

ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS TO WHOM BENEFIT IS PROVIDED	FEDERAL LAW	MAINE (MICA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	<i>Tribes and tribal citizens.</i>	<p>Tribes may choose to administer Bureau of Indian Education (BIE) funded primary and secondary schools through contracts provided under the authority of the Indian Self-Determination and Education Assistance Act.<sup>1</sup> Schools funded in this manner are referred to as “contract schools.”<sup>2</sup></p> <p>Tribes may also elect to utilize grants available under the Tribally Controlled Schools Act, which was enacted to provide tribes with greater autonomy in managing their schools.<sup>3</sup> Today, most schools under tribal control are “grant schools” rather than “contract schools.”<sup>4</sup></p> <p>Tribes also have the ability to operate colleges funded through the Tribally Controlled College or University Assistance Act of 1998.<sup>5</sup></p>	<p>The impact of the <i>Act to Implement the Maine Indian Claims Settlement</i> and the federal <i>Maine Indian Claims Settlement Act</i> on tribal administration of educational services is not clear.<sup>6</sup></p> <p>Maine has the following BIE-funded schools:</p> <ul style="list-style-type: none"> <li>• Beatrice Rafferty School – Perry, ME (K-8 grant school)</li> <li>• Indian Island School – Indian Island, ME (PK-8 grant school)</li> <li>• Indian Township School – Princeton, ME (K-8 grant school)</li> </ul>	

<sup>1</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][i], at 1401 (Neil Jessup Newton ed., 2012) (citing former 25 U.S.C. §450 *et seq.*, currently codified at 25 U.S.C. §5301 *et seq.*).

<sup>2</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][i], at 1401 (Neil Jessup Newton ed., 2012).

<sup>3</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][ii], at 1402 (Neil Jessup Newton ed., 2012) (citing 25 U.S.C. §2501).

<sup>4</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][ii], at 1402 (Neil Jessup Newton ed., 2012).

<sup>5</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][b][i], at 1405-06 (Neil Jessup Newton ed., 2012) (citing Pub. L. No. 105-244, §901, 112 Stat. 1827 (1998), codified at 25 U.S.C. §1801 *et seq.*).

<sup>6</sup> On one hand, *Maine Indian Claims Settlement Act of 1980* specifically provides for Maine’s tribes to receive federal benefits and funding for federal services, at least where not abrogated in the Act itself. See 25 U.S.C. §1725(b)(3) (“Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.”) and 25 U.S.C. §1725(i) (“As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians.). On the other hand, 25 U.S.C. §1735(b) provides<sup>65</sup>, “The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.”

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	<i>Non-tribal citizens</i>	Non-Indian children may attend BIE funded primary and secondary schools with the consent of the school board; however, federal funding is not available for such children. <sup>7</sup> Tribally operated colleges are not required to admit non-Indian students, though many do so. <sup>8</sup>	<i>The Act to Implement the Maine Indian Claims Settlement</i> or the federal <i>Maine Indian Claims Settlement Act of 1980</i> does not appear to affect federal language regarding the delivery of educational services to non-tribal citizens, though see footnote 6.	
State	<i>Tribes and tribal citizens</i>	States (and local entities) may not discriminate against Indian students in administration of state educational programs. <sup>9</sup>	The Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are eligible for state benefit programs in the same manner as other state residents. <sup>10</sup> The tribes are also eligible for discretionary state grants or loans. <sup>11</sup>  Residents of the Passamaquoddy and Penobscot territories and the Houlton Band Trust Land are eligible for state benefit programs. <sup>12</sup>	
Federal Government	<i>Tribes and tribal citizens</i>	The federal government has a unique responsibility for the education of Indians, which is described in the Native American	The impact of the <i>Act to Implement the Maine Indian Claims Settlement</i> and the federal <i>Maine Indian Claims</i>	

<sup>7</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][iii], at 1402-03, footnote 56 (Neil Jessup Newton ed., 2012).

<sup>8</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][b][i], at 1406 (Neil Jessup Newton ed., 2012).

<sup>9</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[1][b], at 1400 (Neil Jessup Newton ed., 2012).

<sup>10</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(1) (“The Passamaquoddy Tribe, the Penobscot Nation and Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State.”). See 30 M.R.S.A. §6211(1)-(2) (describing funding calculations).

<sup>11</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(3).

<sup>12</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(4). (“Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.”).

