

Mediation Assessment for Nicholas County Schools Findings and Process Recommendations

Background

The Nicholas County School District in West Virginia was heavily impacted by a flooding disaster in June 2016. The flooding destroyed three Nicholas County public schools: Richwood High School, Richwood Middle School, and Summersville Middle School. Residents, communities, and public entities disagree about how the rebuilding of the Nicholas County schools should proceed.

The [Consensus Building Institute \(CBI\)](#) is a non-profit organization that provides facilitation and mediation for numerous public issues, with experience in education and school construction issues. CBI was hired to understand local stakeholders' perspectives on an acceptable approach for rebuilding schools and meeting educational needs in Nicholas County and to recommend a process for reaching a broadly acceptable approach.

Methodology

CBI conducted an assessment to identify, in a non-partisan and independent fashion, the range of interests, concerns, and options held by the participants in this effort and to identify if there is any collaborative process that might work to bring decision-making parties together to reach a mutually acceptable plan for moving forward. CBI's assessment process consisted of reviewing relevant background materials and conducting twenty confidential individual interviews and focus group conversations with key stakeholders, including elected and appointed officials and agency leaders at the state, county, and local level; community leaders; and alumni, parents, and residents of Nicholas County. All interviews took place face-to-face or via telephone between October 30 and November 14, 2017. A list of participants interviewed is provided in Appendix A.

CBI used an interview protocol as a general guide for conducting the interviews, which is included as Appendix B. The interviewers followed the general structure of the protocol, while allowing each conversation to follow the interests and comments of the interviewees. The assessors made extensive notes on each interview, and summarized the interviews for internal team use. The team also reviewed various documents provided by interviewees.

CBI's role is to provide an accurate, impartial summary of stakeholder views as represented during the interviews, and an independent analysis of the situation in order to assist leaders in

making decisions on how to best proceed with a collaborative process for determining the rebuilding of Nicholas County Schools. This report summarizes findings based on the views and opinions expressed by interviewees in these conversations and documents, and seeks to capture the range of views and identify areas of commonality and divergence. The report does not weigh or evaluate the frequency or popularity of views. All views are presented without attribution to offer confidentiality to those interviewed and to encourage readers to focus on the substantive issues.

Please note that, while almost all interviewees were eager to discuss their experiences and frustrations about the decision-making process to date and their perceptions of its many flaws and failures, this report does not attempt to capture that history, nor to offer a factual record on past events or current conditions. This draft report is not a legal document, technical report, or an exhaustive study of all the concerns of individuals and organizations with a stake in Nicholas County school facilities. The report is limited by the information gathered in the interviews, and CBI's interpretation of that information. Any errors or omissions are the sole responsibility of CBI.

A draft version of these findings were sent out to all interviewees on November 20, 2017 with a request to provide comments and feedback by November 27, 2017 to ensure that the views of all interviewees were reflected accurately, and that errors or omissions which might affect the recommendations or lead to a mistaken view of the situation could be corrected. CBI received substantive comments from 9 individuals (along with several affirmations of accuracy), which were used to guide revisions in this final report.

Also added to this final report is a set of process recommendations, drawn from our analysis of the findings and our experience convening collaborative problem-solving processes. These recommendations were discussed in draft with representatives from the Nicholas County Board of Education, the West Virginia Board of Education, the Governor's office, and FEMA on December 12, 2017. Participants in that meeting agreed they these recommendations should serve as the framework for a mediation process to begin as soon as possible.

Table of Contents

Substantive Findings

- What are the most important factors and considerations to keep in mind around the rebuilding of Nicholas County schools? 4
- What are the likely positive and negative effects for the implicated communities and constituents of the different approaches being discussed? 10
- What criteria should help to guide decisions about the placement of Nicholas County schools? 11
- What options could exist for addressing diverse stakeholders' priorities and moving forward? 11

Process Findings

- Who should be involved in the mediated negotiation process? 14
- What steps or considerations might be needed to build people's trust that the process is fair, legitimate, and non-partisan? 16
- How might we keep the public informed while allowing room for creativity and exploration in the negotiations? 17
- What information, facts, or studies would this group need to draw from or find? Are there sources of information you would recommend? 17
- What ground rules or guidance would help the group to succeed in reaching a negotiated agreement? 19

Process Recommendations

- Key Recommendations 21
- Additional Components 22
- Mediation Process Potential Work Plan 24
- Keeping the Community Engaged 26
- Selecting Representatives 26

Appendix A: List of Interviewees and Focus Group Participants 28

Appendix B: Assessment Interview Guide 29

Appendix C: Ethical Standards of the Association for Conflict Resolution 31

Substantive Findings

What are the most important factors and considerations to keep in mind around the rebuilding of Nicholas County schools?

Interviewees highlighted the importance of a diversity of factors and considerations informing their perspectives on the rebuilding of Nicholas County schools. These factors include the quality of education provided to Nicholas County students, responsible financial stewardship of the Nicholas County school system, the quality of career and technical education provided to Nicholas County students, student safety, the need for suitable sites for locating schools, and potential impacts on the Richwood community, among others. These factors and considerations, and how different stakeholders view them, are further explained below.

Quality Education for all Students

The most important factor cited by almost all interviewees is the quality of education provided to Nicholas County students. In this vein, interviewees emphasized diverse factors, with some interviewees focusing on some factors while downplaying the importance of others.

Collectively, the factors named by interviewees include the following (presented in no particular order):

- Access to broad and varied curricular and extra-curricular offerings, including advanced and AP courses
- Strong parent, family, and community engagement with schools and with students' education, and strong connections between schools, teachers and families
- Ensuring that certified teachers teach all students
- High graduation rates
- College- and/or career-readiness of graduating students
- Class sizes that are not too small
- Class sizes that are not too large
- Active involvement of students in extra-curricular activities
- Single-grade elementary school classrooms - avoiding "split grade" classes
- Equal access for all students in the district to the same resources and curriculum offerings
- Conditions tailored to meeting the needs of students coming from disadvantaged backgrounds (e.g. low SES)
- High levels of involvement in, and easy access to, career and technical education
- Dedicated participation by students in career and technical education and high levels of completion of technical education programs

In their discussion of the key factors promoting education quality, many interviewees expressed strongly divergent perspectives about the value of community-based schools versus consolidated schools for meeting the educational needs of students. Interviewees generally prioritized different factors on the list above based on their support for or against the consolidation plan. For example, those in favor of consolidation tended to emphasize the benefits of having a variety of curricular and extra-curricular activities, the importance of certified teachers, and the need for equal access to offerings for all students, whereas those opposing consolidation highlighted the value of universal family and community involvement in school, high graduation rates, and high rates of participation in extra-curricular activities. Interviewees tended to leave out or dismiss the priority factors that did not fit with their existing positions on consolidation. Interviewees cited different sources to support their views about the benefits and drawbacks of community schools versus consolidated schools – including trends in the state and country towards or away from consolidated schooling, and academic and applied research findings on these issues.

