

DRAFT – FOR COMMITTEE REVIEW – DO NOT DISTRIBUTE

No Child Left Behind Negotiated Rule Making Committee

Committee Meeting

June 9 - 13, 2003

Hyatt Regency, Albuquerque, New Mexico

Summary of Discussion and Decisions

Facilitator: Lucy Moore

Introductory Remarks and Presentations:

Catherine Freels, Designated Federal Official, welcomed the Committee to this first meeting, and introduced Mr. Gus Keene, Ramah, New Mexico, to offer an opening prayer for the group.

Secretary of Interior Gail Norton spoke by video to the Committee, conveying her appreciation for the commitment of the members to this important task, and pledging her support to insure that the effort is successful. She noted that the time frame for this rule making is short, and that this rule making is a high priority for the administration, which plans for rules in place in time for the beginning of the school year 2004.

Acting Assistant Secretary for Indian Affairs Aurene Martin addressed the group, and expressed her personal and professional dedication to the development of the best rules possible for the regulation of BIA funded schools. She hopes to attend Committee meetings and Work Groups as her schedule permits, and will be in close touch with her staff to follow the group's progress.

Lucy Moore, facilitator, also welcomed the group and explained the role of her facilitation team, which includes: Raymond Daw, Rafael Montalvo, Ed Moreno, Suzanne Orenstein, and Linda Ximenes. They are committed to making the Committee and Work Group meetings as smooth, productive and enjoyable as possible, and welcome suggestions from participants at any time.

Catherine Freels presented basic information on the guiding legislative documents that will frame the work of the Committee – the No Child Left Behind Act (NCLB), the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act, and the Administrative Procedures Act.

She also gave members information on meeting logistics and the mechanics of serving as a member, including travel reimbursement. Briefly, Committee members need to sign a travel voucher before the close of each meeting, and as soon as possible following the

meeting they should send to the Project Management Office (PMO) all receipts for travel, including parking, taxis, shuttles, car rental or mileage (.36/mile). Lodging for tribal committee members will be paid by the PMO and food will be covered in the federal per diem rate which will vary from location to location.

Catherine also described the role of the federal team, the federal agency, and the DFO. She reiterated the commitment from the Secretary of the Interior to publish any rule developed by this Committee by consensus.

John Styrlowski, Office of the Executive Secretariat, Department of Interior, explained his role as drafter of rule language and invited Committee members to put him to work as the need arises. He suggested that by involving him early in the process, the Committee might avoid tedious re-writing at the end. He offered to put any concepts or agreements into plain language appropriate for a rule and return it to the group for re-working. He has no sense of ownership in what he writes, and the Committee can use his drafts as strawmen to further thinking and discussion on a certain point.

Lucy Moore spoke about the role of the facilitators, the resource people and observers. Facilitators will facilitate Committee and Work Group meetings, and will try to provide a safe and equitable environment for all participants. The facilitation team will also be responsible for preparing written summaries of the discussions and decisions from each of the meetings, both plenary and work group. Lucy explained that the BIA had selected and hired her team to provide these services for this initial meeting, but that it was the privilege of the Committee itself to approve or disapprove the selection. This would be a decision for the Committee at the end of the week.

Resource people are available to provide information to Committee members as requested. observers are welcome to attend Committee and Work Group meetings, and make comment or ask questions at times provided by the Committee or work groups.

Committee members were asked to bring their three-ring binders and any other relevant materials to every meeting. The Project Office will provide copying capacity and administrative support on site at each meeting, and will help the Committee to function efficiently in whatever way possible. All Committee materials will be on the website at: www.oiep.bia.edu, click on "negotiated rule making."

Although the internet is still not available to the BIA, the Project Office staff will explore ways of creating an email listserv for Committee members.

Time Frame for Committee Work: The group was concerned about the short period of time allotted for this task. Agency spokespersons explained the necessary time line if the rules are to be in place by September 2004:

- Drafting time 1 month
- OMB review 3 months
- public comment period 4 months
- review of public comments 2 months
- Final OMB review 45 days

Meeting Dates: The Committee discussed future meeting dates and agreed on the following schedule, with additional meetings if needed:

July 14 - 19	Minneapolis, Airport Marriott Hotel
August 21 - 24	Seattle, Grand Hyatt Hotel
September 15 -19	Nashville, Opryland Hotel

Preparing to Negotiate: Committee members spent a half day discussing characteristics of successful negotiations in small groups, and practicing negotiations in a role play setting. A discussion on the definition of “good faith negotiating” revealed the following characteristics:

- no hidden agendas
- honest, everything on the table
- open minded
- respectful and trusting
- making a commitment
- taking things at face value
- good body language

Commitment to the Process: Members understood the incentive for reaching consensus; without consensus, the Department will write the rule themselves. Since federal Committee members will be participating fully in the consensus process, it is expected that their consent will reflect the willingness of the Department to proceed with that rule, barring problems arising in the OMB review. It is better to come to a consensus that isn’t perfect than to have a rule imposed on us, said a participant. Entering into this process requires trust and good faith on the part of all members. Both the federal and the tribal members expressed a deep commitment to developing these rules by consensus, and to maintaining the vision of a better educational future for Indian children at all times. A member spoke for the group, saying that we have been given an opportunity to build something and that no one should give that up. Another offered the thought that when all people think alike, there is no change. We should all be willing to throw in different ingredients, to appreciate different opinions.

Committee Unity: There was discussion about the nature and spirit of the Committee. Although there are six members who are part of the federal team, and nineteen members who are chosen by tribes and tribal schools, all agreed that it was important to see the Committee as a single unit, not the sum of two factions. It was also understood that there are historical and institutional forces that will tend to drive the Committee members into opposing camps. Some tribal members raised issues of trust in the discussions, pointing to a painful history with the federal government. They assured federal Committee

members that raising the question of trust was not intended to be a personal attack, but rather an acknowledgment of the difficult landscape surrounding this process. Federal members expressed the hope that mistrust would not inhibit productive discussion and negotiations. Recognizing these potentially divisive forces and choosing to operate in a collaborative way will be crucial if Committee members are to negotiate efficiently and successfully in the coming months.

Overarching Goal for the Committee: A Committee member suggested that the Committee should have before it during its deliberations a statement of a higher goal for the group. John Strylowski developed language from the discussion, and with adjustments, the Committee adopted the following:

Our goal is to develop recommendations for proposed rules that:

- *focus on the needs of children*
- *provide the highest quality services by increasing accountability within the Bureau of Indian Affairs*
- *serve the interests of tribes, communities and schools*

Negotiation of Protocols: The Committee reviewed the proposed Protocols paragraph by paragraph and made changes by consensus. A final version of the Protocols was accepted by the Committee by consensus on Thursday, June 12. Highlights of the review and discussion follow:

- ***Definition of Consensus:*** The Committee discussed at length how they should define consensus and whether or not to revert to a vote if consensus fails. Some felt that falling back to a voting process undermined the motive for striving for consensus, and that it should not be easy to override minority, even single, voices of dissent. Others felt that our democratic form of government is based on the will of the majority, and that in the end a minority must accept the decision of the majority. The drive for consensus, in fact, might result in the oppression of a minority voice that is overwhelmed by the pressure to consent.

Struggling to reach consensus and including every voice is culturally appropriate for tribal communities, some pointed out, and it is important to take time to understand the needs of all in order to craft the best possible product. On the other hand, time is critical in this process, and it will important to recognize when consensus is not possible, and move on to another issue.

If the group does not reach consensus, the Committee may submit a majority and minority report to the Department explaining the differing views.

The group agreed on the following definition of consensus. They also emphasized that it will be the responsibility of every member to insure that every voice is heard and understood, and that every effort be made to accommodate all interests in all consensus language.

All Committee members can live with all decisions and every effort will be made to address concerns in reaching consensus.

- ***Scope of the Committee:*** Although the Charter and the Draft Protocols speak of six rules, some Committee members urged the Department to allow them to consider two additional rules which cover Dormitories and School Closures and Consolidation, Sections 1121(d) and 1122. Federal team members agreed to include that language in the Protocols and to amend the Charter to allow the Committee to undertake these additional rules after completing the six specified.

