



Broken Promises, Broken Schools:

Overview of the Report from the NCLB School Facilities
& Construction Negotiated Rulemaking Committee

Briefing to Congressional Officials and Staff
September 2011

Committee's Statutory Mandate

In the No Child Left Behind Act, Congress mandated the creation of a negotiated rulemaking committee to prepare report(s) for Congress and the Secretary of the Interior:

- A catalog of the conditions of Bureau-funded schools;
- A school replacement and new construction report; and
- A school facilities renovation and repairs report.

The reports must identify –

- The needs for replacement and renovation and
- A formula for equitable distribution of funds to address these needs



Draft Report: Table of Contents

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- Overview of the Task and Process
- Statement of Need

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- Response to Statutory Questions
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- Recommendations for new process and formula

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- Existing Programs (MI&R and FI&R)
- Recommendations for new process and formula

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Chapter 1: Introduction

- Overview of Task and Process
- Federal Government's Duty to Educate Native Children
- Federal Failure to Provide Quality School Facilities
- Lack of Transparency in Allocation Process



Committee Work

- 7 meetings
- 5 school visits/tours
- 5 regional consultations on draft report attended by over 200 participants
- Detailing of existing processes, procedures, and formulas
- Extensive FMIS, budget, and other data review and analysis
- 2 surveys on educational needs & FMIS use



Overarching Conclusion

“the funding appropriated by Congress has not been sufficient to keep pace with the deterioration of Bureau-funded school facilities – it would take \$1.3 billion to bring all tribal schools up to acceptable condition.

Furthermore, inadequate use and support of the computer database on which the Bureau relies, as well as lack of transparency and equity in the existing decision making process, has hampered a fair and effective allocation of funds.”



DoD Comparison

The U.S. Department of Defense Education Agency (DODEA) – the only other comparable federally-funded educational system -- recently introduced a plan to replace or renovate 134 schools by 2018 for an estimated cost of \$3.7 billion. In 2010, OFMC calculated it would require \$1.3 billion to elevate the 63 schools in poor condition up to satisfactory condition.



Recommendation

This Committee strongly recommends that the Tribes, Tribal Interior Budget Council (TIBC), the Assistant Secretary -- Indian Affairs and the Secretary of the Interior make a request to the President, and the President to include in his budget request, funding for a comparable commitment to bring all Bureau-funded schools into acceptable condition.



Catalog of Facility Conditions



Chapter 2: Catalog of Facilities: Conditions of School Facilities

- 2011: 34% of schools are in poor condition
- \$1.3 billion: estimated cost to bring the 63 schools now in poor condition up to acceptable condition (includes new construction)
- For 2010, OFMC requested \$112 million for school facilities construction (2010 budget)
- For 2011, OFMC received \$46 million for school facilities construction.



Areas of Concern

- Accuracy of the Existing Data in FMIS
- Unclear Roles and Responsibilities
- Inadequate FMIS Entry Training and Support
- System Administration and Remote Access
- Transparency of Condition Assessments

Accuracy of FMIS Data

Problem: Incomplete and inaccurate data entry

Recommended Solutions:

- Prioritize assistance for schools needing help with FMIS data entry
- Ensure schools have equal access to FMIS
- Ensure administrators understand FMIS
- Require 40 hours training for Managers

Roles and Responsibilities

Problem: No consistent local Bureau staff to provide FMIS assistance to schools

Recommended Solutions:

- Develop structure to improve OFMC and BIE coordination
- Clearly define all Roles and Responsibilities for all parties using FMIS from the school up to headquarters.
- Ensure assistance/monitoring by OFMC and BIE of all schools' using FMIS (includes Grant/Contract schools)
- Emphasize responsibility on school administrators to ensure FMIS is updated
- Require schools to use FMIS



FMIS Entry Training and Support

Problem: Insufficient FMIS training offered at users' location; need more support to ensure the schools use of FMIS effectively

Recommended Solutions:

- Develop a National FMIS Users Group
- Develop Regional FMIS Support Groups; create a roster of people in each region who can provide technical assistance
- The 40-hour basic training and refresher training should be offered Regionally on a regular basis
- Provide FMIS users advanced notice and any necessary training before new FMIS requirements take effect



System Administration

Problem: Frequent problems accessing FMIS. Few users know where to turn for assistance. Long response time.

