

NATIONAL
ASSOCIATION
of SCHOLARS

WASTE LAND

*The Education
Department's
Profligacy,
Mediocrity,
& Radicalism*

by Neetu Arnold, Mason Goad,
Teresa Manning, David Randall,
and Nathaniel Urban

Waste Land

*The Education Department's Profligacy,
Mediocrity, and Radicalism*

A report by the

NATIONAL
ASSOCIATION
of SCHOLARS

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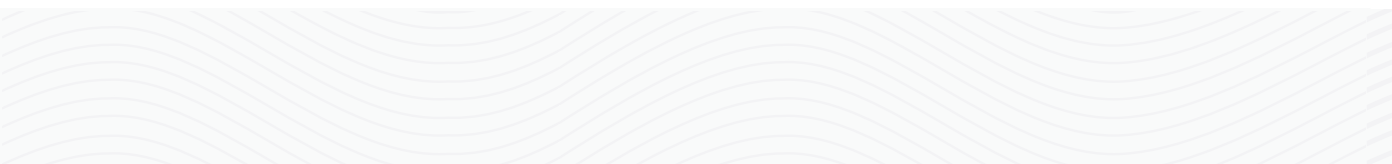
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Contents

Preface and Acknowledgments	8
Introduction	10
The Education Department: A Map of the Territory.....	21
Introduction.....	21
Organizational Structure	21
Funding Structure	24
Statutory and Judicial Background.....	25
Race and Sex Discrimination	28
ED’s Professional Vocabulary	30
Other Parts of Government	31
Reforming Ideals	32
Conclusion	33
History	37
Programs	37
Regulations	40
Conclusion	61
Central Audit	65
Introduction.....	65
Departmental Organization, Employee Counts, and Budget Trends	66
English Language Acquisition	71
Special Education.....	79
Elementary and Secondary Education	89
Conclusion	136

Case Studies: Ashland, OH; Winchester, VA; Philadelphia, PA	145
Introduction.....	145
Case Study: Ashland City School District, Ashland, Ohio.....	145
Case Study: Winchester Public Schools, Winchester, Virginia.....	158
Case Study: School District of Philadelphia, Philadelphia Pennsylvania	165
Conclusion	177
Programmatic Structure: A Roadmap to Reform.....	181
English Language Acquisition	182
Special Education.....	184
Elementary and Secondary Education	194
American Rescue Plan.....	207
Education Stabilization Fund.....	207
Disaster Recovery Unit	208
K-12 Congressionally Funded Community Projects.....	209
Office of State and Grantee Relations and Evidence Based Practices	210
Office of Discretionary Grants & Support Services.....	211
Office of Post Secondary Education.....	218
Institutional Service.....	219
International and Foreign Language Education.....	227
Student Service	228
Office of Career, Technical, and Adult Education.....	230
Institute of Education Sciences	231
Federal Student Aid.....	233
Office for Civil Rights.....	236
Other Offices	238
Policy Recommendations	251
Programs	251
Regulations	260
Conclusion	273
Index	279

Preface and Acknowledgments

Peter W. Wood

President,
National Association of Scholars

I gave David Randall a hard time as he searched for a title to this report. We went through more than a dozen possibilities, starting with the impossibly bland *Public Account*. But when he came up with his nod to T. S. Eliot's 1922 poem, the stars came out. The U.S. Department of Education is the *Waste Land*, in all its fractured incoherence as well as its profligacy. Readers of literature will recall that the poem itself was such a baggy monster that Eliot's friend Ezra Pound had to delete whole sections of it to make it even minimally readable. Would that we could do the same to the actual Department of Education.

We can't. But perhaps the Trump administration and the 119th U.S. Congress can. *Waste Land*, we hope, will assist in that effort.

It is doubtful that any living person really comprehends the whole of the Department of Education (ED). Since it was created in the waning days of the Carter administration and began to take form in the opening months of the Reagan administration, ED has grown like mold on the walls of a flood-ravaged house. Seemingly every session of Congress has added new tasks to ED's mandate without ever removing the old ones and without ever asking whether these tasks are truly valuable or, if so, whether they could be accomplished in some simpler way. Some of the luggage loaded onto ED has fallen off over the years, not because of a sudden desire for efficiency, but usually because some newer and even more cumbersome bureaucratic folly has shoved it aside.

In drafting this report, we set out as innocent outsiders with the question, "What does the Department of Education actually do?" We also wondered, "How do ED's initiatives affect ordinary schools and the students who attend those schools?" To answer the former, we dove into published records. To answer the latter, we sent our researchers into public schools in urban Philadelphia, suburban Virginia, and rural Ohio. And then we tried to distill our findings into a readable report.

How readable it is really is for the reader to decide, but we provide a careful map of the territory in the opening section, a tight list of recommendations at the end, and an index to help the readers who are looking for particular trees in the forest.

I have no wish to make this long study yet longer, but it will help set the tone if I draw from the work of another organization that, like NAS, pokes into dark places in government bureaucracy. I refer to Open the Books, which recently documented the case of Kelisa Wing, former diversity, equity, and inclusion chief at the Department of Defense Education Activity. Ms. Wing has a history of “racially inflammatory statements,” which prompted a congressional investigation over “radical gender ideology” in Defense Department classrooms, as well as a decision by the Biden administration to close her department.¹

What happened to Ms. Wing? She carried her Defense Department expertise over to the Department of Education, where she was hired at an even steeper six-figure salary. Open the Books also reports that, in 2024 in her new job at ED, she gave a conference talk on “The Backlash against Equity.”

This is but a molecule in the sea of contempt with which ED treats the educational values of the American people. That contempt, displayed in a thousand other ways, has fueled the widespread calls to abolish the Department of Education.

In this report, the National Association of Scholars does not join those calls. Rather, we have looked for ways to cut ED down to size by relocating some of its operations to other cabinet departments that we judge less likely to indulge in waste and bureaucratic sprawl. We also call for extinguishing some particular programs and reorganizing others.

This is not to say that we think closing ED is entirely a bad idea, but that it seems to us impractical at least in the near term. Much of its size is due to decades of Congress heaping more and more responsibility on it, funding it extravagantly, and fostering the public impression that it is the font of all sorts of valuable educational innovations. Think of ED as a gigantic iceberg. A frozen Waste Land. It cannot be torpedoed. It can never sink.

But it can indeed be made to melt. This report points to where the heat should be directed.

1 “Diversity Whack-a-Mole: Controversial DOD Employee Pops Back Up at Education Department,” Open the Books, December 4, 2024, <https://www.openthebooks.com/diversity-whack-a-mole-controversial-dod-employee-pops-back-up-at-education-department/>.

Introduction

The United States Department of Education, commonly referred to as the Education Department (ED), is too large and complex to perform its own core functions well. In 2024, it demonstrated that it could not even distribute financial aid to college students properly.

In 2020, Congress enacted the FAFSA Simplification Act in order to simplify the Free Application for Federal Student Aid (FAFSA) application process, protect “the amount of income shielded from a formula used to determine aid eligibility,” and expand the number of Pell Grant recipients.² These reforms were intended to increase the number of students who applied for and received federal student aid. ED suffered difficulties as it implemented this overhaul. Congress granted it an extension—but when ED unveiled its new rushed-to-production FAFSA system just before New Year’s Eve in 2023, it was terribly broken. Department officials had not done their due diligence in technical reviews or beta testing.

FAFSA applicants immediately discovered the new system’s serious glitches. Applicants born in the year 2000 were simply blocked from completing their application. Government Accountability Office (GAO) investigators stated that students were neither warned of this issue nor told when it was fixed. In other cases, graduate students were repeatedly informed that they were eligible for Pell Grants, even though those grants are reserved for undergraduate students. As of September 2024, the electronic signatures of applicants or their parents *still* would simply disappear from their signed forms, making those forms invalid. ED, moreover, seldom picked up the phone to help students, and then it failed to communicate with students about changes to their eligibility. GAO investigators stated that approximately 5.4 million calls were placed to the Department’s FAFSA help center, out of which about 4 million went unanswered. 500,000 applicants whose eligibility was altered due to other mistakes made by the Department were never notified of these changes.³

Richard Cordray, Chief Operating Officer of Federal Student Aid, resigned in Spring 2024. But Cordray was not entirely to blame. ED’s labyrinthine complexity makes it impossible for the Department to perform well any of its multitudinous tasks. ED is a jack of too

2 Katherine Knott and Liam Knox, “Untangling the Bungled FAFSA Launch,” *Inside Higher Education*, March 4, 2024, <https://www.insidehighered.com/news/government/student-aid-policy/2024/03/04/how-ambitious-plans-new-fafsa-ended-fiasco>; Danielle Douglas-Gabriel, “How Creating the New FAFSA Unraveled,” *The Washington Post*, March 11, 2024, <https://www.washingtonpost.com/education/2024/03/11/how-new-fafsa-problems-began/#>.

3 Cory Turner, “Watchdog Sheds Light on FAFSA Fiasco, From a Birthday Bug to Call Center Failures,” *NPR*, September 25, 2024, <https://www.npr.org/2024/09/24/nx-s1-5121218/fafsa-college-financial-aid-gao>.

many trades and a master of none. It cannot be relied on any longer even to disburse college aid properly—and in the 2024 Annualized Continuing Resolution (2024 Annualized CR), the majority of ED funds were devoted to college aid. ED disburses \$106 billion in federal student loans, \$29 billion in Pell Grants, and about \$51 billion for everything else. ED *ought* to be able to perform its most important fiscal function—and it is not.

It is bad enough that ED cannot do its own job. It is worse that the Department is too large and too tangled to be held accountable when it fails.

ED is too large and complex for the public to know precisely what it does. Even policy-makers tasked with its oversight face formidable barriers in executing that task, when they must discover what hundreds of separate programs do, as well as the effects of hundreds or thousands of regulations. ED's size and complexity, and its consequent lack of transparency, make it far too immune to *accountability* to the public and to policymakers.

What ED actually does with its powers has mixed effects. Most of what ED does centers on disbursing money. Its four largest responsibilities, which consist of the vast majority of the funds it handles, are:

1. Title I funds for disadvantaged K–12 students, disbursed by complex formula grants to local educational agencies (LEAs)⁴ and states (2024 Annualized CR: ca. \$18 billion);
2. Special education funds for physically and mentally handicapped students, disbursed by different formula grants to the states (2024 Annualized CR: ca. \$14 billion);
3. Pell Grants for disadvantaged postsecondary students, disbursed directly to individual students, for use at eligible postsecondary institutions (2024 Annualized CR: ca. \$29 billion); and
4. Direct student loans to postsecondary students, disbursed directly to individual students, for use at eligible postsecondary institutions (2024 Annualized CR: ca. \$106 billion).

The federal government as a whole, largely through ED, contributes about 11% of elementary and secondary education revenues and at least 14% of higher education revenues. The last number understates the importance of federal contributions to higher education revenue, since federal assistance also leads students to contribute their own resources to their tuition. Postsecondary institutions defer to federal power with an eye both to direct federal contributions and to the entire tuition provided by every student who receives federal support.

4 "Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools." 34 CFR 303.23, <https://www.ecfr.gov/current/title-34/section-303.23>.

We shall discuss in greater detail below how activist bureaucrats and policymakers use ED's regulatory labyrinth to weaponize these funds and transform the now-dependent states and LEAs into tools of progressive activism. But these funds—as originally intended by Congress, and still to a considerable extent in practice—were meant to fund states, LEAs, postsecondary students, and postsecondary institutions as they made their own decisions about how to use them. To the extent that ED simply channels money to Americans, who then can make their own more local decisions about how to use those funds, ED funds can serve good purposes. To the extent that states and LEAs can ignore ED's directives to impose progressive politics, ED funds may still be used as they originally were intended.

ED imposes its progressive agenda by means of a range of local actions that are never uniform, and never universal, but that are ultimately sufficient to change the nature of American education.

We use the phrase *to the extent*—and, alas, that extent has been diminishing steadily. ED adds to these funding streams an ever-growing number of grant programs that, overall, divert taxpayer money either to no effect or to impose progressive political goals. While these programs only add some tens of billions annually to ED expenditures, ED also holds its larger disbursements hostage to compliance with its regulations and its lawsuits. Above all, the Office for Civil Rights (OCR) has steadily redefined the nature of Title IX and civil rights law, so that states and LEAs must either impose progressive political goals and create bureaucracies to implement them or be found to have violated Title IX or civil rights law.

The largest ED/OCR categories of abusive political imposition are:

1. Informal race and sex quotas;
2. Disparate impact theory, especially as applied to race and sex;
3. The textually unwarranted expansion of the scope of antidiscrimination law to include (sexual) harassment, sexual orientation, gender expression, and gender identity; and
4. Corollary abrogations of liberty (due process, free speech, and religious freedom).

ED and OCR bureaucrats and policymakers have frequently sidestepped the accountability mechanisms of the Office for Civil Rights—above all by means of Dear Colleague

Letters (DCLs) and “voluntary” case resolutions, which are entered into by states and LEAs that wish to avoid the process-as-punishment of an OCR investigation.

ED’s means lend themselves to patchwork effects. The federal government may issue regulations, but states and LEAs can comply with more or less alacrity. The alacrity has become greater as ED pressure and financial concerns generate parallel bureaucracies in the states and LEAs, bureaucracies devoted to enforcing collaboration with federal dictates. Nevertheless, states and LEAs can imitate the old adage of the Spanish Empire, where central authority had limited ability to oversee far-flung dominions: *obedezco pero no cumpro*; I obey, but I do not comply.

When states and LEAs do comply, it is because ED regulations have given license to some local individual to initiate a lawsuit or an administrative complaint against the state or LEA for its alleged violation of civil rights. ED imposes its progressive agenda piecemeal, by a host of individual lawsuits, complaints, and case resolutions. Alternately, fuzzily worded DCLs, and the clear hint of case resolutions, intimidate states and LEAs to take a variety of “voluntary” actions that they believe will bring them into compliance with ED mandates. ED imposes its progressive agenda by means of a range of local actions that are never uniform, and never universal, but that are ultimately sufficient to change the nature of American education.

ED activist bureaucrats and policymakers have done a great deal to turn ED into an unaccountable and arbitrary vessel for progressive political goals. The very structure of ED, which makes states, LEAs, and postsecondary institutions financially dependent upon the federal government, tends to degrade the localized structure of American politics and society and replace it with centralized and counterproductive control by the federal government. Yet we cannot say that ED has been completely counterproductive—and our case studies and our audit below have not provided evidence to substantiate such a conclusion. Perhaps as important, ED’s four main spending streams support goals that appear to have commanded support from large majorities of Americans for several generations. Our report’s evidence, and the long-term political dispositions of America’s citizenry, supports the *reform* of ED, but not its *elimination*.

We wish to make this distinction clear not least because a great many education reformers *have* sought to eliminate ED entirely. We understand the rationale for this goal, and we are sympathetic to it, but we have not embraced it for this report.

The long history of effective federal attention to education before ED, as well as the continued vitality of federal education spending outside ED, explains why many reformers have sought to eliminate ED entirely. If the federal government could attend effectively to education policy before the creation of ED in 1980, surely it can do so again? And indeed, federal education policy doubtless could function without ED. But ED cannot be eliminated until a reformist president, a reformist majority of the House, and a reformist supermajority of

Our report's evidence, and the long-term political dispositions of America's citizenry, supports the reform of ED, but not its elimination.

sixty senators decide that it must go—and that is not likely in the foreseeable future.⁵ If ED is likely to persist anyway, it is reasonable to continue to locate within ED the responsibility for core federal educational tasks: Title I funds, special education funds, Pell Grants, and direct student loans.

Other education reformers have emphasized the reduction of the ED bureaucracy as much as possible, both by eliminating unnecessary and counterproductive programs and by replacing bureaucratically administered programs with block grants to the states and portable grants of money to individuals. We also are sympathetic to these aspirations—but we focus on the first half of that agenda, *eliminating unnecessary and counterproductive programs*. We also favor the simplification of existing formula grants, ideally in ways that would make it easier for them to be converted at some later point into block grants to the states and portable grants of money to individuals. But we do not ourselves make the recommendation to terminate ED's responsibility for disbursing formula grants.