Committee members were also eager to deal with rules governing facilities, and reported that among those in the field this was the top priority for attention. The federal representatives explained that law requires the GAO report to be completed before this rule can be addressed. The group suggested that this Committee be used for consultation on the issue of construction and facilities. They added that facilities will inevitably be a part of the discussions in at least the AYP and Funding Work Groups.

- ***Role of the Committee with respect to Public Comment:*** Committee members requested that the Committee have a role in the review of public comments and the ability to make a recommendation on the final preamble and rules. Federal representatives agreed to include that language in the Protocols and to seek a change in the Charter language.
- ***Absences from Meetings:*** Committee members understood the importance of full Committee attendance at all meetings. They agreed that any member anticipating an absence from any part of a meeting should notify Cathy Freels, DFO, and the Co-Chairs as soon as possible.
- ***Public Participation:*** The Committee discussed ways of including public comment during Committee meetings. Many were concerned that tribal representatives be treated with respect and allowed to speak at a time convenient to them. All agreed that it is important to allow any interested member of the public to contribute to the process, but that it will be critical to maintain control and not infringe on the Committee's work schedule. The Committee agreed to schedule a half hour for public comment in Minneapolis at the beginning of Tuesday, Wednesday, Thursday and Friday. If needed, the Committee may consider an additional time period at the end of the day.
- ***Caucus Procedures for Committee:*** Committee members agreed on a procedure for calling a caucus. Any member may ask the facilitator for time for a caucus. The person calling the caucus will announce who is included in the caucus meeting and the estimated time required. The facilitator will check on the caucus if that time has expired to see if additional time is needed, and will report back to the rest of the group.

- **Notification of Meetings:** The group discussed the importance of notifying tribes, communities and schools of the meeting schedule, to insure that any interested person can attend and contribute. The BIA is sending a letter to all tribal leaders with students in BIA funded schools, and to those schools announcing the process and inviting participation. They will write an open letter to Indian newspapers as well. Committee members are encouraged to do outreach in their communities on behalf of the Committee, in whatever ways are appropriate.
- **Quorum:** The Committee decided that given the short, intense nature of the process, and the commitment of all members to attend all meetings, defining a quorum would not be necessary. Those present at a meeting will constitute the number necessary for consensus.

Co-Chairs: The Committee agreed to have five co-chairs, three representing the tribal membership and two representing the federal membership. Co-chairs chosen by the federal team are Larry Byers and Theresa Rosier. Co-chairs chosen by the tribal representatives are Greg Anderson, Lorraine Begay, and Roger Bordeaux.

There was discussion about the role of the co-chairs with respect to the facilitation team. As part of the negotiation of the Protocols, the Committee created a list of functions for each. They emphasized that coordination of the two roles will be critical. Facilitators emphasized that they serve at the pleasure of the Committee, and welcome any suggestions about how to help the process be more productive. The facilitators' role relates only to the process of the Committee and Work Group work, not to the substance. In this case, the Committee delegates to the facilitators the task of running meetings. The Co-chairs provide leadership for the Committee.

Presentations on the Six Rules: Resource people offered brief overviews of the six rules for the Committee. During those presentations Committee members identified certain documents or information that would be useful in their work. Those items included:

- list of which reservations have multiple schools (boundaries)
- copies of all tribal boundary resolutions (boundaries)
- copies of federal memos and directives, including 62 BIA Manual, relevant to all six subject areas for BIA schools (whole Committee)
- examples of state AYP plans (AYP)
- BIA as 51st state accountability plan (AYP)
- table showing elements of all state plans, abstracted (AYP)
- copy of the work book for states (AYP)
- copies for all members of 25 CFR (whole Committee)

Work Groups: The Committee discussed a variety of ways of dividing the six rules among work groups, and agreed on the following allocation. Federal team members and tribal members assigned representatives to the groups.

Make Up of Work Groups:

Adequate Yearly Progress: (Suzanne Orenstein, facilitator)

Doyce Cannon

Mary Helen Creamer

Laverne Dallas

Gus Keene, Jr.

Dee McKerry

Michael Rossetti

Sharon Wells

Funding/Distribution: (Ed Moreno, facilitator)

Faye Blue Eyes

Deb Bordeaux

Larry Byers

Wayne Newell

Tony Pivec

Theresa Rosier

Wayne Waddoups

Terry Yellow Fat

TCSA/Grants: (Raymond Daw, facilitator)

Greg Anderson

Lorraine Begay

Edith Blackwell

Roger Bordeaux

Mark Sorenson

Student Rights/Geographic Boundaries: (Rafael Montalvo and Linda Ximenes, facilitators)

Pauleen Billie

Zachary Ducheneaux

Vanessa Girard

Bruce Steele

Linda Sue Warner

Direction to Work Groups: Work Groups were asked to develop their own protocols to govern their operations, including handling of resource people and observers. Once the Work Groups begin their work, they will report back regularly to the whole Committee. Understandably, there was interest in developing ways for those in one Work Group to know what was going on in another, and perhaps participate. It was emphasized, however, that the integrity of the Work Group process could be compromised if members were moving from one group to another. As the work proceeds, certain presentations or critical issues may be brought to the whole Committee to enable all members to learn and contribute.

The group also discussed the importance of identifying cross-cutting issues that will be common to two or more groups, and devising a way of communicating among groups on these issues.

Additional Resource Needs: Committee members expressed appreciation for the federal resource people assigned to each of the six rules. In some cases, they felt that there was need for additional technical resource people who could bring a tribal perspective, or contribute different information. The group agreed that any Work Group may add resource people to further its progress, as long as there is agreement within the Work Group. Furthermore, the federal representatives offered to cover travel and per diem expenses for three additional non-governmental resource positions, to be filled at the request of the Committee or a Work Group.

In addition, the group discussed the possibility of having a panel convened to address the Committee or a Work Group on a special topic. The Student Rights Work Group requested a presentation from a panel of students, representing different types of schools, at the meeting in Minneapolis.

The tribal caucus met and chose Alan Lovesee, Carol Barbero and Don Creamer to be additional resource people to assist the process. They will not, however, apply for the three federal support positions.

Information Requests: Catherine asked Work Groups to give her a list of needed information, the source for that information, and enough detail so that she can locate it for members if necessary.

Reports from the Work Groups: Following their initial meetings, each Work Group reported on its progress to the Committee as a whole, with emphasis on cross-cutting issues.

Tribally Controlled Schools Act/Grants: Potential cross cutting issues are school board training and funding. The group prepared a chart showing the existing law, and which sections they plan to consider for revision.

Adequate Yearly Progress: Gus Keene, Jr., chair, said the group was working on a structure for achieving AYP, believing that is the threshold issue.

Funding/Distribution: Deb Bordeaux, chair, identified transportation and school board training as cross-cutting issues with other Work Groups. Her work group is also considering the role of Alaska Natives in this rule.

Geographic Boundaries and Student Rights: Linda Sue Warner is temporary chair. The group is waiting the arrival of two new members at the next meeting, and will reconsider leadership and protocols at that time.

Facilitation Team: The Committee agreed by consensus to accept the facilitation team led by Lucy Moore for the duration of the process.

Public Comment Periods: For the first half hour of Wednesday, Thursday, and Friday, the Committee invited members of the public to offer comments or ask questions. All written public comments are available from the Project Management Office, 500 Gold Avenue SW, PO Box 1430, Albuquerque, NM 87103-1403. (505-248-7241) Public comments are summarized below:

Wednesday, June 11, 2003: Don Creamer, a member of the Field Task Force that initially created the ISEP formula, offered guidance for the Committee in reviewing the Allotment Formula. Mr. Creamer also submitted a written statement on the subject.

Thursday, June 12, 2003: Don Creamer addressed the Committee and suggested that it may be beneficial for some Work Groups to meet in joint session to discuss issues common to both. Mr. Creamer also submitted written comments on geographic boundaries.

Friday, June 13, 2003: Pat Carr, AFL-CIO, Indian Educators Federation Local #4524, urged that the Committee create a clear and workable definition for AYP. Mr. Carr also submitted two written statements. The first is from Mr. Carr, the second is from Amy Hightower, representing AFT teachers, and it outlines seven strategies for achieving AYP based on her review of seven state accountability plans.