Interviewees also differed in their views of how well Nicholas County's schools were doing today at providing high quality education to their students. Some interviewees (again, typically those opposed to consolidation) emphasized the many current successes and strengths of the county's schools, such as high levels of participation in extra-curricular activities; high-performing and award winning music and athletic programs (particularly band and football); strong parental and family involvement in students' educations; robust community support; and overall strong academic performance, including on state tests (particularly for smaller schools that serve an economically disadvantaged student body). Other interviewees (including most supporting consolidation) stressed the schools district's shortcomings – the percentage of students graduating without college or career-readiness, shortages of certified teachers, inequities of course offerings in the secondary schools, and lagging overall academic performance of Nicholas County schools as compared to other schools in West Virginia and in other states.

Responsible Financial Stewardship

Many interviewees underscored the importance of responsible financial stewardship of the Nicholas County school system, and noted this as a very important consideration in the decision about rebuilding schools. County School Boards are responsible for ensuring that they can pay their expenses, and while Nicholas County Schools has been running a budget surplus, they have also been suffering declining enrollments and the associated loss of funding from the state

aid formula. In this context, interviewees strongly disagreed on both the current and anticipated future financial picture for the county's schools.

Nicholas County Schools leaders noted the need for annual personnel reductions, the current insufficient funding for teachers, and clarified that the Reserve Equity funds were being set aside to cover overdue facility upgrades, including repairs for Summersville Elementary School. Other interviewees suggested that the county's fiscal situation is strong and expressed confidence that the district's fiscal situation does not require consolidation to derive cost savings.

In addition to diverging views about the district's current financial strength, interviewees disagreed about how well the district would be able to meet the financial costs for schools and programs going forward. Interviewees cited varied projections and offered disparate predictions for the future populations of both Nicholas County and of Richwood and for the county tax base. While some interviewees anticipate continued decline of both Nicholas County's and Richwood's populations – and the county's tax base – other interviewees foresee a leveling off of the county's population and potential population growth in Richwood associated with ongoing and anticipated future economic revitalization. These different projections correspond with contrasting views about whether there will be a long-term need for consolidation of the district's middle and/or high schools in the foreseeable future (regardless of the effects of the 2016 flood and decision made around rebuilding in the short term).

Many interviewees agreed that the availability of FEMA funds for rebuilding the schools damaged by the floods offers a once-in-a-lifetime opportunity for Nicholas County to construct high quality new middle and high school facilities that could serve the county for decades. Interviewees who saw consolidation as an unavoidable future outcome for the county highlighted the importance of this one-time opportunity to allow the county to build consolidated facilities that would be unaffordable without outside funding, and could ameliorate many anticipated pressures on the school district's budget. They noted that consolidating the schools now would also help the county's long-term fiscal situation by allowing them to construct a new, co-located, state-of-the-art Career Technical Center, reduce ongoing costs for facility operations and maintenance, create a low-cost solution to rehousing Summersville Elementary School (and potentially other nearby elementary schools), and lower transportation costs.

Other interviewees cited research and examples from communities in other counties and states to argue that consolidation of community schools does not save significant amounts of money. These interviewees suggested that the loss of community schools would catalyze much larger reductions in school enrollment (for example, due to families leaving Nicholas County or enrolling their children in neighboring counties), and that transportation costs would increase. Some interviewees suggested that there are other opportunities for addressing potential future resource constraints, such as rethinking allocations of teaching and administrative positions and categories, and seeking additional state support and public/private partnerships for some curriculum and capital needs.

Preserving/Restoring the Economic and Social Future for Richwood

Interviewee views diverged sharply about whether the decision about rebuilding schools should take into account broader economic and social consequences of school location decisions. Some interviewees felt strongly that the effects on the City of Richwood and its citizens should be a major consideration, particularly since the Richwood community was already devastated by the impacts of the flood. Several interviewees spoke about the rebuilding decision in terms of fairness or compassion for the people of Richwood, who had suffered terrible losses and damage from the 2016 flooding. These interviewees saw the use of federal funds to remove schools from Richwood as “kicking them while they’re down” and felt that rebuilding Richwood Middle School and Richwood High School would help to make the community whole. Some interviewees highlighted the many current and potential economic opportunities Richwood is seeing and some noted that Governor Justice’s office is advancing economic development proposals for the Richwood area that would be undercut by the loss of the city’s middle and high schools. Some interviewees felt that, since two Richwood schools were destroyed, the FEMA funding allocated for those schools should rightfully be spent in Richwood, on behalf of Richwood’s schools.

In contrast, other interviewees felt that preserving or restoring the economic and social structure of a city should not be a consideration in determining the county’s plan. Some of these interviewees noted that “the County School Board should not be in the business of saving a town,” emphasizing that it was not their responsibility, as outlined in WV State Code 18-5-13, to maintain the economic viability of any community, city, or town within its jurisdiction. While some interviewees who support consolidation expressed sympathy for Richwood’s loss, they contended that the 2016 flood merely accelerated the timetable for the inevitable consolidation process. Some interviewees felt that gestures to rejuvenate Richwood would be futile even if they were to be implemented and saw the hopes of long-term economic recovery

in Richwood as impractical. Many these interviewees perceived the loss as having affected the county's schools as a whole, and that FEMA funding should be used to support the long-term best interests of the whole county.

High Quality Career and Technical Education

Almost all interviewees discussed the importance of high quality and accessible career and technical education (CTE). Across the board, interviewees emphasized the need to provide students with career and technical education that trains them for in-demand professions and equips them to enter the workforce upon graduation and noted opportunities to expand and upgrade the county's CTE offerings.

There was disagreement among interviewees about how beneficial it would be to have CTE facilities co-located with high school and middle school facilities. Many interviewees expressed concern about the low percentage of Nicholas County students currently participating in CTE and suggested that co-locating CTE with academic educational facilities would encourage a broader array to students to take advantage of CTE offerings. These interviewees suggested that the time that students spend traveling back and forth from Nicholas County or Richwood High School to the current CTE facility in Craigsville served as an impediment to enrollment in the program because students miss the opportunity to complete other courses and participate in many extra-curricular activities. Some noted that there is a stigma associated with "getting on the bus" to participate in CTE courses. Some interviewees also suggested that co-location of the CTE program and the middle schools would offer opportunities for middle school students to participate in CTE courses. Some – though not all – of these interviewees focused on the perceived benefits to students that would result from having all middle and high school students in the county located on one campus with comprehensive CTE facilities conveniently located on site. Other interviewees supportive of co-locating CTE felt that CTE programming could be offered both in Richwood and in Summersville, perhaps tailored to build on the industries and career opportunities most available in each location.

