as a liaison between OFMC and BIE. Glen Allison introduced himself to the group and gave a brief history of his 30 years in education, including ISEP education specialist, construction management, and facilities. He acknowledged that his new role would be a challenging task, but that he looks forward to working with Committee members.

Planning for Final NCLP Meeting

On the final day of the meeting, the Committee discussed plans for the final NCLB meeting, where the Committee would review their recommendations based on comments received during the public consultation sessions, and produce the final report.

The Committee agreed that the final meeting should be held during the week of September 19, 2011.

Public Comment Period

During each day of the meeting, members of the public were invited to provide comments to the Committee members.

On Thursday, April 28, Audra Antone from Blackwater Community School (Coolidge, AZ) expressed appreciation for the hard work the group was performing.

On Friday, April 29, Asa Begaye, President of the Community Land Use Planning Committee, Dennehotso Chapter, spoke on behalf of several members of the community who were also present at the meeting. Mr. Begaye discussed the participatory approach of the community in preparing for the new school. The Tribe, with input from the parents and community members, decided where the school should be located. The Tribe has also donated over five hundred thousand dollars of its own money to bring infrastructure to the site. The Tribe's activities indicate their commitment to being a partner in the school that will be built. The Tribe desires to work with BIE in a participatory, transparent manner to make the new school a reality. [See Appendix D for submitted comment]

Carmelia Crank-Blackwater, Dennehotso Community Services Coordinator, also addressed the Committee. She stated that the community wants to be put on record that they want a school that the community can be a part of and desires some control over how the school is used. She stated that since the school is federally funded, the community no longer feels like the school is part of the community. The school has become stricter and the community is not able to hold its programs in the school. The community desires to take part in their children's education and use the school as a resource for the community.

After the public comments, Jack Rever, OFMC, provided a status update on the construction of the new school. The new school is a top priority for OFMC but they are waiting for funds to be made available. The planning phase is complete, and the next phase is the design phase. OFMC plans to involve stakeholders in the process when the next phase starts.

Test of New MI&R Formula

Margie Morin, OFMC, performed a test of the proposed national-regional MI&R formula. The test revealed that schools in small regions (generally regions with less

than 400,000 funded square feet in total) do not receive enough money to cover even one major repair. Some members suggested setting aside a certain percentage of the total MI&R funding for schools in small regions, and other members supported using the national MI&R funding for the schools instead of a set aside amount.

The Committee suggested and discussed the following options:

- 1% Set-aside: Take 1% off the top of the total amount of funding, and divide the remainder between the regions (2/3 distributed according to square footage), and national (1/3 distributed according to OFMC prioritization process). Square footage of new schools would not be included.
- 4% Set-aside: Several members felt that 1% was insufficient and suggested a set-aside of 4%. Other members were concerned that setting aside more funds for smaller regions would cut into funding for other regions.
- No Set-aside: Some members stated that schools in small regions could supplement their portion from the national MI&R funding and emergency funds. However, one member noted that emergency funding is available for all schools across the nation so it cannot be used to supplement the small regions.

A straw poll revealed that 10 members were in favor of a 1% set aside and 5 members were in favor of a 4% set-aside. Other members did not vote.

Test of new MI&R Formula with 4% Set-aside:

Margie Morin, OFMC, tested the MI&R formula and compared funding values with and without the 4% set-aside. Participants discussed their preferences based on the compared values.

Comments supporting set-aside for small regions:

- 4% is a fair amount, as it allows smaller regions to have money for replacements. Other funds, such as emergency funds and national MI&R funds, are used for different circumstances or reserved for the worst of the worst schools, and are not guaranteed to be available for smaller regions.
- The point of the 2/3 regional funding is to give schools more of a say in how they spend their money. Giving them a voice without money would create more frustration and anger. There must be a mechanism to address that need at the school level.
- One participant recommended establishing a minimum baseline for 3 small regions, and using part of the national 1/3 funding to supplement the small locations.

Comments supporting equal treatment for large and small regions:

- One member stated that tweaking the system to benefit one section or another created an unfair playing field. According to another member, tweaking the formula to make it more fair is fine. It's more of an issue to tell

small schools that the formula was not adjusted to accommodate your school and make sure your school got adequate funding.

- Another member suggested that the set-aside should be distributed on a contingency basis, and available for all the schools regardless of size. However, another member noted that larger regions can absorb some of the costs for other schools, but smaller regions cannot function with less than \$100,000 for several schools.
- Create a threshold level of funding for all the schools; all schools should be assured of at least a minimum amount. For example, the threshold cannot be lower than average of the year's funding; this way the schools don't have to rely on a set-aside.
- One participant pointed out that when divided evenly, some individual schools in larger regions get less money than schools in some of the smaller regions, which seems unfair. Other members pointed out that dividing money evenly among schools was never the intent of the MI&R program and defeats the purpose of the MI&R fund, which is a needs based fund.