Further, we favor substantial action to rein in ED's discretionary power. Policymakers should focus especially on restraining ED's lawless "forgiveness" of student loans and its ever-increasing abuse of OCR. Our recommendations in this arena, however, focus on brief statements of *what* needs to be done rather than detailed sketches of *how* this should be done. ED has acted without textual statutory warrant for much of what it does for many decades now and—especially with reference to the Biden administration's policy on student loans—in ways that seem completely lawless. We are not sure that any parchment barrier can restrain policymakers and bureaucrats who intend to engage in arbitrary and/or lawless conduct. If ED persists in lawless conduct, the case for eliminating ED entirely must grow far stronger. But for now, we will simply sketch what *should* be ED policies and propose reforms to ED that will maximize its ability to forward the public welfare.

⁵ At present, the complete elimination of federal government monies for education might simply lead to their replacement by monies from private foundations—which tend to be progressive in their commitments. Eliminating the federal government from education might not reduce net progressive influence on education. Reducing federal intervention in education, in other words, is not a cure-all for the ailments that afflict our schools, colleges, and universities.

Our proposed reforms follow these leading principles:

1. Accountability to the public and to policymakers;
2. Nondiscrimination among American citizens;
3. Rationalizing ED's program structure;
4. Prioritizing practical and achievable reform; and
5. The possibility of reserving power to ED to restrain local activist bureaucracies.

ED is now so sprawling and complex that it cannot properly be held *accountable*, either by federal lawmakers or by the public. Our recommendations aim not to eliminate ED, or even to reduce its scope simply to reduce its scope, but rather to simplify its operations so that federal lawmakers and the public will be able practically to oversee ED and hold it accountable to its purpose. While we believe that ED would operate as well or better with a slimmer and more focused budget, the structure of our recommendations allows for lawmakers to provide a constant total budget to ED while reforming its internal architecture. We hope that the structure of our recommendations will give reformist policymakers the ability to make necessary compromises to achieve legislative majorities.

Our recommendations also aim to make the ED regulatory process more accountable to federal lawmakers and the public. ED, like far too much of the federal government, effectively has become a lawmaking body by means of Dear Colleague Letters, Significant Guidances, and the rest of an autonomous regulatory machine. ED has done particular damage by perverting civil rights law to enforce race and sex discrimination within and impose gender ideology on K-12 schools, colleges, and universities. We recommend that the regulatory process also be simplified and made more accountable to Congress. Moreover, our recommendations to simplify ED's programmatic structure should make the regulatory process more accountable. ED's regulatory power lies not least in the fact that K-12 schools, colleges, and universities depend financially upon a host of different programs, each of which is affected by ED regulations. To simplify the programmatic tangle is to simplify the regulatory labyrinth, thereby enabling education reformers to tame ED's abuse of its regulatory power.

In addition to accountability, our reforms emphasize *nondiscrimination*, especially nondiscrimination by race or sex. No government programs should discriminate among American citizens or facilitate predictable discrimination by ED bureaucrats. While we generally favor practicable reform, we champion the outright elimination of ED programs that serve to discriminate. We make an exception for America's historical support of Historically Black Colleges and Universities (HBCUs) and Tribally Controlled Colleges and Universities (TCCUs). However, we support those programs that support HBCUs and TCCUs as *institutions*; such support should not be used as a fig leaf for race discrimination among American citizens.

We recommend *rationalizing* ED's program structure by relocating many programs to other portions of the federal government. We believe that rationalizing ED will make it easier to establish accountability over education and that many of these programs are more logically located in different administrative units. We realize, however, that simply relocating programs may just preserve certain ineffective or counterproductive programs in new homes and that it will have little net effect to reduce federal power over American education. Our relocation recommendations should be taken as provisional; policy reformers may wish to revisit these programs once they have been relocated away from ED.

We recommend *practical reforms*. While we admire thoroughgoing and principled plans to reform or eliminate ED, we believe it will be most useful to provide recommendations that policymakers can use to establish priorities and to engage in a first round of reform, which may be the basis for more thoroughgoing reform at a later point. Bluntly, our recommendations will preserve the vast majority of ED spending, albeit in a simpler form that allows for greater accountability and transparency. We do not intend our recommendations to be an end to ED reform, but we would rather policymakers achieved these reforms first and only then consider what should be done next.

We recommend, finally, that reformers consider *the possibility of reserving power to ED to restrain local activist bureaucracies*. This recommendation does not align with our other recommendations, which largely would reduce ED's size, scope, and power. Yet if ED policies originally prompted many public and private educational institutions to adopt discriminatory and illiberal policies, the distributed activist bureaucracies that ED fostered will continue to forward discriminatory and illiberal policies, even absent further support from ED. ED, indeed, may be the only institution that can restrain these distributed activists. We generally recommend preserving ED not least with this function in mind. We particularly recommend to reformers that they consider concrete, detailed ways that ED may be used as a palladium of liberty against distributed activists and thereby counter as much as possible the harm it has caused.

We have structured our report in this fashion:

- *A Map of the Territory*: A brief outline of ED's organizational structure and of how it works.
- *History*: A history of ED since its creation in 1980, focusing on its programs and its regulations. This history will orient readers and provide context for the *Central Audit* and the case studies.
- *Central Audit*: A detailed analysis of the current structure of ED and of the effectiveness of its different programs as they pertain to K-12 education.

- *Case Studies*: Case studies on the effects of ED programs and policies on three school districts: *Philadelphia, Pennsylvania; Winchester, Virginia; and Ashland, Ohio*. We have selected these case studies to include urban, suburban, and rural school districts.
- *ED's Programmatic Structure: Roadmap to Reform*: A catalogue of every office and program within ED, itemizing which should be retained, which relocated, and which eliminated.
- *Policy Recommendations*: A series of policy recommendations for the public and policymakers.
- *Conclusion*: Final conclusions.

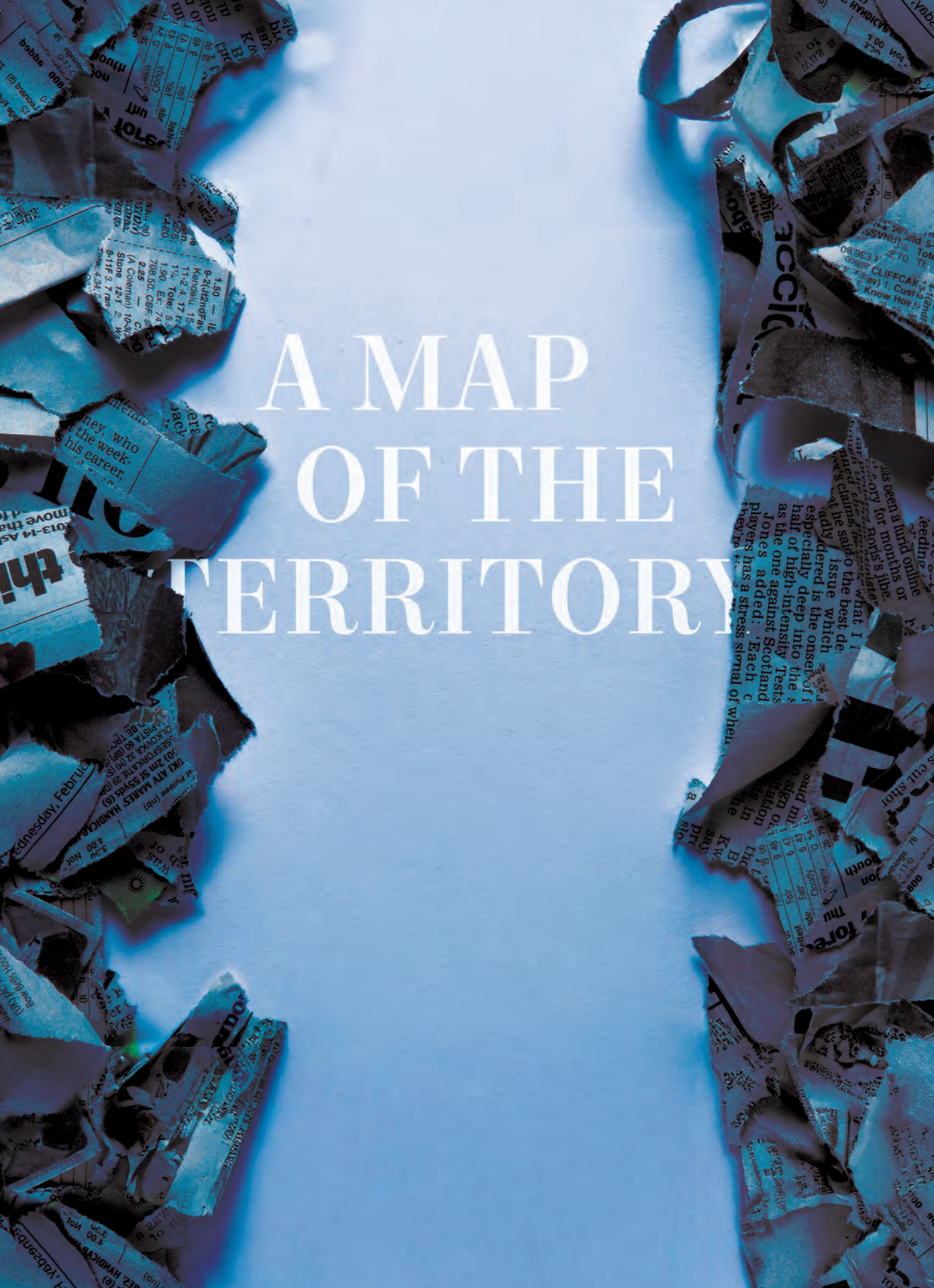
ED has done particular damage by perverting civil rights law to enforce race and sex discrimination within and impose gender ideology on K–12 schools, colleges, and universities.

Our recommendations are generally indebted to previous reformers. We are especially indebted to *Mandate for Leadership*, which provides a recent consensus of education reform priorities for ED.⁶ The Federalist Society has facilitated the publication of a great many legal articles articulating the nature of ED regulatory abuse, as well as preferred solutions. We are indebted to a host of education reformers, whether or not they are explicitly footnoted. We hope that this report will build upon and contribute to the broader education reform policy conversation.

We are especially grateful to the Arthur N. Rupe Foundation, which has provided funding for this report—and, within the Rupe Foundation, to Mark Henrie's support and goodwill.

⁶ Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise*. Project 2025 Presidential Transition Project (Washington: The Heritage Foundation, 2023), 323, <https://static.project2025.org/2025MandateForLeadershipFULL.pdf>.

A MAP OF THE TERRITORY



The Education Department: A Map of the Territory

Introduction

The U.S. Department of Education is a complex organization—its component parts are referred to by a mind-numbing assemblage of departmental names and acronyms, and it refers to policies and administrative vocabulary by means of an equally mind-numbing jargon. The reader needs an introduction to orient him to this user-unfriendly landscape. A glossary would simply reproduce the mind-numbing jargon in alphabetical format, which would not be much of an improvement. We provide this map of the territory, thematic in structure, as a more engaging way to introduce the reader to this language.

This map includes **Organizational Structure, Funding Structure, Statutory and Judicial Background, Race and Sex Discrimination, ED Professional Vocabulary, Other Parts of Government, and Reforming Ideals.**

Organizational Structure

The **Department of Education (ED, for Education Department)**, run by the **Secretary of Education** via the **Immediate Office of the Secretary of Education**, oversees the large majority of federal education spending. Within ED, the **Office of the Deputy Secretary** generally oversees Kindergarten–Grade 12 (**K–12**) education, while the **Office of the Under Secretary** oversees **postsecondary** (vocational training, college, graduate school) education. Several other offices report directly to the Secretary of the Education.

A great many individual offices distribute ED funds. These are the largest nine:

1. The **Office of Elementary and Secondary Education (OESE)** runs the bulk of K–12 programs.
2. The **Office of Postsecondary Education (OPE)** runs the bulk of postsecondary programs.

3. The **Office of Special Education and Rehabilitative Services (OSERS)** specializes in education for the mentally and/or physically handicapped (euphemistically called **special education**); it is also responsible for helping people recover from or minimize the effects of physical or mental impairment (**rehabilitative services**).
4. The **Office of English Language Acquisition (OELA)** specializes in programs (mostly K-12) to help students learn English.
5. The **Office of Career, Technical, and Adult Education (OCTAE)** specializes in adult education, vocational training (education for skilled crafts), and community colleges.
6. The **Institute of Education Sciences (IES)** provides statistics, research data, and academic scholarship intended to improve education policy.
7. **Federal Student Aid** is in charge of federal assistance to postsecondary students, including **grants** (money given outright, especially by way of the **Pell Grants** for poorer students) and **loans** (money given with the expectation that it will be repaid, especially by way of the **William D. Ford Federal Direct Loan Program**).
8. The **American Rescue Plan (ARP)** is a temporary program, passed during the **COVID-19 pandemic**, to provide emergency funds for K-12 schools.
9. The **Education Stabilization Fund (ESF)** is a temporary program, passed during the COVID-19 pandemic, to provide emergency funds for K-12 schools and post-secondary education.

ED runs hundreds more offices and programs within these nine large offices. Of these hundreds of offices and programs, we judge that the reader should be familiar with the following offices and programs.

Within the **Office of Elementary and Secondary Education (OESE)**:

1. **Education for the Disadvantaged** disburses most ED money for school districts with a lot of poor students.
2. The **Office of Indian Education (OIE)** disburses most ED money for federally recognized **Indian tribes**.
3. The **Office of Migrant Education (OME)** disburses most ED money for **migrant children** (children whose parents move regularly from school district to school district).
4. **School Infrastructure Programs (SIP)** disburses money for **K-12 school infrastructure** (e.g., buildings, facilities).
5. The **Office of Safe and Supportive Schools (OSSS)**, which runs Safe Schools and Citizenship Education, disburses ED money for emergency management, mental health, and nebulously defined programs to improve “school climate.”

6. The **Office of Formula Grants** is in charge of **formula grants** (grants disbursed according to a predetermined formula set by Congress).
7. The **Office of Discretionary Grants & Support Services (ODGSS)** operates miscellaneous K-12 programs, including **charter schools** (public schools outside the regular public K-12 school system) and **school choice programs** (programs that allow parents to choose to use tuition funds in either public or private K-12 schools).
8. **School Improvement Programs (SIP)** operates miscellaneous K-12 programs, including **State Assessments** (which helps states to operate state-wide or school district tests) and the **Rural Education Achievement Program (REAP)** (which gives extra financial assistance to rural school districts).

Within the **Office of Special Education and Rehabilitative Services (OSERS)**:

1. The **Office of Special Education Programs (OSEP)** disburses most ED money for educating the mentally and/or physically handicapped (**special education**).
2. The **Rehabilitation Services Administration (RSA)** disburses most ED money for helping people recover from or minimize the effects of physical or mental impairment (**rehabilitative services**).

Within the **Office of Postsecondary Education (OPE)**:

1. **Institutional Service** disburses ED money for miscellaneous small programs, including a great many dedicated to race discrimination on behalf of black, Hispanic, Asian American, and Native American students.
2. **International and Foreign Language Education (IFLE)** disburses ED money to support education abroad or education intended to help America operate internationally, especially foreign language instruction.
3. **Student Service** disburses ED money for miscellaneous programs, especially the **TRIO Programs**, which are intended to help prepare high-school students for college education.

ED operates another ten offices that round out its work:

1. The **Office for Civil Rights (OCR)**, which has greatly abused its powers to promote a progressive policy agenda, takes legal measures to ensure that no education institution receiving ED money violates civil rights law (generally involving **race discrimination**) or Title IX (generally involving **sex discrimination**).
2. The **Office of Planning, Evaluation, and Policy Development (OPEPD)** provides oversight, evaluation, and advice to help operate the rest of the ED.

