

# WHO HAS THE POWER: UNDERSTANDING FEDERAL AUTHORITY OVER EDUCATION

## Context

The Trump Administration is attempting to claim powers, through executive orders, that it does not have. This overreach has hit the Department of Education (ED) directly through:

- The cancellation of vital contracts at the Institute of Education Science;
- A Dear Colleague letter that so inaccurately interpreted the impact of the Students for Fair Admissions decisions that ED had to issue a clarification days later; and
- Multiple executive orders on Diversity, Equity, and Inclusion initiatives and Title IX that will most likely be resolved in the courts.

This is only a partial list, and more attacks on ED are likely to come. For many weeks, the Trump Administration has been threatening to release an Executive Order calling on the Secretary of Education “to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education.” In an email to all staff, Secretary McMahon described her work as the “final mission” for the Department.

If the administration takes steps to close the department, we expect it to face legal challenges and for the courts to uphold the Constitution and the separation of powers. It will be important, all the same, to fight to protect the important services and programs that ED administers and prevent disruptions to them, which will harm students, families, and educators. It will be necessary, too, to make sure that the public understands what authority the Department of Education has and who has what authority over the Department itself.

In order to help the field of education advocacy and policymakers in this fight, Education Reform Now has published this document enumerating the powers that belong to the Secretary of Education, the President, and Congress, with respect to the agency and its major programs, such as Title I, the Individuals with Disabilities Education Act (IDEA), and Federal Student Aid (FSA).

## ➤ Key Points

1. While the Secretary of Education has administrative flexibility over grants, waivers, and regulations, most major funding and structural changes, such as moving large programs to another agency, require congressional approval.<sup>1</sup>
2. The President can issue executive orders to guide policy but cannot override congressional funding decisions.
3. Congress controls funding, program transfers, and structural changes for nearly all major education programs.
4. All of the largest Department of Education programs require congressional action to be changed or moved.

## ➤ What the Secretary and Department of Education Can Do Without Congress

The Secretary of Education has clearly defined powers that include the ability to:

- Issue regulations and guidance (e.g., rules on student loans, Title IX enforcement, and special education compliance).
- Grant waivers for ESSA, IDEA, and HEA requirements. (however, the power to grant waivers for statutory or regulatory requirements is strictly limited in scope).
- Manage discretionary grants (e.g., setting priorities for competitive funding).
- Modify federal student loan repayment plans under HEA.
- Conduct investigations of civil rights violations with the power to deny access to Federal Assistance Programs (e.g., Title I, Title IV) as the ultimate penalty. (n.b., this penalty would require a lengthy judicial review process and has very rarely or perhaps never been used.)
- Delegate functions within the Department which are not specified by statute.
- Alter, consolidate, or discontinue certain non-major programs within the Department following notice to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.
- Establish, alter, discontinue, or maintain regional or other field offices.

## ➤ What the Secretary and Department of Education CANNOT Do Without Congress

- Unilaterally change funding levels for large programs, (e.g., IDEA, Title I, Pell Grants, or Perkins CTE).
- Move programs to another federal department (e.g., shifting Pell Grants from Education to the Treasury).
- Alter statutory requirements for major education laws (e.g., IDEA, ESSA, HEA).
- Transform or abolish laws and regulations governing student loan programs.
- Dictate curriculum to states, school districts, or institutions of higher education.

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1. The elimination of the Chevron doctrine likely could give them even less flexibility.

## ➤ What the President Can Do via Executive Order

Article II of the Constitution gives the President the authority to order the federal government to take specific actions to ensure “the laws be faithfully executed.” The President can use executive orders to “take any steps that are within the scope of the constitutional authority of the executive branch, and do not violate any federal law.” With respect to the Department of Education, executive orders can:

- Set policy priorities for the Department of Education (e.g., emphasizing school choice, expanding or restricting civil rights protections).
- Direct federal agencies to prioritize certain education initiatives within existing budgets.
- Encourage interagency collaboration (e.g., requiring Education and Labor to work on workforce training).
- Provide direction on the implementation of laws and regulations.

