

**FREQUENTLY ASKED QUESTIONS**  
**S. 1723, TRUTH AND HEALING COMMISSION ON**  
**INDIAN BOARDING SCHOOL POLICIES ACT**

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**SUMMARY**

**Why is S. 1723 needed?**

According to the Department of the Interior (DOI), as of May 2022, the federal government supported or operated at least 408<sup>1</sup> Indian Boarding Schools between 1819 and 1969, across 37 states and territories.<sup>2</sup> These schools used systematic and often violent methods—including physical, psychological, and sexual abuse—in an attempt to assimilate Native children as young as three years old, and to eradicate Native languages, cultures, and lifeways to decrease the likelihood of war with Native nations, and with the express purpose of future land dispossession.<sup>3</sup>

The traumatic effects of Indian Boarding School policies on Native communities are far-reaching, still felt by survivors, their descendants, and their communities to the present day. And while some non-profit organizations, religious institutions, and the DOI have examined federal Indian Boarding School policies, and other religious institutions are beginning to acknowledge their role in carrying out these policies and offering actions to address those harms,<sup>4</sup> the federal government has yet to take comprehensive, concerted action commensurate with the harms inflicted by its own policies. The Commission established by S. 1723 is needed to assemble the expertise and provide a national forum for a comprehensive, non-partisan examination of these complex policies, and to make findings and offer recommendations for decisionmakers to act and address impacts of the federal Indian Boarding School legacy.

**What does S. 1723 do?**

S. 1723 establishes a Truth and Healing Commission on Indian Boarding School policies and other necessary advisory bodies to formally investigate, document, and report on the histories of Indian Boarding Schools and their systematic and long-term effects on Native American peoples. The Commission would develop recommendations for federal action and promote healing for survivors, descendants, and communities affected by federal Indian Boarding Schools.

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<sup>1</sup> Compare The National Native American Boarding School Coalition, *Indian Boarding Schools in the United States* (2023), <https://boardingschoolhealing.org/wp-content/uploads/2023/08/National-Native-American-Boarding-School-Healing-Coalition-List-of-Indian-boarding-schools-in-US-August-2023.pdf> (identifying a total of 523 Indian Boarding Schools operating between 1801 and the present).

<sup>2</sup>U.S. DEP'T OF THE INTERIOR, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 83 (2022).

<sup>3</sup> *Id.* at 37, 38.

<sup>4</sup> See e.g. United States Conference of Catholic Bishops, *Keeping Christ's Sacred Promise: A Pastoral Framework for Indigenous Ministry* (2024), [www.usccb.org/resources/Indigenous%20Pastoral%20Framework%20-June%202024-Final%20Text.pdf](http://www.usccb.org/resources/Indigenous%20Pastoral%20Framework%20-June%202024-Final%20Text.pdf).

### **What is the legislative history of S. 1723?**

S. 1723 builds on an extensive congressional record and robust bipartisan work. Starting in the 116th Congress, multiple hearings, listening sessions, meetings and research by the relevant Senate and House committees, State and local, Tribal and international forums, and federal agency initiatives, as well as over one hundred written comments for the record from Indian Tribes, Native communities and organizations, individuals, and religious institutions, helped shape the introduced legislation and inform amendments to S. 1723. Such amendments include a comprehensive amendment in the nature of a substitute offered by the Committee Chairman and Vice Chairman that was adopted, and additional amendments offered by Committee members that were also adopted at a business meeting. S.1723, as amended, passed unanimously by the Committee on June 7, 2023, and is now on the Senate calendar for action by the full Senate.

## **COMMISSION**

### **How is the Commission organized?**

S. 1723 creates a five-member Truth and Healing Commission and three advisory bodies: a 15-member Survivors Truth and Healing Subcommittee, a 19-member Native American Truth and Healing Advisory Committee, and a 17-member Federal Truth and Healing Advisory Committee. Certain members of the Commission and Survivors Subcommittee are cross-appointed to leadership positions on the different advisory bodies. *See* Figure 1 below.

