



# Facts in the Flood

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

## Federal Education Policy Primer

Prepared by Education First

March 25, 2025

# This resource is part of *Facts in the Flood*: Ed First's analysis of federal education policy under the Trump Administration

The *Facts in the Flood* series is designed to help education organizations understand the Trump Administration's education policy actions and develop strategies for navigating the new policy environment.

## Strategies for Responding

This slide deck provides frameworks to help education organizations respond to federal policy changes.

## Federal Policy Resource Hub

This document provides curated links to helpful resources for understanding the Administration's actions and their potential impacts.

## ESEA Waivers 101

This brief details what states need a waiver to do, which requirements can and cannot be waived and what the waiver request process looks like.

## Federal Education Policy Primer

This slide deck explains the reach and limits of federal authority over education, and how each branch of the federal government impacts education policy.

*This deck*

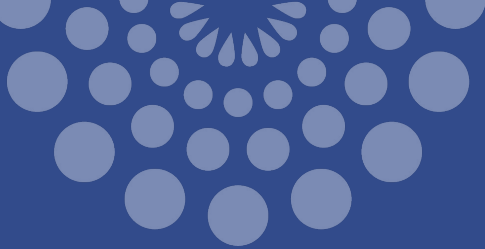


# Executive Summary

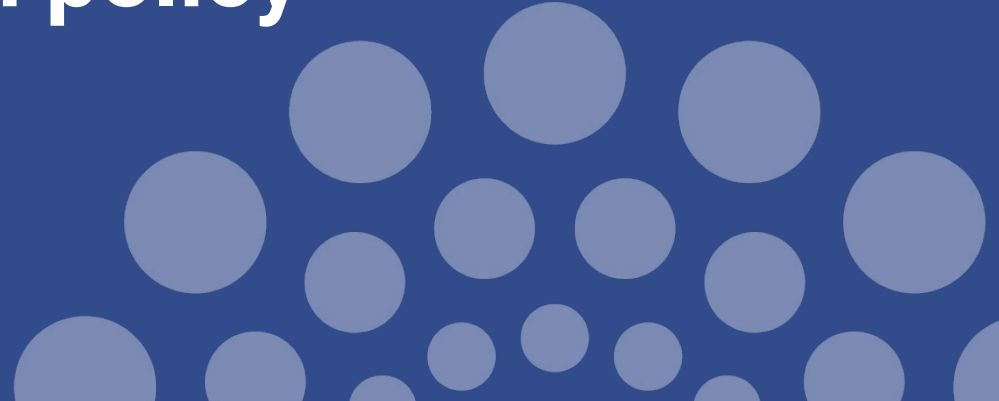
- *Federal role:* **States have more control over education policy** than the federal government. The federal role is primarily focused on funding, regulation, data and accountability. **Higher education is more reliant on federal funding than K12.**
- *Legislative authority:* Republicans control both houses of Congress, but are unlikely to pass partisan education legislation due to Senate Democrats' ability to filibuster. Therefore, most **partisan legislative changes to education will come through the annual budget process**, which can bypass the filibuster. The chairs leading the education committees in both the House and Senate are new.
- *Executive authority:* The Department of Education (ED) can control education policy via **regulation, guidance, waivers and investigations**, each of which has certain powers and limitations. Trump's senior ED appointees are a mix of Trump-aligned non-educators and traditionally conservative state education leaders.
- *Judicial authority:* The federal judiciary can use temporary restraining orders, preliminary injunctions and permanent injunctions to **block executive actions that violate federal laws or the Constitution**. Rulings from lower courts can be appealed.

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**Background:  
Role and structures for  
federal education policy**



# The Trump Administration has asserted an expansive view of federal and presidential authority over education policy

## Within Authority

*Actions that the Administration has the legal authority to take*

## Edges

*Actions of unclear legality*

## Outside of Authority

*Actions that clearly fall outside of presidential authority or violate laws*

Many of the Administration's actions overstep federal or presidential authority, and have therefore been temporarily blocked by federal courts.

This slide deck helps education leaders understand the bounds of federal and presidential authority over education.

