

Facts in the Flood

Education First's analysis of federal education policy under the Trump Administration

The 2026 Midterm Elections' Impact on Education Policy

September 2026

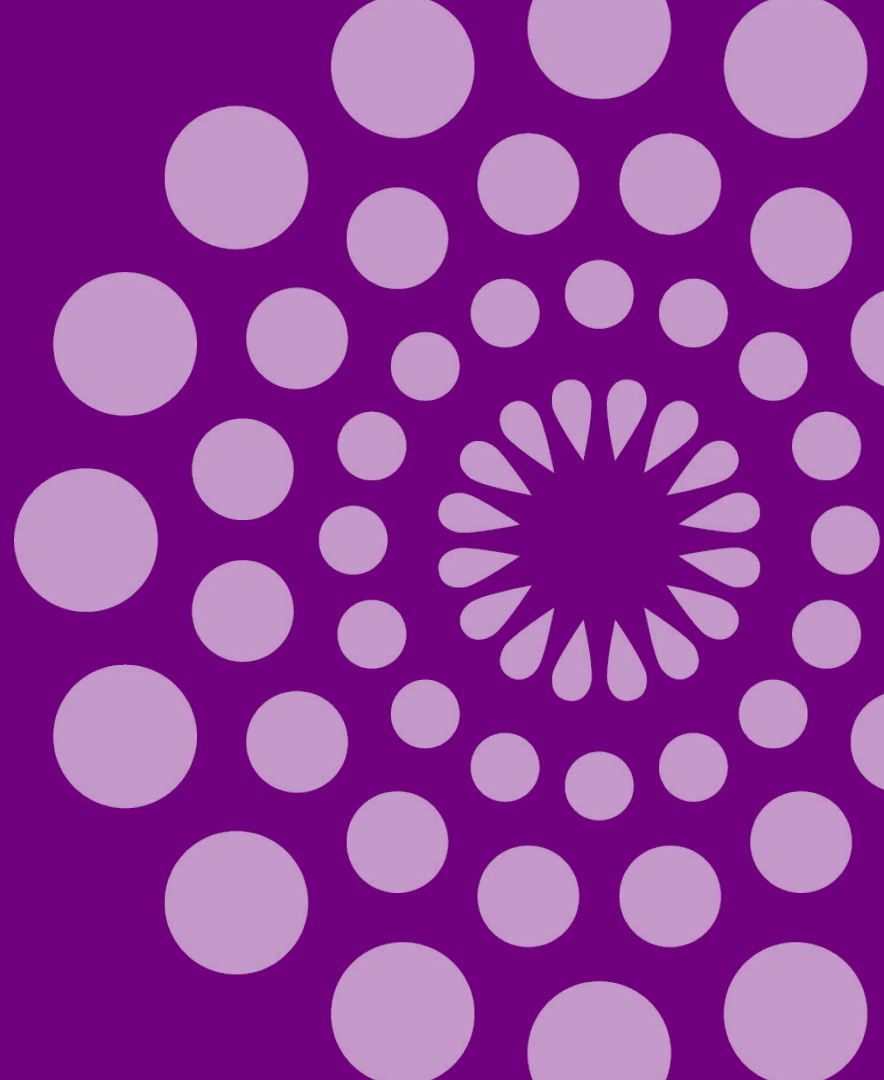


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Executive Summary



Executive Summary

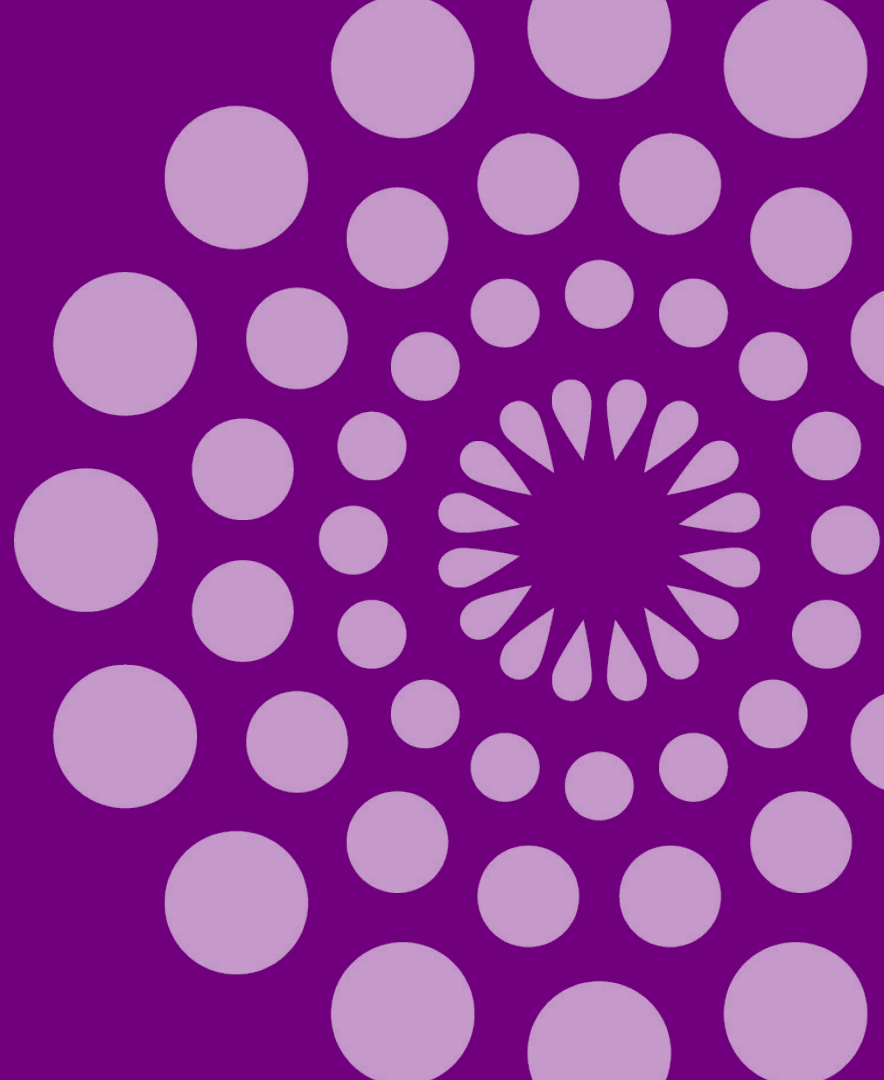
Federal

- The midterm election will likely lead to **divided government**, creating an opportunity to advance bipartisan legislation.
- If legislative avenues close, the administration will likely **continue using regulatory tactics** to implement its agenda, rather than retreat.
- **These tactics will likely be challenged** via Congressional oversight hearings, and gradually work through the court system.

State

- **Many states will have new governors and chief state school officers.** Fewer state legislatures are likely to change control.
- **States face major decision points** related to federal policy changes, including the new Federal Scholarship Tax Credit, federal cuts to Medicaid funding and regulatory shifts.
- There is a **window of opportunity to influence new state leaders** at the peak of their political capital on state-level decisions and responses to federal policy.

The Second Trump Administration's Actions to Date



The Heritage Foundation's Project 2025 set a pre-election policy agenda for Republicans. The Trump Administration has implemented much of it.