3. The **Office of the General Counsel (OGC)** provides legal services for the Education Secretary and the rest of ED.
4. The **Office of Communications and Outreach (OCO)** handles ED's public relations.
5. The **Office of the Chief Information Officer (OCIO)** handles ED's computers.
6. The **Office of Finance and Operations (OFO)** handles ED's finances.
7. The **Office of the Chief Economist (OCE)** provides economics research for ED.
8. The **Office of Inspector General (OIG)** makes sure that there's no fraud or waste in ED spending.
9. The **Office of Legislation and Congressional Affairs (OLCA)** communicates with Congressmen and Senators.
10. The **Boards and Commissions** (or **Boards and Committees**) are ten different groups of appointees from outside ED, who advise ED on particular matters and sometimes help make ED policy.

Funding Structure

Each year, ED states what funds it wants, and for what purposes, in its annual **Budget Request**. **Congress (House and Senate)** normally provides money each year for ED in its **Appropriation**—which can differ considerably from the Budget Request. In recent years Congress has frequently failed to pass regular appropriation bills. Instead it passes temporary, stopgap **continuing resolutions (CR)**. These CRs have become regular enough that many ED documents now routinely use the term **Annualized CR** to refer to what is, in effect, the year's appropriation.

Much of ED spending is divided between **formula grants** (grants disbursed according to a predetermined formula set by Congress) and **discretionary grants** (grants disbursed at levels set by Congress as it desires). Individual **Congressmen** and **Senators** also can **earmark** funds—appropriate special funds for ED to spend money for individual projects. ED classifies earmarked funds as **K12 Congressionally Funded Community Projects** and **Postsecondary Earmarks**.

ED funds for poor K-12 students are mostly formula grants authorized by **Title I** of the **Higher Education Act**. **Title I Grants** are meant to help schools and school districts with high proportions of poor students. Congress now distributes these funds by means of four separate formula **Title I-A Grants: Basic Grants, Concentration Grants, Education Finance Incentive Grants, and Targeted Grants**. These four **Title I-A Grants** are disbursed to **local educational agencies (LEAs)**, which are any school district or other local administrative body that provides public schooling. These formulas formally ensure that Title I funds mostly go to poor schools—although education reformers have noted that, informally, they also

ensure that a portion of Title I funds is distributed to as many **congressional districts** as possible.

Title I-C Grants, **Title I-D Grants**, and **Title IV-A Grants**, among other functions, help states educate migrant, neglected, delinquent, and at-risk children and youth. These are generally distributed to **state educational agencies** (SEAs), state bureaucracies that then distribute the funds to LEAs at their discretion.

Title II Grants support a variety of ED discretionary grants, such as those designed to improve literacy. They also fund a formula grant program for students in **juvenile detention**.

Title III Grants help students learn English. They include formula grants, distributed to the states to distribute in turn to LEAs, and discretionary grants.

Title VI Grants help students learn foreign languages.

ED funds for handicapped students are mostly **IDEA Grants**—formula grants distributed under the authority of the **Individuals with Disabilities Education Act (IDEA)**. **Part B Formula Grants**, distributed to the states, help states give handicapped children a free, public education. The two main Part B Formula Grant programs are **Grants to States** (children ages 3 to 21) and **Preschool Grants** (children ages 3 to 5). **Part C Formula Grants**, also distributed to the states, help states care for handicapped infants and toddlers. Its **Grants for Infants and Families** help states care for children ages 0 through 2, along with their families. ED also disburses competitive discretionary grants under **Part B** and **Part D** to improve education for the handicapped.

Congress also imposes **unfunded mandates** on the states via **IDEA**. Congress requires the states to provide a minimum level of education for handicapped children but does not provide them the funds to pay fully for that minimum level of education.

Education reformers often propose replacing ED's funding structure by a partial or total switch to **block grants** (no-strings disbursement of ED money to the states, which allows them complete discretion regarding how the money should be spent) and/or **portable grants** (grants to individuals and families, which they may then use in any public or private institution). The existing ED **Ed-Flex** program is a step in the direction toward **block grants**, since it provides states more flexibility in how they use ED funds.

Statutory and Judicial Background

A great many laws authorize and govern ED's behavior. Some of these predate the establishment of ED in 1980 and governed its programs when they were part of the **Department of Health, Education, and Welfare**. These laws include:

1. **The Elementary and Secondary Education Act (ESEA) (1965)**, which began regular federal funding of and intervention in K-12 education. ESEA has been modified by

the **Education Consolidation and Improvement Act (1981)**, which simplified ED programs and constrained ED authority; by the **Improving America's Schools Act (1994)**, which increased from two to four the number of formula grants for poor K-12 students; by the **No Child Left Behind Act (2001)**, which increased federal oversight and accountability measures; and by the **Every Student Succeeds Act (2015)**, which rescinded some federal oversight and accountability measures.

2. The **Higher Education Act (HEA) (1965)**, which began regular federal funding of and intervention in postsecondary education. HEA has been modified by the **Student Loan Reform Act (1993)**, which turned most college student loans into direct loans from ED; by the **Health Care and Education Reconciliation Act (2010)**, which ended all federal loan programs except the Federal Direct Loan Program; and by the **FAFSA Simplification Act (2020)**, which was supposed to simplify the **Free Application for Federal Student Aid (FAFSA)**, the standard form that students use to apply for ED college loans.
3. The **Education for All Handicapped Children Act (1975)**, which began regular federal funding of and intervention in special education. This act was reauthorized and renamed as the **Individuals with Disabilities Education Act (IDEA) (1990)**.
4. The **Bilingual Education Act (1967)**, which authorizes dedicated funding to help students learn English.
5. The **Indian Education Act (1972)**, which authorizes dedicated funding for American Indian education.
6. The **Carl D. Perkins Vocational and Technical Education Act (1984)**, which authorizes dedicated funding for career and technical education.
7. The **McKinney-Vento Homeless Assistance Act (1987)**, which authorizes dedicated funding to help homeless students.
8. The **Education Sciences Reform Act (2002)**, which created the **Institute of Education Sciences** to house ED data collection and education research.
9. The **CARES (Coronavirus Aid, Relief and Economic Security) Act (2020)**, the **Coronavirus Response and Relief Supplemental Appropriations Act (2021)**, and the **American Rescue Plan Act (2021)**, which gave hundreds of billions of dollars of emergency funding to education institutions during the COVID-19 pandemic.
10. The **Family Educational Rights and Privacy Act (FERPA) (1974)** and the **Protection of Pupil Rights Amendment (1978)**, which both establish parental rights and student rights to access information and to privacy.
11. The **Office for Civil Rights (OCR)** ensures that all recipients of ED funds comply with all civil rights laws, including the **Civil Rights Act (1964)** (Title VI prohibits racial and ethnic discrimination); the **Education Amendments (1972)** (Title IX

prohibits sex discrimination); the **Rehabilitation Act (1973)** (Section 504 prohibits discrimination against the disabled); the **Equal Educational Opportunities Act (1974)**, which proscribes discrimination and segregation in schools and prescribed students' equal participation in school instruction; the **Age Discrimination Act (1975)**, which prohibits discrimination on the basis of age; the **Americans with Disabilities Act (1990)** (Title II prohibits public discrimination against the disabled); and the **Boy Scouts of America Equal Access Act (2002)**, which prohibits discrimination against designated youth groups.

12. The **Administrative Procedure Act (1946)**, which governs much of how ED operates, establishes regulations, adjudicates cases, and interacts with the public.

The first great legislative act to provide federal support for higher education was the **Servicemen's Readjustment Act (1944)**, also known as the **G.I. Bill**. ED's involvement in higher education builds informally upon the G.I. Bill, but there was no administrative continuity between this legislation and the **Higher Education Act**.

Several Supreme Court judicial decisions also have governed ED's behavior, as well as American education policy more generally. These include:

1. ***Griggs v. Duke Power Co. (1971)***, which incorporated "disparate impact" theory into American law and forbade the use of employment tests with disparate racial effect, unless they were directly and narrowly job-related.
2. ***Regents of the University of California v. Bakke (1978)***, which authorized "diversity" as a way to euphemize and disguise identity-group quotas in college and university admissions.
3. ***Plyler v. Doe (1982)***, which required school districts to provide a free public education to illegal aliens.
4. ***Grove City College v. Bell (1984)***, which held that ED could enforce Title IX regulations on an educational institution that enrolled students who received federal assistance but that the enforcement only applied to the institution's financial aid department and not to the institution as a whole. *Grove City* prompted Congress to pass the **Civil Rights Restoration Act (1987)**, which applied ED enforcement to every part of educational institutions that enrolled students who received federal assistance.
5. ***Gebser v. Lago Vista Independent School District (1998)*** and ***Davis v. Monroe County Board of Education (1999)***, which, along with ED's guidance ***Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997)***, redefined sexual harassment as sex discrimination, and thus within OCR's enforcement remit.

6. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (SFFA) (2023)* and *Students for Fair Admissions, Inc. v. University of North Carolina et al. (2023)*, which jointly held that race-based affirmative action programs in college admissions were unconstitutional.
7. *Loper Bright Enterprises v. Raimondo (2024)*, which overturned the **Chevron doctrine** of deference to federal agencies, and which theoretically weakened the ability of ED to impose its will by administrative means such as **Dear Colleague Letters (DCLs)**, **case resolutions**, and rulemaking in general.

Race and Sex Discrimination

A great deal of ED policy is bound up with **race discrimination** among American citizens, generally to support informal race **quotas** framed in such a way as to skirt the Supreme Court prohibition of formal race quotas. ED's informal race quotas used the euphemism of **affirmative action** early on. After *Regents of the University of California v. Bakke (1978)*, the euphemism of **diversity** increasingly supplanted *affirmative action*—and expanded the range of beneficiaries of these informal quotas much beyond the originally intended beneficiary, black Americans. In the last generation, **equity** and **inclusion** have become new euphemisms. Ideologies that have sprung up to justify these quotas, as well as the repression of words and deeds that oppose these quotas, include **diversity, equity, and inclusion (DEI)** and **critical race theory (CRT)**. ED programs and regulations whose very names convey the Department's commitment to race discrimination include **Equity Assistance Centers** and **Equity Requirements in IDEA**. ED programs also camouflage their support for DEI and CRT via support for pedagogies such as **social-emotional learning (SEL)**, which far too frequently conflate "emotional well-being" with "support for DEI and CRT." ED fosters a great deal of race discrimination by its policies and programs. The Department has also encouraged race discrimination against Jews (**antisemitism**) through its selectively lax enforcement of civil rights law when Jews are victims.

Some of ED's race discrimination overlaps with traditional American support for particular organizations and entities, and these should be distinguished. For example, America's support for **Historically Black Colleges and Universities (HBCUs)**, carried out via ED subunits such as the **Strengthening Historically Black Colleges and Universities Division**, is not necessarily an obvious matter of race discrimination as are ED's efforts via the **Hispanic-Serving Institutions Division (HISD)** or the **Strengthening Institutions Division (SID)**—although ED's support for HBCUs can also be framed badly, as individual race discrimination rather than as institutional support.

America has legal commitments to federally recognized **Indian Tribes**, **Alaska Native entities**, and **Native Hawaiians**. ED funds disbursed to Indian Tribes are often directed to **Tribal Education Agencies (TEA)** and **Tribally Controlled Colleges and Universities (TCCU)**. ED programs that support these traditional American commitments, especially when they serve institutions rather than individuals, are not necessarily examples of race discrimination. These legal commitments now have programmatic corollaries to support **Native American Language** education, which can take place outside of tribal lands. A great many ED offices and programs for Indian education, Alaska Native education, and Native Hawaiian education, therefore, need to be considered carefully, to disentangle the appropriate fulfillment of traditional legal relationships from race discrimination among American citizens. E.g., **Native Americans** are an ethnicity rather than a legal entity; ED should not discriminate between American citizens for or against Native Americans, although, without engaging in race discrimination, it can provide support for Indian Tribes and for Native American Language programs.

Offices and programs that should be scrutinized regarding whether they support race discrimination include **Rural, Insular & Native Achievement Programs (RINAP)**, **Accessing Choices in Education**, **Alaska Native Education**, **Demonstration Grants for Indian Children**, the **Native American & Alaska Native Children in School (NAM) Program**, **Native American Language**, the **Native American Language Resource Center**, the **Native American Teacher Retention Initiative**, **Native Hawaiian Education**, **Native Youth Community Projects**, and the **State Tribal Education Partnership Program**.

ED also abuses its enforcement of **Title IX** prohibitions against **sex discrimination** by redefining *sex discrimination* to include a great many policies that were not originally intended by Congress when it voted for Title IX. Early on, ED took Title IX to require informal **sex quotas** for funding and participation, especially in **K-12 athletics** and **college quotas**. ED later expanded *sex discrimination* to include **sexual harassment** and **sexual violence** (including **rape**)—which, since sex discrimination law had lower **due process** requirements than criminal law, severely damaged America's traditional constitutional, legal, and procedural protections for citizens accused of crimes. ED also redefined *sex* to mean the arbitrary word **gender**; it thus interpreted sex discrimination laws without statutory warrant to provide legal protection for **sexual orientation (homosexuals)** and **gender expression (gender identity, gender nonconformity, gender transition, transgender)**, and collective acronyms for a variety of categories of *sexual orientation* and *gender expression* including **LGBT**, **LGBTQ**, **LGBTQ+**, and **LGBTQI+**. Particular flashpoints for **transgenderism** debates include men participating in **women's sports** and men using female **locker rooms**—issues where ED has coerced educational institutions to require both of these unfortunate policies.

ED frequently imposes race and sex discrimination on K-12 school districts and post-secondary institutions by means of the **Office for Civil Rights (OCR)**. OCR purports to uphold

antidiscrimination law (civil rights law, Title IX), but it imposes a great deal of discrimination in the name of **antidiscrimination**. Aside from supporting informal **quotas**, OCR upholds in many areas of education policy the **disparate impact** doctrine, which holds that policies with disparate racial effect—no matter how meritocratic, well-intentioned, or conducive to public welfare—violate civil rights law. ED has used the disparate impact doctrine to cripple K-12 **school discipline** policies, virtually all of which have disparate racial impact. ED also has hinted loudly that school systems must redirect their finances to avoid disparate impact (**Resource Comparability**); this proposal would terminate states' and localities' ability to tax and spend as they wish and subordinate elected policymakers to OCR bureaucrats. OCR frequently uses **Dear Colleague Letters (DCLs)**—along with other forms of technically not obligatory **significant guidance** from ED to funding recipients—and **case resolutions (resolution agreements)** as bureaucratic devices to impose policy changes on K-12 school districts and postsecondary institutions by coercive administrative fiat. **Significant guidance** and **case resolutions** technically are not obligatory rules, so they sidestep both the requirements of the **Administrative Procedure Act (1946)** and the principle that major policy changes should be made by statutes drafted by elected representatives who are democratically responsible to the people.

ED's Professional Vocabulary

ED uses a very large amount of professional vocabulary—bureaucratic jargon, to put it bluntly. Some of the more important collections of ED's professional vocabulary include:

Performance measures (performance metrics) vocabulary registers how ED assesses the effectiveness of its programs. **Qualitative analysis** is a euphemism for subjective reports with too little data. **Quantitative analysis** provides more data and more objectivity, although, all too frequently, ED does not provide any means to determine the **return on investment** of ED spending. **Efficiency measures** measure the performance of ED's own bureaucracy.

English language instruction vocabulary includes **bilingual education** (different classes taught in different languages, most frequently English and Spanish); **English language proficiency (ELP)** (a minimum ability to speak, write, and understand English); English learners (students who need dedicated support to learn English, generally from homes where their families don't speak English); the **Language Instruction Educational Program (LIEP)** (programs dedicated to help students learn English); and **multilingualism (multilingual, multilingual literacy)**, a euphemism for a weakening commitment to teaching students English. ED acknowledges that English language instruction is primarily for **immigrants** and their children; it does not acknowledge how much English language instruction serves **illegal aliens** and their children, save by euphemisms such as **illegal immigrants** and **undocumented Americans**.