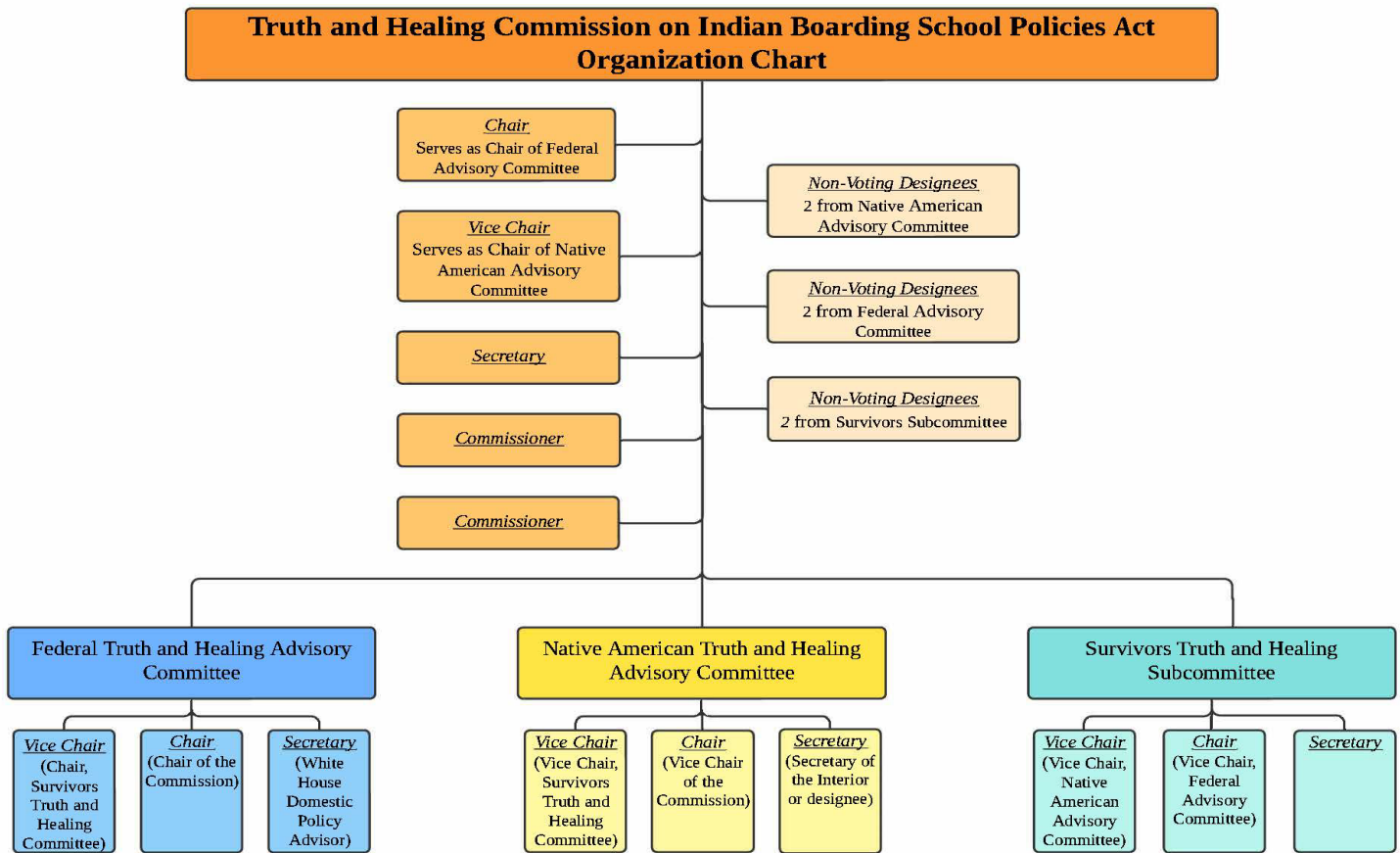


Figure 1 (Illustrating the organization of the Commission and its advisory bodies)

**Who can nominate individuals to sit on the Commission and its advisory bodies?**

Candidates for all positions on the Commission, the Native American Truth and Healing Advisory Committee, and the Native American Survivors Truth and Healing Subcommittee are nominated by Native communities.

**What is the timeline and process for nominations to the Commission and its advisory bodies?**

Nominations for individuals to serve as Commissioners or as members of the Survivors Truth and Healing Subcommittee and the Native American Truth and Healing Advisory Committee must be submitted to the Secretary of the Interior within 90 days of enactment of the legislation. The Secretary then has seven days to transmit a compiled list of nominees to Congress.