# The federal government plays a limited, but important, role in education funding and policymaking

## Federal role:

### Funding

**Postsecondary education is more reliant on federal funding than K12 education.**

- **K12:** Provides 14% of K12 education funding. Key programs include: Title I (aid to disadvantaged students); Title II (teacher and principal training and support); IDEA (support for students with disabilities); National School Lunch Program; and Perkins (career education).
- **Postsecondary:** Provides 27% of funding for 2-year public IHEs and 18% for 4-year public IHEs. Key programs include: managing the federal student loan system, Pell grants for low-income students and federal research grants to public and private IHEs.

### Regulations

**The federal government enforces protections for students in both K12 and postsecondary education.**

- **K12 & Postsecondary:** Enforces federal protections related to: gender (Title IX), civil rights (Civil Rights Act), special education services (IDEA and ADA), etc.

### Data & accountability

**The federal government oversees national data collection for K12 and postsecondary education and sets up separate accountable systems for each.**

- **K12:** Sets parameters for state-run accountability and testing systems.
- **Postsecondary:** Sets rules for the accrediting bodies overseeing colleges and universities.
- **K12 & Postsecondary:** Collects and publishes national education data and funds research.

# State and local governments oversee all education policymaking and funding not covered by federal law

## State and local role:

### Funding

**States fund a larger percentage of K12 education than postsecondary education.**

- **K12:** Provide 87% of K12 funding (split roughly evenly between state and local sources).
- **Postsecondary:** Provide 51% of funding for 2-year public IHEs and 22% for 4-year public IHEs.

### Regulations

**States and localities regulate all policy areas not specifically covered by federal laws.**

- **K12 & Postsecondary:** These policies include standards, teacher certification, enrollment requirements, graduation requirements, teaching methods, instructional materials and other areas.

### Data & accountability

**States create and manage their own state-level data systems.**

- **K12:** Make policy decisions within federal accountability systems; create and manage any additional accountability or data systems.
- **Postsecondary:** Create and manage any data or accountability systems.

### All Other Policies

***States control all policies within their state not delegated to the federal government, per the 10th Amendment of the Constitution.***



# Republicans' control of the presidency and Congress gives them legislative budgetary and executive authority

## Branch

## Political Control

## Powers Available to Party in Control

### Legislative

**Republicans** have a majority of seats in both chambers of Congress:

- Senate: R 53, D 47
- House: R 220, D 215

- ✓ Pass budget-related bills via reconciliation
- ✗ Pass partisan legislation (cannot override a Democratic filibuster)
- ✓ Approve agency appointments and judges

### Executive

**Donald Trump** holds the presidency and appointed ED leadership

- ✓ Issue executive orders and executive actions
- ✓ Issue regulations, guidance, waivers and grants (via ED)
- ✓ Appoint agency officials and judges
- ✓ Control the “bully pulpit” (i.e., informal power to focus public attention)

### Judicial

The federal judiciary is nonpartisan

- ✓ Appoint federal judges that will resolve disputes over interpretation of federal education laws and constitution

**Note:** Last year’s Supreme Court ruling in *Loper Bright* stated that courts, not agencies, should determine the interpretation of ambiguous laws. This ruling may increase judicial scrutiny of ED’s regulations.

# Each branch of government plays a distinct role in education policymaking

Example: Civil rights protections for students under the Trump Administration

## *Legislative*

**Congress** passed the Civil Rights Act of 1964, which prohibits discrimination based on race, color or national origin.

## *Executive*

**ED** recently released a Dear Colleague letter, which offers guidance on OCR's current interpretation of the civil rights law and bars federally funded institutions from engaging in DEI efforts.

## *Judicial*

The American Federation of Teachers sued ED over this guidance, saying it "radically upends" existing law. They are asking a **federal judge** to declare the guidance unconstitutional and block its enforcement.



**Legislative branch:  
Key players and  
policymaking authority**



# New Republican education committee leadership will influence policymaking within the legislative branch

## Senate

- The Committee on Health, Education, Labor and Pensions (HELP) oversees education policy in the Senate.
- With Republicans taking Control of the Senate, ranking member **Bill Cassidy** (R-LA) replaced Bernie Sanders (I-VT) as committee chair of HELP.
- Cassidy supports school choice and high academic standards. He has also indicated he will submit legislation to shut down ED.

## House

- The Committee on Education and the Workforce oversees education policy in the House.
- Although the House did not change party control in 2024, **Tim Walberg** (R-MI) replaced Virginia Foxx (R-NC) as the new committee chair.
- Walberg supports school choice, aligning education with workforce needs, financial aid changes and downsizing ED.

