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# The Executive Order to Dismantle the Department of Education and the Impact on Gender Justice at School

On March 20, 2025, Donald Trump issued an Executive Order announcing his administration's policy priority to dismantle the U.S. Department of Education<sup>1</sup> ("Education EO"). The Education EO directs the Secretary of Education, Linda McMahon, to facilitate closing the Department to the maximum extent permitted by law. The President alone does not have the authority to close the Department, but coupled with the administration's other actions, the Education EO will have a profound impact on students' ability to vindicate their rights.<sup>2</sup>

## What Is an Executive Order?

An executive order is not a law. The Constitution gives the President power to ensure that "laws be faithfully executed."<sup>3</sup> Accordingly, an executive order is a written directive from the President that instructs the government to take specific actions to implement their policy agenda.<sup>4</sup>

Importantly, only Congress can create new laws. The President cannot use an executive order to establish a new law and cannot override, change, or violate federal laws that are passed by Congress. Similarly, the President cannot use an executive order to take action that exceeds the scope of the President's constitutional authority. Lawsuits can challenge an executive order as unconstitutional or in violation of a federal law. Additionally, Congress can enact a law that reverses the executive order.

## What Does This Executive Order Do?

The Education EO, on its own, cannot shut down the U.S. Department of Education. Closing the Department requires Congressional action, as the Department—and its various offices, including the Office for Civil Rights (OCR), the Federal Student Aid office, and the Institute for Education Sciences—was created by Congress through the Department of Education Organization Act in 1979.<sup>5</sup> Congress has charged the Department of Education with specific responsibilities through several additional laws.<sup>6</sup> While some congressional members may introduce bills to close the Department, it is unlikely that they will receive enough votes to pass the current Congress.<sup>7</sup>

However, the Education EO will severely impact the Department's ability to enforce civil rights laws, and protect all students, including LGBTQI+ students, student survivors of sexual assault, pregnant and postpartum students, Black and brown students, and disabled students.<sup>8</sup> This is because the Education EO explicitly instructs the Department to terminate funds to programs supporting diversity, equity, and inclusion, and those supporting transgender individuals—a vague directive that explicitly targets vulnerable students.<sup>9</sup>

And even before the Education EO was issued, President Trump issued executive orders seeking to unlawfully use OCR's enforcement powers to require discrimination, and Secretary McMahon took action to gut the Department from within by firing approximately 50% of its employees—with OCR taking one of the greatest hits.<sup>10</sup> OCR employees did critical work, including issuing regulations and guidance, helping schools comply with federal civil rights laws, and investigating schools that allegedly violated their civil rights obligations.<sup>11</sup> Unfortunately, seven of the twelve OCR regional offices have been shuttered entirely.<sup>12</sup>

The Education EO claims to “return authority over education to the States.” But to be clear: the federal government does not manage educational institutions at either the K-12 or higher education levels. It also does not have legal authority to dictate curriculum or the selection of books and other educational materials in K-12 schools or at institutions of higher education.<sup>13</sup> These matters are already managed separately by states, school districts, and individual institutions.<sup>14</sup> This notion of returning authority to the states is just a pretext to justify the administration's harmful efforts to destabilize public schools, provide fewer resources for marginalized students, and substantially weaken civil rights enforcement.

## Do Students Still Have Federal Education Rights?

**Yes.** Since executive orders cannot eliminate or override federal law, the Education EO does not, and cannot, eliminate federal civil rights laws such as Title IX (which prohibits sex discrimination), Title VI (which prohibits discrimination on the basis of race, color, and national origin), or Section 504 (which prohibits disability discrimination).

But by signing the Education EO, firing half of the Department's staff, and closing more than half of OCR's regional offices, millions of students no longer have

dedicated investigators to protect their rights and investigate their complaints. The Trump administration's staff cuts at OCR will increase each worker's caseload by over 200%.<sup>15</sup> Given that Congress assigned OCR to the Department of Education, it is not yet evident whether the Trump administration will attempt to move OCR to another agency, as outlined in Project 2025's plans for the Department, or how it will carry out its duties.<sup>16</sup> Further, recent guidance and enforcement actions from OCR indicate that it is weaponizing its enforcement duties to punish students and penalize schools that maintain diversity, equity, and inclusion initiatives, have trans inclusive sports and bathroom policies, and allow students to protest on campus.<sup>17</sup>

## What Impact Will This Have on Students' Rights and on Gender Justice at School?

The Education EO and actions gutting OCR's workforce will have a profound impact on gender justice and students' ability to vindicate their rights. Reducing OCR's capacity jeopardizes students' ability to access relief for civil rights violations. Without sufficient staff to investigate civil rights violations and work with schools to bring them into compliance, it is unclear how complaints will be thoroughly investigated and resolved to ensure students are able to continue safely in their educations, free from discrimination.