Commissioners must be appointed by the House and Senate within 180 days of enactment; members of the Native American Survivors Subcommittee and the Native American Truth and Healing Advisory Committee are determined by the Commission from the list compiled by the Secretary at its initial meeting. See Figure 2 below.

## Truth and Healing Commission on Indian Boarding School Policies Act - Timeline

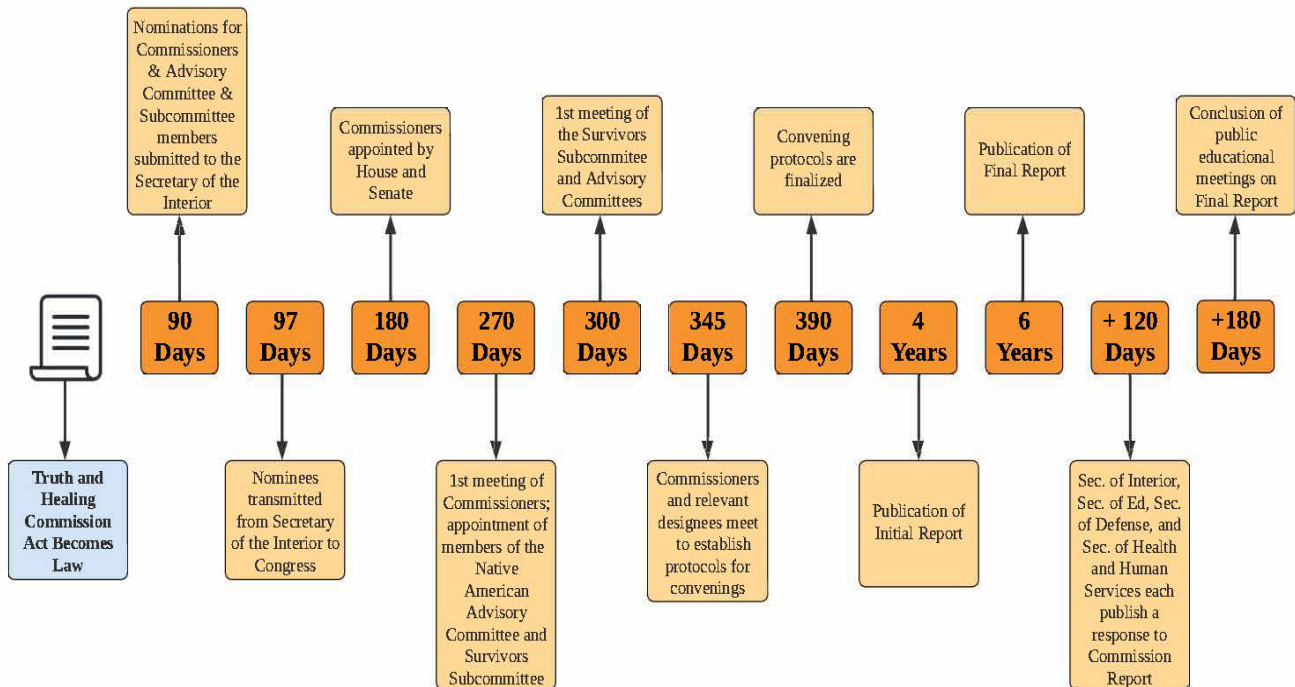


Figure 2 (Illustrating key deadlines for the Commission and its advisory bodies)

### What experience must the Commissioners have? How are they appointed?

Each Commissioner is required to have extensive experience and expertise in one of the following enumerated areas: (1) complex research; (2) Indigenous human rights; (3) Tribal courts, restorative justice, and federal agencies; (4) trauma informed care; and (5) cultural knowledge.

Members of the Commission are jointly appointed by the Majority and Minority leaders of the Senate, in consultation with the Chair and Vice Chair of the Committee on Indian Affairs, the Speaker and Minority Leader of the House of Representatives, and the Chair and Ranking member of the House Committee on Natural Resources.

### What are the duties and powers of the Commission? The Commission is authorized to—

- Investigate the effects of Indian Boarding Schools on Native American communities;
- Within 4 years, make an initial report; and within 6 years, make a final report to Congress;
- Hold safe and culturally appropriate public or private convenings to receive testimony;
- Ensure trauma-informed care services are provided during and following convenings;
- Meaningfully consult and engage with Indian Country and federal partners;

- Engage a wide range of experts, organizations, and agencies to conduct or request interdisciplinary research and analysis;
- Issue subpoenas, subject to certain limitations;
- Solicit funds and accept gifts or donations;
- Incorporate and share information as appropriate;
- Promote awareness and education about Indian Boarding School Policies; and
- Locate, document, identify, coordinate preservation, and share, as appropriate, records related to the burial of students at Indian Boarding Schools.