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		<p>Education Improvement Act of 2001.<sup>13</sup> However, the extent of this responsibility is unclear, though it is well established that the federal government is not required to pay for the entire cost of the education of Indians when a separate entity could be required to provide educational services.<sup>14</sup></p> <p><u>BIA/BIE Programs</u></p> <ul style="list-style-type: none"> <li>• The BIE funds certain elementary and secondary schools as well as higher education. Regardless of how schools are administered (directly by the BIE or by tribes via contract or grant), funding for schools is provided through the Indian Schools Equalization Program.<sup>15</sup> Although funding is calculated using a formula based on eligible Indian enrollment and other factors, funding is dependent upon appropriations.<sup>16</sup></li> <li>• The BIE currently operates two colleges: Haskell Indians Nations University and Southwestern Indian Polytechnic Institute.<sup>17</sup> The federal government also provides loans and grants for Indian students to attend colleges not administered by the BIE or tribes.<sup>18</sup></li> </ul>	<p><i>Settlement Act</i> on the federal government’s unique responsibility for the education of Indians is unclear (see footnote 6).</p>	
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<sup>13</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[1][b], at 1399 (Neil Jessup Newton ed., 2012) (citing 15 U.S.C. §2000).

<sup>14</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[a][b], at 1399-1400 (Neil Jessup Newton ed., 2012) (citing *Meyers ex. rel. Meyers v. Board of Educ.*, 905 F. Supp. 1544, 1568 (D. Utah 1995)).

<sup>15</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][iii], at 1402-03 (Neil Jessup Newton ed., 2012) (citing 15 U.S.C. §2000 *et seq.*).

<sup>16</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][a][iii], at 1402-03 (Neil Jessup Newton ed., 2012).

<sup>17</sup> See Bureau of Indian Education, *Colleges and Universities*, at <https://www.bie.edu/Schools/Colleges/index.htm> (last visited Oct. 10, 2019).

<sup>18</sup> *Cohen’s Handbook of Federal Indian Law*, §22.03[2][b][i], at 1406-1407 (Neil Jessup Newton ed., 2012).

		<ul style="list-style-type: none"> <li>Johnson-O'Malley Grants allow the Secretary of the Interior to fund health, social, and educational services for Indians, but are primarily used for education.<sup>19</sup> The funds are intended to supplement existing resources to provide service to Indian children age 3 through grade 12, with priority funding for reservation-based schools.<sup>20</sup></li> </ul> <p><u>DOE Programs</u></p> <ul style="list-style-type: none"> <li>The federal impact program funds services provided by local educational agencies to children whose parents are federal employees or who reside on federal or Indian land.<sup>21</sup> These funds are intended to supplant local contributions that would otherwise be available for the child.<sup>22</sup> An area of dispute involves the manner in which states consider impact aid in calculating their school funding formulas.<sup>23</sup></li> <li>The Indian Education Act<sup>24</sup> provides funding (subject to appropriations) for a variety of purposes related to the education of Indians.<sup>25</sup></li> </ul>		
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<sup>19</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[2][c], at 1407 (Neil Jessup Newton ed., 2012) (citing 25 U.S.C. §§452-457).

<sup>20</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[2][c], at 1408 (Neil Jessup Newton ed., 2012).

<sup>21</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1409 (Neil Jessup Newton ed., 2012) (citing 20 U.S.C. §7703(a)(1)).

<sup>22</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1409 (Neil Jessup Newton ed., 2012).

<sup>23</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1410 (Neil Jessup Newton ed., 2012) (citing *Gwinn Area Cmty. Schs. v. Michigan*, 741 F.2d 840 (6th Cir. 1984) and *Zuni Sch. Dist. v. State*, CV-98-14-II (N.M. Dist. Ct., 11th Dist.) (Oct. 14, 1999)).

<sup>24</sup> 20 U.S.C. §§7401-7402.

<sup>25</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1410 (Neil Jessup Newton ed., 2012).

		<ul style="list-style-type: none"> <li>Indian students are also eligible for funding available to all children through programs such as the Title I<sup>26</sup> (for children in local income areas) and the Individuals with Disabilities Education Act<sup>27</sup> (for children with disabilities).<sup>28</sup></li> </ul>		
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<sup>26</sup> 20 U.S.C. §6301

<sup>27</sup> 20 U.S.C. §1400 *et seq.*

<sup>28</sup> *Cohen's Handbook of Federal Indian Law*, §22.03[3][b][iii], at 1413 (Neil Jessup Newton ed., 2012),