Additional Comments:

- One member reminded the group that all of the schools are underfunded and the group should remember not to fight among each other for the insufficient resources, but rather fight together to get more resources.

The Committee agreed to keep the new MI&R formula as is, without any set-aside or baseline minimum for schools in small regions.

Committee Review of Revised Presentation:

Jim Porter, Office of the Solicitor, discussed changes he'd made to the public consultation presentation. In addition to simplifying the language, Jim reviewed a new slide that explained when the public could expect to see results and possible outcomes of the Committee's work. Stacie Smith, facilitator, asked the group about their proposal to combine the FI&R formula with the Facility Replacement Formula, as recommended in meeting 5. The group agreed that they did not want any changes made to the new FI&R formula, and recommended deleting that section in the presentation and the report. OFMC and CBI committed to make changes to the slides and report to reflect the changes to the formulas and recommendations made during the meeting.

The Committee agreed to take time to review the presentation and send feedback by Friday, May 6. The final presentation will be sent out on Friday, May 13.

Post-Public Consultation Planning:

The Committee discussed how to handle the comments it would receive during the public consultations. DOI described how it usually handles feedback received during public consultations, including capturing comments and grouping them according to category. The following options were discussed.

- *Working Group*: Create a working group to review and organize comments from public consultations. The working group would also take out comments that are unrelated to the report, craft an agenda for the final meeting based on the content and frequency of comments, and also turn comments into options.
- *Full Committee Review*: Hold a full committee review of the comments so all Committee members are able to review all of the comments, and not just those selected by the working group.
- *Summary of Meeting Highlights*: Consultation leaders can create a brief summary of meeting highlights to be shared with the larger group.
- *Conference Call*: The Committee considered two different options: (1) hold a conference call with the consultation team after each public consultation meeting to discuss meeting feedback; (2) hold one conference call with all of the consultation teams after all of the public consultation meetings to discuss feedback.

The Committee agreed that each public consultation team would prepare a bulleted list of meeting highlights, which will be discussed during one conference call to be held in August.

Additional matters: The Committee was reminded of the following matters before the meeting adjourned:

- Jerry Brown, Confederated Salish and Kootenai Tribe, to provide language for draft report introduction by Friday, May 6.
- Committee members to send ratings of photographs to be included in the report by Friday, May 6.
- Committee members to send comments on the PowerPoint presentation by Friday, May 6.

Meeting Adjourned

Jerry Brown, Confederated Salish and Kootenai Tribe, led a reflections period in which Committee members and participants offered their thoughts on the meeting. Committee members had many positive comments regarding the level of consensus reached during the meeting and the sense of accomplishment felt after many months of meetings and hard work. The meeting was closed with the burning of sweet grass and a convocation.

Appendices

- A. Meeting Participants
- B. Action Items
- C. List of Handouts Distributed at Meeting
- D. Submitted Public Comment, Asa Begaye

Appendix A: Meeting Participants

<i>L_Name</i>	<i>F_Name</i>	<i>Representing</i>	<i>Alt/PriM</i>	<i>Attended</i>
Allison	Glen	BIE Facilities-DC		28, 29
Anderson	Gregory	Muscogee (Creek) Nation of Oklahoma	Primary	27, 28, 29
Begay	Jimmy	Navajo Nation	Primary	27, 28, 29
Brown	Gerald	Confederated Salish and Kootenai Tribe	Primary	27, 28, 29
Colhoff	Fred	Oglala Sioux Tribe	Primary	27, 28, 29
Eskeets	Emerson	Office of Facilities Management and Construction	Alternate	28,29
Gross	Shirley	15 Tribes of ND, SD and NE	Primary	27, 28, 29
Hudson	Lester	Navajo Nation	Primary	27, 28, 29
Gilbert	Regina	AS-IA, Office of Regulatory Affairs and Collaborative Action	Alternate	27, 28, 29
Leader Charge	Fred	Rosebud Sioux Tribe	Alternate	27
Lujan	Frank	Pueblo of Isleta	Primary	27, 28, 29
Martine-Alonzo	Nancy	Navajo Nation	Alternate	27
Miller White Bull	Merrie	Cheyenne River Sioux Tribe	Primary	27, 28, 29
Morin	Margie	Asst. Deputy Director, OFMC		27, 28, 29
Ojaye	Betty	Navajo Nation	Primary	27, 28, 29
Porter	Jim	Office of the Solicitor	Primary	27, 28, 29
Rever	Jack	AS-IA, Office of Facilities, Environmental and Cultural Resources	Primary	27, 28, 29
Roessel	Monty	Navajo Nation	Primary	27, 28, 29
Spears	Brad		Alternate	27, 28, 29
Singer	Michele	DFO/ AS-IA, Office of Regulatory Affairs and Collaborative Action	Primary	27, 28, 29
Tah	Andrew	Navajo Nation	Primary	27, 28, 29
Talayumptewa	David	Bureau of Indian Education	Primary	27, 28, 29
Taylor	Arthur	Nez Perce Tribe	Primary	27, 28, 29
Witt	Jerome Wayne	Oglala Sioux Tribe	Primary	27, 28, 29
Wright	Catherine	Hopi Tribe	Primary	27, 28, 29
York	Kennith	Mississippi Band of Choctaw Indians	Primary	27, 28, 29
Zah Bahe	Lorena	Navajo Nation	Primary	27, 28, 29