Accreditation vocabulary concerns the **accrediting organizations**, particularly the seven **regional accrediting organizations**, that provide general undergraduate accreditation. *Accreditation* makes a postsecondary institution eligible to receive federal student aid, including both grants and loans. These *accrediting organizations* theoretically are independent of ED, but ED exercises ultimate control by accrediting the accreditors. It does this by means of the **National Advisory Committee on Institutional Quality and Integrity**.

Assessment vocabulary largely concerns state and school district examinations that are supposed to provide the public a transparent measure of how well K–12 schools educate children. ED’s **State Assessments**, **State Assessment Grants**, and **Competitive Grants for State Assessments** are part of the Department’s organizational jungle concerned with assessments. The independent **National Assessment Governing Board** is also affiliated with ED. The leading provider of standardized assessments is the **College Board**, which is responsible for the **Standardized Aptitude Test (SAT)** and **Advanced Placement (AP) examinations and courses**. State assessments in English language arts and mathematics have been heavily influenced by the mediocre **Common Core** model examinations, not least because of federal financial inducements.

Other Parts of Government

Other parts of the federal government provide education services already and/or should take over parts of what ED now does. These include:

1. The **Department of Agriculture (USDA)**, which provides funding for school lunches by means of its **National School Lunch Program (NSLP)**.
2. The **Department of Defense (DOD)**, whose **Department of Defense Education Activity** runs a worldwide school system for the children of our soldiers and officers, and whose **Defense Language Institute Foreign Language Center** supports foreign language instruction.
3. The **Department of Health and Human Services (HHS)**—which, before 1980, was the **Department of Health, Education, and Welfare**—includes the **Administration for Community Living**, which ought to take over ED’s **Rehabilitation Services Administration (RSA)**; **Social Services**, which ought to take over the **Office of Migrant Education** and several smaller ED programs; and **Emergency Preparedness and Response**, which ought to take over ED’s **Disaster Recovery Unit**.
4. The **Department of the Interior (DOI)**, whose **Bureau of Indian Affairs (BIA)** includes a **Bureau of Indian Education (BIE)**, which ought to take over ED’s **Office of Indian Education (OIE)**.

5. The **Department of Justice (DOJ)**, whose **Civil Rights Division** ought to take over ED's **Office for Civil Rights**, and whose **Federal Bureau of Prisons** provides education for students in jail or juvenile detention.
6. The **Department of Labor (DOL)**, whose **Employment and Training Administration** ought to take over ED's **Office of Career, Technical, and Adult Education (OCTAE)**.
7. The **Department of State (DOS)**, whose **Bureau of Educational and Cultural Affairs** supports education abroad, and which ought to take over ED's **International and Foreign Language Education (IFLE)** program.
8. The **Department of Veterans Affairs (VA)**, whose **Education and Training** ought to take over all ED programs for veterans.
9. The **National Endowment for the Arts (NEA)**, whose **Arts Education** ought to take over all arts education programs in ED's **Well-Rounded Education Programs Office (WEPO)**.
10. The **National Science Foundation (NSF)**, whose **Directorate for Social, Behavioral and Economic Sciences** ought to take over many ED research programs, especially those housed in the **Institute of Education Sciences (IES)**.

Reforming Ideals

Education reformers generally wish to reform ED policies to restore **freedom (liberty)**. They favor strengthening **First Amendment** rights, including **freedom of speech**, **freedom of assembly**, and **freedom of religion** (both of individuals and of **religious organizations**), as well as **due process** rights to be treated fairly in accordance with established laws and procedures. These liberties are particularly threatened by **OCR's** coercive imposition of **DEI** and **CRT** policies. Educational reformers support individual liberty, but they also support **parental rights** to raise and educate their children as they will.

Educational reformers also favor increasing parents' liberty to choose a school for their children. This principle is articulated in goals such as **charter schools** (administratively autonomous public schools), **school choice** (the ability to choose which public school to attend, or, more expansively, public support for attending a private school), and **education savings accounts** (portable public money that parents can use for either public schools or private schools). ED offices and programs that support these goals include **School Choice & Improvement Programs (SCIP)** and the **Federal Charter School Program**.

Education reformers also favor reform in support of the **national interest**. Such reforms include greater scrutiny of the influence exerted by great power rivals such as China or by bigoted dictatorships such as Qatar. Such scrutiny particularly concerns foreign financial

support of American educational institutions and criminal actions by foreign students, such as antisemitic intimidation.

Education reformers, finally, favor **gifted education**—dedicated education for smart students. ED programs that support this goal include the **Jacob K. Javits Gifted and Talented Students Education Program**.

Conclusion

This map of the Education Department is not comprehensive. To name every ED program would be, in effect, to repeat this report. This outline, however, should orient the reader and make our report easier to understand.



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History

Programs

The major programs and mandates that make up the U.S. Education Department (ED) are older than the Department itself. While the Department—including its associated cabinet position, the secretary of education—was created in 1980, Title I aid to the states and local educational agencies (LEAs) dates back to the **Elementary and Secondary Education Act of 1965**. Special education monies date back to 1975, with the passage of the **Education for All Handicapped Children Act**. Bilingual education support began with the **Bilingual Education Act of 1967**, while much of the dedicated education spending for American Indians dates to the **Indian Education Act of 1972**. The **Equal Educational Opportunities Act of 1974** prohibited discrimination and segregation in schools and prescribed students' equal participation in school instruction. The **Family Educational Rights and Privacy Act**, enacted the same year, both gave substantial privacy rights to students and gave parents the rights to access and control the disclosure of information about their children.

In higher education, **Pell Grants** and the **William D. Ford Federal Direct Loan Program** (under various previous names) also draw upon the **Higher Education Act of 1965**, which was revised in 1972 and 1978. It is worth adding that the House and Senate committees devoted to education date back to 1867 and 1869, respectively, and that major initiatives such as the World War II G.I. Bill also predated ED.

Moreover, a great many other education programs also continue to be housed outside ED. The Department of Defense runs an entire school system under Department of Defense Education Activity, the Department of Justice's Federal Bureau of Prisons offers an array of education programs, and education funding is provided by the National Science Foundation and the National Endowment for the Arts. An astonishing number of federal agencies share responsibility with ED for supporting education.

Yet the greatest changes in federal education policy—and, consequently, in American education as a whole—have proceeded within ED and under the leadership of the education secretary since the Department's creation in 1980. A brief catalogue of the most important judicial, statutory, and programmatic developments since 1980 includes:

- The **Education Consolidation and Improvement Act (1981)** consolidated many ED programs, notably by converting much Title I spending into formula grants to LEAs, and relegated substantial education authority from ED to the states.
- The **Carl D. Perkins Vocational and Technical Education Act (1984)** authorized substantial ED funding for career and technical education.
- The Supreme Court decision *Grove City College v. Bell* (1984), which held that 1) ED could enforce Title IX regulations (and, by extension, all ED interpretations of civil rights law) on educational institutions that enrolled students who received federal assistance; and 2) that the regulation only applied to the institution's financial aid department and not to the institution as a whole.
- The **Civil Rights Restoration Act (1987)** overturned the second part of *Grove City College v. Bell* (1984) and declared that ED's enforcement of civil rights law applied to every part of educational institutions that enrolled students who received federal assistance.
- The **Individuals with Disabilities Education Act (IDEA) of 1990** reauthorized and renamed the Education for All Handicapped Children Act (1975), with revisions including greater attention to the individual education of special education students and an even stronger emphasis that special education should take place in the least restrictive environment.
- The **Student Loan Reform Act (1993)** transformed the bulk of federal student loans from guarantees of student loans secured from private lenders (Federal Family Education Loan Program) to student loans provided directly by ED.
- The **Improving America's Schools Act (1994)** increased from two to four the number of separate Title I formula grants disbursing funds to states and LEAs: Basic Grants (1965), Concentration Grants (1978), Targeted Grants (1994), and Education Finance Incentive Grants (1994).
- The **Federal Charter School Program (1994)**, established by amendment of the Elementary and Secondary Education Act, provided federal funding to states and LEAs to manage and develop charter schools.
- The **No Child Left Behind Act (2001)** revised the Elementary and Secondary Education Act (1965) and added far greater federal promotion of and oversight of standardized testing and other education accountability measures.
- The **Education Sciences Reform Act (2002)** created the Institute of Education Sciences to house and promote ED data collection programs, including the National Center for Education Research, the National Assessment of Educational Progress, and the Regional Educational Laboratory Program.

- The **Health Care and Education Reconciliation Act (2010)** terminated the Federal Family Education Loan Program and left the William D. Ford Federal Direct Loan Program as the sole federal student loan program.
- The **Every Student Succeeds Act (2015)** revised the No Child Left Behind Act (2001) and relegated the responsibility for portions of standardized testing and education accountability from the federal government to the states.
- The **CARES Act (2020)**, the **Coronavirus Response and Relief Supplemental Appropriations Act (2021)**, and the **American Rescue Plan Act (2021)** directed hundreds of billions of dollars of emergency funding to education institutions, funding that was justified as an amelioration of the economic effects of the COVID-19 pandemic.

ED itself employs about 4,400 employees, but ED has done far more to increase the size of state and local education bureaucracies.⁷ The federal government funds 41% of state education agency salary costs, and these state agencies employ ca. 48,000 employees. An extraordinary number of state and local education administrative personnel, moreover, work to satisfy federal mandates and accountability requirements.⁸ One very significant measure of ED's growing and intrusive influence in American education is the distributed state and local education bureaucracy—invisible on the federal books—that complies with ED directives and requirements.

United States Secretaries of Education

Name	Dates in Office
Shirley Hufstедler	1979–1981
Terrel Bell	1981–1985
William Bennett	1985–1988
Lauro Cavazos	1988–1990
Lamar Alexander	1991–1993
Richard Riley	1993–2001
Rod Paige	2001–2005
Margaret Spellings	2005–2009
Arne Duncan	2009–2016
John King Jr.	2016–2017
Betsy DeVos	2017–2021
Miguel Cardona	2021–2025
Linda McMahon	2025–present

⁷ ED's use of contractors appears to be minimal, since ED contracts are about 1–2% of its annual expenses. "Department of Education: Staffing Levels Have Generally Decreased Over Time, While Contracting Levels Have Remained Relatively Stable," U.S. Government Accountability Office, July 12, 2017, <https://www.gao.gov/products/gao-17-669r>.

⁸ Dans and Groves, *Mandate for Leadership*, 323; Jonathan Butcher, "Who Signs Your Paycheck?" *Education Next*, https://www.educationnext.org/who-signs-your-paycheck-federal-influence-state-education-agencies/#_edn1.

Regulations

Another measure is the growing weight of ED regulations, especially in its abusive enforcement of civil rights and Title IX law. ED has arrogated to itself effective lawmaking power, to an increasingly radical effect. The growing size and complexity of ED programs is the essential precondition of these administrative impositions. States, LEAs, and postsecondary institutions have become financially dependent on ED—and they have acquired their own parallel bureaucracies, which are either acquiescent to or eager handmaidens of ED bureaucrats and their dictates. ED's power to dictate depends on its power to bring civil rights and Title IX law to bear on colleges' and universities' eligibility to receive federal money.

ED, precisely, can exert financial, administrative, and legal pressure on institutions that are deemed to have discriminated illegally on grounds of race and sex, as spelled out in the complex of authorizing civil rights and Title IX legislation within its purview. ED's abuse of its regulatory power ultimately derives from attempts to redefine progressive policy goals as remediations of violations of civil rights and Title IX law.

The five most publicized (overlapping) categories of such abuse are:

1. Informal race and sex quotas;
2. Disparate impact theory, especially as applied to race and sex;
3. The illegal expansion of the scope of antidiscrimination law;
4. Abrogations of liberty (due process, free speech, and religious freedom);
5. The use of Dear Colleague Letters and Resolution Agreements to sidestep the publicity requirements of the Administrative Procedure Act.

While these abuses have been the most publicized, we would like to emphasize that ED issues a host of dry financial and administrative regulations and Dear Colleague Letters (DCLs), which collectively hollow out state sovereignty and local decision-making power. These may be no more unconstitutional than the entire hypertrophied federal administrative state—but they are no less unconstitutional. While we will not focus here on how ED's regulatory and fiscal power inexorably degrades the federalist reservation of power to the states and the people, we urge the reader to keep in mind this power and its effect.

We also will not emphasize the complementary role of activist nongovernmental organizations (NGOs), who use a “barratry” strategy to activate the administrative state—complaints that bring (the threat of) ED intervention to bear and thereby bring about desired policy changes.⁹ The UC Berkeley School of Law, for example, altered its admissions policy in 1997 following the announcement of an OCR investigation. That OCR investigation was in turn sparked by a complaint by the Mexican American Legal Defense and Educational Fund,

⁹ Christopher Caldwell, *The Age of Entitlement: America Since the Sixties* (New York: Simon and Schuster, 2020), 16; National Association of Scholars, “Barratry Bureaucracy,” September 14, 2023, <https://www.nas.org/blogs/statement/barratry-bureaucracy>.

ED issues a host of dry financial and administrative regulations and Dear Colleague Letters (DCLs), which collectively hollow out state sovereignty and local decision-making power.

the NAACP Legal Defense and Educational Fund, the California Women’s Law Center, the Asian Pacific American Legal Center of Southern California, Equal Rights Advocates, and La Raza Centro Legal.¹⁰ Readers should presume that activist NGO complaints and lawsuits systematically set up ED abuses of power.

Informal Race and Sex Quotas

ED has supported policies that apply informal race and sex quotas to various aspects of the education system—often, as we shall see below, by way of disparate impact theory. These quotas did not originate with ED—but ED has lent support to such quota systems by investigating failures to have “nondiscriminatory” proportions of protected identity groups as violations of civil rights law or Title IX.

Title IX provided an early and powerful example of such intervention. In 1979, even before the creation of ED, the Office for Civil Rights in the Department of Health, Education, and Welfare devised a three-prong system for testing whether college athletics discriminated against women—one prong of which, and the most effective as a legal safe harbor for educational institutions, was a test of the proportion of support going to women’s athletics: “Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.”¹¹ Since then, Title IX has exerted steady pressure on educational institutions to provide as many informal quotas as necessary to secure such proportionality. Melinda Sidak judged that, by

10 Elaine Woo, “Boalt Hall Law School Kills Its Grade-Weighting Policy,” *Los Angeles Times*, November 27, 1997, <https://www.latimes.com/archives/la-xpm-1997-nov-27-mn-58146-story.html>; Jennifer Nelson, “Department of Education v. Academic Standards,” *The Federalist Society* [Civil Rights Practice Group Newsletter - Volume 1, Issue 3, Fall 1997], December 1, 1997, <https://fedsoc.org/commentary/publications/departement-of-education-v-academic-standards>.

11 A Policy Interpretation: Title IX and Intercollegiate Athletics [OCR-00005], *Federal Register*, Vol. 44, No. 239 - Tuesday, Dec. 11, 1979, Office for Civil Rights, U.S. Department of Education, <https://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>; Alison E. Somin, “Title IX,” *Federalist Society* [New Federal Initiatives Project], August 5, 2010, <https://fedsoc.org/commentary/publications/title-ix>.