Draft Agenda for Minneapolis: The Committee developed the following Draft Agenda for the meeting in Minneapolis. Co-chairs are authorized to amend this agenda in consultation with the Designated Federal Officer prior to the meeting if necessary.

Monday, July 14 – 1:30 pm

Opening Prayer
Introduction of new and old Committee Members
Logistics and housekeeping
Work Groups meet

Tuesday, Wednesday, Thursday, 8:30 - 5:30

Public window – 30 minutes
Committee meeting – 1 hour
Reports from Work Groups – 1 hour
Work Groups meet

Friday, July 18 – 8:30 - noon

Public window – 30 minutes
Committee meeting
Agenda setting for next meeting

Closing Prayer: Mr. Gus Keene, Jr., offered a closing prayer.

Evaluations and Adjournment: Committee members filled out evaluations of the meeting, and adjourned to work in Work Groups as long as each group determined was necessary.

Summary prepared by Lucy Moore. Please contact her with any corrections or comments.

505-820-2166, fax 505-820-2191, or email: lucymoore@nets.com

DRAFT – FOR COMMITTEE REVIEW – DO NOT DISTRIBUTE

No Child Left Behind Negotiated Rule Making Committee

Committee Meeting

July 14-18, 2003

Airport Marriott, Minneapolis, Minnesota

Summary of Discussion and Decisions

Facilitator: Lucy Moore

Introductory Remarks and Presentations:

Wayne Newell, Committee Member from Maine, offered an opening prayer for the Committee Members and others who are working on this project which is so crucial to the welfare of Indian children around the country.

Acting Assistant Secretary for Indian Affairs Aurene Martin welcomed the group. She expressed her commitment to the work of the Committee, and encouraged members to contact her or her staff with any concerns about the process.

Catherine Freels, Designated Federal Official, also welcomed members and offered logistical information. She invited members to indicate on a sign-up sheet if they would prefer to receive meeting summaries, and other materials as possible, by email, rather than by Fedex. Catherine distributed copies of the Federal Register Notice for the development of the Construction Rule for BIA-funded schools.

Lucy Moore, Facilitator, introduced the facilitation team, and welcomed two Committee members, Zachary Ducheneaux and Vanessa Girard, who had been unable to attend the first meeting.

Agenda Review: The Committee agreed to consider hearing from the students who were to address the Student Rights Committee on Wednesday, if those students would be comfortable, and if time allowed. Geographic Boundaries Work Group requested a meeting with the Funding Work Group at lunch on Thursday.

Overarching Goal: Posted on the wall for the duration of the meeting was the overarching goal agreed to at the first meeting:

Our goal is to develop recommendations for proposed rules that:

1. focus on the needs of children
2. provide the highest quality services by increasing accountability within the Bureau of Indian Affairs
3. serve the interests of tribes, communities and schools

Navajo Peacemaking Process: At the request of the Committee, Mark Sorenson gave a brief presentation on the Navajo Peacemaking process, which some Navajo schools have adopted for the resolution of conflict. He emphasized the importance of recognizing relationships and connections among those in a group that is struggling toward a common goal, or to resolve conflict. The group understood that these principles and values underlying Navajo Peacemaking could be useful in the deliberations of the Committee. [presentation materials attached]

Outreach:

Committee members agreed that it is imperative to reach the greatest number of interested people around the country, to inform them about this process and hear their comments and suggestions. There was discussion about availability of funds for outreach activities on behalf of the Committee and its work. Although some funds are available for activities of members during the Public Comment period of this process, following publication of the draft rule, there are none to support outreach during this phase. Committee members agreed to meet with Regional Education Line Officers, tribal councils and committees, and others as appropriate. Members identified the following opportunities for outreach.

- July 22, 1:00 - 3:30, panel on NCLB and Negotiated Rulemaking Committee, at NISBA
- August 7, Window Rock, and August 8, Flagstaff – Navajo regional outreach meetings – Mark Sorenson and others will report in Seattle;
- August 11, Tacoma – Northwest School Administrators Meeting – Larry Byers and Wayne Waddoups will report in Seattle;
- August 18, Great Lakes Meeting – Roger Bordeaux will report in Seattle;
- November 1-4 – panel on NCLB and Negotiated Rulemaking Committee, at NIEA
[Deb Bordeaux, Wayne Newell, Pauleen Billie, Larry Byers, Vanessa Girard, Mark Sorenson volunteered to participate on the panel]

Power Point Presentation: The Committee agreed that a power point presentation offering the facts about the NCLB Negotiated Rulemaking process would be helpful for members' outreach efforts. The Co-chairs took responsibility for developing a draft presentation, which was modified and approved at the end of the meeting. CD copies are available from the Project Management Office.

Tribal Resource People: To date there has been no formal request for funding to fill any of the three resource positions available to tribal nominations. Dr. Kalvin White, an AYP expert from Navajo, will be asked to submit a request as soon as possible, to insure that necessary paperwork can be done in time for the Seattle meeting.

Work Group Process: Committee members emphasized the need for clarity in the process by which Work Groups forward recommendations to the whole Committee. When a Work Group has a concept or a recommendation that it would like the Committee to consider, Work Group members should make clear in its request whether

or not consensus was reached within the Work Group, and whether or not consensus is being sought in the Committee. If possible, the proposed concept or language should be handed out to the Committee members at least one day in advance of the discussion.

Statute Language in the Rules: The Committee had a discussion about whether or not to repeat statute language in the rules. Some felt it was important for the sake of clarity and convenience to repeat, or paraphrase, certain language from the statute, particularly for those at a grass roots level. Others felt this cluttered the rules unnecessarily and that anyone dealing with the issues should be able to refer to the statute when needed.

Agreed: The Committee agreed that if the statute is clear, it should not be repeated in the rule. If it is not clear, it should be included in plain English language in the regulation.

Tribally Controlled Schools Act Regulations: The TCSA Work Group presented to the Committee proposed regulations, reached by consensus, on Thursday afternoon. On Friday morning, the Committee discussed, amended and reached consensus on the proposed regulations. John Strylowski will refine the draft in plain English, and will distribute to the Committee prior to the next meeting.

Agreed: The Committee accepted the proposed regulations from the Tribally Controlled Schools Act by consensus.

Student Rights: This Work Group heard from students from two Minnesota BIA-funded schools. They prepared and distributed proposed recommendations for consideration by the whole Committee, asking that members review the document and reply with any suggestions or concerns by email or fax by August 13. This will enable the Work Group to make revisions before the next meeting. Comments should be sent to Linda Ximenes, fax 210-354-2964 or email <lximenes@swbell.net>.

AYP: The AYP Work Group developed a draft set of recommendations which they distributed to the Committee. They asked for discussion and attempt at consensus on these issues at the next meeting. Issues include: academic standards, academic assessments, AYP starting point, intermediate goals, and “safe harbor” provision, and statistical reliability and validity.

Funding: This Work Group will present proposed language in Seattle for several issues, including: three year rolling average for determining enrollment, count period, transportation, gifted and talented designation, and intense residential guidance.

Geographic Boundaries: Geographic Boundaries Work Group met with the Funding Work Group to discuss issues of mutual concern, including transportation needs and tribal jurisdiction.

Public Comment: For the first half hour of each meeting day the Committee invited members of the public to offer comments or ask questions. All written public comments

NCLB 2003 Draft Meeting Summary Compilation

are available from the Project Management Office, 500 Gold Avenue SW, PO Box 1430, Albuquerque, NM 87103-1403. (505-248-7241) Public comments are summarized below:

Casey Savo: Mr. Savo asked for clarification from the Committee on special emphasis requirements for Off Reservation Boarding Schools (ORBs) to be considered as alternative schools. He enumerated the special conditions faced by ORBs.

Chris Bordeaux: Mr. Bordeaux asked the Committee to consider the needs of the gifted and talented (G&T) Indian students, and to support fully those programs benefitting those students. The BIA includes six areas in which a student may qualify as G&T, including visual and performing arts, creativity, leadership, as well as IQ. He urged the Committee to permit as high as 60% of Indian students to be labeled G&T. Since 5-10% G&T per school is currently acceptable for IQ-based qualifications, and since the BIA includes five other categories, it should be feasible to have a total of 60% of students qualify. He urged the use of nationally recognized tests to justify the G&T designation for each student.