# Congress can influence education policy via the budget or education-related legislation

## Legislation

- There are two major categories of legislation that will impact education in this Congress:
  - + **Education-related legislation:** This could include reauthorizing existing or proposing new legislation that impacts federal education policy.
    - While only a simple majority is needed to pass legislation in the House, Democrats in the Senate can use the filibuster to block voting on most legislation unless it receives 60 votes. Republicans currently only have 53 seats in the Senate.
    - Assuming Democrats filibuster any partisan legislation from Republicans, only bipartisan education-related legislation is likely to pass in this Congress.
  - + **Budget:** The budget can be passed via the traditional federal budgeting process, reconciliation or continuing resolutions.
    - Reconciliation cannot be filibustered, so it is likely any major partisan changes to federal education policy will happen through this special legislative process.
    - Congress can also approve presidential requests for proposed rescissions of funds, which are requests to cancel appropriations that have not yet been obligated for goods or services. Votes to approve rescissions are not subject to the filibuster.

# Changing federal education legislation would require overcoming a filibuster, so partisan legislation is unlikely to advance

## Education-related legislation

- Much of federal education policy is governed by a handful of major laws. Congress can “reauthorize” these laws to modify them, although any partisan reauthorization attempt would likely be filibustered.
- Career pathways and workforce development is one of the few areas of potential bipartisan agreement, so that domain is most likely to see legislation able to overcome a filibuster.

### *Examples of major federal education legislation:*

**Elementary and Secondary Education Act (ESEA):** The US K12 education law governing school performance and transparency. It was last reauthorized in 2015 with the signing of the Every Student Succeeds Act (ESSA).

**Higher Education Act (HEA):** The US higher education law. It strengthens higher education resources and provides student financial assistance. It was last reauthorized in 2008.

**Individuals with Disabilities Education Act (IDEA):** Makes free appropriate public education available to children with disabilities and ensures special education services for them. It was last reauthorized in 2004.

**Title VI of Civil Rights Act of 1964:** Prohibits discrimination based on race, color or national origin for programs or activities that receive federal financial assistance.

**Perkins :** Provides funding and guidelines for career and technical education (CTE). It was last reauthorized as Perkins V in 2018, during Trump’s first term.

**Workforce Innovation and Opportunity Act (WIOA):** WIOA is a major workforce development law, primarily managed by the Dept. of Labor. The House recently held a bipartisan WIOA reauthorization hearing.

# Separately, Congress is likely to use continuing resolutions and reconciliation to pass the budget

*Congress seldom passes appropriations bills before the start of the fiscal year. Therefore, it must use one of the mechanisms below to pass a budget, instead of the traditional process. For more information on the traditional budgeting process, see [Appendix: Budget Process](#).*

## Continuing Resolution (CR)

- **What is it?** A CR is a temporary spending bill that makes modest adjustments to the current fiscal year (FY) budget. It is used when appropriations bills are not completed before the start of the FY.
- **What is the impact?** The current CR funds the government through Sept. 30, 2025, and cuts just over \$300M for ED. Given the passage of the CR, there is not a reconciliation bill that sets a baseline for FY 2026.
- **How does it work?** CRs usually include the same level of funding from prior year's appropriations or a past CR. They can alter the rate funds are utilized, extend an expiring program authority or provide a program a specific dollar amount.

## Reconciliation

- **What is it?** Reconciliation is a special legislative process that can expedite tax, spending and debt limit legislation. It is not subject to the filibuster, so it allows for easier passage of this type of legislation. Instructions for reconciliation are in the Congressional budget resolution.
- **What is the impact?** Given reconciliation's long-term impacts on the debt limit, it can impact the fiscal conditions surrounding the annual federal budget for several years.
- **How does it work?** Reconciliation is most often used to address mandatory spending. It can, but rarely does, address discretionary funding by enacting annual appropriations.