However, the Title IX statute, passed by Congress in 1972 as part of the Education Amendments Act, remains in place. Regardless of where OCR is housed and how robustly it is staffed, **students still have an unambiguous statutory right to access education free from sex discrimination**, including sexual harassment and assault, anti-LGBTQI+ discrimination, and discrimination based on pregnancy and parenting status. Further, students can also take action to vindicate their rights without pursuing an OCR complaint by filing a lawsuit in court.<sup>18</sup> And because Title IX is a floor, not a ceiling, nothing prevents schools from voluntarily providing robust protections above and beyond what is required by Title IX.<sup>19</sup>

## How can I find a lawyer?

One option for finding a lawyer is to contact the Legal Network for Gender Equity at the National Women's Law Center. The Legal Network connects people facing sex discrimination at work, at school, and when accessing health care with legal help. Lawyers in the Legal Network provide free initial legal consultations to people connected to them through the Legal Network.

To request legal help through the Legal Network for Gender Equity, fill out an online intake here: [nwlc.org/times-up-legal-defense-fund/](https://nwlc.org/times-up-legal-defense-fund/).

## FOOTNOTES

- 1 Exec. Order No. 14242, 90 Fed. Reg. 13679 (2025), [www.whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities](https://www.whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities).
- 2 *Id.*
- 3 U.S. Const. art. II, § 3.
- 4 See ACLU, *What Is an Executive Order and How Does it Work?* (Feb. 4, 2025), [www.aclu.org/news/privacy-technology/what-is-an-executive-order-and-how-does-it-work](https://www.aclu.org/news/privacy-technology/what-is-an-executive-order-and-how-does-it-work).
- 5 Department of Education Organization Act of 1979, 20 U.S.C. § 3401.
- 6 See Southern Poverty Law Center, Learning for Justice, *Understanding the Role and Responsibilities of the Department of Education* (2025), [www.learningforjustice.org/understanding-the-role-and-responsibilities-of-the-department-of-education](https://www.learningforjustice.org/understanding-the-role-and-responsibilities-of-the-department-of-education).
- 7 See, e.g., Benjamin S. Weiss, Courthouse News Service, *Senate GOP to Introduce Bill Shuttering Education Department After Trump Executive Order* (Mar. 20, 2025), [www.courthousenews.com/senate-gop-to-introduce-bill-shuttering-education-dept-after-trump-executive-order](https://www.courthousenews.com/senate-gop-to-introduce-bill-shuttering-education-dept-after-trump-executive-order); Lexi Lonas Cochran, The Hill, *Trump Moves Against Department of Education: What to Know* (Mar. 20, 2025), [www.thehill.com/homenews/education/5183091-trump-moves-against-department-of-education-what-to-know](https://www.thehill.com/homenews/education/5183091-trump-moves-against-department-of-education-what-to-know).
- 8 Bayliss Fiddiman, *Dismantling the Department of Education Would be Disastrous for Educational Equity* (Feb. 14, 2025), [www.nwlc.org/dismantling-the-department-of-education-would-be-disastrous-for-educational-equity](https://www.nwlc.org/dismantling-the-department-of-education-would-be-disastrous-for-educational-equity).
- 9 Exec. Order No. 14242, 90 Fed. Reg. 13679 (2025), [www.whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities](https://www.whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities).
- 10 Dep't of Educ., *U.S. Department of Education Initiates Reduction in Force* (Mar. 11, 2025), [www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force](https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force).
- 11 Shiwali Patel, *I Used to Work at the Department of Education. That's Why I Know How Bad Trump's Project 2025-Backed Firings Will Be.* (Mar. 18, 2025), [www.nwlc.org/i-used-to-work-at-the-department-of-education-thats-why-i-know-how-bad-trumps-project-2025-backed-firings-will-be](https://www.nwlc.org/i-used-to-work-at-the-department-of-education-thats-why-i-know-how-bad-trumps-project-2025-backed-firings-will-be).
- 12 Naaz Modan, K-12 Dive, *Half of OCR Eliminated After Trump Education Department Layoffs* (Mar. 12, 2025), [www.k12dive.com/news/half-of-ocr-fired-after-trump-education-department-layoffs/742374](https://www.k12dive.com/news/half-of-ocr-fired-after-trump-education-department-layoffs/742374).