December 1997, “the transformation of Title IX from an equal opportunity and antidiscrimination law to a rigid and arbitrary quota system is now complete.”¹²

In the realm of race, we may confine ourselves to three examples of ED’s actions that exerted pressure on educational institutions to strengthen racial “proportions.” ED’s investigation of University of California law schools for racial discrimination closely followed the 1996 passage of Proposition 209, the referendum that prohibited race discrimination by the state of California. ED’s investigation seemed intended to nullify the effects of that referendum. As Jennifer Nelson wrote at the time, “the Clinton Administration decision to pursue the investigation is continued evidence that the Administration intends to use its bureaucratic powers to force state and local government agencies to continue using race and gender preferences—even in the face of court orders or voter initiatives to the contrary.”¹³ The language of Education Secretary Richard Riley’s 1997 DCL substantiates that judgment:

I want to confirm that the passage of Proposition 209, which would generally prohibit affirmative action under state law for women and racial minorities, has not changed the obligation of school districts and colleges to abide by federal civil rights statutes in order to remain eligible to receive Department funding, nor has it changed the obligations of schools participating in a small number of federal programs administered by the Department to consider race, as appropriate, under the terms of those programs. In addition, I want to express my continuing support for appropriately-tailored affirmative action measures, which are important tools in our efforts to ensure that all students achieve to high standards.¹⁴

In 2001, in the waning days of the Clinton administration, Secretary Riley cited in a DCL a disproportion of resources as a potential civil rights violation: “I am writing to call your attention to a serious issue that goes to the heart of our shared mission to ensure equal educational opportunity and to promote educational excellence throughout our nation—the problem of continuing disparities in access to educational resources.”¹⁵ In 2014, ED founded its DCL intervention in school discipline policies on a racial “disproportion” in school disciplinary actions.¹⁶ In this intervention, as the Wisconsin Institute for Law and Liberty put it, the “Department of Education’s emphasis on the collection and monitoring of racial statistics and its demand that something be done if the numbers come out the wrong way

12 Melinda Sidak, “Brown University v. Cohen: A Pyrrhic Victory for Feminists,” *Federalist Society* [Civil Rights Practice Group Newsletter - Volume 1, Issue 3, Fall 1997], December 1, 1997, <https://fedsoc.org/commentary/publications/brown-university-v-cohen-a-pyrrhic-victory-for-feminists>.

13 Nelson, “Department of Education v. Academic Standards.”

14 Dear Colleague Letter: Passage of the California Civil Rights Initiative, Proposition 209, Office for Civil Rights, U.S. Department of Education, March 19, 1997, <https://www2.ed.gov/about/offices/list/ocr/docs/prop209.html>.

15 Guidance on Racial and Ethnic Disparities in Access to Educational Resources, January 19, 2001, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-200101-title-vi.pdf>.

16 Resource on Confronting Racial Discrimination in Student Discipline, January 8, 2014, <https://web.archive.org/web/20140816042104/https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

is tantamount to setting impermissible race quotas for disciplinary outcomes.”¹⁷ ED, since its foundation, has exerted informal pressure to reinforce race and sex quotas—as we may also see, for example, in its *Dear Colleague Letter: Title VI Access to AP Courses* (2008) and *Dear Colleague Letter: Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina et al.* (2023).¹⁸

These examples, as we shall see, overlap with the effects of “disparate impact” theory and DCLs. What they all illuminate is an underlying logic to ED regulatory practice—ED applies informal pressure on educational institutions to maintain race and sex quotas in an increasingly broad range of their policies.

ED applies *informal* pressure. ED itself has not formally required quotas. Yet the Title IX prongs have been symptomatic of a countering presumption—namely, that a failure to achieve race and sex proportionality will also be taken as litigable and that some sort of informal quotas will serve as a practical safe harbor for an educational institution, one that is within spitting distance of a legal safe harbor. So likewise, with respect to race, the belief articulated by Secretary Riley in his 1997 DCL: “I continue to believe that appropriately-tailored affirmative action measures are educationally sound tools to remedy the effects of prior discrimination and to foster diversity at educational institutions.”¹⁹ American educational institutions have acted to impose informal quota systems not least because of the continuing heavy hints from ED that they will suffer investigations and lawsuits if they do not.

ED and its functionaries have also worked steadily to formulate various means by which they may formally bring their powers to bear, all in order to achieve this and other progressive policy goals. “Disparate impact” theory, for a notable example, has enabled progressives to redefine an extraordinary amount of their public policy goals as remediations of violations of civil rights and Title IX law.

Disparate Impact

The legal incorporation of “disparate impact” dates back to *Griggs v. Duke Power Co.* (1971), which forbade the use of employment tests with disparate racial effect²⁰ unless such tests were directly and narrowly job-related. The disparate impact doctrine did not provide a formal judicial precedent for education—especially since the controlling statutory language in

17 Wisconsin Institute for Law & Liberty, Inc., “Letter to Betsy DeVos, Secretary of Education, U.S. Department of Education,” June 12, 2018, cited in Hans von Spakovsky and Jonathan Butcher, *Misusing “Disparate Impact” to Discriminate Against Students in School Discipline*, The Heritage Foundation, September 29, 2020, <https://www.heritage.org/civil-rights/report/misusing-disparate-impact-discriminate-against-students-school-discipline#:~:text=Disparate%20impact%20is%20the%20dubious,differently%20based%20on%20their%20race>.

18 *Dear Colleague Letter: Title VI Access to AP Courses*, Office for Civil Rights, U.S. Department of Education, May 22, 2008, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080522.pdf>; *Dear Colleague Letter: Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina et al.*, Office for Civil Rights, U.S. Department of Education, August 14, 2023, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230814.pdf>.

19 *Dear Colleague Letter: Passage of the California Civil Rights Initiative, Proposition 209*, Office for Civil Rights, U.S. Department of Education, March 19, 1997, <https://www2.ed.gov/about/offices/list/ocr/docs/prop209.html>.

20 Presumably, “disparate impact” theory has also fostered the spreading misuse of *impact* to mean *effect*, *consequence*, or (as a verb) *affect*. We use “impact” here in this incorrect sense as little as possible.

civil rights and Title IX law clearly forbade racially or sexually disparate *treatment* rather than disparate *effect*.²¹ The ambiguous authorization of affirmative action in *Regents of the University of California v. Bakke* (1978) nevertheless created informal pressure, and permission, to use disparate impact theory as a complement to the equally informal quotas of affirmative action.

Disparate impact theory, as applied to education, holds that any policy with disparate racial or sexual *effect* violates civil rights law. This explicitly contradicts the civil rights and Title IX statutes, as well as the tenor of major corollary judicial decisions,²² which state that what has been rendered illegal is discriminatory *intent*.

Indeed, disparate impact theory tends more generally to degrade the foundations of Anglo-American law, such as individual responsibility and the presumption of innocence. It also replaces individual competition on the grounds of merit with identity-group quotas. It furthermore is an engine of too-powerful and arbitrary government, since

1. An equality of results among human beings never occurs by nature, not least because human beings make individual choices by free will that differ from one another in their consequences;
2. An equality of results can only be achieved (if at all) by government intervention;
3. As Mulder notes, "any policy or practice will benefit some groups more than others"; and
4. Government must arbitrarily select among the infinity of inequalities that are worthy of litigation.²³

To accept disparate impact theory is to grant excessive power to ED, or to any government agency granted power to "remedy inequalities," to act arbitrarily and perpetually in pursuit of the unattainable.

These broader effects of disparate impact theory are reasons to oppose it politically. In the narrower confines of legal judgment, it is enough to say that disparate impact theory does not accord with the controlling statutory language in civil rights and Title IX law. ED can only claim to apply disparate impact theory through a studied unconcern about the statutory warrant for its powers.

21 Carissa Mulder, "The Kudzu of Civil Rights Law: Disparate Impact Spreads Into Educational 'Resource Comparability,'" *Federalist Society [Federalist Society Review]*, Volume 16, Issue 2, September 4, 2015, <https://fedsoc.org/fedsoc-review/the-kudzu-of-civil-rights-law-disparate-impact-spreads-into-educational-resource-comparability>.

22 *Alexander v. Sandoval*, 532 U.S. 275, n. 6 (2001), cited and analyzed in Mulder, "Kudzu of Civil Rights Law": "We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably entwined with' § 601 . . . when § 601 permits the very behavior that the regulations forbid." See also Roger B. Clegg, "OCR's Testing (Mis)Guidance: Anti-Education, Anti-Civil Rights," *Federalist Society [Civil Rights Practice Group Newsletter - Volume 3, Issue 3, Winter 2000]*, February 1, 2000, <https://fedsoc.org/commentary/publications/ocr-s-testing-mis-guidance-anti-education-anti-civil-rights>.

23 Mulder, "Kudzu of Civil Rights Law." Mulder also notes that remedies meant to achieve equal outcomes may have counterproductive results, such as placing underprepared students in advanced classes to achieve group-identity "equity." See also Richard H. Sander and Stuart Taylor Jr., *Mismatch: How Affirmative Action Hurts Students It's Intended to Help, and Why Universities Won't Admit It* (New York: Basic Books, 2012).

Disparate impact theory, as applied to education, holds that any policy with disparate racial or sexual effect violates civil rights law.

ED nevertheless has repeatedly brought up disparate impact theory as a justification for its proposed actions. We already have mentioned Education Secretary Riley's DCL that cited a disproportion of resources as a potential civil rights violation. Riley based this position particularly on disparate impact theory—although with evasive stipulations.

Title VI and its implementing regulations prohibit the disparate treatment of students based on race and national origin as well as policies or practices that have a discriminatory disparate impact by race or national origin. Disparity alone does not constitute discrimination; rather, the existence of a significant disparity triggers further inquiry to ensure that the given policy is educationally justified and that there are no alternative policies that would equally serve the recipient's goal with less disparity.²⁴

Secretary Riley's DCL used ED's interference in state and local taxation to require "intradistrict" and "interdistrict" financial transfers in order to equalize education spending on the progressive policy agenda: as Mulder noted, "the only way that OCR can achieve its goal is by forcing states and localities to remake their school funding systems. The reference to intradistrict and interdistrict funding disparities makes this plain."²⁵ Secretary Riley, in other words, articulated that a strategic progressive policy goal is to use ED to usurp state and local fiscal authority—the right to tax and spend—on the grounds that any "disparate impact" of existing education fiscal policy is a litigable violation of civil rights. ED followed up on Secretary Riley's DCL with a successor DCL on Resource Comparability in 2014.²⁶ ED steadily exerts informal pressure on states and school districts to alter their education fiscal policy, for fear of investigation and lawsuit.

ED's intervention into school discipline policies also rests on the grounds of disparate impact.²⁷ ED's 2014 DCL on Confronting Racial Discrimination in Student Discipline stated that:

Although statistical and quantitative data would not end an inquiry under Title IV or Title VI, significant and unexplained racial disparities in student discipline give

24 Guidance on Racial and Ethnic Disparities in Access to Educational Resources.

25 Mulder, "Kudzu of Civil Rights Law."

26 Mulder, "Kudzu of Civil Rights Law"; Dear Colleague Letter: Resource Comparability, Office for Civil Rights, U.S. Department of Education, October 1, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

27 Von Spakovsky and Butcher, *Misusing "Disparate Impact" to Discriminate Against Students in School Discipline*.

rise to concerns that schools may be engaging in racial discrimination that violates the Federal civil rights laws. ... The administration of student discipline can result in unlawful discrimination based on race in two ways: first, if a student is subjected to *different treatment* based on the student's race, and second, if a policy is neutral on its face—meaning that the policy itself does not mention race—and is administered in an evenhanded manner but has a *disparate impact*, i.e., a disproportionate and unjustified *effect* on students of a particular race.²⁸

ED's warning that any racially disparate impact in school discipline could be investigated or prosecuted as a violation of civil rights law has been unfortunately successful in destroying the will or the ability of school districts to exert proper school discipline:

As written and implemented, the Guidance has been criticized on three primary grounds. First, it creates a chilling effect on classroom teachers' and administrators' use of discipline by improperly imposing, through the threat of investigation and potential loss of federal funding, a forceful federal role in what is inherently a local issue. ... Guidance has likely had a strong, negative impact on school discipline and safety.²⁹

Similar ED disparate impact initiatives threaten standards assessments: in 1999, for example, ED distributed draft guidelines that would “challenge the use of standardized tests when they have a ‘disparate impact’ on racial or ethnic groups.”³⁰ As Roger Clegg noted, this complaint revealed an obvious double standard at ED:

It has become something of an open secret these days that most selective colleges and universities ... require Asians and whites to score at a particular level on the SAT or ACT in order to be admitted, but hold African Americans and sometimes Hispanics to a lower standard. ... OCR has not complained during the Clinton administration about this practice—which, again, any reasonable person would conclude is discrimination in violation of Title VI, the statute that OCR is charged with enforcing.³¹

Indeed, any standard based on individual merit will inevitably have a “disparate impact” on some group; disparate impact theory logically requires ED to dismantle any accurate standards assessment.

Perhaps most troublingly, ED has applied disparate impact theory to special education, in ways that threaten to make it impossible to function. In 2016, ED wrote a DCL stating that

28 Resource on Confronting Racial Discrimination in Student Discipline, January 8, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>. Emphasis original.

29 The U.S. Departments of Education, Justice, Homeland Security, and Health and Human Services, *Final Report of the Federal Commission on School Safety*, December 18, 2018, <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

30 Clegg, “OCR’s Testing (Mis)Guidance.”

31 Clegg, “OCR’s Testing (Mis)Guidance.”

the “over-identification, under-identification, and belated evaluation of students of color to determine whether they have disabilities and need special education services can violate Title VI and Section 504, and in so doing harm students’ civil rights to equal educational opportunity.”³² This DCL threatens states and school districts with investigation for civil rights violations whether they do or don’t identify students who need special education—and, in effect, makes *any* action in special education the potential target for investigation under civil rights law. This ill-considered extension of disparate impact theory threatens to render all special education permanently dysfunctional.

We might multiply examples. The crucial and general effect of disparate impact theory is that, illegally and with malign effect, it subjects large amounts of state and local American education policy to ED’s enforcement of civil rights and Title IX law, in the service of progressive policy goals.

Illegal Expansions of the Scope of Anti-Discrimination Law

ED has also illegally expanded the scope of antidiscrimination law to grant itself ever greater power. Disparate impact theory counts as one illegal expansion of antidiscrimination law. In particular, ED has redefined sexual harassment as a civil rights violation and redefined “sex” to include *sexual orientation*, *gender identity*, and *gender expression*. These three expansions have transformed ED into a major vessel for the progressive policy agenda—at the expense of its fidelity to statute law.

ED’s redefinition of sex discrimination to include sexual harassment dates back to a combination of OCR guidances and Supreme Court decisions in the late 1990s, including *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (1997), *Gebser v. Lago Vista Independent School District* (1998), and *Davis v. Monroe County Board of Education* (1999).³³ In 2020, ED formally defined sexual harassment as sex discrimination.³⁴ This joint institutional redefinition of sex discrimination, part of what R. Shep Melnick refers to as a process of “institutional leapfrogging,” was intellectually incoherent and lacked statutory warrant:

It is not obvious why sexual harassment—even its ugliest form, sexual assault—constitutes sexual *discrimination*. As a result, the legal foundation for this regulatory

32 Dear Colleague Letter: Preventing Racial Discrimination in Special Education, Office for Civil Rights, U.S. Department of Education, December 12, 2016, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>.

33 Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, March 13, 1997, <https://www.federalregister.gov/documents/1997/03/13/97-6373/office-for-civil-rights-sexual-harassment-guidance-harassment-of-students-by-school-employees-other>; Paul F. Zimmerman, “The Duty to Address ‘Sex-based Harassment’: Part II in a Series on the Biden Administration’s Final Title IX Rule,” Federalist Society, August 1, 2024, <https://fedsoc.org/commentary/fedsoc-blog/the-duty-to-address-sex-based-harassment-part-ii-in-a-series-on-the-biden-administration-s-final-title-ix-rule>.

34 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, May 19, 2020, <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

effort has never been clearly enunciated. At first many courts held that harassment, however objectionable, is not discrimination. Eventually, judges ruled that harassment does constitute discrimination, but only if it is aimed at members of a particular sex: A heterosexual male who harasses a woman does so *because of her sex*; the same is true for a heterosexual woman who harasses a man, or a gay man who harasses another man. It does not hold true, oddly enough, for a bisexual who harasses both men and women; his sexual taste is undiscriminating, and thus his harassment is legal.³⁵

This “bizarre result,” Judge Robert Bork wrote in 1985 while sitting on the DC Circuit, indicates that antidiscrimination law does not extend to this problem: “Had Congress been aiming at sexual harassment, it seems unlikely that a woman would be protected from unwelcome heterosexual or lesbian advances but left unprotected when a bisexual attacks.”