## ➤ What the President CANNOT Do via Executive Order

- Reallocate funding for programs in statute (e.g., IDEA, Title I, Pell Grants).
- Transfer education programs to other agencies if statute places them under the Department of Education (e.g., Office for Civil Rights, Title I, IDEA, FSA).
- Rewrite statutory requirements, “override laws, direct agencies to act unlawfully, or dictate how state and local governments must act.”

## ➤ Who Has the Authority?

Action	Secretary of Education	President (Executive Order)	Congress Required?
Adjust funding for IDEA, Title I, Pell Grants	✗	✗	✓
Transfer a program to another department	✗	✗	✓
Change student loan forgiveness rules	✓ <i>(Limited)</i>	✓ <i>(Policy Direction)</i>	✓ <i>(Broad Forgiveness)</i>
Issue guidance on civil rights enforcement (Title IX, discrimination)	✓	✓	✗
Waive certain federal education requirements	✓ <i>(ESSA, HEA, limited IDEA Waivers)</i>	✗	✓ <i>(Permanent Changes)</i>
Expand school choice programs using federal funds	✓ <i>(Discretionary Grants)</i>	✓ <i>(Policy Support)</i>	✓ <i>(New Funding Programs)</i>
Alter Title I funding formulas	✗	✗	✓

## ➤ Which Education Programs Require Congressional Action to Change or Move?

Program	Budget (FY 2024)	Purpose	Who Benefits?	Requires Congress to Change/Move?	Can Be Changed via Reconciliation?
<b>Federal Student Loans</b>	\$97.2B	Provides loans for postsecondary ed	College students & parents	✓ <i>(HEA governs loan terms)</i>	✓ <i>(Loan repayment terms, forgiveness, and interest rates can be changed)</i>
<b>Pell Grants</b>	\$29.2B	Financial aid for college students	Low-income college students	✓ <i>(HEA sets grant amounts &amp; eligibility)</i>	✓ <i>(Pell Grant funding levels and eligibility can be modified)</i>
<b>Title I (Low-Income Schools)</b>	\$18.4B	Funds high-poverty schools	K-12 public schools	✓ <i>(Funding formulas set by ESSA)</i>	✗ <i>(Discretionary funding requires appropriations)</i>
<b>IDEA (Special Ed.)</b>	\$15.5B	Supports students with disabilities	K-12 students with IEPs	✓ <i>(IDEA governs special ed funding)</i>	✗ <i>(IDEA funding is mandatory but formula changes require Congress)</i>
<b>Title II (Teacher Training)</b>	\$2.2B	Teacher professional development	K-12 teachers	✓ <i>(Funding set by ESSA)</i>	✗ <i>(Discretionary funding requires appropriations)</i>
<b>Perkins CTE (Career &amp; Technical Ed.)</b>	\$1.5B	Workforce training for students	High school & community college students	✓ <i>(Funding governed by Perkins Act)</i>	✓ <i>(Some funding formulas can be adjusted, but full changes require Congress)</i>
<b>Title IV, Part A (Student Support &amp; Enrichment)</b>	\$1.4B	School safety, STEM, mental health	K-12 public schools	✓ <i>(Funding formulas set by ESSA)</i>	✗ <i>(Discretionary funding requires appropriations)</i>
<b>Federal Work-Study</b>	\$1.2B	Part-time jobs for students	College students	✓ <i>(HEA governs funding &amp; eligibility)</i>	✓ <i>(Financial aid program modifications can be made)</i>
<b>School Safety &amp; Mental Health Grants</b>	\$1B	Mental health & violence prevention	K-12 schools	✓ <i>(Congress sets funding)</i>	✗ <i>(Discretionary funding requires appropriations)</i>
<b>Title III (English Language Learners)</b>	\$890M	ELL support & bilingual programs	K-12 public schools	✓ <i>(Funding formulas set by ESSA)</i>	✗ <i>(Discretionary funding requires appropriations)</i>