Gaillard Peltier: Mr. Peltier asked the Committee to consider the need for funding to enable teachers to become highly qualified as required in NCLB. He also pointed to the unfairness of requiring three different tests for student achievement, as is the case in some states. Testing should be consistent, and results should be timely. "We all need to be on the same page," he said. He asked who would be responsible for implementing and enforcing NCLB, and suggested that technical assistance and funding will be critical in restructuring schools to meet the NCLB requirements. He urged the Committee members to hold regional meetings in order to maximize the contribution of those in the field. Finally, he noted that different standards of achievement for Indian students can result in lowered expectations, which is a great disservice to those students.

Yvonne Novak: Ms. Novak spoke of the double testing of students in BIA-funded schools in Minnesota, and asked that the Committee consider accepting the state test and drop the BIA test.

Wayne Newell: Mr. Newell, Committee member, spoke on behalf of a constituent, Ronald Jenkins of Maine Indian Education. Mr. Jenkins requested that the AYP rule allow for BIA-funded schools in Maine to use the Maine Educational testing scores and the State of Maine rules for determination of AYP. These tests and rules have been accepted by the federal government, and Mr. Jenkins asks relief from testing and reporting requirements of the BIA.

Tom Miller: Mr. Miller (Minneapolis Tribally Controlled Schools) encouraged the Committee to stay on task, and take care not to rush to judgment and punish all the schools because of abuses by a few. He asked that all BIA-funded schools be given a chance to review the recommended rules after their completion and prior to the public comment period, perhaps through a mass email.

NCLB 2003 Draft Meeting Summary Compilation

Next Meeting: The third meeting of the NCLB Negotiated Rulemaking Committee will take place August 21 - 24 in downtown Seattle, at the Grand Hyatt, 721 Pine Street. The meeting will begin at 8:30 Thursday morning, and will end no later than noon on Sunday. The draft agenda for the meeting follows this summary.

Closing Prayer: Mr. Wayne Newell offered a closing prayer.

Evaluations and Adjournment: Committee members filled out evaluations of the meeting, and adjourned to work in Work Groups as long as each group determined was necessary.

Summary prepared by Lucy Moore. Please contact her with any corrections or comments. 505-820-2166, fax 505-820-2191, or email: lucymoore@nets.com

NCLB Negotiated Rulemaking Committee Meeting

DRAFT AGENDA

August 21 - 24, 2003

Grand Hyatt, 721 Pine Street, Seattle, Washington

Thursday, August 21:

- 8:30 am Opening Prayer
Welcome and Introductions
Public Comment (30 minutes)
Logistics and housekeeping
Approve summary of previous meeting
Review Agenda
Outreach updates
- 9:30 Plenary Committee considers proposal from AYP Work Group
- Issues include:
 - academic standards
 - academic assessments
 - AYP – starting point, intermediate goals, “safe harbor” provision
 - statistical reliability and validity
 - Discuss and attempt consensus
- Work Group meetings
- 5:30 Adjourn

Friday, August 22:

NCLB 2003 Draft Meeting Summary Compilation

- 8:30 am Public Comment
- 9:00 Plenary Committee considers proposal from Funding Work Group
- Issues include:
 - three year rolling average for determining enrollment
 - count period
 - transportation
 - intense residential guidance
 - Discuss and attempt consensus
- Work Group meetings
- 4:00 pm Plenary Committee considers draft recommendations for Student Rights
- Issues include:
 - purpose of regulations, definitions, application to schools
 - individual student rights
 - due process
 - Discuss and attempt consensus

5:30 Adjourn

Saturday, August 23:

- 8:30 am Public Comment
- Work Group meetings
- 4:00 pm Plenary Committee meeting hears Work Group reports
- 5:30 pm Adjourn

Sunday, August 24:

- 8:30 a.m. Public Comment
- Plenary Committee meeting sets agenda for next meeting
- Closing prayer
- Work group meetings
- noon Adjourn

DRAFT – FOR COMMITTEE REVIEW – DO NOT DISTRIBUTE

No Child Left Behind Negotiated Rule Making Committee

**Committee Meeting
August 20 - 24, 2003
Grand Hyatt, Seattle, Washington**

Summary of Discussion and Decisions

Facilitator: Lucy Moore

Introductory Remarks and Presentations:

Gus Keene, Committee Member from New Mexico, offered an opening prayer for the Committee Members and others who are working on this project which is so crucial to the welfare of Indian children around the country.

Catherine Freels, Designated Federal Official, welcomed members and offered logistical information. Lucy Moore, Facilitator, introduced herself and work group facilitators Raymond Daw, Rafael Montalvo, Ed Moreno, Suzanne Orenstein, and Linda Ximenes. Committee members and others in the audience introduced themselves.

Acceptance of Summary of Last Meeting: The Committee accepted the summary of the last Committee Meeting in Minneapolis as written. That summary will be put on the Committee website.

Agenda Review: The Committee reviewed the agenda, and reserved the right to make changes as the work groups progressed.

Overarching Goal: Posted on the wall on the second day of the meeting, and for the duration, was the overarching goal created by the Committee:

Our goal is to develop recommendations for proposed rules that:

- 1. focus on the needs of children*
- 2. provide the highest quality services by increasing accountability within the Bureau of Indian Affairs*
- 3. serve the interests of tribes, communities and schools*

Outreach:

Committee members reported on outreach activities since the Minneapolis meeting:

- August 18 – Great Lakes Schools Meeting, Roger Bordeaux presented
- August 18 – Northwest Schools Meeting, Larry Byers presented
- South Dakota Indian Education Association Meeting, Deb Bordeaux presented
- Two Navajo Schools in Ramah area, Gus Keene presented

- July 29 – Navajo Area School Board Association, Pauleen Billie presented
- Meeting with three school administrators, Vanessa Girard presented
- Two Navajo Nation meetings have been postponed
- All Indian Pueblo Council meeting, September 3, Gus Keene hopes to present

- Note from previous meeting:

November 1-4 – panel on NCLB and Negotiated Rulemaking Committee, at NIEA [Deb Bordeaux, Wayne Newell, Pauleen Billie, Larry Byers, Vanessa Girard, Mark Sorenson volunteered to participate on the panel]

Consultation on three additional rules: The BIA held consultations on the development of three additional rules through the negotiated rulemaking process – dorm standards, school closures and facilities construction. Informal results from those meetings reveal a support for the process. Some suggested that the same committee could be used for all three rules, with different resource people; others felt that the facilities rule required a different group.

AYP: Although AYP planned to present proposed rule language on the first morning, the presence of new representatives from the Department of Education resulted in the need to review some key issues. The Committee appreciated the participation of the Department of Education, understanding that they offer an opportunity to create a rule now that will encounter fewer hurdles in the review process later.

AYP Chair Gus Keene asked for additional help for his Work Group, perhaps from work groups whose work is finished or winding down.

The proposed AYP definition allowing schools to either use the state plan, or to invoke a waiver and develop a tribal plan, sparked a lively discussion about the role of the BIA. Some favored the BIA development of a definition for all tribes. There was concern that developing a tribal plan would result in, or appear to be, lowering the bar for performance by Indian students. On the other hand, some pointed out that tribes were not under the jurisdiction of the state, and that they had the right to exercise sovereignty and develop a definition that would better incorporate an understanding of their Indian students. It was also noted that students who move from state to state could be disadvantaged by having to change standards.

There was agreement that these schools should not be subject to multiple testing schemes, as is the case in some states now. The Work Group is attempting to provide a definition that will allow schools to choose between the state test, or an alternative, which could be developed by a tribe, a school, or a group of tribes or schools on the basis of region or some other common factor. The goal is to allow creativity within and among tribes, and to provide a framework where the BIA, the tribes, and the states can coordinate for the good of the students. The Committee asked that the regulations clarify the responsibility of the BIA to provide technical assistance (required in the law) to tribes and schools wanting to develop their own systems.

Agreement: Suggested language changes in the proposed definition of AYP should be sent to ssmith@bia.edu by August 29, first thing in the morning. Please title your comments “AYP Language.” The comments will be forwarded to all members of the Committee, and will be considered by the Work Group on a conference call before Nashville.