In contrast, other interviewees highlighted the strengths of the current career and technical education facility in Craigsville, which was described as "award winning." These interviewees underscored the dedication and skill of the current CTE educators and the high rankings and success that Nicholas County CTE students and graduates enjoy. Although the proportion of students participating in CTE in Nicholas County is less than many other West Virginia counties, these interviewees noted that those students who do participate in CTE despite the Craigsville facility's distance from Nicholas County's middle and high schools demonstrate dedication and

higher levels of commitment to the program. They also noted that scheduling impediments could be resolved to mitigate the academic and extracurricular opportunities that CTE students currently forego and shared examples of other counties where the CTE facility is not co-located with any of that county's high schools but nevertheless sees very strong and broad participation from students.

Some interviewees also spoke about the potential for using CTE facilities to provide continuing education and job skills training to adults in addition to school-age students. These interviewees suggested that the CTE center could much better fulfill this purpose if it is located in a larger population center, such as Summersville.

Other Factors to Consider

A number of interviewees spoke about the importance of student safety in considering how to rebuild Nicholas County's schools. Among the safety-related concerns raised were: the risk of life-threatening flooding and limited options for evacuation of students, the importance of nearby access to medical facilities, and questions about state safety standards for sightlines at the entrance to the Glade Creek site from State Route 41. Interviewees favoring consolidation generally raised concerns about the safety of placing schools in Richwood and interviewees opposing consolidation raised safety concerns about the Glade Creek site.

Many interviewees spoke about the question of site suitability for the rebuilt school facilities. Interviewees variously noted that potential sites within the City of Richwood might not meet requirements for avoiding flood risk and the presence of environmental contaminants; that the Glade Creek site may not be well-suited for educational facilities due to location and access; and that potential sites near the City of Richwood could require the installation of expensive infrastructure. Some interviewees raised concern about FEMA "comparators" that would be used by FEMA in an audit after the project was completed to determine if the selected site was too expensive as compared to similar sites. Again, those favoring consolidation tended to raise questions and concerns about the Richwood sites while those opposed to consolidation questioned the due diligence performed before selecting the Glade Creek property.

Some interviewees spoke about the importance of minimizing travel times for students, and interviewees presented very different (and conflicting) estimates of the travel time for different options. Interviewees on all sides expressed doubt about the accuracy of the travel time studies and estimates cited by "the other side."

Many interviewees, on all sides, noted that the opioid epidemic has ravaged Nicholas County and West Virginia and spoke to the importance of providing opportunities to students and of productively engaging them. Interviewees tended to have diverging suggestions for how this issue should effect the decision about school locations – pro-consolidation voices spoke about the importance of providing students with the skills they need to secure well-paying employment, for example, while those advocating for community schools focused on the importance of having schools close to home and the benefits of strong community support and involvement in community schools.

Several interviewees spoke about the principle of making decisions consistent with the democratic will of the majority of voters in Nicholas County, though they disagreed about what that will was and how it could best be measured. Some also suggested the importance of providing students and their families with the ability to choose which school to attend to best meet their individual needs. In contrast, other interviewees noted that most public school students in the United States do not have the option of choosing which school to attend.

Finally, many interviewees felt that the decisions around school rebuilding must be consistent with the legal and political context surrounding this issue, offering a variety of examples, including:

- Statements by political leadership, including Governor Justice
- Judicial decisions, including by the State Supreme Court
- Decisions made by elected Nicholas County school board officials
- “Local control” – meant by some to support county-level decision-making, and by others to mean responsive to the needs of the local citizens of the individual communities within the county.

Interviewees consistently cited the legal and political examples and decisions that would bolster their own case, whether pro- or anti-consolidation.

What are the likely positive and negative effects for the implicated communities and constituents of the different approaches being discussed?

Most interviewees acknowledged that any plan that did not rebuild the middle school and, particularly, the high school in Richwood would precipitate the economic and demographic decline of the city. Some interviewees emphasized that the loss of the Richwood community’s schools would snuff out the incipient economic recovery that is taking place in the city and would preclude potential economic investment by the timber industry and other potential businesses that the governor’s office is supporting. While there was broad agreement about

the likely negative effects on the Richwood community of consolidation, interviewees were strongly divided as to whether this factor should be taken into account when deciding how to rebuild the schools.

Some interviewees suggested that placing middle and high schools in Richwood would drain the financial resources of Nicholas County and its schools system to the detriment of the entire county's students and future economic competitiveness. Some expressed concern that the need for consolidation will become unavoidable in the future, and if not done now using FEMA disaster recovery funds, would be extremely costly for the county's taxpayers in the future.

What criteria should help to guide decisions about the placement of Nicholas County schools?

Criteria suggested by interviewees include (variously, and in no particular order):

- Educational quality including:
 - Diversity of curricular and extra-curricular offerings
 - Parent, family, and community engagement with schools and with students' education
 - Teacher and other educator involvement in students' lives
 - Provision of certified teachers
 - Class size and makeup
 - Equality of access to opportunities
 - Providing high quality education particularly for students coming from disadvantaged backgrounds (e.g. low SES)
 - Strengths and weaknesses associated with consolidated and community schools
 - Ready and seamless access to high quality career and technical education
 - Building on existing successes
- Responsible and prudent financial stewardship for Nicholas County schools
- Maximizing the resources available for the benefit of all students
- Avoiding disproportionate harm to subsets of students or communities
- Student safety
- Suitability of potential school sites
- Student travel time
- Replacement of losses incurred
- Legal findings
- Political support
- Local governance and control of decision-making
- Expression of democratic will

What options could exist for addressing diverse stakeholders' priorities and moving forward?

Interviewees proposed a wide range of suggestions for the placement of Nicholas County's middle and high schools. Across the board, interviewees expressed high levels of disagreement about the strength and validity of varying options, generally characterizing their own preferred options in a highly favorable light while minimizing or disregarding other options. Broadly speaking, those favoring consolidation reinforced their support for building consolidated secondary education and CTE facilities in Summersville and dismissed most options to build schools in Richwood. When pushed to suggest options that included a school in Richwood, many suggested building only a middle school there, building as small a middle/high school there as possible, and/or making it easy (e.g. via busing) for students in the Richwood area to choose to attend school in Summersville instead. On the other side, interviewees who opposed consolidation generally only considered options that would involve building middle and high schools (whether separate or combined) within the Richwood city limits along with CTE programs in Richwood or without moving the CTE facility from Craigsville.

Several interviewees noted that the FEMA 428 program provided sufficient funds to allow for a new high school, middle school, and integrated CTE program in Summersville AND a new middle/high school with CTE components in Richwood. Notably, some interviewees suggested that resources may be available, such as from the State of West Virginia and from community and business sources to meet diverse parties' needs.

Please note that the below options are not mutually exclusive and are not presented in any particular order. They are organized by components and were frequently suggested as pieces of a broader package.

Academic school location and configuration options:

- A. Construction of a combined middle school/high school facility in Richwood with full facilities (band room, science labs, auditorium, gymnasiums, etc.). Construction of middle school and high school facilities at the Glade Creek site in Summersville with full facilities.
- B. Construction of a combined middle school/high school facility in Richwood with smaller or more limited facilities (band room, auditorium, gymnasiums, etc.). Construction of middle school and high school facilities at the Glade Creek site in Summersville with full facilities.
- C. Construction of a combined elementary school/middle school/high school campus in Richwood.

