



LEGAL UPDATES

Executive Order Closing the Department of Education Faces Legal and Congressional Barriers

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Overview

Last night, President Trump signed an Executive Order titled, "Improving Education Outcomes by Empowering Parents, States, and Communities," directing the Secretary of Education to close the Department of Education to the "maximum extent appropriate and permitted by law." The order aims to return educational authority to states and local communities, "while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely." The order also directs the Secretary of Education to terminate any federally funded program or activity related to "'diversity, equity, and inclusion' or similar terms and programs promoting gender ideology." The order notes it does not impair authority granted by law and it shall be implemented consistent with applicable law.

The Department of Education's functions include overseeing funding for K-12 public schools, with a focus on supporting economically disadvantaged schools and students with disabilities, dispersing student aid for college students through Pell Grants and federal loans, and enforcing antidiscrimination laws.

This order comes a week after the Department of Education announced that it would eliminate nearly half of its staff, including workers in the Office of Federal Student Aid and the Office for Civil Rights.

Implications

This Executive Order could have several implications for schools and institutions, including:

- Attempted reorganization of federal educational functions to other departments and alternative enforcement mechanisms.
- Potential cuts or outright elimination of federal funding and programs that are not mandated by statute.

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Related Services

- Complete closure or reduction in the Department of Education's size, staff, research, reporting and budgets.
- Continued litigation and uncertainty regarding federal funding to schools and programs, including diversity, equity and inclusion programs operated by schools and institutions.
- Disruption of federal funding to current recipients.

Due to current and anticipated legal challenges, much remains to be seen about the scope of this Executive Order. Additionally, this order also faces Congressional barriers. In the meantime, schools and institutions should monitor and continue to be aware of potential changes in federal educational funding and programming, and work with legal counsel to best position themselves for the impact of the order once the path forward becomes a bit clearer.

Legal Challenges and Congressional Barriers

Prior to the issuance of this order, several lawsuits were filed, including *Carter, et al. v. United States Department of Education, et al.* (U.S. District Court for the District of Columbia), and *State of New York, et al. v. Linda McMahon, et al.* (U.S. District Court for the District of Massachusetts). Relying on draft language of the Executive Order, these lawsuits allege closing or "gutting" the Department of Education "will cause grave harm to the states and their residents." They also claim President Trump exceeded the authority conferred to the president, and that he cannot unilaterally eliminate the Department of Education because it was created by Congress in 1979 and, therefore, requires an act of Congress to be dismantled. Now that the order has been officially issued, additional lawsuits are likely to be filed.

Recognizing the legal limitations, the order includes specific language that directs Secretary of Education Linda McMahon to dismantle the Department of Education to the "maximum extent appropriate and permitted by law." It is quite possible that current federal funding, such as student loans and grants, may be dispersed by the Department of the Treasury, funding for students with disabilities may be managed by the Department of Health and Human Services, and civil rights protections may be enforced by the Department of Justice. However, in addition to the order's main goal of returning authority over education to the states and local communities, even the reallocation of funding and programming could face legal challenges because Congress explicitly allocated funds and established certain responsibilities to the Department of Education.

Sen. Bill Cassidy (R-La.), Chair of the Health, Education, Labor and Pensions Committee, confirmed he will submit legislation to accomplish the goal of shutting down the Department of Education "as soon as possible." However, closing the department entirely may be difficult to achieve, as such an act would face likely opposition from constituents and require a filibuster-proof 60-vote majority in the Senate to move the measure to a vote. Republicans currently hold only 53 Senate seats, meaning any legislation would need bipartisan support.

The legal challenges and congressional hurdles that lie ahead create much uncertainty around this Executive Order. Lathrop GPM is closely monitoring developments around the order, and we will provide future updates as they become available. In the meantime, if you have questions about the impact of this Executive Order on your school or institution, please contact [Michael Manoukian](#), [Kathryn Nash](#), [Graciela Quintana](#), or your regular Lathrop GPM attorney.