Tribally Controlled Schools Act Regulations: The TCSA Work Group presented the proposed regulations which were adopted by consensus by the Committee at the last meeting and put into plain language by John Strylowski at the Department of the Interior. The Work Group felt that nothing of substance had been changed, and that the consensus of the Committee still held.

Student Rights: This Student Rights Work Group reworked their proposed language in light of comments received following the Minneapolis meeting. They presented the regulations to the Committee for discussion and revised the document again before final consensus was reached. Discussion centered on the difference between rights and goals, due process procedures, and victims' rights.

Agreed: Student Rights Regulations were adopted by consensus, without definitions, and will be sent by Cathy to John Strylowski for plain language re-write.

Funding: The Funding Work Group presented language on Intensive Residential Guidance, School Board Training, Contingency Funds, and Section 1130 Uniform Direct Funding and Support for discussion.

Agreed: Intensive Residential Guidance, School Board Training, Contingency Funds and Section 1130 Uniform Direct Funding and Support were adopted by consensus, and will be sent by Cathy to John Strylowski for plain language re-write.

Geographic Boundaries: Geographic Boundaries Work Group continued discussions and will present proposed regulations for discussion in Nashville.

Concern with Deadline and Remaining Work to be Done: Committee members asked PMO staff to arrange for a fifth meeting to allow more time to reach consensus on rule language. PMO staff will explore a location that will work for either the week of October 14 - 18 (Tuesday - Saturday) or October 20 - 24 (Monday - Friday). Edith will pursue funding for an October meeting, which will fall in the next fiscal year, and may pose problems. Committee members should assume that a fifth meeting will occur in one of the two weeks identified above, and should reserve those times until notified.

Members also emphasized the importance of using all available time during meetings to maximize productivity. When members arrive late, leave early, or fail to attend, the burden falls to the remaining members to make critical decisions. The Committee asks all members to plan to attend the full time of future meetings. Decisions reached by consensus will not be revisited to accommodate an absent member.

To make the most of the time in Nashville, the meeting will begin at 8:30 Monday morning. The Committee may consider also working during the evenings to accomplish its tasks.

Public Comment: For the first half hour of each meeting day the Committee invited members of the public to offer comments or ask questions. All written public comments are available from the Project Management Office, 500 Gold Avenue SW, PO Box 1430, Albuquerque, NM 87103-1403. (505-248-7241) Public comments are summarized below:

Committee Request: Committee members asked those making comments, either at the meeting or between meetings, to submit them in writing, if possible, and preferably in language that could be incorporated into the rule.

Ray Lorton, Chief Leschi School: Mr. Lorton expressed appreciation to the Committee for its hard work. He urged them to consider the whole funding picture and strive for equitable distribution which will minimize the existing competition among schools. He suggested including various factors, like Gifted and Talented, in the base allocation. Even if some schools end up with less money, the total distribution will be more equitable. At Chief Leschi School after school athletics are considered to be part of the physical education program, resulting in reimbursement for transportation costs related to those activities.

With respect to AYP he reminded the Committee that there is great variation in the state plans. He also raised the issue of accountability, and urged the Committee to build accountability into the regulations, particularly at the ELO level. Schools receive mixed messages, he said, and it is difficult for a school to be accountable, when the “pieces are not all in place.” Special AYP concerns include: effective date, assessment tool, status of schools in corrective action. He hopes that the Committee will define AYP in a way that offers schools consistency, and he prefers a BIA definition over using state plan definitions. He added that perhaps it would be possible to use pilot programs or demonstration projects to test some aspects of the new regulations.

Mr. Lorton prefers a spring count week for ISEP because at that time of year the process can be more efficient. A certain percent could be paid based on that count, with an adjustment in the fall. This would avoid the “circus” atmosphere of the fall count.

Finally, he asked the Committee in all of its deliberations to consider the big picture, and “not put schools in a position where they have to be creative.”

Robert Yazzie, Grey Hill High School: Mr. Yazzie praised the Committee, and congratulated them for not having any politician members. He expressed concern for the short time frame allowed the process, and encouraged the members “to argue, but work it out, for the sake of the children.” It is not fair, he added, to pit tribes against each other in funding decisions, when states are not put in that same position.

Richard Smith, Pueblo of Laguna: Mr. Smith thanked the Committee for its efforts, and said that the Pueblo of Laguna was following the progress carefully. He had special concern that the testing of students be clear and effective. He noted that the New Mexico Indian Education Act, passed this year, needs more involvement from tribes and pueblos.

Harvey Moses, Colville Confederated Tribes: Mr. Moses thanked the Committee for working hard on this critical issues. He was concerned that the negotiating process that he observed in the work groups was “not a two way street.” He asked the BIA to take responsibility for the welfare of the students and to negotiate, not demand what is needed. He also urged the Committee to communicate with and involve tribal elected officials whenever possible.

Reanna Albert, Hopi Tribe: Reanna brought words of support from the Hopi Tribe. She was pleased that the Committee was considering adopting a base minimum amount for funding of

students. Such a figure would help in lobbying efforts. She added that the Hopi Tribe has now added teaching the Hopi language to all education programs in all Hopi schools. She reminded the Committee that accountability goes both ways, and that the federal government has a trust responsibility to all Indian peoples.

Conference Calls:

AYP Work Group – September 10, 8:00 pacific, 9:00 mountain, 10:00 central, 11:00 eastern

Funding Work Group – September 4*, 8:00 pacific, 9:00 mountain, 10:00 central, 11:00 eastern

Next Meeting: The fourth meeting of the NCLB Negotiated Rulemaking Committee will take place September 15-19 at the Gaylord Opryland Resort and Convention Center, 2800 Opryland Drive, Nashville, Tennessee. The meeting will begin at 8:30 am** Monday morning, and will end at noon on Friday. The draft agenda for the meeting is attached to this summary.

Closing Prayer: Mr. Terry Yellow Fat offered a closing prayer.

Evaluations and Adjournment: Committee members filled out evaluations of the meeting, and adjourned to work in Work Groups as long as each group determined was necessary.

Summary prepared by Lucy Moore. Please contact her with any corrections or comments. 505-820-2166, fax 505-820-2191, or email: lucymoore@nets.com

*** originally scheduled for September 3 – note change to September 4**

**** originally scheduled to begin at noon – note change to 8:30 am**

DRAFT – FOR COMMITTEE REVIEW – DO NOT DISTRIBUTE

No Child Left Behind Negotiated Rule Making Committee

**Committee Meeting
September 15 - 19, 2003
Gaylord Opryland Hotel, Nashville, Tennessee**

Summary of Discussion and Decisions

Facilitator: Lucy Moore

Introductory Remarks and Presentations:

Aureen Martin, Acting Assistant Secretary for Indian Affairs, addressed the Committee and members of the public. She expressed her appreciation for the hard work of all the members, and said that she understood the enormity of the task. For this reason she responded to the Committee's request for a fifth and final meeting. She is hopeful that this additional meeting, October 14 - 18, 2003, in Tempe, Arizona, will enable the Committee to complete the development by consensus of all six rules. She also asked that those Committee members interested in participating in a panel at NIEA November 1-4 let her office know so that arrangements can be made with the conference.

Wayne Waddoups, Committee Member from Idaho, offered an opening prayer for the Committee Members and others who are working on this project which is so crucial to the welfare of Indian children around the country.

Catherine Freels, Designated Federal Official, welcomed members and offered logistical information. Lucy Moore, Facilitator, introduced herself and work group facilitators Raymond Daw, Rafael Montalvo, Ed Moreno, and Suzanne Orenstein. She expressed appreciation for the facilitation work of Linda Ximenes, whose work group on Student Rights has completed its work.

Acceptance of Summary of Last Meeting: The Committee accepted the summary of the last Committee Meeting in Minneapolis with two corrections. That corrected summary will be put on the Committee website.

Agenda Review: The Committee reviewed the agenda, and reserved the right to make changes as the work groups progressed.