Project 2025 Policy Priority	Status
Eliminate the US Department of Education (ED) and revert control of education to the states	PARTIAL
Establish “parental rights” in education	PARTIAL
Eliminate “Critical Race Theory (CRT)” and “Diversity, Equity and Inclusion (DEI)” programs and LGBTQ protections in schools	PARTIAL
Expand school choice and education savings accounts	PARTIAL
Expand CTE and career pathways	PARTIAL
Cut federal funding for Title I, Head Start and IDEA	NO (Proposed but Congress rejected)
Eliminate loan forgiveness programs and revamp the college accreditation system	PARTIAL
Allow teachers with permits to carry concealed weapons	NO
End teacher tenure and adopt merit pay	NO
Allow prayer and reading the Bible in schools	PARTIAL

Note: Trump's official 2024 platform, Agenda 47, had similar policy goals to Project 2025, but far fewer details.
Sources: [Hechinger Report](#) (2026), [Education Week](#) (2026), [U.S. Department of Education](#) (2026), [Higher Ed Dive](#) (2026)

In 2025 and 2026, the Trump Administration and a supportive Republican Congress have taken action on five policy priorities

Roll back “DEI” policies

- Rescinded “disparate impact” regulations so ED only pursues claims of intentional discrimination
- Opened ED investigations into transgender athlete policies at the K12 and university level

Strictly enforce immigration laws

- Roughly tripled ICE’s budget to increase enforcement; student attendance has declined
- Attempted to limit undocumented students’ access to education programs and challenge *Plyler v. Doe* protections

Reduce the federal role in education*

- Signed 14+ interagency agreements transferring roughly 150 ED programs to other agencies
- Promoted ESSA waivers to consolidate some federal Title funds and give more flexibility to states

Remake higher education and expand career pathways

- Launched Workforce Pell program
- Implemented new higher education accountability system tying federal funding to graduates’ earnings
- Changed income-driven federal loan programs

Expand school choice and parents’ rights

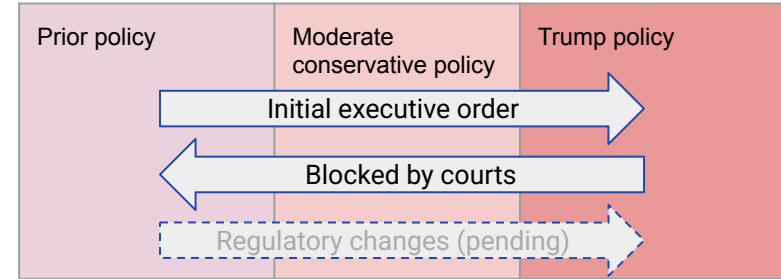
- Created the Federal Scholarship Tax Credit, providing federally-funded scholarships for private and public school expenses

The administration has shifted its strategy from high-profile executive orders (“headlines”) to low-profile regulatory changes (“fine print”)

2025: Headlines	2026: Fine Print	Post-Midterms
Executive Actions, Court Reactions and One Big Bill 70+ education-related executive actions signed since Jan 2025, prompting 100+ lawsuits. Most are still working through the courts. - The One Big Beautiful Bill Act (OBBBA) was signed into law in July 2025. It is the only major bill passed during Trump’s second term.	OBBBA Implementation, Regulatory Actions and Election Season - Congress passed its annual appropriations (budget) bill, following a shutdown. It kept education funding largely unchanged, ignoring Trump’s proposed cuts. - Congress enacted no other major new legislation impacting education in 2026. - The administration advanced its policy agenda via OBBBA implementation and regulatory actions.	New Congress and Lame Duck President - New Congress convenes, with Democrats likely to gain power. - Partisan legislation is unlikely to pass under divided government. Bipartisan bills (e.g., for workforce development) may advance. - The administration may accelerate regulatory actions to lock in policy changes before leaving office. - Presidential candidates for 2028 may compete for attention with President Trump.

Organizations need to weigh “mission risk” versus “legal risk” in response to changing policies under the Trump Administration

- The policy and legal landscape has oscillated under the Trump Administration
- **Policies remain unsettled** as the administration changes tactics and lawsuits work their way through the courts



- When the administration takes legally-contested actions that are counter to an organization’s mission, organizations face a tradeoff between **legal risk vs. mission risk**.
- When the mission risk is high and the legal risk is low, organizations should avoid **overcompliance**.

Legal Risk

Risk of legal consequences by *not complying* with contested policies.