# A federal budget passed via reconciliation could have a major impact on federal education policy

## Reconciliation

- Reconciliation is typically only used to address **mandatory spending**. Therefore:
  - + **federal student loans** are most likely to be impacted by this process. Education committees may take up student-loan reform.
  - + Discretionary programs, **including Title I and IDEA**, are not likely to be affected.
  - + Funding for other programs not administered by ED but that still impact students, like **Medicaid and federal nutrition programs**, may be reduced.
- Congress could use reconciliation to pass a **federal school choice tax credit**, because it is a tax provision.
- Because reconciliation is limited to federal revenue or spending, it likely **cannot be used to reorganize or abolish ED or to advance anti-DEI policies**.

## Types of spending:

**Mandatory spending**, or funding for entitlement programs, is written into law and doesn't require annual approvals. It continues automatically unless laws governing the program change. Example: student loan subsidies.

**Discretionary spending** is determined annually by Congress and the President through the appropriations process. It must be approved each year. Nearly all federal edu. funding is discretionary. Examples: Title I, IDEA.





**Executive Branch:  
Key players and  
policymaking authority**



# ED is not primarily a policymaking body, but instead oversees the implementation of federal education policies

## K12 Responsibilities

- Disburse and monitor funds to states and districts using congressionally-defined formulas, including:
  - + \$18.4B in Title I funds to support schools with high percentages of low-income students
  - + \$14.2B to support students with disabilities under the Individuals with Disabilities Education Act (IDEA)
- Develop framework for accountability to identify low performing schools and distribute resources

## Higher Education Responsibilities

- Operate the \$1.6T federal student loan program
  - + Of note, the majority of ED's budget is discretionary; the small amount that is mandatory is largely for student loan subsidies

## Crosscutting Responsibilities (K12 and Higher Education)

- Enforce civil rights laws
- Conduct high quality research and evaluation through the Institute of Education Sciences
- Collect and analyze data that can be used to change and improve education programs and policies, i.e. Nation's Report Card, College Scorecard, EDFacts

# The policymaking powers that ED does have are built on top of current statute and are constrained by existing law

## Regulation

- **Overview:** ED writes regulations and monitors compliance with these rules. Regulations have force of law because they implement a law. ED can withhold money from states, districts, schools and institutions if they do not meet conditions or do not spend money according to rules.
  - + To eliminate regulations, they must go through a formal rescission process.
- **Limits of Power:** Rules must stem from underlying statute. ED must issue a notice of proposed rule-making and go through a public comment period to inform regulations.

## Guidance

- **Overview:** ED issues guidance to clarify rules and regulations. Guidance can include statements, Dear Colleague Letters, and FAQs. Guidance is not required to go through public comment.
- **Limits of Power:** Guidance does not carry the force of law and instead is a recommendation and current interpretation on how to implement existing law.
  - + The administration's current interpretation of Federal civil rights law provides their rationale for eliminating DEI programs, which led to the cancellation of several multi-year ED grants. However, many of these cancellations are being challenged in court.

# ED can waive certain legal requirements, and can use investigations to enforce the administration's civil rights agenda

## Waivers

- **Overview:** ED can administer waivers from certain requirements in ESEA to “advance student academic achievement.” For example, ED can provide states with flexibility on assessment and accountability provisions, if the flexibility will “maintain or improve transparency in reporting to parents and the public on student achievement and school performance.”
- **Limits of Power:** ED is prohibited, by law, from waiving 10 fundamental provisions of ESEA, including civil rights protections and formulas and distribution rules for Title funds. ED also cannot place conditions on waivers outside their scope, such as requiring the adoption of specific standards.
- More detail on waivers is in the “ESEA Waivers 101” brief on Ed First’s [Facts in the Flood](#) homepage.

## Investigations

- **Overview:** ED’s Office of Civil Rights (OCR) enforces civil rights laws in schools and other recipients of ED funding. The public can file civil rights complaints and OCR lists the institutions under investigation on its website.
- **Limits of Power:** OCR must act within the bounds of federal legislation. If it errs in its interpretation of federal law, impacted parties can sue in federal court.

# The White House can wield legislative power with executive orders; this power is more expansive than those controlled by ED

## Executive Orders

- **Overview:** Executive orders are a written directive signed by the president ordering the government to take action within the authority of the executive branch to ensure “the laws be faithfully executed.” These actions could include rulemaking or announcing new policy priorities.
- **Limits on Power:** Executive orders cannot include anything that overrides existing federal laws and statutes.