Overarching Goal: Posted on the flip chart during the meeting was the overarching goal created by the Committee:

Our goal is to develop recommendations for proposed rules that:

1. focus on the needs of children
2. provide the highest quality services by increasing accountability within the

- Bureau of Indian Affairs
3. serve the interests of tribes, communities and schools

Funding: The Funding Work Group asked the Committee for guidance on which method to use for establishing a number of students for the ISEP count. Having come to a stalemate over the count week concept, the work group had asked Theresa to explore the technical feasibility of establishing a system for ADA or ADM which could be implemented in the fall of '04. She reported that either ADA or ADM would be feasible, if the system were not loaded with “bells and whistles,” but was simply for the purposes of establishing a count.

The options presented by the work group were:

- a count period consisting of one day in each of three consecutive weeks, with perhaps a second count period in the spring, and an adjustment for significant increases or decreases during the year;
- average daily attendance (ADA) – total number of students present each day of the school year divided by a certain number of days (either a fixed number or the number of days students are counted);
- average daily membership (ADM) – total number of students on the membership roster at the school who are present on count days, divided by the number of count days

Most Committee members favored an ADM system. They felt it would be more accurate than an ADA, in that it can tolerate absences. And, with a three year rolling average, schools would be able to phase in changes in staff. An ADM system, they said, was also more equitable because it evened out imbalances between schools with higher enrollment in the fall and schools with higher enrollment in the spring.

Both types of schools face particular problems. Those who lose students during the year are reluctant to let teachers go, knowing they will need them again in the fall – or in some cases are legally prevented from doing so. It was suggested that those schools who can anticipate significant drops in enrollment could start the year with larger classrooms. There were questions about where the drop out students go, and whether there are student's rights issues connected with their being dropped from school membership. Schools which gain in enrollment have no budget to hire additional teachers to cover the expanded student body because their funding is based on a lower number of students. BIA-operated schools are bound to the Department of Defense pay scale, which puts an extra burden on their budgets.

The group concluded that there is not enough money to fund education for Indian children. They urged the work group to include language that will lead to the determination of actual costs, and to make the BIA responsible for lobbying Congress for those funds.

Contingency Funding: This section had been written by the TCSA Work Group after completion of their rule, and had been rewritten by John Strylowski in plain language. The rewrite contained a change in meaning, and the Funding Work Group presented that to the Committee, as well as new language added by the work group. The Committee considered the document to be new, and gave consensus on a rewritten version. This will not be sent to Strylowski, but will be the product of the Committee for inclusion in the Funding rule.

Student Rights: The Committee reviewed the plain language of the Student Rights rule and adopted it with changes by consensus. This rule will go to the Secretary as a recommendation from the Committee.

AYP: The Work Group presented a draft rule to the Committee for consideration. Chair Gus Keene explained that reaching agreement had been a difficult process, and that work group members discovered that AYP is interwoven with many other parts of the NCLB. In some cases, he explained, the work group had chosen to paraphrase the law when they felt it was necessary for clarity or emphasis. Mark Sorenson, work group member, said that the first principle for the deliberations had been to “do no harm” to students, to schools, or to communities. The group also hoped their rule would allow for flexibility, so that a student who had made great gains, but did not reach an adequate level by AYP standards, would be recognized.

Sharon Wells also spoke for the work group and reviewed the history of the BIA/OIEP in their struggle to provide education for Indian students, often “like trying to fit a square peg in a round hole.” Goals 2000 mandated states to set standards for student achievement. The BIA chose to adopt national standards, but most schools chose to align with their state standards instead. The BIA provided funding for those schools to align curricula with the state standards. In accordance with NCLB in 2001, the BIA (as the 51st state) created its own state plan. Consultation on the BIA’s plan to develop a CRT revealed significant opposition from tribes who “did not want to be dictated to by the BIA,” and from schools who had already aligned with a state. In addition, development of a CRT would cost the BIA \$ 50 - 60 million. Because of this price tag and the strong opposition, and in deference to the spirit of tribal self determination, the BIA gave up the CRT project.

The Committee discussed at length the Secretary’s definition of AYP, a requirement in the regulation. There was a division among members over the issue of a BIA definition of AYP. Some felt that it is the obligation of the Bureau to provide these standards and that some schools, especially small ones, might want to rely on a BIA AYP. There was strong aversion to being associated with a state system in any way, and a feeling that this was a threat to tribal sovereignty. Some states, they pointed out, are hostile in their dealings with Indian communities and issues, and being put in a position of using a state assessment tool would be very uncomfortable for some tribes. They also feared that if the Bureau did not step forward with its own definition, and allowed BIA-funded schools to choose their state’s definition, this would be an indication that the BIA intended to withdraw from education of Indian students entirely.

Others felt that since 80% of schools are already aligned with their states, the most efficient use of funds would be to focus on the remaining 20% of schools and help them either align with their states, or obtain a waiver to meet their particular needs. The waiver could consist of a state definition, with deletions or additions to make it appropriate for Indian students, or it could consist of a different definition created by the school, either alone, or in partnership with similar schools, either by type or by region. If a school chose to adopt its state assessment system, they pointed out, the tribe would in no way be subject to the state; they would simply be buying a product for their own use, and would not report or defer to the state in any way.

The Committee agreed by consensus to a draft AYP rule which will be sent to John Strylowski for plain language rewrite, and then will be reviewed by the AYP work group in Tempe.

Geographic Boundaries: The work group presented a draft rule to the Committee for discussion. Consensus was reached on some of the sections, and consideration will continue in Tempe.

Summary of Rules to Date:

Tribally Controlled Schools Act: Completed

Section 1130: TCSA Work Group (authors of 1130) will review plain language version, refer to Funding Work Group for review if necessary. Final consideration for consensus in Tempe.

Funding:

- Contingency funding section: Completed
- Intensive Residential Guidance: Completed
- School Board Training: Completed
- Other sections: Draft to be presented in Tempe; discussion; consideration for consensus

Student Rights: Completed

Geographic Boundaries: Consensus on some parts reached; final consideration for consensus in Tempe

AYP: Consensus reached in Nashville; will be sent to JS for plain language, reviewed by work group, and re-presented to Committee if necessary in Tempe.

Process Issues: Members discussed the process for finalizing the consensus product of the Committee. There were concerns that the conversion of the draft rules into plain language was resulting in substantive change in some cases. It was agreed that the draft rule would be sent to John Strylowski to be rewritten in plain language, and that the re-write would be sent back to the work group that drafted it. If that work group felt that the changes were cosmetic, they would report that to the Committee and the Committee would not review the document. If the changes were substantive, the work group would bring the document back to the Committee for consideration. The Committee may decide to accept the changes, or to reject them, and revert to the original language. The consensus of the Committee on the rewrite (changed or not) will be final, and that document will be sent to the Secretary as a recommendation. Department of Interior representatives on the Committee assured other members that they would defend the consensus of the Committee before the Secretary.

Preambles: Each rule will need a preamble. The preamble serves as a history of the rulemaking process and should reflect the various views brought forward by members. Each work group will consider how best to create its preamble. Edith volunteered to produce draft preambles for AYP and TCSA for consideration in Tempe.

Plain Language: The Committee asked the Program Management Office to request the presence of John Strylowski at the last meeting in Tempe. They believed that it would be more efficient and more satisfying to be able to work closely with John in the exchange of draft language.

Paper Reduction Act: The Committee was reminded that any request for information as part of a rule must be accompanied by an explanation of the purpose of the request, and an estimate of the amount of time and the cost associated with filling out the form.

Groundrules Update: After four meetings, the Committee needed reminding about some of the groundrules for efficient, productive meetings.

- Please be sure to read, and think about, materials that are distributed either between meetings, or on one day for consideration the next day of a meeting.
- Please bring all relevant materials with you to each meeting, to reduce the number of trees that are sacrificing themselves for this process.
- Please make travel arrangements that allow you to stay until the end of each meeting. Leaving early means that the remaining time is less useful for those who stay.
- Please keep side bar discussions to a minimum. Feel free to call a caucus with anyone you wish, or simply excuse yourself from the room.
- Audience members, please do not whisper during Committee meetings. It can be distracting for members who are sitting near you.

Public Comment: For the first half hour of each meeting day the Committee invited members of the public to offer comments or ask questions. All written public comments are available from the Project Management Office, 500 Gold Avenue SW, PO Box 1430, Albuquerque, NM 87103-1403. (505-248-7241) Public comments are summarized below:

Committee Request: Committee members asked those making comments, either at the meeting or between meetings, to submit them in writing, if possible, and preferably in language that could be incorporated into the rule.