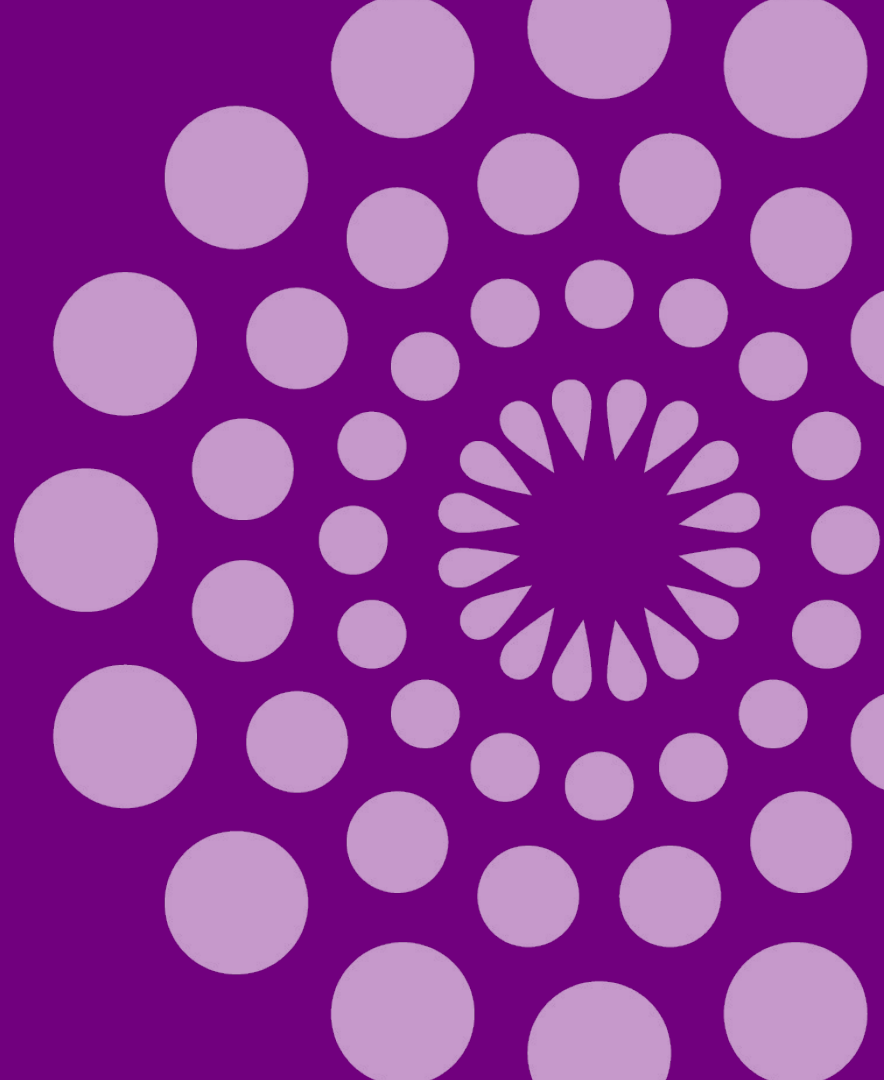
Mission Risk

Risk to mission, values and culture by *complying* with contested policies

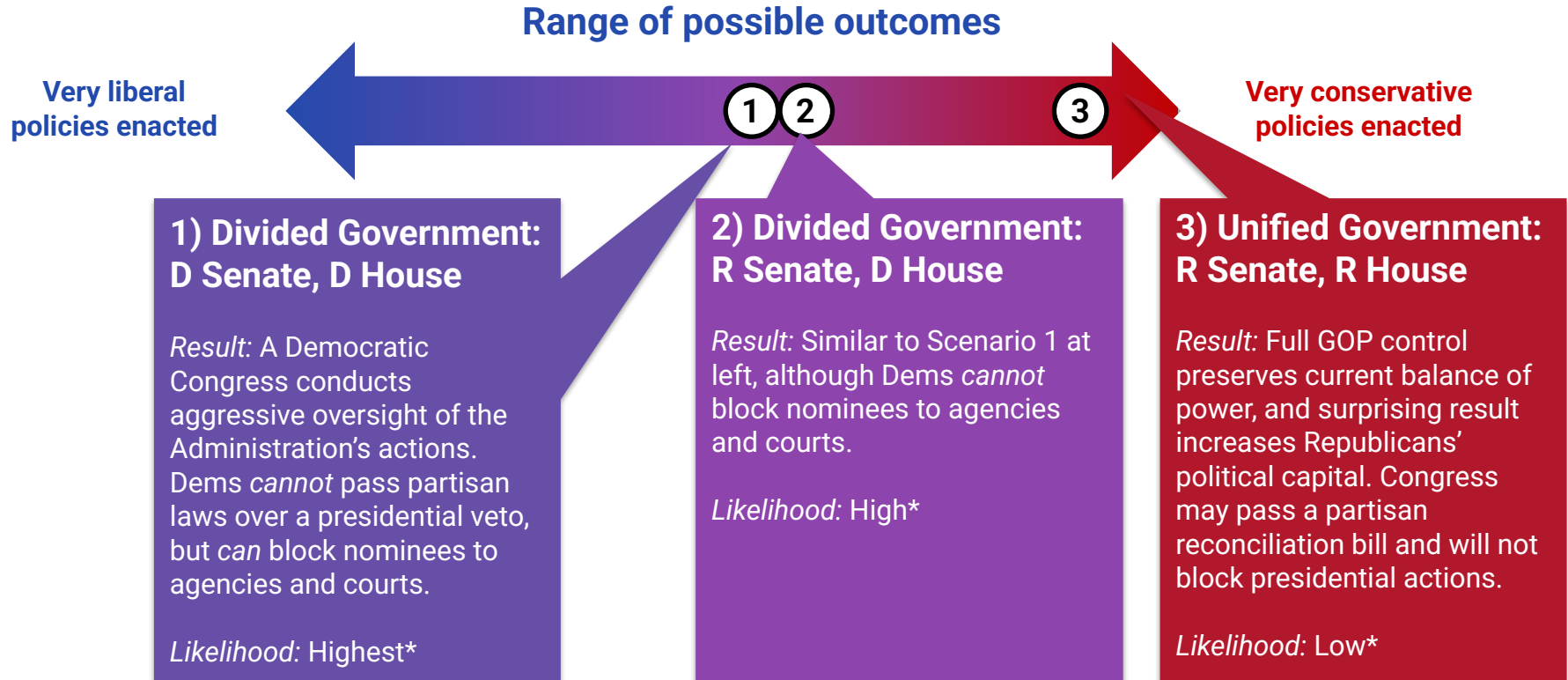
Policies have oscillated under the Trump Administration, following a pattern of executive actions, court reversals and then alternative tactics

Example: Anti-DEI policies	Prior policy	Moderate conservative policy	Trump policy
Step 0: Baseline	ED allowed race-conscious policies to address racial discrimination		
Step 1: Executive action			ED issues "Dear Colleague" letter threatening funding cuts to any school with DEI programming
Step 2: Litigation & court rulings	Organizations sue and courts block the letter. ED drops its appeal, leaving the letter unenforceable. The letter is withdrawn.		
Step 3: Regulatory action			ED proposes changes to regulations requiring all ED grants to comply with executive orders on race
Step 4: TBD. *We are here*			

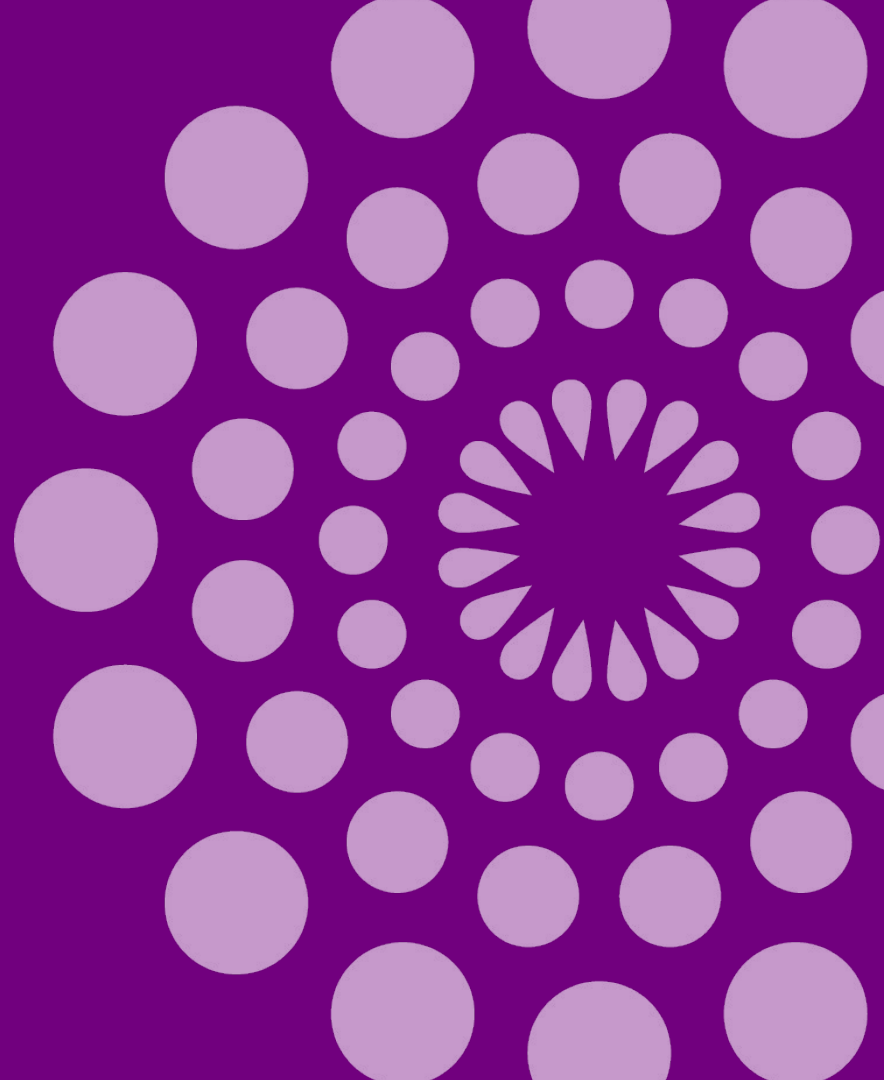
Federal Elections



The federal midterm election is likely to lead to divided government, limiting the likelihood of partisan legislation



Federal Policy



The two parties have different priorities, but there are opportunities for bipartisan educational policy to advance in a divided government

Potential policy priorities in a divided government <i>(Democrats control one or more chamber of Congress)</i>		
Democratic Priorities	Bipartisan Opportunities	Republican Priorities
• Broad Congressional oversight • Introduce symbolic bills on: ○ Keeping programs within ED by challenging inter-agency agreements ○ Upholding civil rights/DEI protections and policies ○ Repealing the Federal Scholarship Tax Credit ○ Student wellness ○ Loan forgiveness	• Literacy legislation (READ Act) • AI regulation or legislation • Level funding within Title programs and IDEA; addressing Pell shortfall • Keep special education in ED • Career pathways / workforce development legislation (WIOA) • Student data privacy and online safety legislation • Legislation on college costs and data (College Transparency Act)	• Regulatory changes or department action to: ○ Establish “race-neutral” policies via grant requirements ○ Dismantle ED ○ Expand school choice and parents’ rights ○ Implement higher ed loan, accreditation and accountability changes ○ Support state authority and financial flexibility

House and Senate Committee leadership will likely change. These leaders set the legislative agenda for education.

