

## **Rebuilding Nicholas County Schools Mediation Process Process Protocols and Scope of Work**

### **Purpose and Scope**

The West Virginia Board of Education (WVBOE) and the Nicholas County Board of Education (NCBOE) agree to enter into a consensus building effort to develop a mutually agreeable and workable plan for the rebuilding of Nicholas County schools, assisted by a neutral mediator. The NCBOE is eligible for FEMA recovery funds through the Public Assistance program, which provides multiple funding options to provide flexibility for the NCBOE.

The successful conclusion of the mediation process should achieve the following:

- Decide which FEMA Public Assistance Program funding program to utilize.
- Evaluate, narrow, and identify location(s) for rebuilding schools.
- Determine school configurations, sizes, and instructional and curricular offerings.
- Resolve disagreements between the NCBOE and WVBOE on the components of an Amended Comprehensive Education Facility Plan (CEFP).

The parties to the negotiation seek to reach an agreement about how to use resources available under FEMA's Public Assistance Program to proceed with the rebuilding of Nicholas County schools. To do this, the parties will engage in a deliberate negotiation process that thoroughly explores the details of diverse options and engages with potential complications and contingency scenarios to ensure that all parties understand the risks associated with diverse proposals, including the favored proposal. FEMA has indicated its intention to support and release Public Assistance Program funding to support a mutually acceptable plan for rebuilding Nicholas County schools.

The mediation process is designed to resolve differences between representatives of the Nicholas County Board of Education and West Virginia Board of Education and to increase public engagement in order to provide input to the full Nicholas County Board of Education in its deliberations and development of an Amended Comprehensive Education Facility Plan. The mediation is conducted through representatives of the school boards and the outcomes of the mediation will be pre-decisional – final development and approval of the amended CEFP will occur through the official procedures and meetings of the full Boards.

Success in the mediation process will be defined by resolution by all parties of outstanding issues to lay the groundwork for a plan that can be approved by the NCBOE and the WVBOE and that meets the educational and social-emotional needs of the county's children.

### **Participants**

Participants to the mediation will include the parties responsible for reaching agreement on the Amended CEFP, as determined by the October 2017 decision of the West Virginia Supreme Court (civil action no. 17-P-232). This includes representatives of the following parties appointed by their full respective boards:

- Nicholas County Board of Education – represented by the County School Superintendent and 1-2 representatives from the Nicholas County School Board
- West Virginia Board of Education – represented by the West Virginia State School

Superintendent, and 1-2 representatives from the West Virginia State School Board

### **Participant commitments**

- The Nicholas County Board of Education commits to hold off on scheduling any bond votes for the period of the mediation process.
- The West Virginia School Board commits to hold off on any actions to take over the Nicolas County Board for the period of the mediation process.
- The Governor’s Office commits to support any agreement reached by the County and State School Boards, to eschew any interventions during the period of negotiations, and to provide any needed support to the mediation process during its term.
- All parties commit to negotiate in good faith, with a willingness to consider a range of options beyond their first choices, and to seek to address the priorities and concerns of the other party.
- All parties privy to the mediation commit to refrain from negotiating through the press, through the Governor’s office, or any other alternative channel to the mediation itself.
- All parties and technical advisors commit to confirm confidentiality for the negotiation process, to allow private conversations and exchange of draft materials for the purposes of exploration of ideas. All deliberations are pre-decisional and any agreements will be discussed through the normal order of meetings of the Nicholas County Board of Education and the West Virginia Board of Education.
- Parties retain the right to withdraw from the mediation process. Withdrawing parties and their representatives remain bound by the confidentiality provisions of this Agreement. If parties are considering withdrawing, they will undertake the following actions: 1) reach out to the mediator to express concerns; 2) work with the mediator to identify ways to address or mitigate those concerns; 3) work with the other party to resolve concerns to the greatest degree possible, and, 4) if and then, withdraw in writing.

These commitments would be for a fixed period of time corresponding to the mediation only - nothing would preclude any party from exercising their individual alternatives should a mediated settlement not be reached.

### **Mediation Process**

The mediated negotiation will be conducted taking into account the limitations and options of FEMA’s Public Assistance Program. Deliberations will take place over a series of confidential face-to-face meetings, with additional communication through email or other virtual platforms, as necessary.