- D. Construction of middle school/high school facilities at a site *just outside* Richwood city limits.
- E. Construction of middle school/high school facilities *near* Richwood (e.g. in Craigsville).
- F. Construction of a Pre-K to 8th grade school in Richwood. High school would be in Summersville.
- G. Design the new middle school/high school facility in Richwood to be adapted for possible future transitioning to a combined elementary school/middle school/high school facility *or* to a combined elementary school/middle school in the case of future population declines.
- H. Following the construction of a new high school in Summersville, adaptive reuse of the current Nicholas County High School facility as the new Summersville Elementary School.
- I. Construction of a consolidated middle school, high school, and CTE facility at the Glade Creek site in Summersville. Closure of middle and high schools in Richwood.

School zoning:

- A. Cherry River, Panther Creek, and Gauley River Elementary schools feed into Richwood Middle School/High School with limited ability for students/families in those schools to choose to attend other middle and high schools in Nicholas County. This option focuses on maintaining a larger student population in Richwood schools.
- B. Cherry River, Panther Creek, and Gauley River Elementary schools feed into Richwood Middle School/High School with the option for students/families in those schools to choose to attend other middle and high schools in Nicholas County.
- C. Cherry River Elementary school feeds into Richwood Middle School/High School. Panther Creek, and Gauley River Elementary schools feed into middle schools/high schools in Summersville. This option prioritizes educating the vast majority of students in county-wide consolidated schools.
- D. Open up all zoning in Nicholas County schools and provide full busing to allow middle and high school students to attend any school.

Career and technical education:

- A. Creation of a comprehensive CTE center at the Glade Creek site in Summersville.
- B. Retaining the CTE center in Craigsville, updating the curriculum and facilities at that site.
- C. Creation of tailored CTE programming in both Summersville and Richwood.
Programming in both locations would reflect local context with, for example, CTE

programming in Summersville featuring hospitality and medical sciences and CTE programming in Richwood featuring forestry and coding.

- D. Creation of comprehensive CTE centers in both Summersville and Richwood.

Resources available:

- A. Supplementing the funds available from FEMA disaster relief funds (and associated state matching funds) with additional resources from the State of West Virginia to support additional programming, school maintenance and repair, etc.
- B. The State of West Virginia taking responsibility for site selection, cost overruns, and support for additional needs over an extended time period.
- C. Building partnerships with community and business resources to provide more internships, apprenticeships, and college and career technical training
- D. Resources could also be raised through an additional levy on Nicholas County taxpayers.

Addressing distance and time barriers:

- A. Use virtual and distance learning options to supplement in-person resources, as needed.
- B. Enhanced coordination between administrators at different middle and high schools and the Craigsville CTE facility could address some of the scheduling challenges that make it difficult for students participating in CTE to concurrently take advantage of other educational opportunities.

Process Findings

Who should be involved in the mediated negotiation process?

Most interviewees agreed that Nicholas County School Board and the West Virginia Board of Education are the two key decision-making parties – that is, if those two agree, then the process can move forward based on their agreement. *However*, a strong subset of interviewees noted that the interests of all Nicholas County taxpayers, parents, and schools stakeholders are not directly represented by the county and state board of education. That is, while most interviewees who supported consolidation felt confidence that the NCSB would represent their views, others who opposed consolidation felt strongly that their views and voices had been ignored and discounted by their elected Nicholas County Board of Education members. These interviewees felt that despite some shared perspectives, that the interests of families and students in Richwood are not fully represented or aligned with those of the WVBOE. Therefore, some interviewees suggested that political leaders or community advocates from Richwood be

represented directly in the negotiations. Other interviewees suggested that, if community representatives from Richwood are included in the negotiations, then community representatives from Summersville should be equally represented in the negotiations.

Some interviewees suggested that community representatives could be involved as non-voting members. There were also suggestions to include teacher/school representatives. Most people suggesting additional voices at the table agreed that the goal of doing so is to ensure that the outcome of the negotiation reflects the range of concerns that exist within the Nicholas County community. Several interviewees cautioned that having community representatives as parties to the negotiation would make reaching resolution exceedingly difficult, if not impossible.

Similarly, it was noted that, since the City of Richwood would need to work with the NCSB in implementing any agreement (assuming that the final plan involved some role for Richwood), that there would need to be a longer-term process to help rebuild communication, trust, and relationships between these parties. It was suggested that this might occur as a parallel or secondary process, once the general approach for where and how to rebuild is agreed on.

Many parties stated that the governor should not be involved directly in the negotiations. In contrast, a few interviewees suggested that if the governor is influencing the negotiating positions of some parties from outside of the room, that it would be preferable that the governor's office have open and transparent representation in the room directly. Some suggested that IF the governor's office is directly represented in the negotiations, other political representatives, such other state elected officials, should also participate.

Interviewees suggested several different ideas for who should represent the WVBOE and NCSB, ranging from just the two superintendents and their staff to others suggesting that both the superintendents and a few board members (1-3) from each side should participate. Some stakeholders raised concerns about including board members directly in the negotiations, including questions about their impact on the processes' efficiency and a desire to shield them from an ugly or contentious process. Some interviewees suggested that the two superintendents hold sufficient information and trust from their boards such that their respective boards would very likely support any agreement that they are able to reach.

Many interviewees noted that staff from both the State and County Departments of Education would be needed in the room as part of the negotiations to provide information and detailed

analysis to their own sides and ideally to help explain their data and reconcile discrepancies with the other side.

Most parties felt that the SBA and FEMA would be needed as technical resources to the negotiation, but not as deciding parties at the negotiation table. Other technical experts were also suggested, such as an independent subject matter expert to explain FEMA funding and a WV Department of Commerce representative to provide information about economic development opportunities. A concern was raised about including independent consultants out of concern that they would delay the process.

What steps or considerations might be needed to build people's trust that the process is fair, legitimate, and non-partisan?

Many, if not most, interviewees on all sides of the issue expressed concerns about improper and underhanded behavior by other parties throughout the process to date. Allegations and accusations of corruption, foul play, undue influence, rigged processes, and rude and demeaning comments abound on all sides. Given the visceral sense among most interviewees that they have been treated badly and unfairly, most parties felt that trusting individuals and agencies on the other side would be a major challenge. Some suggested a need to hear apologies for things that had been done and said in the past. Many parties, while feeling justified in their mistrust of other parties, emphasized that the mistrust directed toward *them* was without merit and maliciously motivated. For example, while many participants felt that their own voices were not heard or heeded by their officials and representatives (e.g., opponents to consolidation felt that their voices were not heard or respected by the Nicholas County School Board, while supporters of consolidation felt that the Nicholas County school board was not heard or respected by the state board of education), representatives from the Boards typically disagreed with assertions that they had not listened, responding that they provided numerous opportunities to hear from their respective constituents.