# ED's leadership oversees various programmatic offices that impact K12 and higher education federal policy

Office of the Secretary	Office of the Deputy Secretary	Office of the Under Secretary
Institute of Education Sciences	Office of Elementary and Secondary Education	Office of Postsecondary Education
Office for Civil Rights	Office of English Language Acquisition	Office of Career, Technical and Adult Education
Office of Planning, Evaluation and Policy Development	Office of Special Education and Rehabilitative Services	Federal Student Aid
Office of Office of Legislation and Congressional Affairs		

*Note: This is the historical structure of ED as of 3/25; ED may make future restructuring changes.*

# Secretary McMahon is aligned with Trump and his priorities; she also served in Trump's first Administration

## Office of the Secretary

Name and Title	Job Description	Appointee/Nominee Background
<b>Linda McMahon,</b> Secretary	The secretary oversees all ED activities and is the principal advisor to the President on federal education policies and programs.	McMahon is a business executive who is the former CEO of WWE. She previously served as the Administrator of the Small Business Administration in Trump's first term. She also chaired the America First Policy Institute, a right-wing think tank.
<b>Kimberly Richey,</b> Assistant Secretary for Civil Rights (nominee)	The office of civil rights oversees federal laws that prohibit discrimination and activities receiving federal financial assistance.	Richey has held senior roles at the Oklahoma, Virginia and Florida departments of education and previously served at ED under the George W. Bush and Trump Administrations.

# Leaders in the Office of the Deputy Secretary, overseeing K12 education, have extensive state-level K12 experience

## Office of the Deputy Secretary

Name and Title	Job Description	Appointee/Nominee Background
<p><b>Penny Schwinn</b>, Deputy Secretary (nominee)</p>	<p>The deputy secretary oversees elementary and secondary education matters.</p>	<p>Schwinn previously served as the Tennessee Commissioner of Education, where she led the state’s school finance overhaul and started COVID recovery programs.</p>
<p><b>Kirsten Baesler</b>, Assistant Secretary for Elementary and Secondary Education (OESE) (nominee)</p>	<p>OESE provides leadership and technical assistance to SEAs and LEAs to maintain and improve public and private schools.</p>	<p>Baesler currently serves as North Dakota Superintendent of Public Instruction.</p>



# Leadership in the Office of the Under Secretary have experience with state-level higher education policy

## Office of the Under Secretary

Name and Title	Job Description	Appointee/Nominee Background
<b>Nicholas Kent</b> , Under Secretary (nominee)	The under secretary oversees postsecondary education, vocational and adult education and federal student aid.	Kent currently serves as the Deputy Secretary of Education for Virginia.
<b>Kevin O’Farrell</b> , Assistant Secretary for Career and Technical Education (nominee)	The Office of Career, Technical, and Adult Education coordinates programs related to adult education and literacy, career and technical education and community colleges.	O’Farrell is currently the Chancellor for the Division of Career and Adult Education at the Florida Department of Education.



# **Judicial Branch: Key players and policymaking authority**



# Federal courts hear cases within federal jurisdiction; these cases involve the federal government or statute, or the Constitution

*Federal jurisdiction typically includes the following types of cases:*

Type of Case	Example(s)	
Civil lawsuits against the federal government	■ Recent case brought by AFT suing ED for guidance barring DEI efforts in K12 and higher education	<i>These types of cases <b>often</b> relate to education policy</i>
Cases involving U.S. Constitution or interpretation of federal statute	■ <i>Brown v. Board</i> (overturning separate but equal doctrine); <i>Plyer v. Doe</i> (states cannot deny undocumented children public education)	
Criminal cases involving violations of federal law	■ Cases involving drug trafficking, immigration, money laundering	<i>These types of cases <b>rarely</b> relate to education policy</i>
Disputes between states	■ Cases involving water rights, contracts, boundaries	

*The state courts handle all interpretation of state laws (except for disputes between states), which is where most education policy takes place.*

# Cases proceed through the three levels of federal courts, but can be moved directly to the Supreme Court in rare circumstances

## District Courts

District courts are the general trial courts for the federal court system. There are 94 district courts in the U.S.

## Circuit Courts

Once a district court decides a case, they can be appealed to the Circuit Courts. There are 12 circuit courts in the U.S. divided into different regions.

## Supreme Court

The Supreme Court is the highest court in the US judicial system. It can decide appeals on all cases brought to federal court.

