

SHIFT IN EDUCATION POLICY UNDER THE TRUMP ADMINISTRATION

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A succession of events in the first year of Donald Trump's presidency signals a shift in education policy as part of a broader conservative agenda to reduce governmental regulations, including civil rights activism. Akin to the proverbial pendulum, the shift is rather clear and uniform in its immediate direction, but not its ultimate extent, especially for special education. The immediate effects are evident in the actions and inactions of the U.S. Department of Education's OCR and OSEP.¹ However, the long-range effects on both general and special education are likely to be primarily attributable to the changed complexion of the federal judiciary. Conservative judges tend to defer to school authorities, but not, for example, in cases of applying the First Amendment's religion clauses or statutes that are clear and specific as to Congressional intent. Here are the highlights in chronological sequence for this past year:

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| Feb. 7, 2017 | The Senate confirmed, with the vice president's vote breaking the tie, the President's appointment of Betsy DeVos, a longtime advocate of charter schools and vouchers whose Senate hearing revealed to be not knowledgeable about the IDEA, as head of the Department of Education. |
| Feb. 22, 2017 | The OCR/DOJ Dear Colleague Letter (DCL) withdrew the Jan. 7, 2016 Letter to Price and May 13, 2016 DCL regarding Title IX coverage of transgender students. |
| Mar. 27, 2017 | President Trump signed Congress's voiding of the Nov. 2016 ESSA and teacher-preparation regulations per the Congressional Review Act. |
| Feb. 24, 2017 | The President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda," establishing federal policy "to alleviate unnecessary regulatory burdens." |
| Apr. 25, 2017 | The President appointed the regulatory reform task force to implement this policy. |
| June 8, 2017 | OCR's acting director Jackson issued an internal memo to OCR staff that included: <ul style="list-style-type: none">• a change from (1) collecting 3 years of data from LEAs to (2) a new policy that substantially reduces the scope (systemic→individual), LEA paperwork, and time for investigations• a summary that in the 8-month period from Jan. 21 (day after presidential inauguration) to Aug. 17, OCR "closed" 7,769 complaints, compared to 8,625 closed cases during all of FY 2016 (under the previous administration)² |
| June 22, 2017 | The aforementioned regulatory reform task force issued its interim progress report - https://www2.ed.gov/documents/press-releases/regulatory-reform-task-force-progress-report.pdf |

¹ The Department of Education includes, among various other units, (1) the Office for Civil Rights (OCR) and (2) the Office of Special Education and Rehabilitation Services (OSERS), which in turn, includes the Office for Special Education Programs (OSEP) and the Rehabilitation Services Administration (RSA).

² The distribution of the 7,769 closures were: dismissals - 76%; insufficient evidence - 9%; administrative closures - 7%; resolution agreements - 5%; and early complaint resolution - 2%.

June 22, 2017	<p>As a departure from the usual issuance of proposed new regulations, the Department of Education issued in the <i>Federal Register</i> an open-ended invitation for suggestions of regulations and guidance that may be appropriate for repeal, replacement, or modification (by Aug. 21, 2017).</p> <ul style="list-style-type: none"> • This invitation reportedly yielded 16,000 comments, including many based on template from National Women’s Law Center that urged the Department to retain all current civil rights regulations and guidance documents.
Sept. 8, 2017	<p>In stark contrast with the past practice of frequent policy letters in response to individual inquiries,³ OSEP and OSERS issued only one such policy letter in the ten-month period since the end of February, with this exception being for a private schools’ issue (which referenced the abovementioned Executive Order 13777) - https://sites.ed.gov/idea/idea-files/policy-letter-september-8-2017-to-brian-radziwill/</p>
Sept. 22, 2017	<p>OCR issued “Q&A on Campus Sexual Misconduct,” including its notice of intent for new rulemaking under Title IX and its revocation of the previous administration’s 2011 and 2014 guidance documents.</p>
Oct. 20, 2017	<p>OSERS issued notification of its rescinding of 72 “guidance documents” that were purportedly “outdated, unnecessary” or ineffective.”</p> <ul style="list-style-type: none"> • 9 from RSA (mostly concerning vocational-rehabilitation) • 63 under OSEP (mostly superseded or outdated)
Oct. 27, 2017	<p>The Department issued notice of its intent to withdraw total of 600 “outdated” pieces of sub-regulatory guidance.</p>
Nov. 1, 2017	<p><i>Education Week</i> reported that the Department of Education has drafted a proposal for a two-year hiatus in implementing the new racial/ethnic “significant disproportionality” rule so as to have time to consider whether to continue, modify, or eliminate it.</p>
Nov. 11, 2017	<p>The <i>N.Y. Times</i> reported President Trump’s successful strategy to reshape the federal judiciary via young and deeply conservative nominees, including (a) 18 nominees and 9 Senate approvals w/o any disapprovals for the appellate level, and (b) lesser but effective emphasis at the district court level, with a predominance of white males and including several nominees whom the ABA has rated as unqualified.⁴</p>
Dec. 15, 2017	<p>The <i>Wall Street Journal</i> reported significant cuts in staff of U.S. Department of Education’s OCR via job freeze and buyouts.</p>
Dec. 22, 2017	<p>President Trump signs the new federal income tax legislation, which (a) dampens future increases state and local taxes (the primary source of public school funding) by imposing a cap on these deductions, and (b) facilitates private school enrollment by expanding 529 plans to include up to \$10K annuals for K–12 expenses</p>

³ For a more general policy document, see Questions and Answers on U.S. Supreme Court Decision *Endrew F. v. Douglas County School District RE-1*, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017.pdf> (USDE Dec. 7, 2017).

⁴ This agenda, which included quick rather than careful vetting, continued into the new year; on Jan. 8, 2018 the President resubmitted 21 judicial nominees to the Senate whose nominations expired in 2017, including two that the ABA rated as “not qualified.”