Many individuals also said that they would need some proof that all parties are participating in the mediation process in good faith. Some suggestions for demonstrating good faith included securing written commitments from all participants to stay in the mediation process through a mutually agreed-on minimum timeframe (i.e. not simply just deciding whether to continue participating from one meeting to the next), not to withdraw prematurely, and not pursue other options away from the table for the duration of the negotiation. In terms of these away-from-the-table options, particular concerns were raised about Nicholas County's bond proposal as well as threats of state takeover of the Nicholas County School Board as signs of bad faith.

Parties on both sides strongly suggested that the other side commit to taking these respective options off the table for the duration of the negotiations. A number of parties suggested that all parties to the negotiation should commit to abiding by their agreements, reflecting concerns on all sides that other parties have reneged on past agreements and have otherwise behaved dishonestly.

Some interviewees noted a concern about the role of the governor's office, with a fear that office might be pulling strings from outside the room. One interviewee suggested that the governor promise that he and his office would not engage directly or indirectly with any of the participants in the mediation process.

A few interviewees suggested that the discussions should take place in a neutral location – not Summersville, not Charleston, and not Richwood. Others suggested that discussions in any of these locations would be fine.

Many parties noted that a mediator that was approved by all parties would be necessary for the negotiations to proceed successfully.

How might we keep the public informed while allowing room for creativity and exploration in the negotiations?

Most interviewees saw the value/need of allowing confidential conversations to occur between the state and county in order to allow for creativity and problem-solving, but many also expressed concern about the all-around lack of trust. One idea to address this was for the State and County Boards to jointly hold interactive community meetings (in Summersville and Richwood, and perhaps other locations) at key points throughout the negotiating process to share updates about their progress and to receive community input on the developments and options being considered. Several interviewees specified that such meetings needed to be deliberative and interactive, not just public hearings where speakers are given short comment periods with no responses from the Boards to questions and ideas.

During negotiations, interviewees requested that there be clear information about the progress of discussions shared with the public. Some specific suggestions included:

- Make materials being examined by the negotiations public (any studies, presentations from experts, fact sheets, etc.).
- Provide neutral summary/joint press releases of the discussions after each negotiation session, using language acceptable to both sides.

What information, facts, or studies would this group need to draw from or find? Are there sources of information you would recommend?

As interviewees shared their assumptions or beliefs about the underlying “facts” that have transpired since the flooding of June 2016, it was clear that very few, if any, of these facts or beliefs are universally shared by all parties. Most stakeholders acknowledged that the lack of shared data was a central problem for coming to a joint resolution.

In light of this, interviewees suggested that, to be useful, all data used to drive decisions must be accepted as credible and legitimate by all parties to the negotiation. One approach could include examining each party’s data and working through why their respective conclusions were so different. Another would involve bringing in new experts or information that was trusted by all, and/or developing new information jointly.

Some interviewees suggested that the negotiation team would benefit from traveling to the key locations together to really get a feel for the effects of their decisions on stakeholders on the ground. They recommended joint field trips to see the Glade Creek site, the existing CTE Center in Craigsville, potential sites in Richwood, and the roads and routes between them that would need to be travelled by students on buses.

Specific topics suggested as needing clarification include the following:

- The fiscal situation for Nicholas County Schools – current budget allocations, how different options would impact short-term and long-term budgets, options for addressing costs, projections for the future.
- Enrollment demographics and projections for the different communities, and information about expected or prospective local economic opportunities and initiatives that might impact those projections.
- Possible locations in Richwood and Summersville for siting school(s) and how they would meet diverse legal and regulatory requirements (FEMA, state, etc.)
- Research and expert findings about the long-term economic and educational costs/benefits of consolidated and small community schools
 - Educational outcomes: dropout rates, family involvement, extra-curricular involvement, graduation rates, academic performance, impacts on low-SES (socioeconomic status) students, preparing students for college/careers, etc.
 - Fiscal impacts of consolidation: Does consolidation generally save money? Would it save money for Nicholas County? How much?

- Career and technical education: What creates a successful CTE program? Participation/certification rates in CTE programming when co-located with other secondary education facilities or not co-located? Other strategies for strengthening CTE?
- Comparisons with and lessons that can be learned from other school districts and communities in the state and in the country
- FEMA funding options
 - Clarify the different FEMA programs and their implications for the rebuilding of Nicholas County schools, including how much money each would make available in federal and state funds, how much flexibility each would offer in the rebuilding process, what constraints, restrictions, and risks exist, etc.
 - Some interviewees suggested engaging an independent subject matter expert to explain FEMA funding options due to concerns that different FEMA officials have provided conflicting information in the past.
- Transportation times and costs for different school siting options
- Options for the State to provide supplementary funding and opportunities to Nicholas County schools

What ground rules or guidance would help the group to succeed in reaching a negotiated agreement?

Many parties, across the board, expressed significant concern about whether all parties are willing to come to the table and negotiate in good faith. Interviewees noted that both school boards would need to commit to openly learning from each other, fairly considering the data generated during the negotiations, and exploring alternative solutions with an open mind. Some interviewees suggested that the all participants must be open to considering a range of options, not only the consolidation plan proposed by the Nicholas County Board of Education or rebuilding schools in Richwood as they were.

As noted earlier, many interviewees from diverse perspectives emphasized that a good-faith mediation process would only be possible if all parties agree that they will not pursue their alternatives to negotiation while the negotiations are underway – e.g., Nicholas County will not issue a school construction bond and the state board of education will not seek to take over the county school board. (While interviewees expressed different perceptions about both the purpose and effects of scheduling a vote on a Nicholas County school bond on the decision-making process for rebuilding Nicholas County’s schools, several interviewees perceived it to be

an effort to implement the NCSB’s consolidation plan over the objections of the WVBOE – and a sign that the NCSB would not be negotiating in good faith.)

Most parties noted that an extension of FEMA’s 428 deadline beyond its current December 26 2017 date would be essential, since this mechanism may provide the best opportunity to meet Nicholas County’s needs. Some parties, however, noted that the parties should not assume that the FEMA 428 program is the best option and should be open to exploring and investigating the question about the best approach and funding mechanism to pursue.

Interviewees also commented on how to make sure that any representatives selected by the County School Board and State Board of Education are best suited for participating in productive dialogue and negotiations. While interviewees generally agreed that the selection should ultimately be made by the respective boards, some suggested offering guiding criteria to help each board select representatives with the right characteristics – for example, that representatives be level-headed, respectful, open-minded, deeply informed, etc.

Interviewees expressed concerns about the risks of erroneous or conflicting information about the group’s discussions being shared publicly and some suggested that the parties to the negotiation all agree that no parties will speak directly to the media or individually characterize the discussions with outside parties. Instead, all parties to the negotiation would agree to issue joint statements or would defer to a “public information officer” who would share only what the parties sign off on.

Interviewees generally noted that any agreement would need to have at least the WVBOE and the NCSB as signatories.