House Changes

House Education & Workforce Committee

Current Chair: Tim Walberg, R-MI

- A House flip would likely return the gavel to Ranking Member **Bobby Scott (D-VA)**. However, **Jahana Hayes (D-CT)** has launched a formal run against Scott in hopes of bringing a fresh perspective and more aggressive resistance to Trump.
- **Suzanne Bonamici (D-OR)**, a 14-year veteran of the committee, unveiled a legislative plan to transform K12 education and introduced articles of impeachment against Secretary of Education McMahon, potentially positioning herself to launch a run against Bobby Scott.

Senate Changes

Senate Health, Education, Labor, and Pensions (HELP) Committee

Current Chair: Bill Cassidy, R-LA

- With Senator **Bill Cassidy** losing his primary election, **Rand Paul (R-KY)** and **Roger Marshall (R-KS)** are both positioned to potentially become chair if Republicans hold the majority. **Bernie Sanders (I-VT)** would likely reclaim the gavel if Democrats flip the Senate.
- A Republican-led committee would mostly support and oversee the administration's education agenda. A Sanders-led committee would likely focus on holding oversight hearings and investigations into the administration's agenda, and would place more emphasis on healthcare and higher education than K12 education.

The Supreme Court will influence education through both its regular process and emergency rulings

The Emergency Docket

The emergency docket is how the Supreme Court handles urgent requests to pause or allow a policy while a lawsuit plays out. In 2025, it allowed the Education Department's mass layoffs and teacher-grant cuts to go into effect while legal challenges continued.

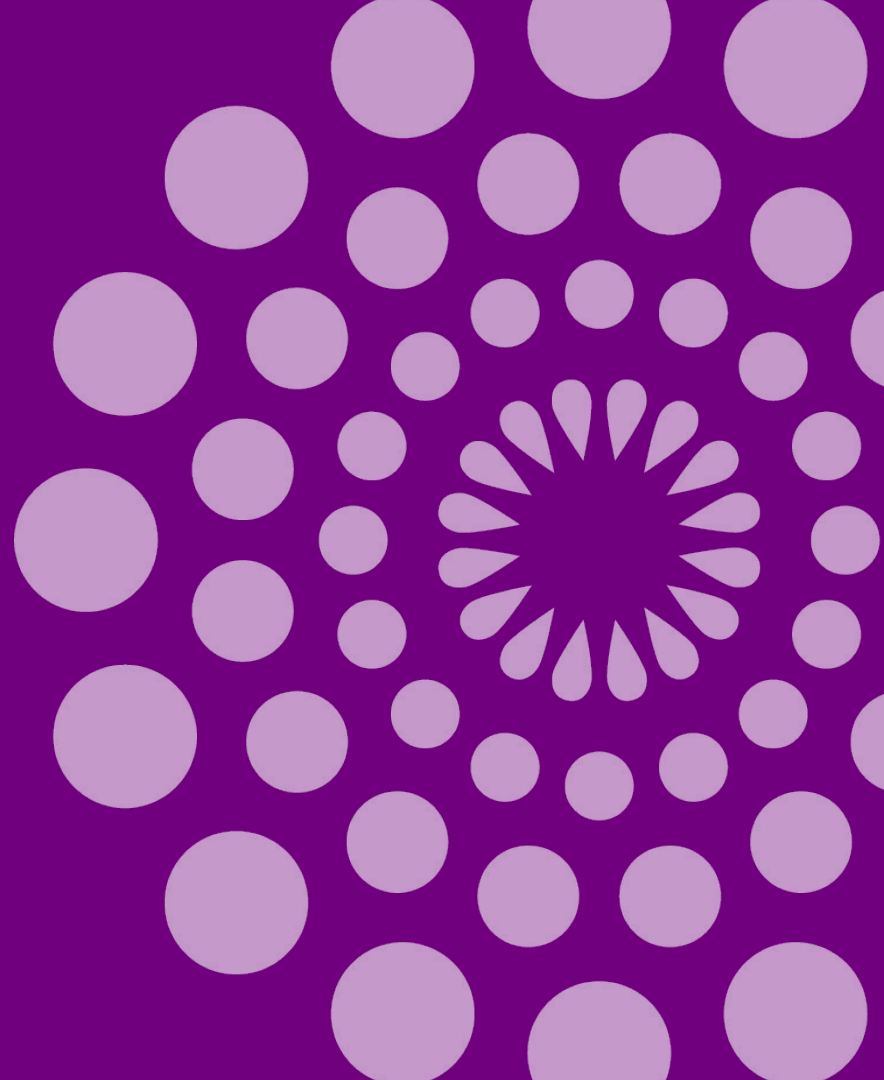
The Regular Docket

This is the standard process the Supreme Court uses to thoroughly hear cases each year, after they have been appealed and heard from lower courts. Possible impactful education cases that may reach the Supreme Court in coming years include:

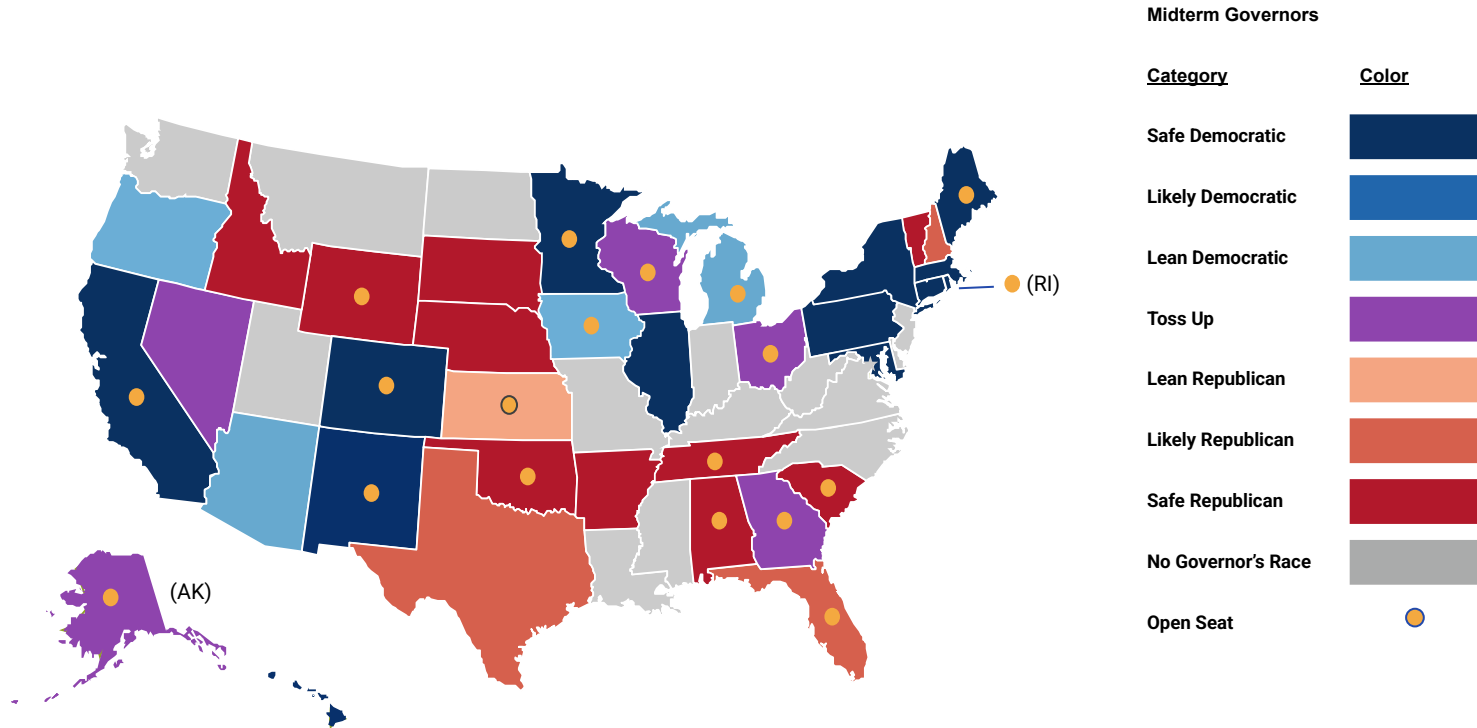
- **Undocumented student protections:** Hearing challenges to the landmark *Plyler v. Doe* case protecting an undocumented student's right to K12 education.
- **Religious charter schools:** Prior case from 2025 about charter schools was deadlocked due to Barrett's recusal. It may return.
- **Parental rights:** After *Mirabelli v. Bonta* (2026), disputes over what schools are required to tell parents could return for review.

