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Federal Authority Over Education Laws and Funding—A Summary of the Executive Branch and Legislative Branch

Following the Inauguration on January 20, 2025, the President has signed several executive orders (EO) directing federal agencies to take actions that set priorities for the Administration’s policy agenda. Every President has issued executive orders since our country’s founding and while there is no specific provision in the United States Constitution for Executive Orders, Section 1 of Article II (the Executive Power) of the U.S. Constitution is generally viewed as granting authority for such orders.¹

The President’s latest EO, signed on March 20th instructs the Secretary of Education Linda McMahon to shutter the U.S. Department of Education (ED) and he has since publicly stated that they intend to move programs for “special needs students” to Health and Human Services (HHS).^{2 3} While it is not legally possible for the President and the Secretary to move the fiscal and programmatic oversight, monitoring, and compliance of the Individuals with Disabilities Education Act (IDEA) to HHS without an act of Congress, confusion still exists about the authority, power and functions of the White House, ED, and the interplay of the executive branch with the U.S. Congress.

To help shed light on the basics, COPAA has developed this brief to summarize which powers belong to the executive branch and which belong to the legislative branch of the U.S. government as it applies to IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504) and other federal education and civil rights laws. For those interested in further research, additional resources are provided at the end of the document.

The Impact of an Education-Focused EO and the U.S. Department of Education

With respect to ED, an Executive Order CAN:

- Direct an agency to declare a new policy priority or emphasize an existing policy as a renewed priority, within the scope of the law(s).
- Provide direction on the implementation of existing laws and/or regulations.

With respect to ED, an Executive Order CANNOT:

- Rewrite or override existing federal statutes and/or regulations
- Reallocate funding for programs in statute* (e.g., IDEA, Title I, Pell grants)
- Transfer education programs to other agencies if the statute places them at ED (e.g., Office for Civil Rights, IDEA, Title I, Vocational Rehabilitation)
- Direct agencies to act unlawfully or dictate how state/local governments must act outside existing statutory or regulatory requirements.

*For Fiscal Year 2025 -passed by Congress March 14, 2025, and runs to September 30- Congress only included top-line spending amounts for most federal programs, including for IDEA. This lack of funding detail is unprecedented in appropriations law and now provides ED *some* flexibility in how funds may be allocated *within* IDEA’s programs which include: Part B (grants to states, school age children); Part B 619 (preschool), Part C (infants and toddlers); and Part D (research/technical assistance, state personnel grants, parent training centers, specialized personnel preparation, specialized technology/accessible materials etc.).

¹ See: *Executive Orders*, American Bar Association at:

https://www.americanbar.org/groups/public_education/resources/teacher_portal/educational_resources/executive_orders/

² The Hill, (3/21/25) <https://thehill.com/homenews/education/5207597-trump-student-loans-sba-special-needs-disabled-students-hhs-mcmahon-kennedy/>

³ *Nomination of Linda McMahon to serve as Secretary of Education*, (2/13/25), <https://www.youtube.com/watch?v=9hbSTLV6EVA>

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

- Issue regulations and guidance, however, some statutes limit the Secretary's authority to regulate. For example, Congress preemptively included [most of] IDEA's Part B regulations in the statute which limits the Secretary's authority. This is also true for the Elementary and Secondary Education Act (ESEA) -currently known as Every Student Succeeds Act- which specifies where the Secretary can regulate
- Grant State waivers under federal education laws. Like issuing regulations, the IDEA and ESEA statutes specifically limit the Secretary's scope, and most waivers require approval from Congress
- Manage discretionary funding, which now, due to Congress' agreeing to eliminate line-item spending in FY 2025, may include some part of Part D of IDEA as noted above
- Delegate functions within ED which are not specified in statute (e.g., recent closing of OCR offices, the recent elimination of key positions in the Office of Special Education and Rehabilitative Services).

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

- Alter or rewrite statutory requirements of education or civil rights laws
- Change funding levels for large programs whose formulas are codified in statute(s) (e.g., Title I, IDEA)
- Move programs to another federal agency (e.g., move IDEA to Health and Human Services)
- Dictate to states or schools their reading/math/other academic standards, curriculum/programs/classroom materials, high school graduation requirements, teacher credentialing and more.

The Role of the US Congress in the Debate About ED

- There are several bills in the US Congress that propose to eliminate, abolish, and/or otherwise alter the roles and functions of ED. Others may be introduced now that the EO has been signed.⁴
 - In the House of Representatives, a bill would need to be marked up in the House Education and Workforce Committee and then proceed to the House floor. To pass, a majority vote (218 of 235) is required
 - In the Senate, a bill would need to be marked up in the Senate Health, Education, Labor and Pensions Committee and then proceed to the Senate floor -where 60 votes are required. In the current Senate, this means 7 Democrats would need to join the vote *if every Republican* supported the measure. Also in the Senate, a 'hold' can be placed on a bill by a Senator, which can put a measure on permanent pause if the issue is too controversial or issues cannot be ironed out sufficiently to secure the votes.

Additional resources

- Who Has the Power: Understanding Federal Authority Over Education,
- [What is an Executive Order and How Does it Work?](#), ACLU (2025)
- [A Summary of Federal Education Laws Administered by the U.S. Department of Education](#), Congressional Research Service (2024)

⁴ See H.R. 369, the *States Reclamation Education Act* and H.R. 899, a bill to terminate the Department of Education. On March 20, Senator Bill Cassidy [announced that he would introduce a bill in the Senate to shut down ED](#).