Many interviewees from diverse perspectives expressed concern about the timing of the process and emphasized the need to proceed in all due haste, both to meet funding deadlines and also to provide students with new school facilities as quickly as possible. Some suggested coming together in several multi-day meetings to quickly make progress and reach agreement.

Process Recommendations

Based on the findings above, our analysis, our review of comments on the draft findings, and our experience with bringing groups together for collaborative problem solving, we offer the following process recommendations to the Nicholas County School Board, the West Virginia State School Board, the Governor's Office of the State of West Virginia, and the Federal Emergency Management Agency (FEMA).

There is a need, and potentially an opportunity, for the West Virginia State Board of Education and the Nicholas County Board of Education to reach agreement on a mutually acceptable plan for how to rebuild the schools destroyed by the 2016 floods. The State Board and County Board have many shared interests and goals – foremost among them, the educational outcomes for the students of Nicholas County – and interviewees suggested a diverse array of components of potential options to meet these interests. In order to reach a negotiated resolution, however, both parties will need to take seriously the central concerns of the other – particularly, preparing for the long-term economic sustainability of the county's schools and retaining the cultural and economic viability of the City of Richwood.

In addition to determining an approach for rebuilding the schools, the communities and elected officials of Nicholas County will need to find a way to work together to meet the educational and social-emotional needs of the county's children in the long run. The current polarization within Nicholas County over pro- and anti- consolidation views has fractured the community; if not addressed, this discord will likely impede efforts to effectively implement any plan, no matter what decisions are made.

KEY RECOMMENDATIONS

We recommend that the Governor's Office of the State of West Virginia, with support from FEMA and the assistance of a mutually acceptable neutral mediator, convene a mediation process to develop a mutually acceptable approach to rebuilding the county's schools and meeting the facility and educational needs of the county's middle and high school students. Parties participating in the mediation would include the Nicholas County Board of Education – represented by the County School Superintendent and 1-2 representatives from the Nicholas County School Board – and the West Virginia Board of Education – represented by the West Virginia State School Superintendent, and 1-2 representatives from the West Virginia State School Board.

In addition, once the core contours of an approach is agreed to by the State Board and County Board, we think it will be necessary to engage the broader community within Nicholas County in a community-based implementation process. Such a process would include representation from each of the County's impacted schools and communities, to jointly work through the many details implementation of the negotiated plan. This process would require additional design (not detailed here), which could be explored further in partnership with the broader stakeholder group subsequent to or in parallel with the mediation process.

The Scope of the State-County mediation would be to:

- Decide which FEMA funding program to utilize
- Determine the locations; expected enrollment; approximate building footprints; amenities, extracurricular, athletic, and vocational facilities; and overall functions of the facilities.
- Consider and plan for a range of potential future enrollment scenarios, as well as future facility and educational needs countywide.
- Agree on the basic elements of any required components (e.g., cost and criteria analysis)

The mediation process might also achieve the following additional goals:

- Identifying shared principles of success
- Clarifying contested "facts" about options and possible future scenarios and needs
- Improving relationships and communication between the WVBOE and NCBOE

Additional Components

In our professional judgment, certain additional conditions would be necessary or highly recommended.

Make some key commitments

- Commitment from FEMA to extend the deadline for the 428 process for the purposes of seeking an acceptable negotiated agreement between the County and the State on a plan for rebuilding schools.
- Commitment from Nicholas County to hold off on scheduling any bond votes for the period of the mediation process

- Commitment from the West Virginia School Board to hold off on any actions to take over the Nicolas County Board for the period of the mediation process
- Commitment from the Governor’s Office to eschew any interventions during the period of negotiations, on-going support for the mediation process during its term, and commitment to support any agreement reached by the County and State School Boards
- Commitments from all parties to negotiate in good faith, with a willingness to consider options beyond their first choices, and to seek to address the priorities and concerns of the other party.
- All parties privy to the mediation refraining from negotiating through the press, through the Governor’s office, or any other alternative channel to the mediation itself.
- Confirmation (and signed statement) of confidentiality rules to allow private conversations and exchange of draft materials for the purposes of exploration of ideas.

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.

Retain a neutral mediator: We recommend that the State of West Virginia and/or FEMA retain an experienced, neutral mediator to assist with the negotiations. The mediator should be acceptable to and work equally for all parties, and abide by the Ethical Standards of the Association for Conflict Resolution (attached as Appendix C). The role of the mediator could include the following:

- Drafting operating protocols & ground rules to ensure clear and effective communication, gaining agreement from the group on these protocols, and ensuring compliance with the agreed 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 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.

- Document a running synthesis of key ideas and agreements as a shared text of the group’s progress, and prepare a single text draft on the deliberations to date, including areas of agreement and disagreement, and circulate it for review and discussion.
- After each meeting, prepare a general summary of discussions and outcomes, without attribution, to review in draft with the group and make available for wide public distribution.

Enlist support from one or more Technical Advisors: Given the technical nature of some of the questions, 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 would include FEMA technical representatives; independent FEMA consultants (trusted by all participants); and staff from State, County, or local agencies deemed available and acceptable to all parties. The role of the technical advisors would 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 taking a stand on the solution.

Mediation Process Potential Work Plan: We recommend that the mediation process include joint fact-finding, to clarify key outstanding questions, followed by confidential mediation meetings to evaluate options, public engagement to collect additional community input, and final private mediation meetings to finalize the plan. As suggested above, this process would be followed by a community-based advisory process to oversee implementation. This process has the value of inclusiveness, transparency, and deliberation to seek the best possible compromise agreement, but requires a significant investment of time and resources.

Such an approach may proceed as follows:

- *Begin informal talks:* As soon as possible, the Superintendents of the State and Nicholas County Schools should come together and begin to share ideas, identify potential areas of agreement, and key questions.
- *Kick-off formal convening:* Convene negotiation team (2-3 representatives each from the State Board and the County Board) for a 1-3 day meeting to agree on core principles, clarify goals, identify key questions, and agree on experts and/or methodologies for collecting and presenting critical information. This kick-off might include travel together to key locations in the county, such as Glade Creek, the CTE Center in Craigsville, the City of Richwood, and the roads and routes between them. Extensive preparation by the

mediator and parties prior to this session would be essential to reaching clear direction on process in this initial meeting.