*A Supreme Court vacancy is possible. Conservative Justices Alito (76) and Thomas (78) currently plan to retain their positions. However, one may decide to retire early if Democrats win the Senate in November, to ensure a Republican Senate confirms a conservative replacement.

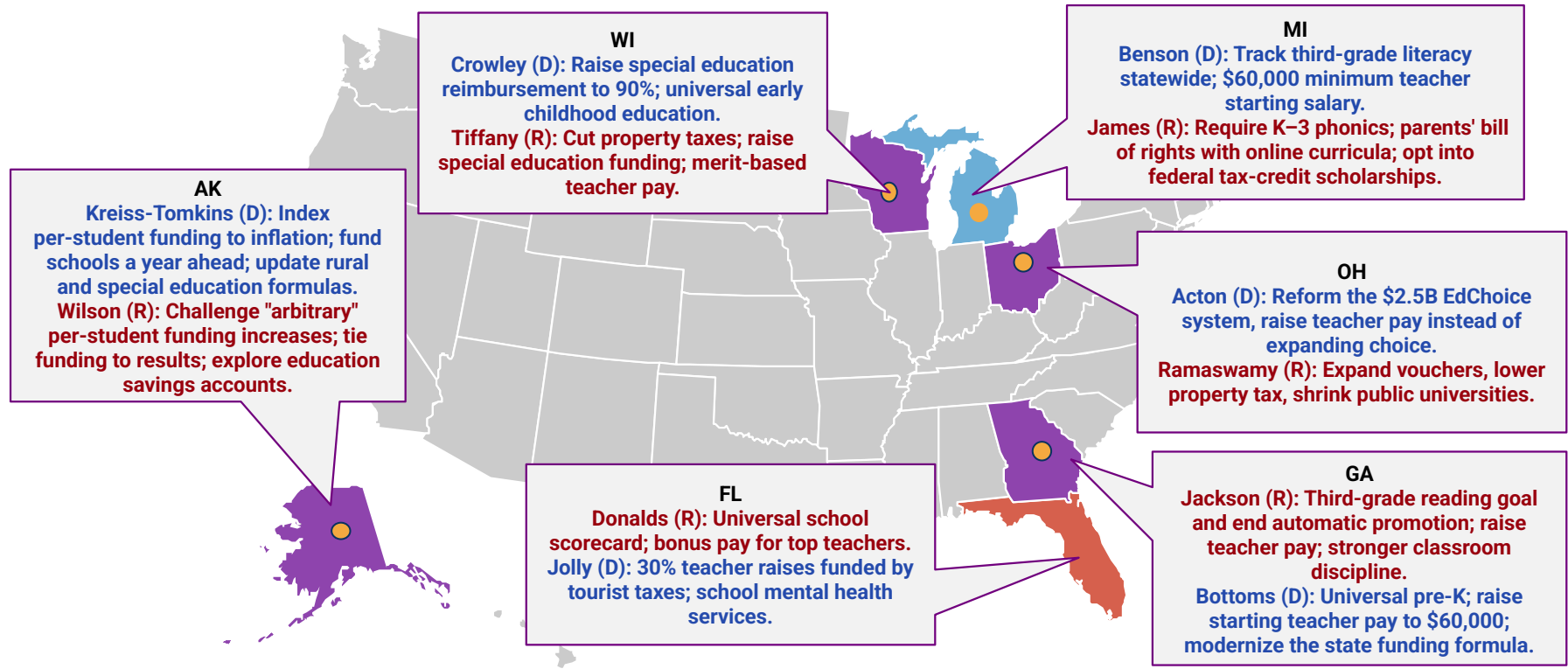
State Elections



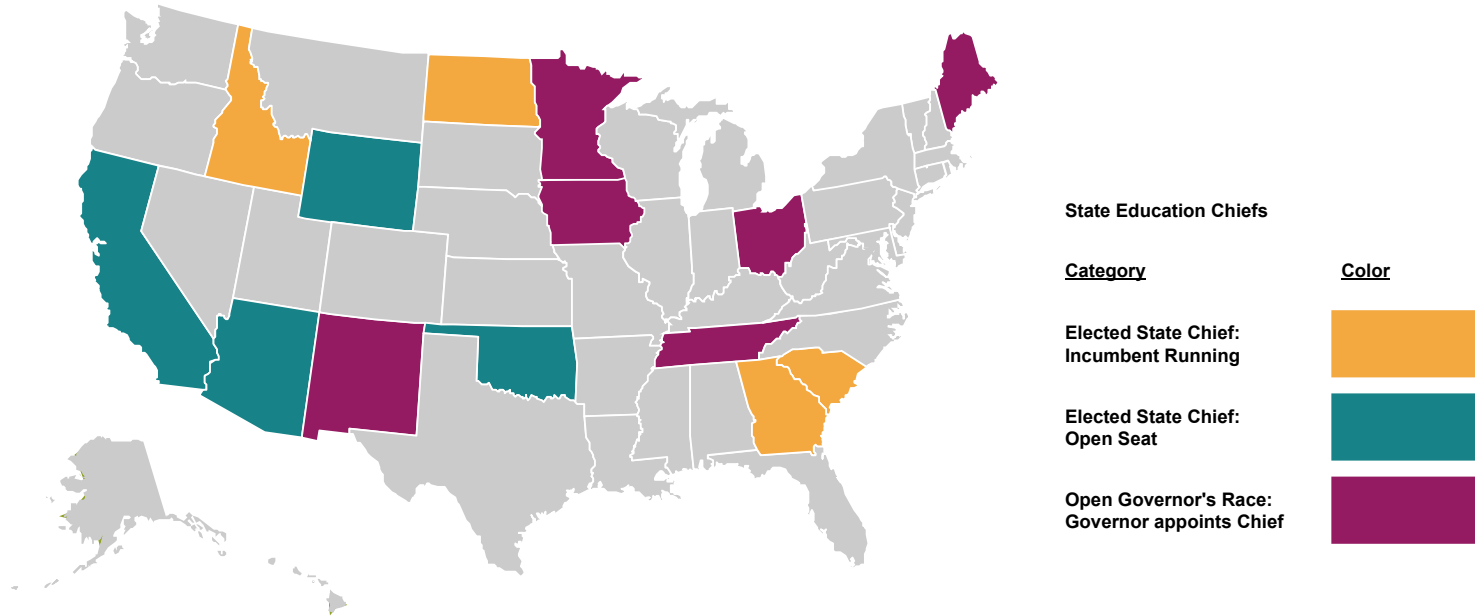
There are 36 governor's races, including 19 open races and 10 competitive races