The mediators will be responsible for developing an agenda for all meetings, and the agenda will be distributed in draft for participant input prior to being finalized.

Face-to-face meeting dates will be set in consultation with all participating parties and will take place in Charleston, WV, Summersville, WV, or other suitable locations. All efforts will be made to schedule meetings so that representatives of all participating groups can be present.

Parties to the negotiation will participate actively in the deliberations, seek creative solutions, prepare draft alternatives and other written documents, provide background information, and participate in the final consensus agreement. FEMA personnel will participate in all discussions as technical advisors and not as parties to the negotiated agreement.

## Decision Making and Final Product

Agreement is defined as unanimous concurrence of the participants after discussion. Participants may choose to “abstain.” Abstention is a non-vote, and therefore does not count against agreement.

If a participant disagrees with a proposal, he or she should make every effort to offer an alternative satisfactory to all participants. Participants should not block or withhold agreement unless they have serious objections to the proposal. Consent means that members can accept or at least “live with,” even if reluctantly, the agreement that emerges. Agreement does not require that all participants will be equally satisfied with the outcome.

The formal conclusion of the negotiation will be documentation of an acceptable, negotiated set of components that could guide an Amended CEF. The finalized amended CEF, which will be developed by the full NCBOE and approved by the WVBOE, will guide the use of FEMA Public Assistance Program resources for rebuilding Nicholas County schools, compliant with federal, state and local codes and standards. This mediation process should be completed no later than June 15, 2018. Development of cost estimates and compliance review to finalize the Fixed Subgrant Agreement Letter will occur subsequent to the negotiated agreement, and be complete no later than September 25, 2018.

## Operating Protocols

In order to conduct a successful process, *parties agree to the following ground rules and operating protocols:*

- All participants will act in good faith in all aspects of the negotiation. Good faith requires that the views and opinions expressed in the deliberations are sincere and consistent with actual views and opinions, and reflect the perspectives of the groups being represented.
- Parties will share relevant information openly and honestly and in a timely manner.
- Participants will strive throughout the process to bridge gaps in understanding, to seek resolution of differences, work to foster a climate of joint problem solving, and to pursue the goal of achieving consensus on the content of the topics under discussion. Parties will be open to suggestions for new alternatives, and view disagreements as problems to be solved rather than battles to be won.
- Participants will seek outcomes that meet not only their own interests and the interests of the groups, agencies, or organizations they represent, but also uphold broader public interests of providing quality education for the students of Nicholas County. Representatives will work to ensure that any agreements developed in the consultation process are acceptable to their organization or constituency.
- Participants commit to the principles of decency, civility, and tolerance. Parties will treat each other respectfully and refrain from personal attacks, distributing inaccurate

information about other participants, or any other negative behavior.

- Participants will make a good faith effort to participate in all scheduled meetings or activities, and arrive at the meetings prepared to discuss the issues on the agenda, having reviewed the documents distributed in advance.
- All participants will make help to stay on track with the agenda in order to move the consultation forward, and avoid unproductive digressions.
- Only one person will speak at a time and no one will interrupt when another person is speaking.

The progress of deliberations is the responsibility of each participant as well as the group as a whole. Should any participant be concerned that another participant is in some way impeding progress, the participant will raise the concerns in a spirit of helpful, constructive criticism. The goal is to move the deliberations forward and not to blame, attack, or accuse others.

### **Role of the Mediator**

The mediator serves at the pleasure and with the consent of the parties and works equally for all parties. The parties agree that the mediators for this process shall be Stacie Smith, Senior Mediator, and Tushar Kansal, Senior Associate, of the Consensus Building Institute (CBI).

The mediator's role shall be to mediate negotiations between the parties. This includes the following specific responsibilities:

- Drafting and refining operating protocols & work plan to ensure clear and effective communication, gaining agreement from the group on these protocols, and ensuring compliance with the agreed-on protocols.
- Helping to develop and refine the process so that it runs smoothly and effectively, drafting meeting agendas, preparing any presenters, and facilitating meetings to ensure that the agenda is followed and that all participants are able to contribute.
- Working with participants separately and together, both during and between meetings, as necessary, to clarify interests and concerns, identify and synthesize points of agreement and disagreement, and elicit and clarify potential options that might "bridge" those differences.
- Serving as liaison to the media, technical advisors, and other key players, as requested and needed by the negotiation team.
- Document a running synthesis of key ideas and agreements and single text draft on the deliberations to date to document the group's progress for internal use of the negotiation team, and circulate it for review and discussion within the negotiation team.
- As appropriate, prepare a general summary of discussions and outcomes, without attribution, to review in draft with the group and make available for wide public distribution.