- *Provide detailed briefings on key topics:* After credible technical advisors have been identified and after these technical experts develop credible and legitimate information about key questions put forward by the negotiation team, the technical advisors present that information in an interactive session with negotiators. Such a session might be open to the public in order to facilitate greater shared understanding of salient factual information across the county, and/or could involve the dissemination of summaries of all information developed by the technical advisors to the public. 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. Examples of these necessary questions could include the contours and implications of the different FEMA funding programs for rebuilding options, an understanding of the capital costs and on-going operational budget implications of different rebuilding scenarios, and a preliminary analysis of potential sites and costs for rebuilding different-sized schools in and near Richwood and Summersville. There are other questions – such as the educational impacts of consolidated schools, or the likelihood of economic revitalization leading to shifts in enrollment expectations – that are very valuable questions but may not be answerable in the time we have and/or may not have answers that are sufficiently definitive to influence parties' existing views on the issues. For issues where additional information is unlikely to be persuasive, parties may benefit more from agreeing to consider multiple approaches or contingent options that could respond to emergent situations as they may arise in the future. In short, the group should ensure that all data being presented is relevant (it's going to help solve the problem at hand), credible (technically well done), and legitimate (trusted by a range of views and stakeholders).
- *Explore Options:* Bring negotiators back together in private meetings to evaluate options and packages that meet shared goals. This might entail one multi-day meeting or several half-day to one-day meetings with time in-between for reflection and further data exploration.
- *Public Workshops:* Representatives from the WVBOE and NCBOE hold public workshops around Nicholas County to share initial ideas and options and to obtain feedback and input from community members. These sessions should be interactive and open, allowing for (controlled) back and forth exchange between negotiators and members of the public. The workshops might utilize conversations in small and large groups, focused on the issues before the mediation. The sessions would not be intended to be

public hearings or general listening sessions. The mediators could help facilitate these workshops, if helpful.

- *Reach Agreement:* Bring negotiators back together in private meetings to seek final agreement. This might entail one multi-day meeting or several half-day to one-day meetings with time in-between for reflection and confirmation with official Boards.

Depending on the time required for contracting, selecting experts, and collecting data, we project the overall timeframe for the proposed process would be 3-6 months.

Keeping the Community Engaged:

One risk of holding confidential negotiations is the continued and potentially escalating mistrust of parties from some members of the public. Holding community workshops during the fact-finding phase and before finalizing an agreement can help to assure community members that the negotiations are being conducted fairly, deliberatively, and in good faith. The public workshops would also help to ensure that the ideas being considered by the negotiation team are responsive to community concerns and realities and can be publically explained and justified.

To further enhance community engagement in the State-County negotiation process, we recommend posting public materials about the negotiations on the County School Department's website. Examples of these public materials could include the assessment report and process recommendations; ground rules and work plan for the mediated negotiation process; documents created by technical advisors during the fact finding process; ongoing, high-level summaries of progress in the negotiations; options and ideas on which the parties desire input; and the final agreement, should one be reached.

Selecting Representatives from the County and State School Boards: Within their official capacities, the full boards should select and officially authorize representatives to represent their interests, with assistance from the neutral mediator if helpful. Representatives should possess qualities that support thoughtful, inquiring, and open-minded discussion, such as:

- Capacity to represent and articulate the diverse range of interests and concerns of the constituencies they represent and to dig into and understand the substantive issues being discussed;
- Willingness and interest in attending all meetings and participating actively in discussions;

- Willingness and interest in traveling to and attending all community meetings and participating actively in discussions;
- Willingness to commit additional (and possibly significant) time *away* from the negotiating table to review briefing materials, prepare for meetings, and liaise with school board colleagues not participating in negotiations;
- Willingness to engage in respectful and constructive dialogue with other representatives and members of the public;
- Ability to maintain an open mind and a problem-solving mindset, seek evidence-based options and possible solutions, and explore creative resolutions of differences that meet the interests of all parties.

Appendix A: List of Interviewees and Focus Group Participants

Interviewees

AJ Rogers
Bob Baber
Brian Abraham
Chip Perrine
Chris Drennen
Chuck Toussieng
Dan Ritchey
Dave Perry
Deborah Sullivan
Dennis White
Digger O'Dell
Donna Burge-Tetrick
Dr. Lloyd Adkins
Fred Amick
Greg Boso
Greg James
Gus Penix
H.C. Spencer
Heather Hutchens
Jeffrey Jones
Jeromy Rose
Jimmy Gianato
John Estep
Kevin Snyder
Kristin Anderson
Mary Ann Tierney
Phil Berry
Robert Shafer
Scott Raines
Sharon Glasscock
Stacy Raffo
Steve Paine
Stu Mathis
Susan Johnson
Tom Campbell
Valerie Panacio

Focus Group Participants

Alice Hamilton
Amanda Carpenter
Anita Jarrett
Ann Greynolds
Anna O'Dell
Anne Vaughan
Becky Sweeney
Cara Meadows
Chris Hanshaw
Christina Bailey
Christine Boone
Clyde Bailes
David Irvin
David Meadows
Deanna Sweeney
Debbie Boso
Diana Meadows
Ed Shelton
Eric Gadd
Gerry Cox
Heather Greynolds
Heather Tully
Jenny Foreman
Jim Amick
Jim Cox
Jim Fitzwater
Jody LeRose
Junior Samples
Ken Altizer
Kevin B. Hess
Kristen Peck Eakle
Larry Greynolds
Laura Young
Lawrence Tully
Marsha Bailes
Megan Hanshaw
Melissa White
Nina Bragg
P.K. Milam
Rebecca Jarvis
Robert Brown
Rocky Roberts
Rodney LeRose
Ryan Adkins
Teresa Gadd
Tom Fitzwater

Appendix B: Assessment Interview Guide

Overview:

- CBI has been asked to ascertain local stakeholders' perspectives on an acceptable approach for rebuilding schools and meeting educational needs in Nicholas County, and to recommend a process for reaching a broadly acceptable approach.
- CBI is a non-profit organization that provides facilitation and mediation for public issues, with experience in education and school construction issues.
- The intent of the assessment is to identify, in a non-partisan and independent fashion, the range of interests, concerns, and options held by the participants in this effort and to identify if there is any collaborative process that might work to bring everyone together to reach a mutually acceptable plan.
- We will be having confidential discussions with key stakeholders, including elected officials and agency leads at the state, county, and local level, community leaders, and alumni, parents, and residents of the local towns and county. We developed an initial interviewee list in conversation with leaders from federal, state, county, and local levels. We are seeking to capture the range of views, not weighing or evaluating the frequency or popularity of views.
- CBI will prepare a report summarizing findings based on these conversations, as well as options for potentially resolving differences through a collaborative process. In our work, we will not attribute statements to individuals or individual organizations. That said, please let us know if you'd like us to keep something you say entirely confidential.
- Thanks for taking the time to speak with us and for sharing your perspective.
- Any questions for us?

Potential Discussion Questions

Name, Organization, and Position/Role

- Tell us a little bit about your organization/position or affiliation.

Interests and priorities

- How have you been involved in the process relating to rebuilding Nicholas County schools during the past year? What motivates your involvement?
- What do you see as the most important factors and considerations to keep in mind around the rebuilding of Nicholas County schools? *For each of those issues, help us understand better why it is important to you?*

- What do you see as the likely positive and negative effects for you and your community/constituents of the different approaches being discussed? What do you see as the likely effects on others (the impacted towns, the county, the state)?
- If you were to think about a set of criteria to guide decisions about the placement of Nicholas County schools, what would it be, and why?
- The decision-making around the rebuilding of Nicholas County schools would ideally seek to balance a number of factors: community perspectives, quality of education, economic development, cost to the county and its taxpayers. For some communities, placing schools in Richwood for employment, economic development, and/or community pride may be most important; but for others, creating more modern school facilities and saving costs may be more important. If you were “in charge for a day,” how would you go about trying to balance all these different interests?
- What options could you think of for resolving these differing perspectives?