Recommended Solutions:

- Make FMIS easily available on the web and from remote locations without requiring dedicated terminals
- Ensure OFMC and CIO respond to FMIS problems quickly and efficiently
- Notify all users via email when, and for how long, a system shut-down will occur
- Provide Regional/Agency Support, or a Regional Assistance Team, to ensure backlogs are input for all Bureau-funded schools without access for whatever reason



Transparency with Contractors

Problem: Contractors' role is unclear, communication with schools may be poor and accountability to schools is limited.

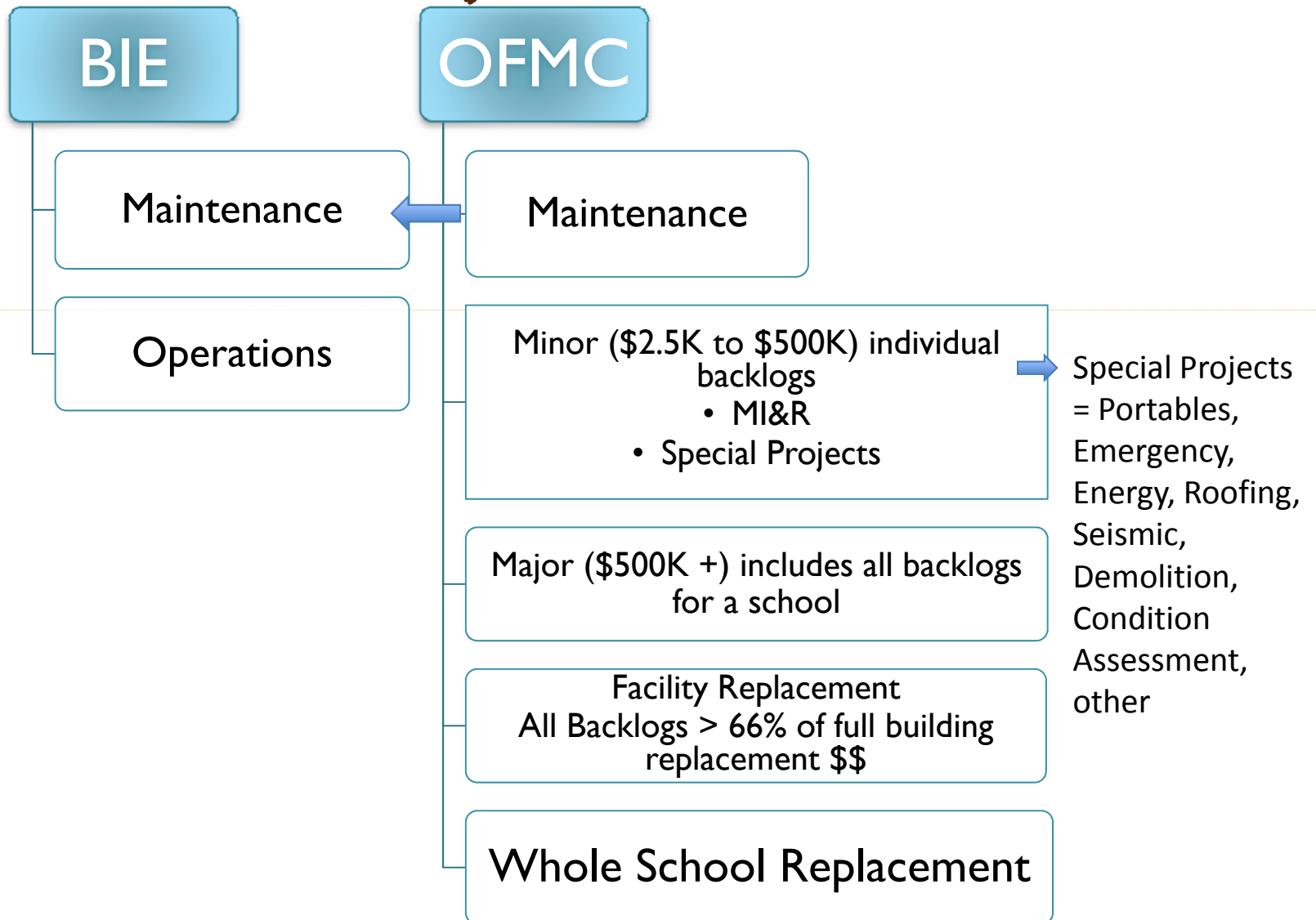
Recommended Solutions:

- Improve communication between contractor and schools
- Require formal entry & exit interviews between school & contractor
- Provide copy of contractor's Facility Assessment Report to the school
- Require contractor to be accompanied by school's staff during contractor visit
- Provide administrator the contractor's Scope of Work and a print-out of the school's list of backlogs from FMIS 30 days prior to Contractor's visit
- Anyone with access from that location should receive notification if backlog entries are changed by gatekeepers



Formulas for Minor and Major Renovation and Facility Replacement

“Kinds of Projects”





MI&R Recommendations: OFMC should improve *communication* by:

- Emphasize to the schools importance of timely entry of data in FMIS
- Annually publish the criteria OFMC will use to make MI&R decisions: include weightings and formulas, and point of contact in each regional office
- Issue an annual report explaining each decision to remove a school-proposed project from the prioritization list
- The information provided above should be posted on the **Bureau's website**, distributed to all school principals, facility managers, and ELOs, and distributed at Bureau key conferences and trainings.




MI&R Recommendations: OFMC should improve *engagement* by using Regional Committees:

Convene Regional Committees made-up of one representative from each school in the Region to make decisions about the allocation of each Region's MI&R funds

Proposed MI&R Formula

- **2/3 of funds allocated by OFMC regional offices**
 - Funds allocated *to regions* based on square footage of all schools' educational & dormitory space in that region based on FMIS
 - Funds allocated to schools to cover only serious health and safety backlogs from FMIS
 - Allocation decisions within regions made by Regional Committee made up of representatives of schools
- Prioritized projects not funded by regional funds forwarded to OFMC
- **1/3 of funds disbursed by OFMC headquarters**
 - All regional priorities not funded by regional offices prioritized on worst-first basis using FMIS/FCI.



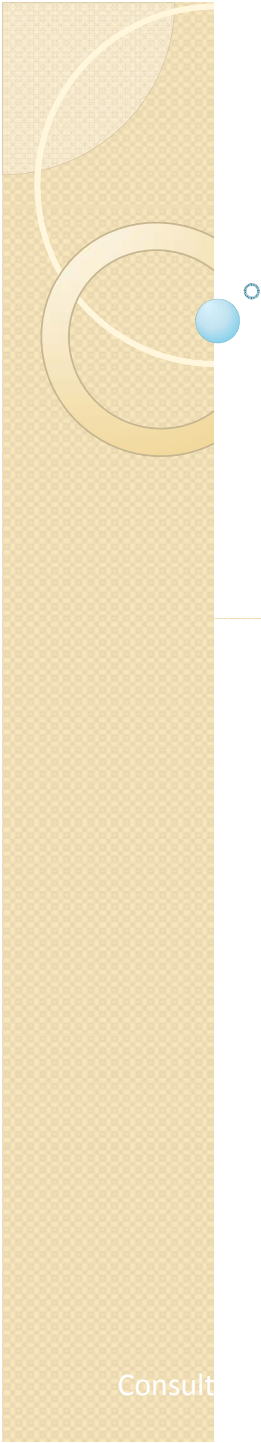
OFMC should improve the FI&R funding process by including educational space deficiencies in the prioritization formula

- To do this, OFMC must conduct a study of all schools, comparing space guidelines (and state accreditation requirements) to existing conditions to determine Educational Deficiencies (see Catalog for further detailed recommendation).
- Educational deficiencies should be incorporated into the FI&R formula as Critical Health and Safety Capital Improvement (Educational Space Deficiencies) backlogs, given a weighting factor of 9.