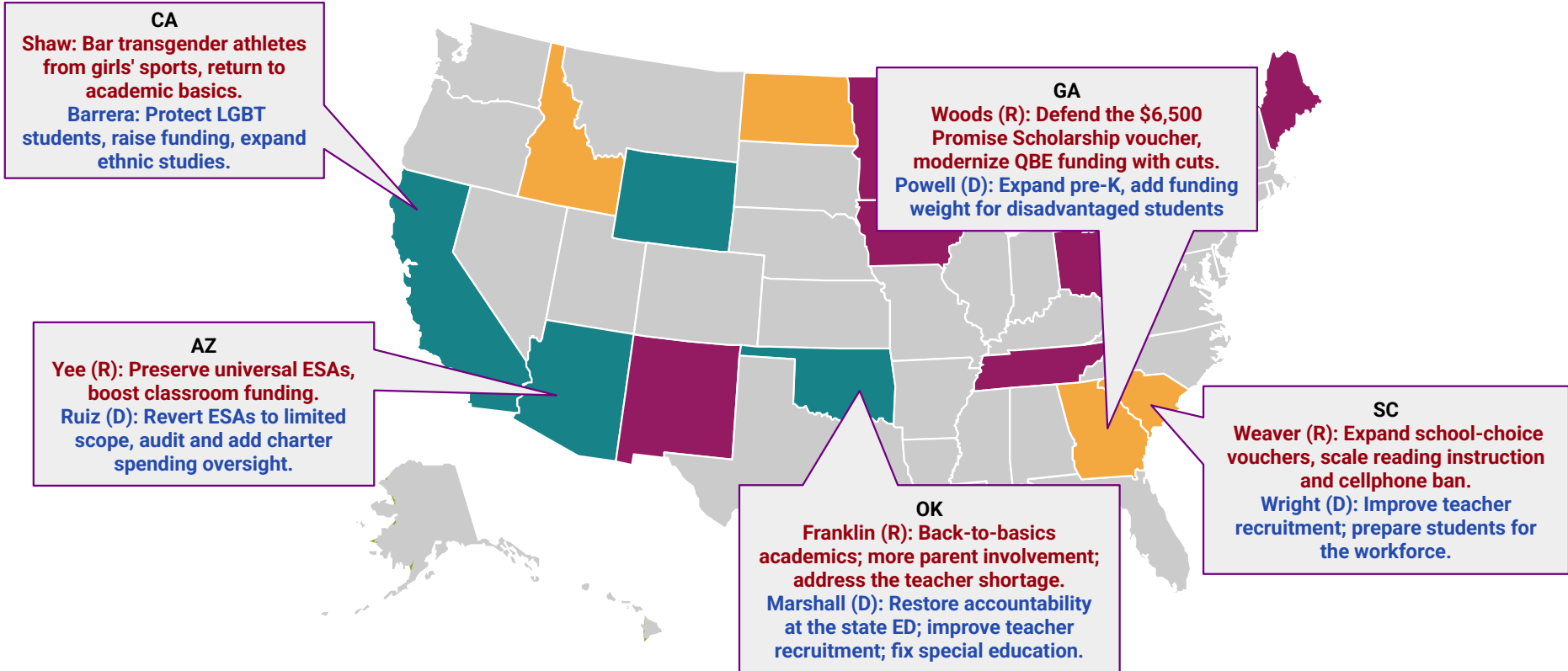
Education is most prominent in governors' races in six states, with candidates debating funding, literacy and school choice



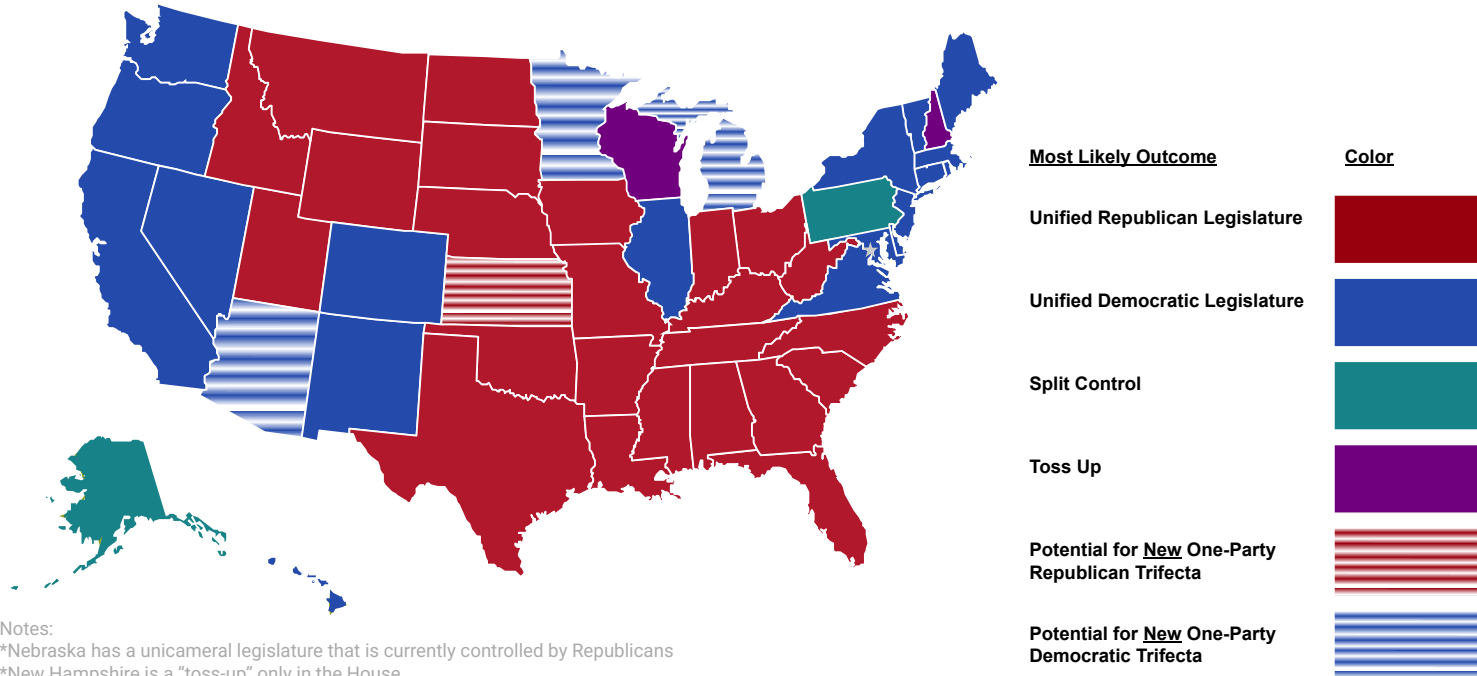
State education chiefs will also change. There are eight elections with four open seats; others will be appointed by new governors.