District courts can issue **nationwide injunctions**, meaning they can temporarily pause executive actions on a national basis until they are appealed. As a result, plaintiffs often “shop around” for a district court judge who is more likely to be sympathetic to their case.

The use of nationwide injunctions has increased in recent years, but their **constitutionality is under debate**.

If a plaintiff receives an unfavorable ruling in a district court, they can petition the Supreme Court to take up the case immediately. The Supreme Court may hear the case if it has **nationwide importance or is time sensitive**.

# If a judge believes a federal law or action violates the Constitution, they can temporarily block that law or action

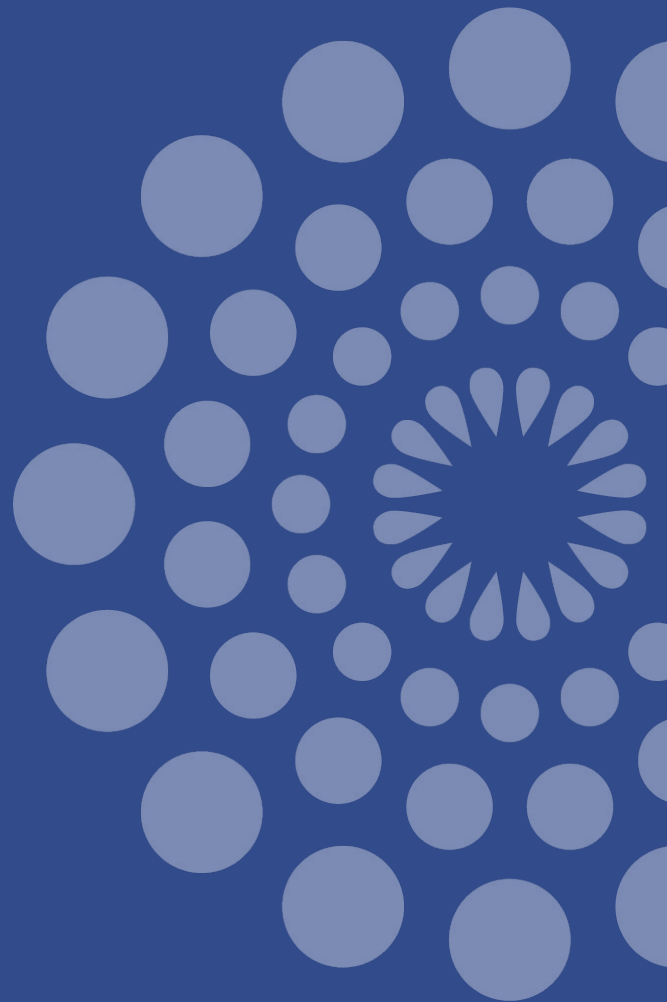
Courts can issue the following orders to temporarily halt executive actions that raise constitutional or legal questions. This has happened frequently in 2025.

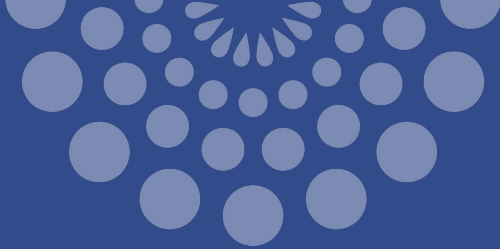
	Temporary Restraining Order (TRO)	Preliminary Injunction	Permanent Injunction
What is it?	<ul style="list-style-type: none"> <li>■ A TRO can temporarily halt the administration's actions.</li> <li>■ It can be issued before defendant knows they've been sued to avoid immediate and irreparable damage.</li> <li>■ TROs typically cannot be appealed, but they often expire in 2 weeks or less.</li> </ul>	<ul style="list-style-type: none"> <li>■ A judge holds hearing where both parties present their arguments.</li> <li>■ If the judge believes the plaintiff will succeed on the ultimate merits of their lawsuit, a preliminary injunction blocks the administration's action.</li> <li>■ These can be appealed.</li> </ul>	<ul style="list-style-type: none"> <li>■ A permanent injunction is the final judgement issued after the case is fully litigated.</li> <li>■ It will block the government's actions forever.</li> </ul>
Recent Example	A judge issued a TRO preventing Elon Musk's DOGE team from accessing sensitive federal data.	A nationwide preliminary injunction blocked enforcement of provisions from Trump's DEI-related EOs, providing relief to parties concerned they would be prosecuted for DEI efforts.	Permanent injunctions have not been issued yet against the Administration's actions, as the cases still need to move through the courts.