Ranking Backlogs by Weight

DOI Category	OFMC Category	Backlog Type	Weight Factor
CHSdm	S-1, H-1, M-1, X-1	Critical Health & Safety Deferred Maintenance	Score 10
CHSci	C-1	Critical Health & Safety Capital Improvement & Educational Facility Deficiencies	Score 9
EPHPSBci	E-2, E-3	Energy Policy, High Performance, Sustainable Buildings	Score 5
CMdm	X-2, M-2	Critical Mission Deferred Maintenance	Score 4
CCci	H-2, F-2, S-2	Code Compliance Capital Improvement	Score 4
Odm	M-3	Other Deferred Maintenance	Score 3
Oci	P-2, P-3, C-2	Other Capital Improvements	Score 1

(page 132 in draft report)



Processes and Formulas for School Repair, Renovation, and New Construction

Chapter 3: New School Replacement

Existing and Previous Programs

- No existing processes – current funding is being allocated based on 2004 replacement school list
- Past processes:
 - Prior to 1994: annual prioritized list based on FACCOM or FMIS data
 - 1994 – 2003: multi-year priority list based on OFMC evaluation of applications
 - 2004: multi-year priority list based on FMIS data and site visits from contractor

Principles Underlying New Process

- Funding should be prioritized for “worst first”
- Formulas -
 - Must support health and safety standards
 - Must account for educational needs
 - Only as good as FMIS data – which must be improved
 - Must be uniformly applied
 - Must not be susceptible to manipulation
 - Must be practicable
 - Should be defensible legally and technically
- Some non-formula, subjective decision-making may be unavoidable, but must also be clear, consistent, transparent and compliant with these principles.



New Process for New School Replacement

- Every 5-years (or sooner if sufficient funding is allocated) OFMC to generate list of schools approved for replacement
- List based on application process; objective criteria applied to available data; enabling all schools, regardless of resources, to apply.
- Allow for a mix of replacement and renovation. Some schools may not require the replacement of every building on campus – some may only need renovation.
- *Schools on the FY 2004 list that have not yet received funding will be funded for replacement school prior to the application of this new approach.*

Eligibility for Application

- Only schools in poor condition or 50 years or older AND using 75% or more portables are eligible
- All schools in poor condition will be ranked; however, if schools do not *apply, they will not be considered*
- OFMC must heavily publicize the initiation of the application process; must reach far beyond the Federal Register notice
- During the 5-year cycle, schools on the replacement list would still be eligible for MI&R and FI&R monies



Review of Applications; Short List of Applicants

- OFMC reviews applications for accuracy; calculates location scores (65 points max)
- Review Committee, including members from all regions plus OFMC and BIE, assesses other criteria, awards up to 35 points; determines top 10 applicants
- Publication of top 10 in alphabetical order; invited to public meeting in Albuquerque
- At meeting, schools present arguments and answer Committee questions
- After deliberation, Committee ranks the top 5; Committee required to be clear and explain in detail its decision on selection
- Committee recommendation reviewed by the Assistant Secretary for final approval

Final Notification of Approval

- BIA to publish a ranked list of all applicants in the Federal Register, and a list of schools approved for replacement. The Federal Register notice should state clearly that applicants not approved for replacement:
 1. Will not be funded in the five year window;
 2. Will have to reapply in the next five-year cycle, and
 3. Applicants will be re-ranked in the next five year cycle of application. The goal is for all schools to understand what the rankings do and do not mean.



Post Application

- Schools in Replacement Pool undergo pre-planning for readiness (site availability, soils, available utilities).
- Reasonable time/money would be provided for the schools in the pool for identifying readiness
- “Readiness” criteria should be created for the pool
- Schools will be funded for construction based on: 1) ranking; 2) readiness; and 3) budget
- Pool unchanged for the length of the term. If the Bureau funds all schools in under 5-years, reinitiate application process to ensure there are no gaps in activity
- If Bureau cannot fund all schools within 5-years, unfunded schools are “grandfathered” into the next ranking of schools for the next 5-year timeframe

New School Replacement Process

1. Pre-Notification: 3+ month notification of pending application process. Schools provided FCI condition, application materials and asked to update backlogs

2. Application: Application process opens and schools provided 45 days to respond online.

3. OFMC Initial Review: OFMC reviews applications against FMIS data for accuracy/completeness, and awards up to 65 pts.

4. Committee Review: External committee scores applications based on the other criteria (up to 35 points). Applications ranked, top 10 are published in alphabetical order (not by ranking).