**What experience must members of the Commission’s advisory bodies have? How are they appointed?**

Other than being nominated by Native communities to represent certain regions or organizations, there are no specific areas of expertise or other formal prerequisites to sit on either the Survivors Truth and Healing Advisory Committee or the Native American Truth and Healing Advisory Committee. Each Subcommittee and Advisory Committee nomination is considered and determined by the Commission.

Members of the Federal Truth and Healing Advisory Committee represent leadership from relevant named federal departments and agencies.

*SURVIVORS TRUTH AND HEALING SUBCOMMITTEE*

**What is the primary purpose of the Survivors Truth and Healing Subcommittee? What are its duties?**

The Survivors Truth and Healing Subcommittee’s primary purpose is to advise the Commission on convenings related to its work to investigate and report on federal Indian Boarding School Policies.

The 15-member Subcommittee will represent each BIA region and Hawai‘i; Indian Boarding School survivors; descendants of Indian Boarding School attendees; recent graduates of contemporary Indian Boarding Schools; and recent Indian Boarding School educators.

The Subcommittee’s duties are to—

- Advise the Commission on criteria and protocols for convenings;
- Review the Commission’s findings and recommendations;
- Assist the Commission and Advisory Committees in coordinating events;
- Provide leadership on the Native American and Federal Advisory Committees;
- Provide other advice the Commissioners may require; and
- Consult or engage, as appropriate, with relevant people and communities.

## *NATIVE AMERICAN TRUTH AND HEALING ADVISORY COMMITTEE*

### **What is the primary purpose of the Native American Truth and Healing Advisory Committee? What are its duties?**

The Native American Truth and Healing Advisory Committee's primary purpose is to serve as an advisory body to the Commission.

The 19-member Committee will represent each BIA region and Hawai'i; certain Tribal organizations; and individuals with experience in traditional healing, health care, mental health, or working with Indian Boarding School survivors.

The Native American Advisory Committee's duties are to—

- Advise the Commission;
- Assist the Commission in organizing and carrying out meetings to receive testimony;
- Assist the Commission in determining necessary documentation from federal agencies and religious institutions;
- Assist the Commission on its initial and final reports to Congress;
- Coordinate with the Federal Advisory Committee and the Survivors Subcommittee; and
- Consult or engage, as appropriate, with relevant people and communities.

## *FEDERAL TRUTH AND HEALING ADVISORY COMMITTEE*

### **What is the primary purpose of the Federal Truth and Healing Advisory Committee? What are its duties?**

The Federal Truth and Healing Advisory Committee's primary purpose is to ensure representation of relevant federal agencies and coordination among them to assist in fulfilling the Commission's duties.

The 17-member Committee, established within the Department of the Interior, will have representatives seated from agencies and departments with relevant connections to Indian Boarding Schools, including the Department of the Interior, the Department of Health and Human Services, the Department of Education, the Advisory Council on Historic Preservation, the Library of Congress, and the Archivist of the United States.

The Federal Advisory Committee's duties are to—

- Ensure effective and timely coordination between federal agencies to further the Commission's goals;
- Assist in coordinating events;
- Assist in collecting, organizing, and preserving information;
- Ensure timely submission of records requested by, or to, the Commission; and
- Consult or engage, as appropriate, with relevant people and communities.

## **How will the Commission and its advisory bodies work together?**

The Commission and its advisory bodies are structured to facilitate effective and efficient communication and coordination. The Commission is directed to coordinate with its advisory bodies to obtain records, establish culturally appropriate event protocols, carry out its duties related to the discovery of burials, and finalize its recommendations to Congress. Likewise, the advisory bodies have responsibilities to assist and coordinate across their respective duties.