The fees and expenses of the mediators are being paid by a contract with the Federal Emergency Management Agency.

## **Role of Technical Advisors**

Given the technical nature of some of the questions and concerns at issue, the negotiations will likely need to draw on the expertise of one or more technical advisors who is trusted as credible and legitimate by all parties. This includes FEMA technical representatives and staff from State, County, or local agencies deemed acceptable to all parties.

The role of the technical advisors will be to offer unbiased information that is relevant (helping to reach a resolution), credible (technically well done), and legitimate (trusted by a range of views and stakeholders), as requested by the negotiation team. FEMA's role in the process would be limited to that of technical advisor, rather than being a party to the negotiated agreement. Technical advisors will be invited to present and participate in meetings at the request of the negotiation team.

Should the parties decide that additional technical expertise is required, they will work to define the salient questions that must be answered, clarify the methodology and expertise required, and agree upon what external expert is acceptable. Limited funding for external expertise has been made available for sub-contract through the mediator, subject to approval by FEMA.

## **Media Communications**

Participants agree not to speak independently to the media about the on-going deliberations, but rather to work through neutral and jointly-acceptable statements. No participant will attribute statements to others involved, seek to present or represent the views or position of other members, nor attempt to speak on behalf of the deliberations as a whole in or to the media. "Media" for these purposes includes the press, television, radio, websites, social media, blogs, and any other public information distribution mechanism. Participants will abide by these ground rules in all communications during the process in and out of meetings.

## **Mediation Work Plan and Schedule**

The following is a working plan for the mediation process:

### **1. Define and Gain Agreement on an Approach to Reaching Consensus**

- a. Convene a formal "kick-off" meeting of the Negotiation Team, which will consist of three representatives from the State Board and the County Board, for a one to two (1-2) day meeting to agree on core principles, protocols, clarify goals, identify key questions, and agree on experts and/or methodologies for collecting and presenting critical information.
- b. Draft and adopt operating protocols and ground rules to ensure clear and effective communication and ensuring compliance with the agreed protocols.
- c. Jointly identify technical questions requiring expert input or assistance, potential needs for external technical advice, and methodologies for eliciting such advice. This may include collection of research findings, neutral expert review of technical materials, and/or presentations by technical advisors. Any methodology used should draw upon unbiased information that is relevant (helping to reach a resolution), credible (technically

well done), and legitimate (trusted by a range of views and stakeholders), as requested by the Negotiation Team.

- d. Joint adoption of these process protocols and formal designation of negotiation team members by the State Board of Education and the Nicholas County Board of Education.

## **2. Conduct Joint Fact Finding and Provide Detailed Briefings on Key Topics, as Needed**

- a. Topics for fact-finding should include only those items that will be necessary for the parties to move closer to a shared vision of the problem and potential solutions. Fact finding should address the items expected in a final agreement. The Negotiation Team will jointly identify key questions and to work with technical experts to develop credible information in response to these questions.

## **3. Conduct Public Engagement**

- a. Design and execute a mutually acceptable process to engage the broader community within Nicholas County during the mediation process. Such a process could include one or more public workshops with representation from each of the County's impacted schools and communities along with representatives from the County and State Boards of Education. This process should be inclusive and transparent to seek community input on the options being considered.
- b. Post materials about the negotiations on the County School Department's website.

## **4. Conclude the Mediated Negotiation Process (*Completion by June 15, 2018*)**

- a. Participate in additional negotiation sessions to identify priorities and interests, explore and evaluate options, and package options.
- b. Work during and between meetings to clarify interests and concerns, identify and synthesize points of agreement and disagreement, and elicit and clarify potential options that might "bridge" those differences.
- c. Participate in a meeting to agree on the key features of a mutually agreeable and workable plan for the rebuilding of Nicholas County schools. This might entail one multi-day meeting or several half-day to one-day meetings with time in-between. Final development and approval of the amended CEFPP will occur through the official procedures and meetings of the full Boards.

The mediation process must be completed by June 15, 2018.