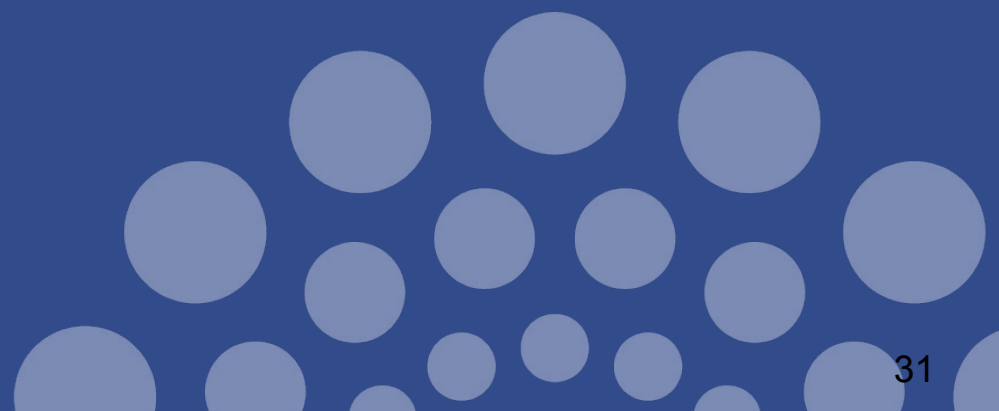
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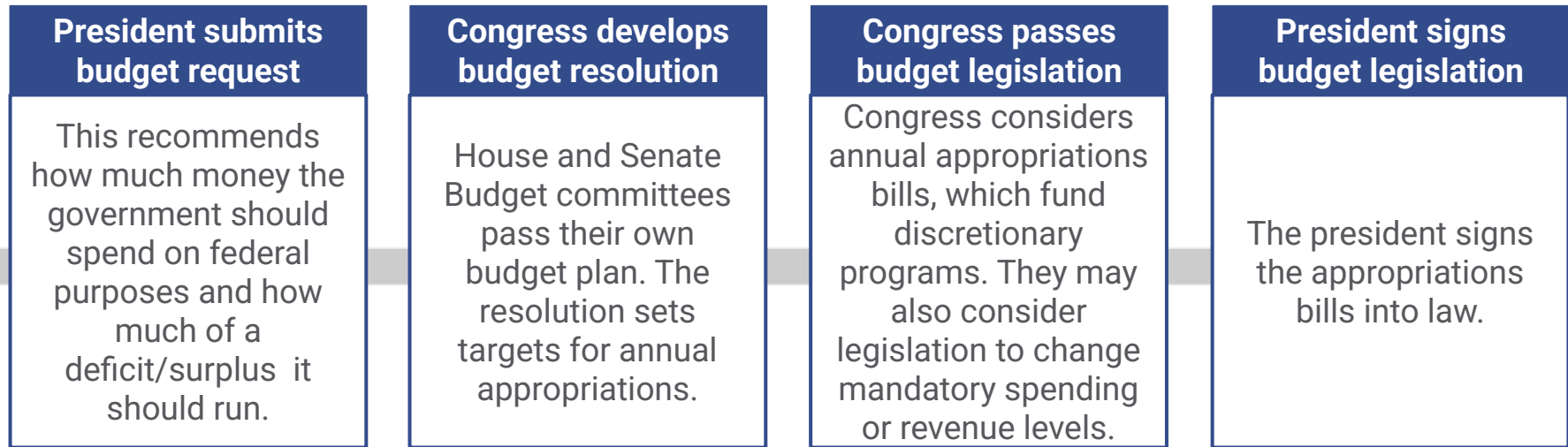


# Appendix



# The federal budget is significant legislation Congress passes each year; it sets the funding for ED-administered programs

*Simplified overview of the traditional federal budgeting process.  
(Note: this process has not been consistently followed in recent years.)*





# In its first months, the Trump Administration has taken many executive actions related to education policy

Updated 3/25/25. Not comprehensive.