The Chair and the Vice Chair of the Commission also serve as Chairs of the Federal Truth and Healing Advisory Committee and the Native American Truth and Healing Advisory Committee. The Chair and the Vice Chair of the Survivors Subcommittee also serve as Vice Chairs for the Native American Truth and Healing Advisory Committee and the Federal Truth and Healing Advisory Committee. *See Figure 1.*

All three advisory bodies are directed to appoint two non-voting designees to attend business meetings of the Commission (*See Figure 1*). The Survivors Truth and Healing Subcommittee and the Native American Truth and Healing Advisory Committee are also directed to appoint three designees each to draft rules and protocols for convenings where testimony is received, subject to the Commission's final approval.

## **How much will the Commission cost to operate? How was the funding level determined?**

The Commission is authorized at \$15 million per fiscal year to carry out its work over a six-year period. The Commission is permitted to supplement this funding through receipt of gifts, services, including voluntary services, fundraising, and donations.

This funding framework was developed through careful consideration of the costs associated with past and contemporary examples of similar commissions (*e.g.*, the Canadian Truth and Reconciliation Commission), the DOI's Federal Indian Boarding School Initiative, and the current truth and healing initiatives in California, among others. Further considerations include: the broad scope of the Commission's anticipated duties, including public and private meetings with potentially tens of thousands of individuals from all 50 states;<sup>5</sup> directing research activities involving over one hundred million pages of documents;<sup>6</sup> providing trauma informed care to participants; and ensuring survivor participation through financial support for travel. To balance these anticipated costs, the Committee reduced the amount of compensation for members of the Commission and its advisory bodies, and limited compensation to 14 days per month and reimbursement to travel related expenses.

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<sup>5</sup> *Legislative Hearing on H.R. 5444, Truth and Healing Commission on Indian Boarding Schools Policies Act Before the Subcomm. on Indigenous Peoples of the H. Comm. on Nat. Res., supra note 22.* The Canadian Truth and Reconciliation Commission received over 1,000 hours of testimony from over 6,000 individuals to address 139 Boarding Schools. Given the 521 known Indian Boarding Schools in the United States, the Commission is expected to receive approximately four times the amount of testimony.

<sup>6</sup> U.S. DEP'T OF THE INTERIOR, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT (2022). DOI's report cites a total of 98.4 million pages at the American Indian Records Repository alone, not accounting for the additional eight million pages believed to be within the current and former Indian Boarding Schools' possession, custody, or control.

## SUBPOENA AUTHORITY

### Why does the Commission need subpoena authority?

Obtaining information is core to the Commission's duties. Subpoena authority allows the Commission to obtain necessary records and provide Congress comprehensive and accurate report of the intertwined federal and non-federal actions implementing federal Indian Boarding School policies and practices. The Commission's ability to obtain records also ensures it can complete its work within the six-year time-frame.<sup>7</sup>

Extensive feedback from Tribal stakeholders, religious institutions, and the Department of the Interior indicated that the Commission must have subpoena authority to make complete and accurate recommendations to Congress about possible future federal actions. The Committee learned that as many as half of all Indian Boarding Schools may have received support or involvement from religious or other non-federal institutions; in some cases, these institutions desire to share their records, but are unable to do so absent a subpoena.<sup>8</sup>

### Does the Commission have any limitations on its use of subpoena authority?

Yes. The Commission will have to meet higher standards than any other federal commission with such authority.<sup>9</sup>

- The Commission's subpoena authority is limited to documents and records. **It does not cover individuals;**<sup>10</sup>
- Issuing a subpoena **requires unanimous consent** of the 5-member Commission;
- The **Commission must inform the U.S. Attorney General** of its intent to issue a subpoena;
- The **Attorney General has broad authority to prevent issuance** of the subpoena upon a showing of any procedural or substantive defect;
- The **Attorney General must inform Congress** as to why a subpoena was denied; and
- The **Federal Rules of Civil Procedure apply** to the subpoena process and enforcement.

### How does the bill protect due process rights in exercising subpoena authority?

The House of Representatives and the Senate thoroughly considered and debated the nature and extent of the Commission's subpoena authority. S. 1723 reflects bipartisan compromise for a

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<sup>7</sup> Canada's National Centre for Truth and Reconciliation continues to obtain records to be included in their digital archives, ten years after its Commission concluded its report. For example, the Canadian Truth and Reconciliation Commission's final report identified approximately 6,000 child-deaths at Canadian Boarding Schools. Based on subsequently obtained information, in 2021, 215 children were discovered in a mass grave at the largest Canadian Boarding School. The current number of deceased children is thought to be between 10,000 and 25,000. *Oversight Hearing on "Volume 1 of the Department of the Interior's Federal Indian Boarding School Initiative Investigative Report" and Legislative Hearing on S. 2907 Before the S. Comm. on Indian Affairs*, 117th Cong. (2022) (statement of Sandra White Hawk, Nat'l Native Boarding School Healing Coalition).