Appendix B: Action Items

Action Item	Who	Status
Draft language summarizing Impact Aid for public and DOD schools impact for the Introduction	Jerry, Lester, Monty	In Progress <i>By May 13</i>
Get existing data on funding for DOD and public schools (from OIEP?)	David	Complete Posted on BIA webpage 5/5/11
Develop strategies for addressing collaboration/communication between OFMC and BIE	Jack and David	Meeting scheduled but has not yet taken place.
Send draft Dormitory Standards language to the Federal Register	RACA	Currently in the process of reviewing draft of approved language, particularly changes to preamble.
Committee Review and ranking photos for report	Committee	<i>By May 6</i>
Verify tables and numbers that came from OFMC (recheck numbers for consistency and accuracy)	OFMC	By May 6
Draft blurb describing current MI&R formula	OFMC	May 6
Add citations to draft report	Jim	May 6
Add all new agreement language in draft report	CBI	May 13
Review Terms of Art in draft report	CBI & RACA	May 13
List appendices	Catherine & CBI	May 13
Create chart that breaks down project money needs by state	OFMC	May 13
Compile questions and answers to be expected in consultation sessions	CBI	May 13
Confirm consultation dates and participants, including federal agency representatives and facilitators	Committee	May 13
Submit bios and pictures for report	Committee and IECR	May 13
Create simplified illustration of FI&R formula, removing unused factors and explained in lay language	OFMC	May 13
Manage Federal Register announcement, send	RACA	May 20

letters to all tribes and schools about consultations, post draft report on website		
Draft summary pages (with four boxes) for each section of report	CBI & RACA	May 20
Send hard copies of draft report to committee members	RACA	Before June
Set up conference call in August to review findings from public consultations	RACA & CBI	Before August
Provide criteria for Review Committee from previous committees	OFMC – CBI to pull out and send	
Follow up on tribal letter to Secretary	RACA	
Take care of logistics for public consultation sessions	RACA & IECR	
Complete Meeting Summary	CBI	

Appendix C: List of Handouts Distributed at Meeting (available at <http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm>)

- MI&R Options for the Committee worksheet
- Overview of IA and BIE's Organization Charts, Education Construction Funding Process, Operations & Maintenance Funding Process, and OFMC Programs - OFMC
- OFMC Flow of Input to FMIS (diagram)
- OFMC FMIS Responsibility Matrix
- OFMC Facility Deficiency Flow Diagram
- OFMC FY2011 Priority Backlogs for Supplemental Funding (spreadsheet)
- Potential locations for NCLB outreach on Committee's work
- DRAFT NCLB Tribal Consultation Plan
- BIA/OFMC Asset Priority Index Scoring
- OFMC Planned MI&R Funding for 2011

Appendix D: Submitted Public Comment, Asa Begay (attached)

Before the
No Child Left Behind School Facilities and Construction
Negotiated Rulemaking Committee

COMMENT

4/29/2011

US Department of Interior, Press Release, dated 1/14/2011, in part states:

“Our goal is a comprehensive, transparent and effective policy on which the Tribes can rely,” Secretary Salazar said. “We must have a policy that embodies the best consultation practices available, responds to the needs of Tribal leaders to be more engaged in policy development and promotes more responsible decision-making on issues affecting American Indians and Alaska Natives,” Salazar said. “The success of this policy depends greatly on the depth of input received from Indian Country.”

“Meaningful, good faith consultation makes the Department’s operations and governance practices more efficient and effective,” said Assistant Secretary- Indian Affairs Larry Echo Hawk. “Forging a strong role for Indian Tribes’ involvement at all stages in the government’s decision-making process will benefit Federal Indian policy for generations to come.”