After wrestling with this question for a few years, federal judges simply gave up, asserting without explanation that *all* forms of sexual harassment violate Title IX.³⁶

ED’s redefinition of sexual discrimination to include sexual harassment put pressure on educational institutions to create a vast new monitoring and supervisory bureaucracy. As Melnick put it,

the harassment issue differs from athletics in two key ways. First, the central problem is not the restrictive policies established by schools or their allocation of resources, but rather the behavior of employees and students, much of which takes place in private. This means that regulators must determine schools’ responsibility for monitoring and controlling the day-to-day activities of thousands of people.³⁷

More succinctly, Gersen and Suk have denominated this new administrative regime the “Sex Bureaucracy.”³⁸ Similar expansions of “harassment” as civil rights discrimination, including that based on race and disability,³⁹ have likewise prompted the more general growth of anti-harassment bureaucracies. As we shall see below, this new anti-harassment regime, especially as it pertains to sexual harassment, has forced educational institutions and their members to substantially abrogate liberties such as due process, free speech, and religious freedom.

35 R. Shep Melnick, “The Strange Evolution of Title IX,” *National Affairs*, Summer 2018, <https://www.nationalaffairs.com/publications/detail/the-strange-evolution-of-title-ix>.

36 Melnick, “The Strange Evolution of Title IX.”

37 Melnick, “The Strange Evolution of Title IX.”

38 Jacob Gersen and Jeannie Suk, “The Sex Bureaucracy,” *California Law Review* 104, no. 4 (2016): 881–948, <http://dx.doi.org/10.15779/Z38HV80>.

39 Dear Colleague Letter: Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, Office for Civil Rights, U.S. Department of Education, October 26, 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; Dear Colleague Letter: Guidance on Bullying of Students with Disabilities, Office for Civil Rights, U.S. Department of Education, October 21, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

This sex bureaucracy was intrusive enough when it preserved the standard that sexual harassment, to be legally actionable as sex discrimination, must be “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” It threatens to become far worse, now that ED proposes to replace this standard with a much looser one: “Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment).”⁴⁰ ED now claims the ability to require educational institutions to prevent “sexual harassment,” which it defines with arbitrary looseness in order to include concepts such as *subjectively* and *totality of the circumstances*.

ED compounded this expansion of sex discrimination to include sexual harassment by expanding “sex” to include *sexual orientation*, *gender identity*, and *gender expression*. A 2010 DCL marked the first notable such expansion:

Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target. ... Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX.⁴¹

ED followed up on the 2010 DCL with the remarkably intrusive 2013 Arcadia School District Resolution Agreement:

“Gender-based discrimination” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct. ...

The District ... will revise all of its policies, procedures, regulations, and related

40 Zimmerman, “The Duty to Address”; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, <https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

41 Dear Colleague Letter: [Bullying,] Office for Civil Rights, U.S. Department of Education, October 26, 2010, <https://www.ed.gov/media/document/colleague-201010.pdf>.

documents and materials ... related to discrimination ... to a) specifically include gender-based discrimination as a form of discrimination based on sex, and b) state that gender-based discrimination includes discrimination based on a student's gender identity, gender expression, gender transition, transgender status, or gender nonconformity.⁴²

As Anderson and Wood note, Arcadia Unified School District “was required to provide the student with access to sex-specific facilities and activities according to the student's self-declared gender identity. The school district was also required to keep the student's birth name and biological sex confidential and not disclose the information to any district employees or other students without consent from the student's parents or the student.”⁴³

Subsequent resolution agreements further expanded this redefinition, including the requirement that biologically male students be allowed access to girls' locker rooms.⁴⁴ In May 2016, ED joined the Justice Department to state that “the Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations.”⁴⁵ Since 2021, ED has issued several further reinforcements of the redefinition of sex as sexual orientation or gender identity—although many of these have been vacated by courts, and ED enjoined from enforcing them.⁴⁶

ED's expansions of “sex discrimination” to include “sexual harassment” and of “sex” to include “sexual orientation,” “gender identity,” and “gender expression,” are doubtless bad policy. Transgenderism, notably, is a mental illness and should not be redefined as a legally protected class. But regardless of their value as policy, they rely on redefinitions without statutory warrant, which any judge with a regard to the plain meaning of words would deem to have rationalized illegal actions by ED.

These illegal actions have substantially abrogated American liberties.

42 U.S. Department of Education and U.S. Department of Justice, “Resolution Agreement between the Arcadia Unified School District and the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division,” OCR Case Number 09-12-1020, DOJ Case Number 169-12C-70, July 24, 2013, 1, 4, <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

43 Ryan Anderson and Melody Wood, *Gender Identity Policies in Schools: What Congress, the Courts, and the Trump Administration Should Do*, The Heritage Foundation, March 23, 2017, <https://www.heritage.org/education/report/gender-identity-policies-schools-what-congress-the-courts-and-the-trump>.

44 Anderson and Wood, *Gender Identity Policies in Schools*; U.S. Department of Education, “Agreement to Resolve between Township High School District 211 and the U.S. Department of Education, Office for Civil Rights,” OCR Case Number 05-14-1055, December 2, 2015, 2, <https://www2.ed.gov/documents/press-releases/township-high-211-agreement.pdf>.

45 Anderson and Wood, *Gender Identity Policies in Schools*; U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office for Civil Rights, “Dear Colleague Letter on Transgender Students,” May 13, 2016, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>. See also Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights, U.S. Department of Education, January 7, 2015, <https://www2.ed.gov/about/offices/list/ocr/letters/20150107-title-ix-prince-letter.pdf>.

46 U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office for Civil Rights, “Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families,” June 1, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>; U.S. Department of Education, Notice of Interpretation – Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, June 22, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>; U.S. Department of Education, Office for Civil Rights, “Supporting Intersex Students: A Resource for Students, Families, and Educators,” October 1, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>.

Abrogations of Liberty: Due Process, Free Speech, and Religious Freedom

ED's pressure on educational institutions to adopt informal quotas, to embrace disparate impact theory, and to prevent an ever-widening sphere of "sexual harassment" has required them to host ever-expanding and ever more repressive bureaucracies to implement and maintain ED requirements. Not least among the ill consequences of these bureaucracies' metastasis has been a substantial abrogation of individual liberty on campus. These abrogations primarily concern due process, free speech, and religious freedom. All abrogations, generally, arise from ED's pressure to place quotas and antidiscrimination law (improperly redefined) above every competing value. Educational institutions fearful of litigation, as well as its effect on their bottom line, simply discard everything else—academic standards, discipline, and ultimately liberty itself.

Title IX law, in particular, has tended to degrade Americans' right to *due process*. In general, the redefinition of sexual harassment as sex discrimination only replaced one civil offense with another⁴⁷—but it also tended to remove the judgment of sexual harassment from the courts, with its attendant legal protections, to the realm of educational institutions, where bureaucracies judged sexual harassment by procedures they determined rather than by the constitutionally determined procedures of our courts. Some administrators, particularly Title IX administrators in postsecondary institutions, were ideologically committed to hostility toward men accused of the sexual harassment of women.⁴⁸ Educational institutions that have set up quasi-judicial processes to investigate and punish sexual harassment have done so with a weather eye toward ED enforcement of Title IX law and ED control of the disbursement of federal money. Educational institutions, pressured by ED, have tended with unfortunate uniformity to degrade the due process rights of individuals accused of sexual harassment.⁴⁹

This degradation of due process rights became even more clear in 2011, when ED issued a DCL redefining sexual violence as sex discrimination.⁵⁰ This redefinition, it should be noted, had no precedent; K. C. Johnson has observed that, during the 2006 Duke Lacrosse Case, when members of the Duke lacrosse team were falsely accused of rape, no one at Duke seems even to have imagined bringing the accused up on charges of sex discrimination.⁵¹ Sexual violence, however, is a criminal offense—and criminal charges have a high evidentiary standard. ED explicitly demanded that educational institutions both judge sexual violence as sex

47 Sexual harassment can be a civil or a criminal offense, depending on the precise offense as well as the jurisdiction.

48 Teresa R. Manning, *Dear Colleague: The Weaponization of Title IX* (New York: National Association of Scholars, 2020), <https://www.nas.org/reports/dear-colleague>.

49 Manning, *Dear Colleague*.

50 Dear Colleague Letter: [Campus Sexual Assault,] Office for Civil Rights, U.S. Department of Education, April 4, 2011, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201104.pdf>.

51 K. C. Johnson, oral comment.

discrimination *and* use the lower evidentiary standard for sex discrimination to judge cases of sexual violence.

The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX, Title VII prohibits discrimination on the basis of sex. OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX. OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings. Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.⁵²

Campus bureaucracies—frequently using a "single investigator" model that assigns one person the role of judge and prosecutor, and equally frequently providing no traditional due process rights to the accused—have unleashed a wave of sexual violence convictions using this lower evidentiary standard. While those convicted have not been jailed, they frequently are expelled from educational institutions and permanently labeled to the public as perpetrators of sexual violence. ED has contributed to a substantial deterioration of due process rights on campus.⁵³ While the Trump administration sought to restore due process rights,⁵⁴ the Biden administration has restored the status quo ante.⁵⁵

ED's pressure has also tended to restrict free speech rights. A 2003 DCL reaffirming that "OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment" suggests

52 Dear Colleague Letter, [Campus Sexual Assault.]

53 Manning, *Dear Colleague*.

54 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, May 19, 2020, <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

55 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, <https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

that, in general, educational institutions *had* understood OCR's regulations and policies to do just this.

Some colleges and universities have interpreted OCR's prohibition of "harassment" as encompassing all offensive speech regarding sex, disability, race or other classifications. ... There has been some confusion arising from the fact that OCR's regulations are enforced against private institutions that receive federal-funds. Because the First Amendment normally does not bind private institutions, some have erroneously assumed that OCR's regulations apply to private federal-funds recipients without the constitutional limitations imposed on public institutions. OCR's regulations should not be interpreted in ways that would lead to the suppression of protected speech on public or private campuses. Any private post-secondary institution that chooses to limit free speech in ways that are more restrictive than at public educational institutions does so on its own accord and not based on requirements imposed by OCR.⁵⁶

Under continual pressure from ED, educational institutions still pervasively restrict free speech. ED's increasing commitment to misapplying Title IX to include sexual orientation, gender identity, and gender expression also has infringed upon freedom of assembly, since it has pressured colleges and universities to restrict the rights of religious organizations to limit membership and leadership to individuals committed to religious ideals of sexual behavior.

This misapplication of Title IX more generally has come at the expense of religious freedom. ED spoke out in 2004 against blatant anti-religious discrimination in educational institutions: "OCR has also recently investigated allegations of race and sex discrimination against white, male Christian students. In one unfortunate incident, a white male undergraduate student was harassed by a professor for expressing conservative Christian views in a classroom discussion regarding homosexuality."⁵⁷ Yet its later commitments to misapply Title IX to include sexual orientation, gender identity, and gender expression inevitably have pressured educational institutions to restrict religious freedom by limiting the right of faithful individuals or organizations to champion their faith commitments in contradiction to these newly proclaimed "rights." These supposed "rights" should not abridge *anyone's* rights to freedom of speech and freedom of assembly—but it is especially pernicious when they also abridge one's right to freedom of religion.

The expansion of Title IX regulation has come at the expense of the due process protections of the accused. The expansion of "harassment" has come at the expense of free speech.

56 Dear Colleague Letter: First Amendment, Office for Civil Rights, U.S. Department of Education, July 28, 2003, <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.

57 Dear Colleague Letter: [Religious Discrimination,] Office for Civil Rights, U.S. Department of Education, September 13, 2004, <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf>.

The expansion of “sex” to include sexual orientation, gender identity, and gender expression has come at the expense of religious freedom. In all of these arenas, ED has paid lip service to these fundamental rights while hollowing out their practical effect. Where the process is the punishment, any number of people can effectively be punished by being “investigated” for violating civil rights. Where an extraordinarily wide range of actions can be investigated as civil rights offenses, all traditional liberties are effectively nullified.

Dear Colleague Letters and Resolution Agreements

As the preceding sections have indicated, ED has resorted increasingly frequently to “Dear Colleague Letters” (DCLs) as the most effective means to expand its abuses of civil rights and Title IX law. DCLs, which ED began to use in 1994, are meant to inform educational institutions about matters of interpretation that do not rise to the level of formal policy guidance, that do not have the force of law or regulation, and that, therefore, do not need to meet the notice-and-comment rulemaking requirements of the Administrative Procedure Act.⁵⁸ DCLs were intended for matters of small import, such as “schools may choose to have 1995–96 Renewal Applications mailed to them instead of to their students”:

The Department of Education (ED) has revised the 1995–96 Electronic Data Exchange (EDE) procedures and software to allow institutions an additional option for printing EDE-requested Renewal Applications for the 1995–96 processing cycle.

The changes made will give EDE institutions the option of having 1995–96 Renewal Applications for designated students printed by the FAFSA processor, American College Testing (ACT).⁵⁹

ED continues to issue many DCLs of such a nature. But it has also begun to use DCLs to make policy. An extraordinary amount of ED policy since 2010, especially OCR policy, has proceeded by DCL and, therefore, has not been subject to procedural review. Formally, DCLs have no power. Effectively, and as intended, educational institutions have taken them as guidance regarding ED policy. DCLs are thus the procedural means by which ED imposes changes on educational institutions for which there is no statutory justification at all.

58 Mulder, “Kudzu of Civil Rights Law.” Johnson further notes: “Contemporaneous critics of the Dear Colleague letter (including me) faulted OCR for releasing the document as guidance rather than going through the notice and comment period required for a new regulation. (The Obama administration clearly expected the guidance to be followed.) I was a bit surprised, therefore, to discover that OCR did extensively consult outside of its office—but only with other actors in the executive branch, and (to a lesser extent) with victims’ advocates. In other words, OCR wanted to hear opinions on its work—as long as those opinions came from those with a similar pro-complainant agenda. This partial willingness to seek feedback makes all the more troubling the Obama administration’s refusal to produce its new Title IX policy through the regulatory process.” K. C. Johnson, “The Origins of the 2011 Dear Colleague Letter on Campus Sexual Assault,” *Federalist Society*, September 6, 2023, <https://fedsoc.org/commentary/fedsoc-blog/the-origins-of-the-2011-dear-colleague-letter-on-campus-sexual-assault>.

59 Dear Colleague Letter: Schools may choose to have 1995–96 Renewal Applications mailed to them instead of to their students, August 1, 1994, <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/1994-08-01/gen-94-26-schools-may-choose-have-1995-96-renewal-applications-mailed-them-instead-their-students>.

... the demands of undergoing an OCR review are so rigorous that many educational authorities prefer to come to such a resolution rather than make the great effort to prove that there were no grounds for complaint ...

ED, moreover, uses *resolution agreements* with individual educational institutions. Because these agreements are “voluntary,” they require no resort to regulatory oversight. We put “voluntary” in quotation marks, since the demands of undergoing an OCR review are so rigorous that many educational authorities prefer to come to such a resolution rather than make the great effort to prove that there were no grounds for complaint: as Mulder notes, “the investigation process is enough to cow the district into submission, and a guidance document tells other districts how to avoid an investigation.”⁶⁰ Yet these resolution agreements also have great precedential power; in general, other institutions adopt the policies “voluntarily” agreed to by their peer, even where ED would seem to lack statutory power to demand many specific remedies stipulated in the resolution agreements.⁶¹

It is difficult to select the most important resolution agreements from the hundreds or thousands completed by ED.⁶² We may choose as one arbitrary example of what a case resolution demands a 2015 agreement with the University of Virginia (UVA), where OCR “found UVA to be in violation of Title IX for failing to promptly and equitably respond to some complaints of sexual violence.” In its resolution agreement UVA agreed to:

continue to implement its revised policies and to notify OCR of any proposed revisions, ensure that agreements with student organizations—including fraternities and sororities—clearly state that sexual harassment, sexual violence and retaliation are prohibited and that the failure of an organization’s student members to comply with the Title IX policy may result in the University severing all ties with the

⁶⁰ Mulder, “Kudzu of Civil Rights Law.”