Process Considerations

- Imagine that a set key players were pulled together to seek a broadly acceptable approach for school placement and rebuilding.
 - Who should be involved?
 - What steps or considerations might be needed to build people’s trust that the process is fair, legitimate, and non-partisan?
 - How might we keep the public informed while leaving room for creativity and exploration in the room?
 - What information, facts, or studies would this group need to draw from or seek to get to do their work? Are there sources of information you would recommend?
 - What groundrules or guidance would be needed for this group to be more successful?
 - What do you think a group like this might be able to achieve or reach agreement on?
 - Given what you know today, would your organization participate in such a process: absolutely, maybe, if I knew more, possibly, but have reservations, unlikely, or no.
- Are there any points of view or perspectives you think we have missed in our list of interviewees?
- Any other considerations that we should keep in mind as we’re thinking about these issues? / Anything that we haven’t touched on that you would like to share?

Appendix C: Ethical Standards of the Association for Conflict Resolution

Staff of the Consensus Building Institute adhere to the following ethical standards to ensure the delivery of the highest quality and fairly and impartially conducted professional services.

The Association for Conflict Resolution (ACR) was established in 1972 to promote the peaceful resolution of disputes (formerly known as the Society of Professionals in Dispute Resolution – SPIDR). Members of ACR believe that resolving disputes through negotiation, mediation, arbitration and other neutral interventions can be of great benefit to disputing parties and to society. In 1983, the ACR Board of Directors charged the ACR Ethics Committee with the task of developing ethical standards of professional responsibility. The Committee membership represented all the various sectors and disciplines within ACR. This document, adopted by the Board on June 2, 1986, is the result of that charge.

The purpose of this document is to promote among ACR Members and Associates ethical conduct and a high level of competency, including honesty, integrity, impartiality and the exercise of good judgment in their dispute resolution efforts. It is hoped that this document also will help to **(1)** define the profession of dispute resolution, **(2)** educate the public, and **(3)** inform users of dispute resolution services.

Application of Standards

Adherence to these ethical standards by ACR Members and Associates is basic to professional responsibility. ACR Members and Associates commit themselves to be guided in their professional conduct by these standards. The ACR Board of Directors or its designee is available to advise Members and Associates about the interpretation of these standards. Other neutral practitioners and organizations are welcome to follow these standards.

Scope

It is recognized that ACR Members and Associates resolve disputes in various sectors within the disciplines of dispute resolution and have their own codes of professional conduct. These standards have been developed as general guidelines of practice for neutral disciplines represented in the ACR membership. Ethical considerations relevant to some, but not to all, of these disciplines are not covered by these standards.

General Responsibilities

Neutrals have a duty to the parties, to the professions, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests at the expense of their parties'.

Neutrals must act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias towards individuals and institutions involved in the dispute, be reasonably available as requested by the parties, and be certain that the parties are informed of the process in which they are involved.

Responsibilities to the Parties

1. **Impartiality.** The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party.

2. **Informed Consent.** The neutral has an obligation to assure that all parties understand the nature of the process, the procedures, the particular role of the neutral, and the parties' relationship to the neutral.

3. **Confidentiality.** Maintaining confidentiality is critical to the dispute resolution process. Confidentiality encourages candor, a full exploration of the issues, and a neutral's acceptability. There may be some types of cases, however, in which confidentiality is not protected. In such cases, the neutral must advise the parties, when appropriate in the dispute resolution process, that the confidentiality of the proceedings cannot necessarily be maintained. Except in such instances, the neutral must resist all attempts to cause him or her to reveal any information outside the process. A commitment by the neutral to hold information in confidence within the process also must be honored.

4. **Conflict of Interest.** The neutral must refrain from entering or continuing in any dispute if he or she believes or perceives that participation as a neutral would be a clear conflict of interest and any circumstances that may reasonably raise a question as to the neutral's impartiality. The duty to disclose is a continuing obligation throughout the process.

5. **Promptness.** The neutral shall exert every reasonable effort to expedite the process.

6. **The Settlement and its Consequences.** The dispute resolution process belongs to the parties. The neutral has no vested interest in the terms of a settlement, but must be satisfied

that agreements in which he or she has participated will not impugn the integrity of the process. The neutral has a responsibility to see that the parties consider the terms of a settlement. If the neutral is concerned about the possible consequences of a proposed agreement, and the needs of the parties dictate, the neutral must inform the parties of that concern. In adhering to this standard, the neutral may find it advisable to educate the parties, to refer one or more parties for specialized advice, or to withdraw from the case. In no case, however, shall the neutral violate section 3, Confidentiality, of these standards.

Unrepresented Interests

The neutral must consider circumstances where interests are not represented in the process. The neutral has an obligation, where in his or her judgment the needs of parties dictate, to assure that such interests have been considered by the principal parties.

Use of Multiple Procedures

The use of more than one dispute resolution procedure by the same neutral involves additional responsibilities. Where the use of more than one procedure is initially contemplated, the neutral must take care at the outset to advise the parties of the nature of the procedures and the consequences of revealing information during any one procedure which the neutral may later use for decision making or share with another decision maker. Where the use of more than one procedure is contemplated after the initiation of the dispute resolution process, the neutral must explain the consequences and afford the parties an opportunity to select another neutral for the subsequent procedures. It is also incumbent upon the neutral to advise the parties of the transition from one dispute resolution process to another.

Background and Qualifications

A neutral should accept responsibility only in cases where the neutral has sufficient knowledge regarding the appropriate process and subject matter to be effective. A neutral has a responsibility to maintain and improve his or her professional skills.

Disclosure of Fees

It is the duty of the neutral to explain to the parties at the outset of the process the basis of compensation, fees, and charges, if any.

Support of the Profession

The experienced neutral should participate in the development of new practitioners in the field and engage in efforts to educate the public about the value and use of neutral dispute resolution procedures. The neutral should provide pro bono services, where appropriate.

Responsibilities of Neutrals Working on the Same Case

In the event that more than one neutral is involved in the resolution of a dispute, each has an obligation to inform the others regarding his or her entry in the case. Neutrals working with the same parties should maintain an open and professional relationship with each other.

Advertising and Solicitation

A neutral must be aware that some forms of advertising and solicitations are inappropriate and in some conflict resolution disciplines, such as labor arbitration, are impermissible. All advertising must honestly represent the services to be rendered. No claims of specific results or promises, which imply favor of one side over another for the purpose of obtaining business, should be made. No commissions, rebates, or other similar forms of remuneration should be given or received by a neutral for the referral of clients.