The Press Release titled “**Secretary Salazar, Assistant Secretary Echo Hawk Submit Draft Consultation Policy to Tribal Leaders**,” further states:

The draft policy was developed in response to President Obama’s Nov. 5, 2009 White House Memorandum on Tribal Consultation, which signaled this Administration’s commitment to strengthening the government-to-government relationship between the United States and Tribal nations.

The Navajo Nation Council through resolution CAP-34-98 enacted the Navajo Nation Local Governance Act of 1998. The LGA is codified at Title 26, Navajo Nation Code. The LGA confers certain authorities upon the Navajo Nation Chapters to engage in a local governance process, including the authority to conduct all manner of local planning for the community. In respective section(s) of the Act, provides that:

1. The purpose of the Local Governance Act is to recognize governance at the local level. Through adoption of this Act, the Navajo Nation Council delegates to Chapters governmental authority with respect to local matters consistent with Navajo law, including custom and tradition.
2. Enactment of the Local Governance Act allows Chapters to make decisions over local

matters. This authority, in the long run, will improve community decision making, allow communities to excel and flourish, enable Navajo leaders to lead towards a prosperous future, and improve the strength and sovereignty of the Navajo Nation.

From the most recent letter to Andrew Robinson, Architect, Division of Design and Construction, dated 3/15/2011 signed by Mr. Emerson Eskeet for Barbara Borgeson, Acting Chief, Division of Design and Construction, states: "The Dennehotso School Board and school staff should be involved in the development of this project and, to the extent allowed by policy and regulations, their opinions and recommendations should be reflected in the final project. However, the project budget must not be exceeded."

During the effort to complete the 100% Feasibility Report completed on behalf of OFMC, we had respectfully requested during a meeting with Mr. Eskeet to have the report address the sewer lagoon located near the Laguna Wash. As we had experienced before, due to heavy rain the level of the water overflowed the banks of the wash and caused a break in the lagoon and eventually the waste water contaminated the Laguna Wash. The people downstream with livestock and having reliance on the wash as water for their livestock complained of the contamination. Therefore, we stated our desire to see the environmental impact due to its close proximity to the Laguna Wash. This was not addressed in the 100% Feasibility Report for OFMC. We further indicated that this wash eventually become the Chinle Wash, then the San Juan River and eventually, the Colorado River.

Also, the former El Paso Natural Gas line runs directly south of the Dennehotso Boarding School and numerous parents had expressed concern on its safety – this concern came about due to the gas line rupture and explosion that occurred near the Artesia, New Mexico area that people became aware of through the media. This was not addressed in the above-mentioned report.

Subsequent to our communications with Mr. Jack Rever, a letter was written to the Honorable Katherine Benally, Council Delegate, Navajo Nation Council, who represents the community of Dennehotso. In this letter, it indicated that the Bureau would look at the alternative site supported by the Community through a Chapter Resolution adopted by the Chapter membership at a lawful Dennehotso Chapter meeting. This information was forwarded to respective stakeholders (Chapter, Navajo Nation and Federal) and we continued our efforts to bring the needed infrastructures to the Desert Meadows Development Site. At this time and presently, we have expended in excess of \$514,000 to bring water, power and other utilities to the Desert Meadows Development Site. Further, we have obtained consent from respective land users for 150 acres of which 40 acres is set aside for the replacement school. We are working with the Navajo Tribal Utility Authority, Indian Health Services-OEH, Frontier, Navajo Nation Division of Economic Development and other stakeholders to complete this infrastructure development. This should reflect our utmost commitment to have this replacement school at the Desert Meadows Development Site – a true reflection of a "community-driven" decision.

The 4-mile waterline extension from a well identified as D12 has a project number assigned by Indian Health Services and from a meeting held on Wednesday, 4/27/2011, the I.H.S.-OEH in Kayenta AZ is completing their staking for the waterline and is in the process of completing the design. The NTUA presented their design and they will be forwarding their cost estimate to the

Navajo Nation Division of Economic Development for funding from the established funding obtained through the Navajo Nation for infrastructure development at the development site. The 140 acres has been received all the necessary clearances as mandated by respective laws.

As a community, we are in agreement that “for the benefit of the students, we need to begin construction without any more delays.” In light of the Navajo Nation’s Local Governance Act (LGA) and the principles of the current Obama Administration’s policy on consultation, the Chapter continues to await the OFMC interaction with us in addressing the education facilities for our children. The non-availability of these information and documentation as we have been requesting does not lend to the spirit of cooperation and partnership necessary to achieve such an undertaking by all involved. Nor does it meet the intent and purposes of consultation as directed by the President of the United States, on November 8, 2009 to all government agencies having any dealings in the Indian Nation. As iterated by countless leaders throughout the Country and this community, only we as parents and Native community know what is best for our children and how to govern ourselves. We no longer desire to be a spectator in determining our own destiny.