<sup>8</sup> *Oversight Hearing on "Volume 1 of the Department of the Interior's Federal Indian Boarding School Initiative Investigative Report" and Legislative Hearing on S. 2907 Before the S. Comm. on Indian Affairs*, 117th Cong. (2022) (statement of Deb Haaland, Sec'y of the Interior).

<sup>9</sup> CONG. RSCH. SERV., INFORMATION ACCESS FOR CONGRESSIONAL ADVISORY COMMISSIONS (R47173) (Jul. 7, 2022).

<sup>10</sup> *Id.*



limited subpoena authority with the following requirements: (1) all five commissioners must vote in favor to issue a subpoena (unanimous vote); (2) a subpoena may only issue to compel written or recorded evidence, not to compel oral testimony from individuals; and (3) the Commission must give a 10-day confidential notice of its intent to issue a subpoena to the Attorney General of the United States, who, upon a showing of procedural or substantive defect, may prohibit issuance of the subpoena. If the Attorney General prohibits the Commission from issuing the subpoena, the Attorney General must submit a report to Congress outlining its reasons. Additionally, S. 1723 includes an enforcement requirement that the Commission seek a court order directing compliance, and applies the Federal Rules of Civil Procedure to the subpoena process. These provisions, approved unanimously by the Committee, provide important safeguards to protect constitutional due process. These provisions, approved unanimously by the Committee, provide important safeguards to protect constitutional due process.

### **NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)**

#### **Does NAGPRA apply? How?**

Yes. NAGPRA applies to eligible cultural items or human remains discovered in the course of the Commission's work, including to collections and excavations on any federal lands where former Indian Boarding Schools were located.

#### **What is the Commission's role in NAGPRA and repatriation?**

The Commission is directed to locate, document, identify, and coordinate the preservation of records related to the interment of Indian Boarding School students as part of its research. The Commission is also directed to, as appropriate, coordinate with relevant agencies and Native communities to identify and locate marked and unmarked burials, and share those locations with affected communities. The bill also clarifies that sensitive information obtained by the Commission and its advisory bodies is protected from public disclosure.

### **DEPARTMENT OF THE INTERIOR FEDERAL INDIAN BOARDING SCHOOL INITIATIVE**

#### **How does the Commission differ from the DOI's Truth and Healing Initiative?**

The Commission and its advisory bodies would be an independent, nonpartisan forum to fully examine the full scope of and effect of federal implementation of Indian Boarding School policies. The Commission differs from DOI's Initiative in key ways, including—

- The Commission will operate for a set, 6-year time period (the DOI Initiative has no official end-date);
- The Commission is subject to Congressional and Department of Justice Oversight (the DOI Initiative is self-monitoring);
- The Commission must submit annual reports to Congress providing information on its progress, barriers, and financial activities (the DOI Initiative has no similar requirement);

- Members of the Commission, the Survivors Truth and Healing Subcommittee, and the Native American Truth and Healing Advisory Committee are nominated from Native communities (the DOI Initiative is directed, implemented, and overseen by DOI leadership and staff);
- The Commission may request federal detailees, obtain other voluntary services from universities and institutions and organizations, and receive administrative support from the General Services Administration to carry out its duties (the DOI Initiative does not have similar authorities available to it to do its work);
- The Commission is directed to review the implementation and impact of Indian Boarding School policies across the federal government (the DOI Initiative is limited to the stated goals of identifying Indian boarding School facilities and sites, burial locations, and Tribal affiliations of interred children);
- The Commission is able to review a broad range of documents (the DOI Initiative is limited to records under its control);
- The Commission will incorporate survivor, descendant, and public testimony into its recommendations (it is unclear how testimony collected by the DOI will be used);
- The Commission is able to protect sensitive information from public disclosure (the DOI Initiative is unable to do this);
- The Commission is directed to make recommendations to Congress regarding possible related future federal actions (the DOI Initiative recommendations for future action are limited to the DOI); and
- The Commission may obtain voluntary services, gifts, and fundraise to defray the cost of its activities (the DOI Initiative is limited to federal appropriations from Congress).