State education chief races focus on vouchers, funding, cellphones and transgender athletes



New one-party trifectas (controlling house, senate, and governor) may appear in four states that are currently split



Notes:

*Nebraska has a unicameral legislature that is currently controlled by Republicans

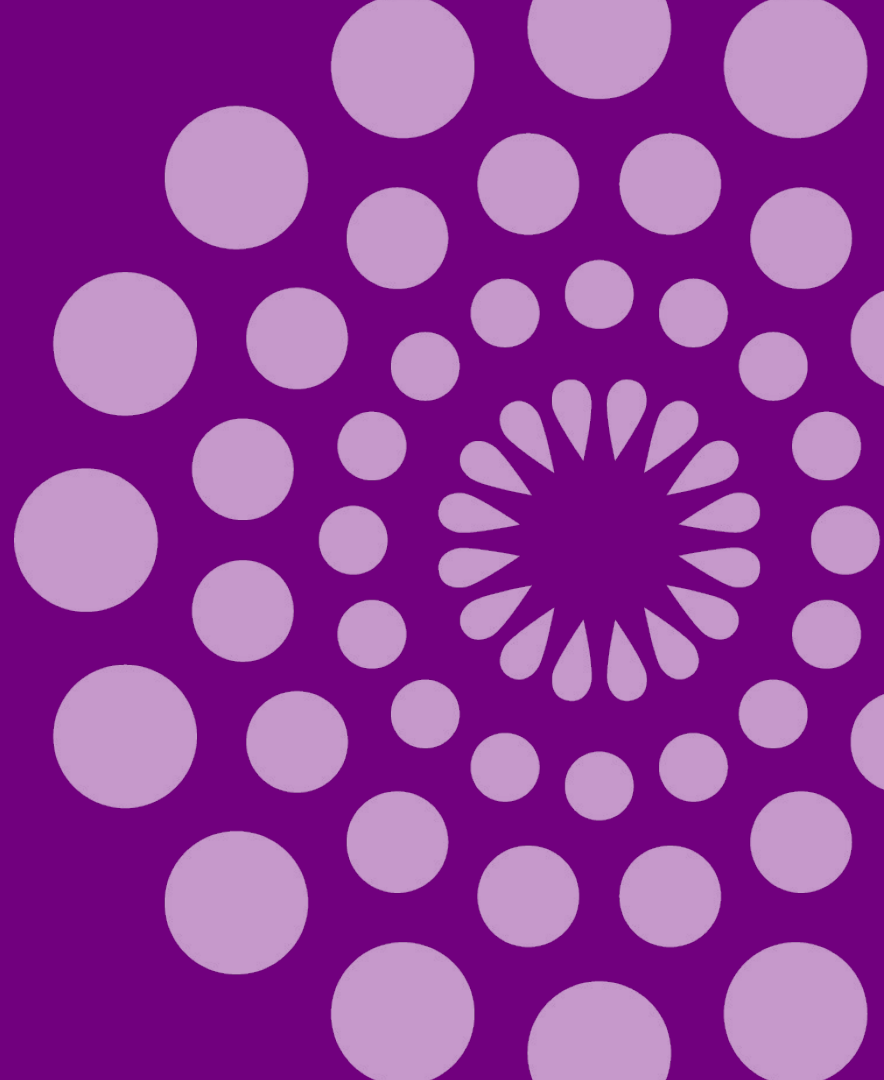
*New Hampshire is a "toss-up" only in the House

*Pennsylvania will likely keep a Republican Senate and a Democratic House

*Alaska's House and Senate are controlled by two separate multi-party coalitions comprised of Democrats and Republicans

*Kansas could become a new trifecta through the gubernatorial election

State Policy



Federal policymaking has focused on five main priorities. New state leaders need to decide how to respond.

Roll back “DEI” policies

- Codify race-conscious “**disparate impact**” **protections** for students into state law?
- **Require disaggregated data reporting**, broken out by race, disability and other categories to identify disparities?

Strictly enforce immigration laws

- Protect **undocumented students’ right to K12 education** by reinforcing *Plyler v. Doe* protections in state law?
- Extend *Plyler* protections to vulnerable K12-adjacent programs like **dual enrollment and early childhood programs**?

Reduce the federal role in education

- Apply for an **ESSA waiver** to consolidate federal Title II/III/IV funds?
- **Backfill federal Medicaid funding cuts** with dollars that might otherwise be spent on education?

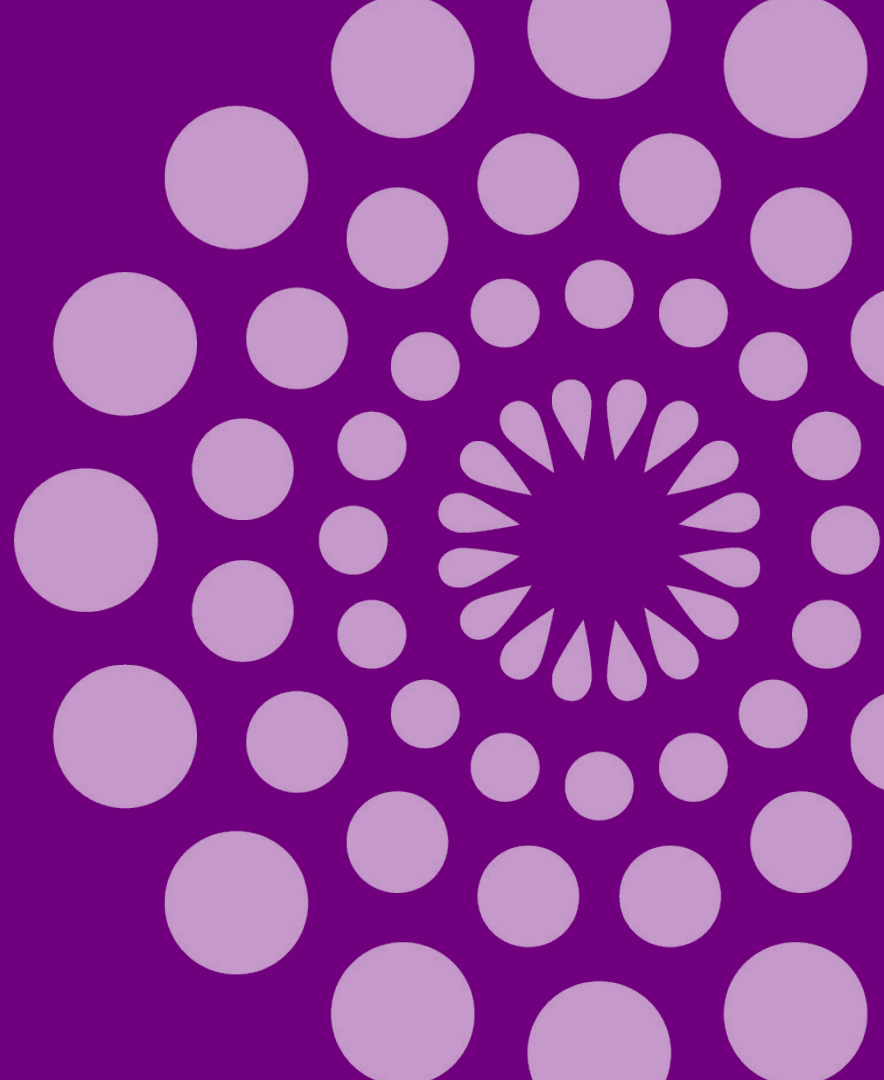
Remake higher education and expand career pathways

- Develop a state approval process for **Workforce Pell**? Plan for potential funding shortfall?
- Evaluate impact of new **higher ed accountability** and **student loans** programs?