Karen Dixon-Blazer, Division of Dine Education, Navajo Nation: Ms. Blazer asked the Committee members to concentrate on the challenges imbedded in the AYP and Funding rules. She is concerned that AYP is yet one more unfunded mandate from the federal government that will put enormous stress on tribal governments and schools. She urged the Committee to deal with the funding needs directly, and to develop figures that reflect the actual costs of educating Indian children. Congress has requested these numbers, and the GAO has responded that the BIA and tribal schools do not have that data available. She also cited the Native American Education Improvement Act, Section 1129, which calls for these same projections. The Committee, she recommended, should ask Congress for funds to implement Section 1129.

If the funding issue is not dealt with directly, “tribal schools are left holding the bag.” They lack the basic funding to run a school, and now additional demands are placed on them.

She expressed concern with the “passive aggressive games of power-hungry bureaucracies,” and wondered aloud if the BIA is planning to get out of the education business.

Chris Redman, Ardmore, Oklahoma, Peripheral Dorm: Mr. Redman’s dorm houses 128 students. He emphasized that the real issue in providing for Indian children is the amount of money not the distribution of money. He urged the Committee to look at the actual costs of educating a child, first figuring a base amount, and then adding on depending on the special needs of the student. The current system results in robbing Peter to pay Paul. “You need to order a larger pizza,” he concluded, referring to a metaphor used by the Funding Work Group to describe the limited amount of funding available, or the fixed size of the pie.

Chris Bordeaux, Wounded Knee School, South Dakota: Mr. Bordeaux is an NIEA board member and said that Cindy Lamar is the contact person for the upcoming conference. As gifted and talented coordinator, Mr. Bordeaux offered a list of several gifted and talented check lists and assessment tools. [This list was later submitted to the Committee]. “Do not decapitate the children with a gifted and talented cap,” he asked. He also warned that G&T should not be tied to IQ levels.

Early Work Group Meeting: The Funding Work Group will begin their deliberations Sunday morning, 8:30 am, October 12, in Tempe.

Next Meeting: The fifth and final meeting of the NCLB Negotiated Rulemaking Committee will take place October 14 - 18 at the

The meeting will begin at 10:00 am Tuesday morning, and will end at 5:30 pm on Saturday. The draft agenda for the meeting is attached to this summary.

Closing Prayer: Mr. Gus Keene, New Mexico, offered a closing prayer.

Evaluations and Adjournment: Committee members filled out evaluations of the meeting.

Summary prepared by Lucy Moore. Please contact her with any corrections or comments. 505-820-2166, fax 505-820-2191, or email: lucymoore@nets.com

DRAFT – FOR COMMITTEE REVIEW – DO NOT DISTRIBUTE

No Child Left Behind Negotiated Rule Making Committee

**Committee Meeting
October 14 – 18, 2003
Tempe Mission Palms, Tempe, Arizona**

Summary of Discussion and Decisions (revised 10/29)

Facilitator: Lucy Moore

Introductory Remarks and Presentations:

This was the final meeting for the negotiation of the six sets of regulations under the No Child Left Behind Act. The Funding Work Group had begun meeting on Sunday October 12 in order to prepare for the Committee meeting. They were joined by other Committee members at 1:30 on Tuesday.

Wayne Newell, Committee member from Maine, offered an opening prayer to guide the Committee in its work.

Committee member Deb Bordeaux from Pine Ridge expressed her appreciation to fellow Committee member for their hard work and their spirit of cooperation. She presented each member with a gift from her community.

Catherine Freels, Designated Federal Official, welcomed the group and gave logistical information.

Committee Members Present: Greg Anderson, Pauleen Billie, Faye Blue Eyes,.Deborah Bordeaux, Roger Bordeaux, Doyce Cannon, Mary Helen Creamer, Laverne Dallas, Vanessa Girard, Gus Keene, Jr., Delores McKerry, Wayne Newell, Anthony Pivec, Mark Sorensen, Wayne Waddoups, Terry Yellow Fat, Edith Blackwell, Larry Byers, Theresa Rosier, Michael Rossetti, Bruce Steele, Sharon Wells. Lorraine Begay was present Thursday, Friday, and Saturday, October 16 – 18. Zachary Ducheneaux was present Friday and Saturday, October 17 – 18.

Committee Member Absent: Linda Sue Warner did not attend.

Acceptance of Summary of Last Meeting: Facilitator Lucy Moore asked for comments on the summary of discussion at the previous meeting in Nashville. The summary was corrected and approved by the group. The corrected summary will be put on the NCLB Negotiated Rulemaking website at www.oiep.bia.edu under “Negotiated Rulemaking.”

Agenda Review: The Committee reviewed the agenda and reserved the right to make changes as the work groups progressed.

Overarching Goal: Posted on the wall during the meeting was the overarching goal created at the Committee's first meeting:

Our goal is to develop recommendations for proposed rules that:

- 1. focus on the needs of children*
- 2. provide the highest quality services by increasing accountability within the Bureau of Indian Affairs*
- 3. serve the interests of tribes, communities and schools*

Process: Catherine Freels distributed two flow charts. The first described the process for producing a recommended rule, from Work Group consensus, to Committee consensus, to Plain English re-write, return to Work Group and eventual completion. The second showed the path of the rules after they leave the Committee and begin their journey through the Department of the Interior and the Office of Management and Budget.

Outreach : Committee members realize that it is critical to communicate with their constituents and to offer information about the negotiated rulemaking process and products whenever possible. Two opportunities where members will present are:

- Denver, November 17 – 21, OIEP Meeting for ELO's, school boards, and others
- NIEA - Deb, Vanessa, Mark, Lorraine, Theresa, Larry, Pauleen, with Aurene Martin, Assistant Secretary

Members will be communicating with their constituents and others during the next few months to disseminate information about the work of the Committee.

Access to Committee Work Products: Members of the public expressed concern about opportunities to see documents being negotiated in committee and work group meetings. The Committee discussed the difficulty of reaching a balance between the need for confidentiality in their deliberations in order to have the freedom to explore a full range of possibilities, and the need for an open process with public access to work products of the Committee. Summaries of Committee meetings and committee-related documents are posted on the website, and paper copies are available from the Project Management Office. Committee members may make use of a power point presentation to help in outreach about the rulemaking. They may also create their own outlines or notes on the work of the Committee to share with constituents. Committee members are reluctant to release draft rule language because of the confusion it could cause once the draft regulations are published.

Public Comment Opportunities: The Committee discussed opportunities for public comment. Most useful are written comments, with specific proposed language. Once the

Committee has completed a rule, that recommendation is sent to the Secretary of the Interior. Following review by the Department and the Office of Management and Budget, the draft rule is published in the Federal Register and the 120 day public comment period begins. During this time anyone interested in commenting on the draft rule is urged to submit comments in writing. Committee members and BIA staff will conduct public outreach meetings during the comment period, and at the close of the period the Committee will reconvene to review the comments and revise the rules if necessary.

Adequate Yearly Progress: At the previous meeting the Committee had reached consensus on the AYP rule. That language was sent to John Strylowski for Plain Language re-write. After a federal caucus meeting with John, a version was presented to the Work Group which was substantively the same as the original version. The AYP Work Group reviewed the Plain Language draft and made editorial changes. The Work Group decided that there was no substantive change made in the version agreed to by the Committee in Nashville, and that it could be considered completed and ready for recommendation to the Secretary.

Geographic Boundaries: The Committee continued its review of the draft of the Geographic Boundaries rule begun in Nashville. The Committee returned to the Work Group two questions relating to the authorization of transportation funding costs for students attending schools outside their reservation boundaries, as well as the definition of “on or near.” The rest of the draft rule was sent to John Strylowski for Plain Language re-write. The Work Group declared that the rewrite was editorial and did not change the substance of the document. They offered the Committee two options for dealing with the question of authorization for transportation funding. The Committee agreed to not address the question in regulations but to rely on the statute. The definition of “on or near” became moot and was omitted. The rule was complete and ready for recommendation to the Secretary.

Direct Funding: Section 1130 regulations as re-written by John Strylowski was accepted by the TCSA Work Group, which were the original authors, as being not substantively changed for the consensus version. Section 1130 is complete.