- 13 See Education Counsel, "Consistent with Applicable Law": Critical Statutory Constraints on President Trump's Executive Order about K-12 Curricula (Jan. 30, 2025), [www.educationcounsel.com/our\\_work/publications/2025-federal-executive-actions/deep-dive-consistent-with-applicable-law-critical-statutory-constraints-on-president-trump-s-executive-order-about-k-12-curricula](https://www.educationcounsel.com/our_work/publications/2025-federal-executive-actions/deep-dive-consistent-with-applicable-law-critical-statutory-constraints-on-president-trump-s-executive-order-about-k-12-curricula); The Leadership Conference on Civil and Human Rights, *Prohibitions on Federal Interference with Curriculum* (Jan. 2025), <https://civilrights.org/wp-content/uploads/2025/01/ProhibitionsFederalInterferenceCurriculum.pdf>.
- 14 In addition, both the Bureau of Indian Education and the Department of Defense manage educational systems.
- 15 Bernie Sanders, Minority Staff Report, Health, Education, Labor, and Pensions Committee, *President Trump's Decision to Gut the Office for Civil Rights has Left Over 46 Million Students Without Protection from Discrimination* (Mar. 27, 2025), [chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://www.sanders.senate.gov/wp-content/uploads/03.27.25-OCR-Report-Draft-v9.pdf](https://chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://www.sanders.senate.gov/wp-content/uploads/03.27.25-OCR-Report-Draft-v9.pdf).
- 16 Wesley Whistle, New America, *The Perils of Handing Off the Education Department's Job to Other Regulators* (Feb. 13, 2025), [www.newamerica.org/education-policy/edcentral/the-perils-of-handing-off-the-education-departments-job-to-other-regulators](https://www.newamerica.org/education-policy/edcentral/the-perils-of-handing-off-the-education-departments-job-to-other-regulators).
- 17 See, e.g., Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter* (issued Feb. 14, 2025), [www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf](https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf); *Sixty Civil Rights Organizations Call on U.S. Department of Education to Rescind "Dear Colleague" Letter* (Mar. 17, 2025), [www.naacpldf.org/press-release/sixty-civil-rights-organizations-call-on-u-s-department-of-education-to-rescind-dear-colleague-letter-cite-severe-inaccuracies-and-threats-to-equal-opportunity](https://www.naacpldf.org/press-release/sixty-civil-rights-organizations-call-on-u-s-department-of-education-to-rescind-dear-colleague-letter-cite-severe-inaccuracies-and-threats-to-equal-opportunity); Johanna Alonso, *Inside Higher Ed, OCR Halts Investigations, Switches Focus to Trump Priorities* (Feb. 17, 2025), [www.insidehighered.com/news/quick-takes/2025/02/17/ocr-halts-investigations-switches-focus-trump-priorities](https://www.insidehighered.com/news/quick-takes/2025/02/17/ocr-halts-investigations-switches-focus-trump-priorities) (describing OCR's shift to cases related to gender neutral bathrooms, trans women athletes, alleged antisemitism, and alleged discrimination against white students). The Trump administration has rapidly investigated institutions maintaining trans-inclusive policies. Just four days after announcing its investigation into the Maine State Department of Education for its trans-inclusive policy, the U.S. Department of Health and Human Services (HHS) concluded it had violated Title IX—without any interviews, data requests, or negotiations with the state. Similarly, OCR opened an investigation into the state and took under a month to hold that Maine violated Title IX—even though complaint resolution typically takes months or even years. This rapid shows this administration's willingness to disregard and weaponize procedure to hurt vulnerable students. See Eesha Pendharkar, *Maine Was Found Guilty of Violating Title IX. What Does That Mean, and What Happens Next?* (Mar. 7, 2025), <https://mainemorningstar.com/2025/03/07/maine-was-found-guilty-of-violating-title-ix-what-does-that-mean-and-what-happens-next/>.
- 18 The Supreme Court has established that individuals have an implied private right of action under Title IX, Title VI, and Section 504. See Dep't of Justice, Civil Rights Division, *Title IX Legal Manual* (updated Jan. 31, 2025), [www.justice.gov/crt/title-ix](https://www.justice.gov/crt/title-ix).
- 19 See National Women's Law Center, *Students Still Have Title IX Rights Even Without the 2024 Biden Title IX Rule* (Feb. 2025), <https://nwlc.org/resource/students-title-ix-rights-without-2024-biden-rule>.