Expand school choice and parents’ rights

- Opt into the **Federal Scholarship Tax Credit**?
- Set **curriculum opt-out** policies to implement new Supreme Court ruling on religious objections?

Midterm Readiness Self-Assessment



Self-Assessment: Ready for the 2026 Elections?

Issue Areas List the policy, economic, social, technological, environmental and/or legal issues that are affecting your organization's work below.	Organizational Opportunity/Threat Dimensions				Total Points
	Financial Sustainability How does this impact your organization's existing funding sources? How does it impact grantees' ability to raise funds from other sources, affecting how much your organization may need to step in?	Hiring, Retention, Culture How does this impact your organization's mission? Will compliance make it more difficult to maintain a strong organizational culture and recruit/retain top talent?	External Affairs How will this affect relationships with organizations you partner with? How will it impact your beneficiaries? How will this affect your reputation within the field?	Programming How will this affect current grantmaking strategy, funding priorities, or initiatives? What new grantmaking opportunities or funding needs does this open up?	
	Rating	Rating	Rating	Rating	
Rolling back "DEI" policies					
Limiting educational access for undocumented students					
Shrinking the federal role in education					
Remaking higher education and expanding career pathways					
Expanding school choice and parents' rights					

Rate your organization's readiness to handle these issues using the following scale: -2, -1, 0, 1, 2

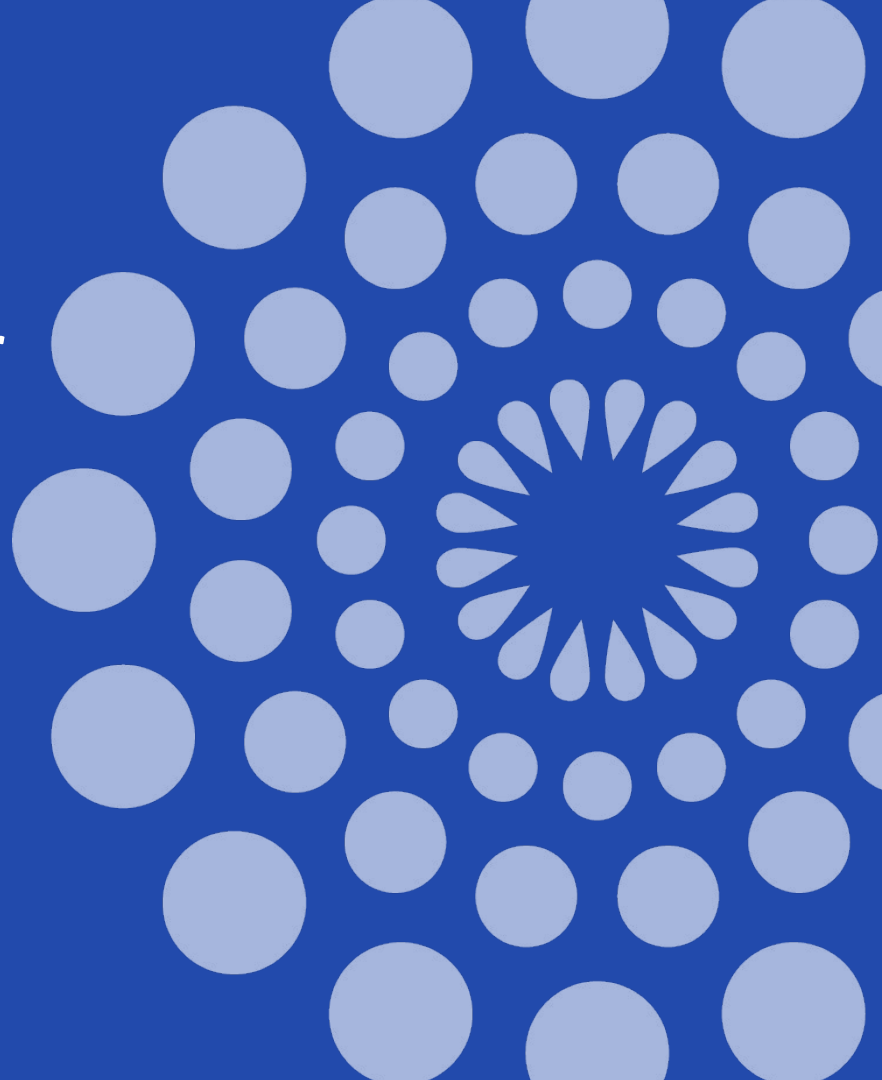
For more information on federal
education policy changes, visit our
Facts In The Flood series page

Contact Us

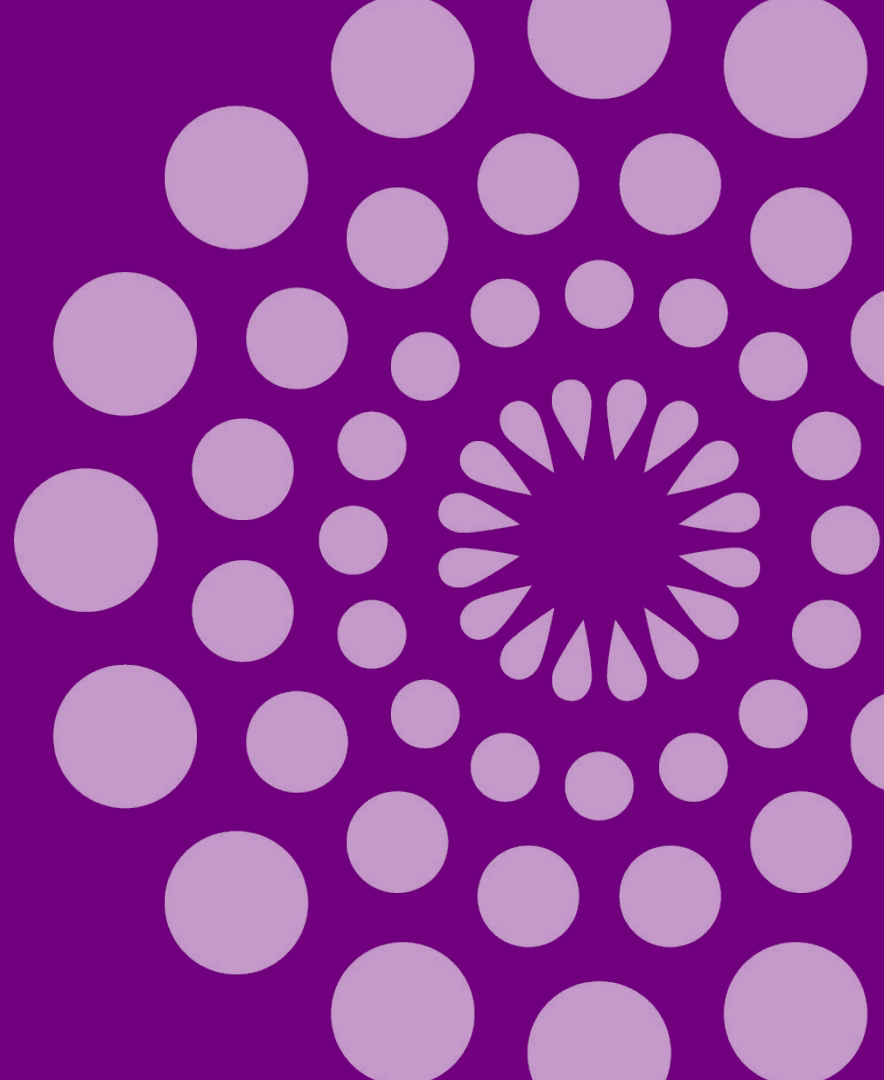
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