Funding: The Funding Work Group had completed Intensive Residential Guidance, Contingency Funding, and School Board Training at previous meetings. These were rewritten into Plain Language, accepted by the Work Group, and declared complete.

Before presenting sections to the Committee, Deb Bordeaux, Funding Work Group Chair, described some of the issues challenging her group. Running through their discussions has been the theme of accountability, both on the tribal and the federal side. The Work Group has taken on the mandate of the Committee to do everything possible to insure that responsibilities are carried out fully and that all those in responsible positions are held to the highest standards of performance. They also feel deeply the commitment to make sure that every possible dollar is used to benefit Indian children, and that those funds are distributed equitably throughout the system. The Work Group is aware that the funds allocated for Indian education are limited, and that this situation may pit schools against

each other, and may encourage “creative” school management in the pursuit of funding through manipulation of the formula. The Work Group has tried to move beyond “winners and losers,” and to develop regulations that result in the most equitable distribution of available funds.

Committee members acknowledged that all the work groups have strived to meet the goal of serving the interests of Indian students, and expressed their appreciation for each other’s commitment. Any consensus reached in a work group reflects hours of thoughtful, and sometimes painful, discussion.

The federal caucus and tribal caucus separately reviewed the sections Subpart B (which describes the base academic and residential funding formulae as well as the special cost factors for gifted and talented, small schools and small high schools, language development and isolation), Subpart C (which establishes the method and procedures for counting students for academic and residential purposes and provides various accountability measures), and separate sections on Accountability and Transportation. The Work Group then took the results of those caucuses on Subparts B and C and created versions which were sent for Plain Language re-write. All sections of Subparts B and C were agreed by consensus in the Work Group except the isolation cost factor and the gifted and talented cost factor.

The Committee considered the plain language version of Subpart B, discussed at length Base Funding and Special Education, and the special cost factors for gifted and talented and isolated schools. The Committee agreed that Havasupai Elementary School at the bottom of Grand Canyon qualified as an isolated school, and that the preamble should include language about other criteria for geographic isolation and invite public comment on the question of including other isolated schools. The Preamble will also include a request for actual costs related to isolation, and will include a chart which offers categories of isolation factors to be considered.

The Committee agreed on language for gifted and talented which does not put a cap on the numbers of such students eligible for funding, but does have requirements for verification of eligibility for these programs and delivery of services. There were concerns among members that without a cap, the funding for gifted and talented may seriously impact base funding, particularly for residential programs. This issue will also be raised in the Preamble to encourage public comment.

The Committee agreed to leave special education within the academic base funding at 15%, rather than creating a separate special cost factor for categories of physical, mental and emotional conditions. The recent MOU between the Department of Interior and the Department of Education and the need for experience with the 15% figure were deciding factors, as well as a fear that a special education cost factor would dilute the base funding dramatically. Members felt strongly that the Bureau should increase its efforts to educate school personnel about accessing Part B funding from the Department of Education, which is available for special education costs beyond what is covered in the 15%.

In general, the challenge facing the Committee was to divide a limited amount of funds among competing needs. Advocacy for one category of funding inevitably threatens the amount remaining to cover other needs, and/or reduces the base amount per student. For schools struggling to make ends meet, how funding formulas are put together can make a significant difference in their ability to serve students. It was often painful for those representing individual schools to negotiate the parts of the formula with a broader perspective.

Section 1127 of the No Child Left Behind Act requires development of a formula for determining the actual amount needed to provide educational services for an Indian student in a Bureau-funded school. Although current congressional funding is not tied to these actual costs, Committee members believe that without a defensible amount and formula for calculating that amount, it will be difficult to press for adequate funding in the future. A formula for determining the actual cost of educating an Indian student was adopted by consensus as Subpart A. The formula is based on the adjusted national average current expenditures (ANACE) of public and private schools, which is determined by data from the U.S. Dept. of Education-National Center of Education Statistics (NCES), and similar data for residential programs.

Following the federal caucus and tribal caucus review of the section on accountability the Committee adopted a new section in the ISEP rule relating to the accountability of the student count, transportation costs and other reporting at all levels, from the school to the Director of OIEP. The section also provides for random independent process audits and sanctions for misrepresentation of data.

Following the federal caucus and tribal caucus review of the section on transportation, the Committee adopted a new section in the ISEP rule relating to transportation. The Committee agreed to recommend that current transportation policy be put in the regulations. The Committee also decided to convert the proposed language into a reporting requirement that will begin the process of gathering actual cost data for transportation. Finally, the actual cost formula for transportation will be discussed in the funding preamble.

The committee felt it was critical to gather information about actual costs of transporting students, to better inform schools about their costs and to help in presenting information to congress about budget needs. They were reluctant, however, to institute an actual cost reimbursement program without understanding the impact those costs could have on the basic funding amounts. At the recommendation of federal team members, the rule will include an advance notice of rulemaking for future changes in the formula. The Committee also agreed to incorporate the current methodology for calculating and distributing transportation funds in the regulation. Presently it exists in an unpublished BIA memorandum.

To be included in the Preamble to the Funding Rule: The Committee recommended four topics for discussion in the preamble. The first will seek comment on proposed criteria for establishing geographic isolation to qualify the most remote schools for additional

funding. The second will seek comment on the potential impact to the base funding and to residential programs if the numbers of gifted and talented students dramatically increases as a result of the new regulations. The third will describe and seek comment on the costs associated with special-needs students in ORBS. Although yet to be quantified, these costs are particularly significant when dealing with court-ordered students. The committee recognized that the discrepancy between the weights used in these regulations for funding a residential and academic student do not statistically reflect the actual cost formulas used for determining minimum funding for residential and academic programs. However, the constraints of time prevented any further consideration. The fourth topic for preamble discussion will consider the actual cost formula for transporting students.

Preambles: Draft preambles for Funding and Student Rights were distributed to Committee members for comment. The Committee did not review preambles, and any member with comments should contact the work group chair.

Public Comment:

Alma Siquah-Ashley, Hotevilla-Bacavi Community School: Ms. Siquah-Ashley asked the Committee to consider providing written documents to interested members of the public. It is difficult to become informed on the development of the regulations without access to the written products of the Committee.

Todd Honyaoma, Sr., Hotevilla-Bacavi Community School: Mr. Honyaoma was concerned that the Committee's confidentiality groundrule was preventing members of the public from having access to draft material considered by the Committee. He also noted that comment periods were often too short for adequate response from tribal governments and communities. [Catherine Freels answered that the comment period for these rules would be 120 days.]

Mr. Honyaoma urged the Committee to insure that tribal sovereignty is not compromised in this rulemaking, and that if state AYP standards are applicable there be opportunity to adapt those standards to meet local needs. He also presented a written statement to the Committee concerning the AYP appeal process. He asked that schools be notified and provided documentation prior to designation in school improvement, restructuring, etc. He also asked that there be an adequate timeline for response by the school to the pending decision. Current policies are confusing and often seem contradictory. A school may be declared in school improvement, and while attempting to meet new requirements is notified that they are no longer in school improvement.

Mr. Honyaoma congratulated the Committee on its cooperative spirit and its willing to resolve issues. This gives meaning to the word "united," he said.

Larry Schurz, Salt River Pima/Maricopa Indian Community: Mr. Schurz emphasized that without tribal community support, these rules may not survive and will need to be revised in four years. Tribal support, he added, means understanding of the process and access to the work of the Committee.

David Laughter, Native American Grant School Association, President: Mr. Laughter presented written testimony to the Committee requesting the Bureau provide technical assistance to grant and contract schools in school improvement, restructuring and corrective action. Their status indicates a serious need for the assistance of experts.

Robert Black, Jr., Shonto Prep School, Board Member: Mr. Black spoke to the challenges facing schools in school improvement and corrective action. He suggested that these schools might benefit from adopting models from other schools. Shonto school has researched and adopted the Quality Schools Systems, used in the Rural Alaska School District. This system requires mastery by a student at each level, before proceeding to the next level, and allows each student to move at his/her own pace.

Summary written by Lucy Moore. Please contact her with comments or questions. 505-820-2166, or lucymoore@nets.com