⁶¹ Kent D. Talbert, “Behind the Scenes: A Closer Look at OCR’s Enforcement Authority,” *Federalist Society [Federalist Society Review]*, Volume 16, Issue 3], December 10, 2015, <https://fedsoc.org/fedsoc-review/behind-the-scenes-a-closer-look-at-ocr-s-enforcement-authority>.

⁶² Case Resolutions Regarding Race, Color, or National Origin Discrimination, Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/ocr/race-discrimination>; Recent Resolutions, Office for Civil Rights, U.S. Department of Education, <https://web.archive.org/web/20240303123931/https://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html><https://web.archive.org/web/20240303123931/https://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html>.

organization. In addition, the University has agreed to a comprehensive education and prevention program about the school's policies and procedures regarding sexual assault/violence; regular training of all members of the UVA community on issues related to sexual harassment and sexual violence, the requirements of Title IX, and the university's policies and procedures when a student reports possible sexual harassment and sexual violence; improve outreach to and feedback from students, including conducting focus groups; conducting an annual climate assessment to determine students' attitudes and knowledge regarding sexual harassment and sexual violence; develop and implement a system for tracking and reviewing all reports, investigations, interim measures and resolutions of student and employee conduct that may constitute sexual harassment or sexual violence, to ensure that such reports are adequately, reliably, promptly, and impartially investigated and resolved; and determine whether students know to whom and how to report such conduct, identify potential barriers to reporting, tracking of its responses and handling of all sexual assault/violence allegations; and reexamination of complaints filed from academic year 2011-12, 2012-13, and 2013-14, including providing appropriate remedies that may still be available to the complainants in these cases and remedies that may be necessary to address the climate of the larger University community.⁶³

We will leave aside how such an extensive administrative apparatus can be used to promote repressive and radical gender ideology.⁶⁴ It is enough here to point out that ED, in redefining its statutory powers to prevent sex discrimination to cover "sexual harassment, sexual violence and retaliation," and in using the bureaucratic camouflage of a "voluntary" case resolution, imposed a vast administrative bureaucracy and set of procedures on UVA, along with continuing oversight by the Department. Some enormous number of similar case resolutions have provided the precedent for similar impositions on all of America's educational institutions.

The foregoing example concerns higher education. Since this report focuses on K-12 education, we also will give a sense of how school districts comply with OCR pressure by quoting extensively from the resolution agreement with Rapid City Area Schools in South Dakota. *We urge the reader to read these paragraphs slowly and carefully.*

- To ensure the District has the staffing and expertise needed to implement this Agreement, the District will employ a Director of Positive School Climate (or

63 Title IX: Sexual Violence: University of Virginia (11-11-6001), Office for Civil Rights, U.S. Department of Education, <https://web.archive.org/web/20240417190633/https://www2.ed.gov/about/offices/list/ocr/docs/investigations/11116001.html>. See also, for an equally arbitrary second example, Slattery and Kloster's discussion of the May 2013 settlement agreement on sexual harassment between ED, the Justice Department, and the University of Montana. Elizabeth Slattery and Andrew Kloster, *An Executive Unbound: The Obama Administration's Unilateral Actions*, The Heritage Foundation, February 12, 2014, <https://www.heritage.org/the-constitution/report/executive-unbound-the-obama-administrations-unilateral-actions>.

64 Manning, *Dear Colleague*; Gersen and Suk, "The Sex Bureaucracy."

similarly named Director), retain at least one expert consultant, and consider the input of a Stakeholder Equity Committee as set forth below. If the District uses an existing position to carry out the duties of the Director of Positive School Climate, the District will ensure that the position is focused on the Director's duties and has adequate District resources, including staffing, to fulfill these duties successfully. ...

- Subject to OCR's review and approval, the District will employ a Director to oversee positive school climate and the implementation of this Agreement to ensure that the District's discipline policies, procedures, and practices do not discriminate against students on the basis of race, color, or national origin (the Director). The District may fill this position with a District employee or an individual hired from outside the District. The Director will have experience with student discipline, alternatives to exclusionary discipline, truancy, advanced opportunity selection/ placement, and promoting and sustaining a positive school climate and educational achievement for students of all racial and ethnic backgrounds. ...
- The District will retain or designate, as needed throughout the implementation of this Agreement, one or more consultants with expertise in nondiscriminatory discipline practices, data analysis, research-based discipline strategies, truancy, advanced learning opportunities and implicit bias to assist the District in implementing this Agreement. ...
- The District will establish a Stakeholder Equity Committee (Committee) of community representatives by September 1, 2024. Such stakeholders shall include the Title VI Indian Education Manager or Director, and representatives from the Parent Advisory Committee Members, Indigenous Education Task Force Members, participants from OCR's Native American Listening Sessions, students, parents, and members of community organizations giving reasonable consideration to specific participants identified by OCR. ...
- In consultation with the Director and Committee, the District will examine the root causes of the disparities based on race, color and national origin in the discipline and placement in advanced learning opportunities of its students. ... Based on its examination of the root causes, the District will develop a Corrective Action Plan describing the corrective actions it has identified to ensure nondiscrimination on the basis of race, color, and national origin in the discipline of its students. ...
- By February 2025, the District will review its student discipline and truancy policies and procedures and propose revisions consistent with the Agreement's Principles above and in consultation with the expert consultant(s) and the Committee. In doing so, the District will seek out and consider promising discipline/truancy-related policies and practices identified at any District schools, programs sponsored

by outside programs such as Ateyapi and Oaye Luta Okolakiciye (OLO), expert consultants, and any proposals or practices suggested by the Stakeholder Equity Committee concerning these issues. ...

- If the data required in this section reflect less enrollment and/or class success/completion for students of a particular race or national origin at the District or school levels [in advanced learning classes], the Director will schedule a separate meeting with the school's principal and advanced learning team to explore possible root causes for the lower enrollment and success rates, determine the steps needed to ensure nondiscrimination in advanced learning opportunities, and align any next steps with the Corrective Action Plan. ...
- By October 3, 2024, the District will propose, with the input of the expert consultant(s), to OCR at least three names of individuals with relevant experience to conduct training on advanced learning opportunities for all District teachers, counselors, administrators, and school aides. ...
- Beginning in the 2024–2025 school year and following approval by OCR of the survey instrument and survey administration methodology, the District will annually administer a comprehensive climate survey to students, teachers/staff, and parents of all District schools to measure their perceptions of the District's administration of school discipline, truancy referrals and advanced learning opportunities. The survey will measure perceptions of fairness and equity in the administration of discipline, truancy referrals and advanced learning opportunities, and whether District and school rules and behavioral and academic expectations are clear.⁶⁵

We have quoted this case resolution at length and urged the reader to read these paragraphs carefully because superintendents and principals throughout the country read these case resolutions with attention to every nuance, since substantial portions of their revenue, and the question of whether they will be investigated in turn by OCR, rest upon understanding OCR's intent.

- OCR wants districts to hire a “Director of Positive School Climate”—so every superintendent knows he must hire a diversity, equity, and inclusion (DEI) director, however named, to impose quotas and censorship in the perpetual and futile effort to remove “disparities.”
- OCR wants districts to hire “one or more consultants with expertise in nondiscriminatory discipline practices”—so every superintendent knows he must gut

⁶⁵ Resolution Agreement, OCR Case No. 07115001, Rapid City Area Schools, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/07115001-b.pdf>.

school discipline by means of the fig leaf of a “consultant” recommendation. The “consultant” doubtless also will recommend the expansion of the intrusive and radical DEI bureaucracies.

- OCR wants districts to establish “trainings” and “surveys”; these, like “consultants,” are the well-known means by which to propagandize staff for DEI and to justify further expansions of the DEI bureaucracy.
- OCR wants districts to establish a “Stakeholder Equity Committee (Committee of community representatives”—which means giving the local members of the progressive-activist network a permanent role in the public schools.
- OCR wants districts to commit themselves to “Corrective Action Plans” that base their recommendations upon examining “the root causes of the disparities based on race, color and national origin”—which means that districts must commit themselves to what “root causes” ostentatiously euphemize quotas, discrimination, indiscipline, and censorship.

Doubtless a school district superintendent subject to such a case resolution could do less than this and hope that OCR would be satisfied without the school district creating a full DEI regime. Doubtless a school district superintendent could read that OCR had imposed this case resolution on another school district and risk not preemptively creating a DEI regime in his own school district. He could take such risks, even though OCR had imposed similarly intrusive case resolutions dealing with compliance with Title IX and civil rights law on school districts including Alpine School District in Utah,⁶⁶ Bayfront Charter School in California,⁶⁷ East Side Union High School District in California,⁶⁸ Loleta Union Elementary School District in California,⁶⁹ Newark Public Schools in New Jersey,⁷⁰ Oklahoma City Public Schools in Oklahoma,⁷¹ Ottumwa Community School District in Iowa,⁷² Owatonna Independent School District #761 in Minnesota,⁷³ Peoria Unified School District in Arizona,⁷⁴ Pflugerville Independent School District in Texas,⁷⁵ Red Clay Consolidated School District

66 Resolution Agreement, Alpine School District, OCR Compliance Review 08-20-5001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/08205001-b.pdf>.

67 Resolution Agreement, Bayfront Charter School, OCR No. 09-15-1243, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09151243-b.pdf>.

68 Resolution Agreement, East Side Union High School District, Case No. 09-14-1242, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09141242-b.pdf>.

69 Resolution Agreement, Loleta Union Elementary School District, Case No. 09-14-1111, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09141111-b.pdf>.

70 Resolution Agreement, Newark Public Schools, Compliance Review 02-20-5001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/02205001-b.pdf>.

71 Resolution Agreement, Oklahoma City Public Schools, OCR Docket #07141149, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/07141149-b.pdf>.

72 Resolution Agreement, Ottumwa Community School District, OCR Case No. 05-21-1162, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/05211162-b.pdf>.

73 Resolution Agreement, Owatonna Independent School District #761, #05-10-1148, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/05101148-b.pdf>.

74 Resolution Agreement, Peoria Unified School District, OCR Case 08-22-1273, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/08221273-b.pdf>.

75 Resolution Agreement, Pflugerville Independent School District, Complaint Number 06-19-1726, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/06191726-b.pdf>.

in Delaware,⁷⁶ Redlands Unified School District in California,⁷⁷ San Diego Unified School District in California,⁷⁸ Stockton Unified School District in California,⁷⁹ Torrington Board of Education in Connecticut,⁸⁰ Val Verde Unified School District in California,⁸¹ Victor Valley Union High School District in California,⁸² Washoe County School District in Nevada,⁸³ and Yakima School District in South Dakota.⁸⁴

What OCR demands of the Rapid City Area Schools in South Dakota it demands of school districts throughout America.

School superintendents can and do take such risks and defy OCR's pressure, and those who do deserve great praise. But we cannot expect most school superintendents to do so. OCR is City Hall, and the job description for school superintendents does not include fighting City Hall.

Looking ahead to our Case Studies, we wish to emphasize that these case resolutions form the essential background to the growth of diversity, equity, and inclusion (DEI) bureaucracies within K–12 schools. Some local initiative doubtless also explains the growth of such bureaucracies. But it is the weight of these case resolutions—the threat of legal action by OCR—that provides the constant background pressure and that leads school districts to *pre-emptively* create DEI bureaucracies. Only one school district need be sued for a score to engage in “voluntary” measures to propitiate OCR. Americans cannot understand the growth of K–12 DEI bureaucracies if they do not understand the climate of fear imposed by OCR. The existence of a DEI bureaucracy in a K–12 school is a register of that fear.

ED's initiatives, we also wish to emphasize, are highly selective. ED found no problems with the race discrimination regime that existed prior to the companion cases of *Students for Fair Admissions v. Harvard* (2023) and *Students for Fair Admissions v. University of North Carolina* (2023). We may note in particular that, in 2012, ED found no evidence of discrimination against white and Asian American applicants for undergraduate admissions at the University of North Carolina at Chapel Hill (UNC).⁸⁵ UNC never faced ED pressure to enter

76 Resolution Agreement, Red Clay Consolidated School District, OCR Case No. 03-23-1373, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/03231373-b.pdf>.

77 Resolution Agreement, Redlands Unified School District, Compliance Review Number 09-20-5002, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09205002-b.pdf>.

78 Resolution Agreement, San Diego Unified School District, OCR Compliance Review Number 09-20-5001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09205001-b.pdf>.

79 Resolution Agreement, Stockton Unified School District, OCR Case Number 09-14-1216, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09141216-b.pdf>.

80 Resolution Agreement, Torrington Board of Education, OCR Complaint No. 01-21-1588, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/01211588-b.pdf>.

81 Resolution Agreement, Val Verde Unified School District, Compliance Review 09-15-5001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09155001-b.pdf>.

82 Resolution Agreement, Victor Valley Union High School District, OCR Case No. 09-14-5003, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09145003-b.pdf>.

83 Resolution Agreement, Washoe County School District, OCR Reference No. 10135001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/10135001-b.pdf>.

84 Resolution Agreement, Yakima School District, OCR Docket: 10115001, <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/10115001-b.pdf>.

85 Title VI: University of North Carolina–Chapel Hill (NC) OCR Complaint No. 11-07-2016, Office for Civil Rights, U.S. Department of Education, <https://web.archive.org/web/20230203010238/https://www2.ed.gov/about/offices/list/ocr/docs/investigations/11072016.html>.

into a “voluntary” case resolution. ED’s reliance on investigation and case resolution granted it arbitrary power that may be measured as much by its selective nonenforcement of civil rights law against UNC as by the vast administrative program “voluntarily” adopted by UVA.

In 2024, the Supreme Court in *Loper Bright Enterprises v. Raimondo* overturned the Chevron doctrine, which had given judicial sanction to deference to federal agencies. *Loper Bright* theoretically weakens the ability of ED to impose its will by administrative means such as DCLs, case resolutions, and rulemaking in general.⁸⁶ We may hope that *Loper Bright* will indeed serve to constrain ED—but this only can be achieved by a long campaign of legal challenges, and the ability to challenge ED legally does not guarantee that ED will be defeated in the courts. Education reformers should welcome *Loper Bright*, but they cannot rely on it to aid them in their work.

Conclusion

ED programs have expanded extraordinarily in scope—although the four main areas of expenditure remain Title I aid to LEAs, special education aid to states and LEAs, Pell Grants, and federal direct student loans. These, accompanied by a host of smaller programs, have made states, LEAs, and postsecondary institutions financially dependent on ED aid and created parallel bureaucracies within these institutions to ensure that they remain eligible for ED monies. These bureaucracies also administer and enforce ED requirements. ED functionaries have used the power they gained to pursue their own policy agenda, most notably by reformulating progressive policy goals as enforcement of civil rights and Title IX law. They have done so by exceeding statutory limits and seeking work-arounds via DCLs and case resolutions to the normal procedural safeguards on the ED regulatory process.

86 Katherine Knott, “Supreme Court Decision Weakens Education Department,” *Inside Higher Ed*, July 2, 2024, <https://www.insidehighered.com/news/government/student-aid-policy/2024/07/02/supreme-court-decision-weakens-education-department>.

Central Audit

Introduction

This section of the report, the Central Audit, provides a general overview of ED's employee numbers and budget tables from 2010 to 2023, followed by more specific discussions of six major budget categories exclusive to K-12 education. These six include: English Language Acquisition, Safe Schools and Citizenship Education, Indian Education, Special Education, Education for the Disadvantaged, and School Improvement Programs.

Our Central Audit provides evidence that supports three categories of reforms:

- **Simplify:** Eliminate or relocate to other parts of the federal government most of ED's small programs. There is no evidence that they do any good, they do not have as much bipartisan support as the larger ED programs, and it will be impossible to reform ED while it remains such a sprawling labyrinth of programs. The remaining ED programs and formula grants in turn should be simplified as much as possible. ED must be drastically simplified to make possible real reform of the remainder of the Department.
- **Provide Real Performance Measures:** Provide objective, quantifiable measures of all remaining programs, including efficiency measures of ED's own bureaucratic efficiency.
- **Depoliticize and End Discrimination:** Remove all discriminatory requirements and performance measures for "equity" and other political goals.

Before examining the six major budget categories, we will first provide an overall survey of ED's departmental organization, employee counts, and budget trends.