5. Public Meeting and Final Committee Decision: 10 highest ranked schools invited to present to Review Committee at a Public Meeting. Committee then completes a final ranking. Top 5 projects are sent to the Assistant Secretary for acceptance.

6. Award Notification: Assistant Secretary notifies the schools in the “pool” of funded projects. Names of schools in the pool and ranking of all schools are published.

7. Pool Pre-Planning: OFMC works with the awardees on pre-planning addressing site readiness and starting development of programs for each major project.

8. Construction Scheduling: OFMC schedules projects in appropriate order. If school not site ready, it has 18-mos from award acceptance to move forward or must reapply.



Formula for Allocating New School Replacement Construction Funds

Overall Formula

Points	Criteria
65	Condition of Facilities & Educational Deficiencies
5	Crowding
5	Declining or Constrained Enrollment associated w/Poor Facilities
5	Inappropriate Educational Space
5	Accreditation Risk
10	School Age
5	Cultural space needs

Crowding (5 points)

- Determined by: 1. calculating students per square foot per grade (based on 3 year avg. Enrollment (per NASIS), divided by total square feet core educational space. 2. Compare this ratio against standard for that school in the Space Guidelines (times 100) 3. Award points based on Chart below.
- Application will lay this out in a simple way for applicants to fill in. OFMC will confirm.

Crowding Factor	Points Awarded
140 and above	5
130 to 139	4
120 to 129	3
110 to 119	2
101 to 109	1
100 and below	0

Declining/Constrained Enrollment (5 points)

- Poor facilities may cause declining or constrained enrollment. Schools should explain how the condition of facilities is decreasing enrollments, inability to utilize existing space, etc.
- 5 points if school has closed a building due to poor conditions
- 3 points if school can demonstrate students transferring away from school because of poor facilities and/or if school has a waiting list on day 11 of school according to NASIS.
- All lists and data would be verified by Selection Committee prior to finalizing rankings.

Inappropriate Educational Space (5 points)

% of Students Taught (based on last 3-year average) in portables, dormitories, or leased facilities	Points Awarded
95% to 100%	5
80% to 95%	4
60% to 79%	3
40% to 59%	2
20% to 39%	1
Below 20%	0

Accreditation Risk (5 points)

Citations in Accreditation named by the Accreditation body (documentation should be provided)	Points Awarded
Accreditation at highest risk (numerous, severe citations)	5
Accreditation at high risk (numerous citations, some severe)	4
Accreditation at risk (some citations, some severe)	2-3
Accreditation citations, not extensive nor severe	1
No citations	0

School Age (10 points)

Average age of School Buildings or Dormitories to be Replaced or Renovated under the Application	Points Awarded
Over 60	10
50 to 59	8
40 to 49	6
30 to 39	4
20 to 29	2
Below 20	0



Cultural Space Needs (5 points)

Up to 5 points could be awarded for cultural space needs. In the application, the school should answer the following questions:

1. Is there a requirement for native language/cultural education (please provide the Tribal Council requirement/resolution)?
2. Is there a lack of adequate or sufficient space to support this program and/or requirement?

If yes to both, 4 points.

One additional point if school also has a program in place.



Factors **NOT** Considered

- Cost share not used in ranking
 - “School isolation” in original Statute
 - Isolation factored into transportation and other formulas
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Next Steps

- Finalize report and distribute to Congress, Secretary, and others (Fall 2011)
- Prepare and publish Federal Register Notice, including consultation themes and responses
- Convert recommendations into updated Indian Affairs policies
- Consider regulations for formulas