## Expand career pathways

- Reversal of CTE data collection requirements
- Congressional interest in WIOA and short-term Pell changes

## Increase immigration enforcement and deportations

- Laken Riley Act
- Anti-immigration EOs, including EO ending birthright citizenship\*
- ICE raids
- Undocumented residents registry

## Cut federal funding

- Cuts to ED programs, including the Institute of Education Sciences, Regional Education Labs, Comprehensive Centers and teacher pipeline programs\*

## Roll back “DEI” policies

- EOs eliminating DEI programs\*
- EOs blocking transgender recognition
- “Dear Colleague” letter warning against DEI programs

## Expand school choice and “parents’ rights”

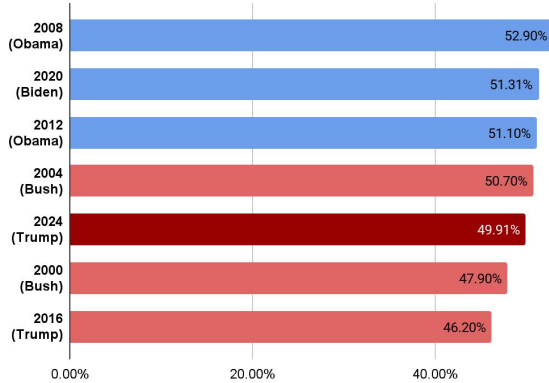
- EO prioritizing school choice in discretionary grants
- EO requesting report on “protecting parental rights”

## Weaken or politicize the US Department of Education (ED)

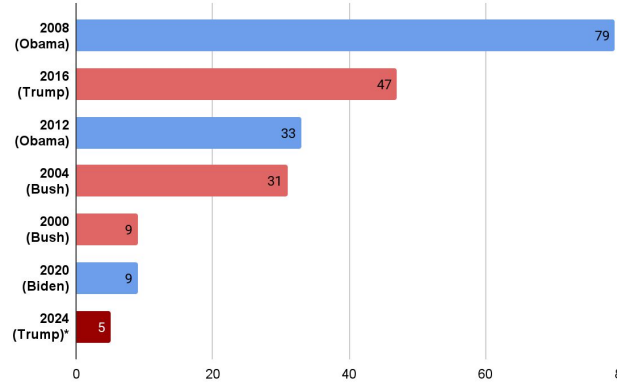
- EO stating intent to close ED
- Sec. McMahon issues “Final Mission” statement
- Reduction in force (RIF) at ED, hiring freeze, etc.

# The 2024 election gave Trump a slightly narrower margin in Congress than other recent incoming presidents

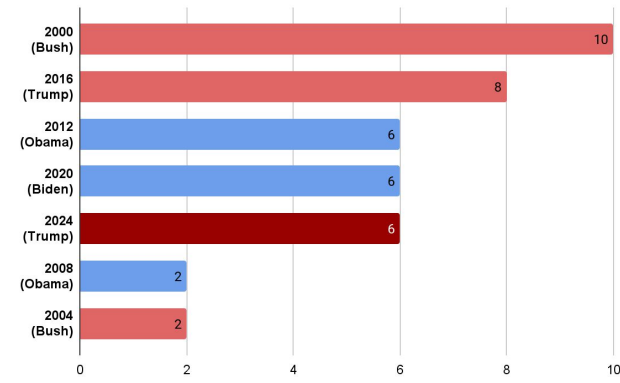
**President  
Popular Vote Margins**



**House  
Seat Margins**



**Senate  
Seat Margins**



*Trump's narrow Congressional margin means he needs to rely heavily on executive authority, rather than acting through Congress*

# Unlike the federal election, state-level elections in 2024 did not lead to major changes in party control

- **No governorships** changed partisan control.
  - + There were 11 governor's races on the ballot, and none flipped party control. This has not happened since 2000.
  - + There are still 27 Republican governors and 23 Democratic governors.
- **Two state legislative chambers** switched control; this is below the historical trend of 11-12 flipped chambers.
- **Moderate state superintendent candidates** won in all contested races: NC, MT, ND and WA.
- **School funding increases passed** in AR, CA, CO, NM, RI and UT
- **Voucher and education savings accounts (ESA) initiatives failed** in KY, NE and CO (although ESAs may expand in other red states without such ballot initiatives)

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