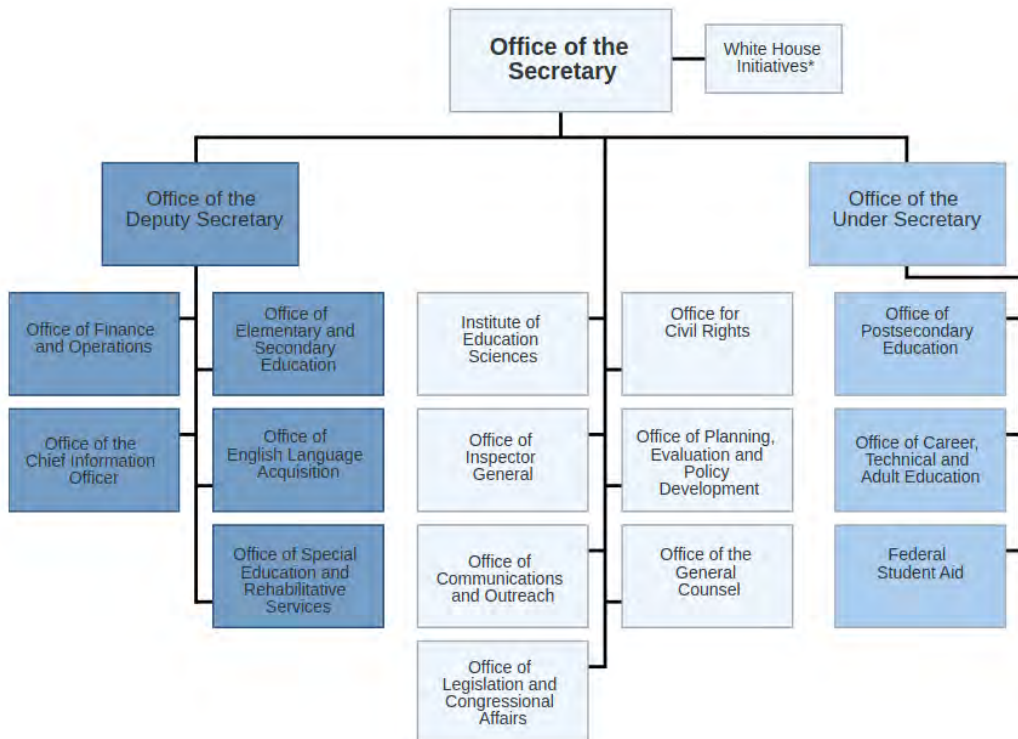
Departmental Organization, Employee Counts, and Budget Trends

ED is a large federal bureaucracy with divisions, departments, and suboffices working on a myriad of projects across the nation. While this report focuses on K-12 initiatives and programs, this section provides an overview of all of ED. We include an organizational chart, the number of employees in each department from 2010 to 2023, and ED budget trends for fiscal years 2010 to 2023.

ED itself provides the public with an accurate organizational chart. (See **Figure 1.1: ED Organizational Chart**.) Practically all of the programs analyzed in the Central Audit, including the Office of Elementary and Secondary Education (OESE), the Office of English Language Acquisition (OELA), and the Office of Special Education and Rehabilitative Services (OSERS), are located within the Office of the Deputy Secretary, which has primary responsibility for K-12 education.

The National Association of Scholars filed an open records request with the Department in early 2024 for the number of employees in each office from the years 2010 to 2023. We provide both the number of employees as of 2023 (**Figure 1.2** and **Figure 1.3**) and the changes in ED’s personnel over time (**Figure 1.4**).

Figure 1.1: ED Organizational Chart



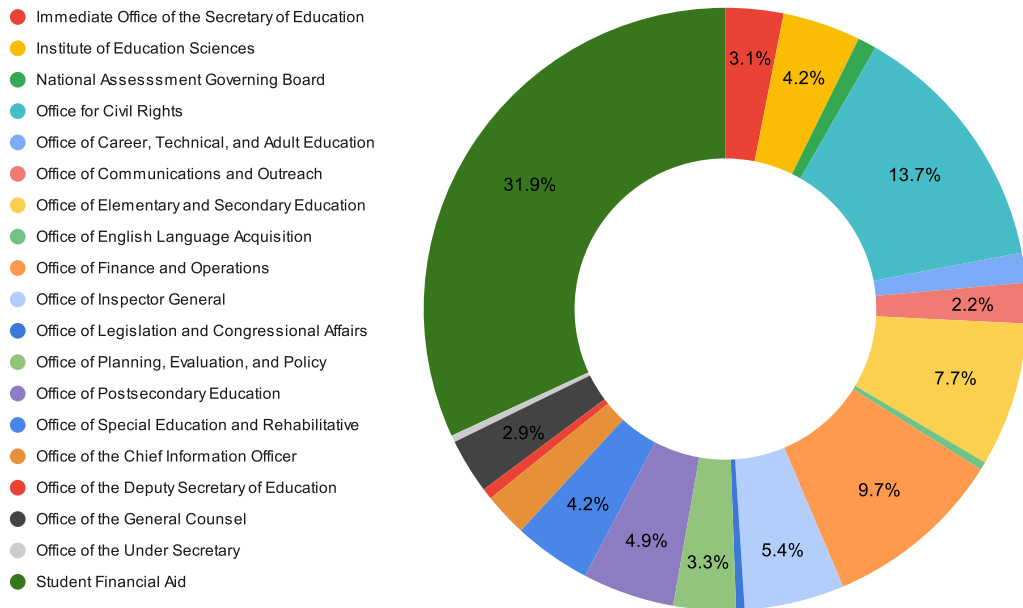
Source: U.S. Department of Education, <https://web.archive.org/web/20240412183317/https://www2.ed.gov/about/offices/or/index.html>.

Figure 1.2: Number of Employees in Each ED Office, Fiscal Year 2023

Office	Employees
Immediate Office of the Secretary of Education	143
Office of the Deputy Secretary of Education	27
Office for Civil Rights	633
Office of Planning, Evaluation, and Policy Development	154
Office of the Under Secretary	17
Office of Inspector General	247
Office of the General Counsel	136
Office of Special Education and Rehabilitative Services	192
Office of the Chief Information Officer	108
Office of Legislation and Congressional Affairs	21
Office of Finance and Operations	447
Student Financial Aid	1,472
Office of Communications and Outreach	100
Office of Postsecondary Education	227
Institute of Education Sciences	193
Office of Elementary and Secondary Education	357
Office of English Language Acquisition	20
Office of Career, Technical, and Adult Education	74
National Assessment Governing Board	46
Total	4,614

Source: National Association of Scholars's Open Records Request, U.S. Department of Education, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/ED_Employee_Counts.xlsx.

Figure 1.3: Breakdown of ED Departmental Size, Fiscal Year 2023



Source: National Association of Scholars’s Open Records Request, U.S. Department of Education, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/ED_Employee_Counts.xlsx

The information in these three Figures (Figure 1.2, Figure 1.3, Figure 1.4) allows us to reach several initial conclusions.

Conclusions

- Student Financial Aid is the largest ED department, with 1,472 employees (31.9% of the total)—and still it was unable to handle the 2023–2024 FAFSA reform rollout with minimum professional competence. If the largest ED department is unable to perform a core ED task, this suggests that ED will not be well served by merely adding resources and personnel. It also suggests that adding more functions to ED will further distract ED and its personnel from their core functions.
- The Office for Civil Rights (OCR) is the second-largest ED department, with 633 employees (13.7% of the total). OCR, as we have noted above, has been tasked with the imposition of a progressive political agenda in the guise of defending civil rights among recipients of ED funds. Its large number of employees appears far greater than what is needed for actual defenses of civil rights; we may note, by comparison, that the Justice Department’s Civil Rights Division only had 764 positions in fiscal year 2023.⁸⁷ The Justice Department’s 764 employees serve a total American

⁸⁷ General Legal Activities, Civil Rights Division (CRT), U.S. Department of Justice, https://www.justice.gov/d9/2023-03/crt_fy_24_bud_sum_ii_omb_cleared_03.08.23.pdf.

population of ca. 330 million; OCR's 633 employees serve a total American student population of ca. 70 million. The sheer bulk of OCR employees indicates that many are superfluous to actual defenses of civil rights.

- The sudden rise in the number of employees in the Office of Finance and Operations (OFO), from ca. 200 in 2017 to ca. 450 in 2023, should be scrutinized carefully by the public and policymakers.
- The equally sudden rise in the number of employees in the Office of Planning, Evaluation, and Policy Development (OPEPD), from ca. 65 in 2019 to ca. 275 in 2023, also should be scrutinized carefully by the public and policymakers.
- The lesser but still considerable rise in the number of employees in the Office of Elementary and Secondary Education, from ca. 240 in 2017 to ca. 360 in 2023, also merits scrutiny by the public and policymakers.
- The number of employees in the Immediate Office of the Secretary of Education (IOSE) has risen from ca. 80 in 2019 to ca. 200 in 2023. Employees in the Immediate Office may work for politicized initiatives that are not immediately apparent in the Organizational Chart. They also may disguise bureaucratic bloat in particular areas of ED. The public and policymakers should scrutinize IOSE employees and their tasks especially carefully.
- Total ED personnel has risen about 12%, from ca. 4,100 in 2019 to 4,614 in 2023. While the number of ED personnel was even higher in the Obama administration (ca. 5,100 in 2011), this recent overall rise in ED personnel merits a general inquiry by the public and policymakers into bureaucratic bloat at ED.
- NAS had to submit an open records request to acquire this information. ED provides its budgetary information very unclearly—the budget request it provides to Congress does not indicate clearly which budget item funds which office and which personnel.⁸⁸ ED's muddled presentation of its budget and personnel hinders transparency and accountability. ED should provide the funding source, budget, and personnel for each of its administrative units in a clear, easy-to-find portion of its website.

⁸⁸ Fiscal Year 2025 Budget Summary, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget25/summary/25summary.pdf>.

Figure 1.4: Number of Employees in Each ED Office, Fiscal Years 2010 to 2023



Source: National Association of Scholars's Open Records Request, U.S. Department of Education, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/ED_Employee_Counts.xlsx.

Note: We allowed the y-axes to float in Figure 1.4.

English Language Acquisition

Program Overview

ED's Office of English Language Acquisition (OELA) aims to help students, usually immigrants or their children, to obtain proficiency in the English language. To qualify as an "English learner," a student must be an individual:

- who is aged 3 through 21
- who is enrolled or preparing to enroll in an elementary school or secondary school
- who meets one of the following criteria
 1. who was not born in the United States, or whose native language is a language other than English;
 2. who is a Native American, an Alaska Native, or a native resident of the outlying areas; and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency (ELP); or
 3. who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant
- whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual
 1. the ability to meet challenging state academic standards;
 2. the ability to successfully achieve in classrooms where the language of instruction is English; or
 3. the opportunity to participate fully in society.⁸⁹

OELA programs also promote "multilingual literacy"—a counterproductive distraction from its main goal to provide English language proficiency.

OELA pursues its mission by:

- discretionary grant programs that prepare educators to teach English learners;
- conducting research into the instruction of the English language; and
- disseminating information and resources through the National Clearinghouse for English Language Acquisition.

OELA's 2023 Budget Request set the fiscal year 2022 appropriation for English Language Acquisition at \$831.4 million, with a requested increase of \$243.6 million for fiscal year 2023.⁹⁰

89 20 U.S. Code § 7801(25), <https://www.govinfo.gov/content/pkg/USCODE-2011-title20/html/USCODE-2011-title20-chap70-subchapIX-partA-sec7801.htm>.

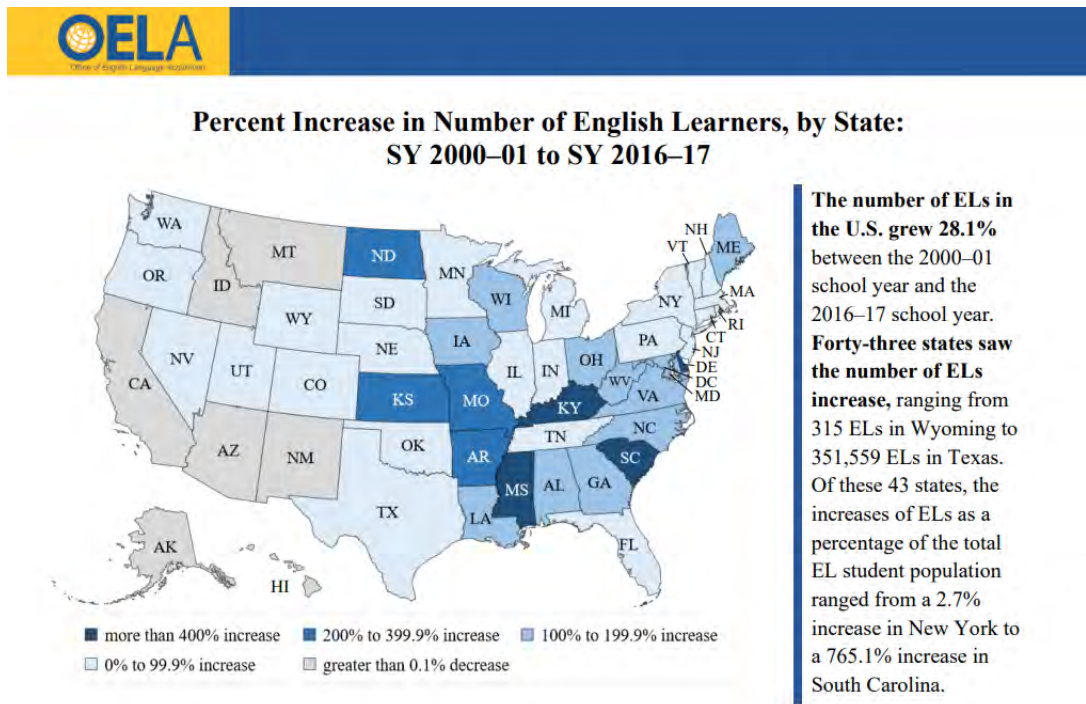
90 Department of Education, English Language Acquisition, Fiscal Year 2024 Budget Request, 6, <https://www.ed.gov/sites/>

Evaluation

OELA’s rationale for requesting such a large additional sum was that the additional funds were needed “to help the significant number of English learners (ELs) in U.S. schools attain English language proficiency (ELP) and meet challenging, State-determined college- and career-ready academic standards, while also assisting States and Local educational agencies (LEAs) that have experienced rapid growth in their EL populations.”⁹¹

Certainly the number of “English learners” has skyrocketed since the turn of the century. By the end of the first Trump administration, ED estimated that approximately 1 million more English learners were enrolled in America’s K–12 schools than in 2000. In school year 2016–2017, English learners as a demographic made up 9.6% of all K–12 students nationally, as well as approximately one-fifth of the total K–12 student enrollment in both California and Texas, with large increases in the English learner demographic throughout the Southeastern United States and a 765.1% increase in South Carolina alone.⁹² OELA provides a visual representation of the demographic changes from school year 2000–2001 to 2016–2017 (Figure 1.5):

Figure 1.5: Increase (%) in English Learners, by State: 2001–2016



Source: English Learners: Demographic Trends, Office of English Language Acquisition, U.S. Department of Education, https://ncela.ed.gov/sites/default/files/legacy/files/fast_facts/19-0193_Del4.4_ELDemographicTrends_021220_508.pdf.

[ed/files/about/overview/budget/budget24/justifications/h-ela.pdf](https://ncela.ed.gov/sites/default/files/legacy/files/about/overview/budget/budget24/justifications/h-ela.pdf).

91 Department of Education, English Language Acquisition, Fiscal Year 2024 Budget Request, 4.

92 English Learners: Demographic Trends, Office of English Language Acquisition, U.S. Education Department, https://archhive.org/details/ERIC_ED613175/mode/1up.

English language acquisition is a necessary initiative for the assimilation of immigrants and their children. Yet OELA arouses warranted suspicion that its strategic approach will not actually address this difficulty, since it so heavily emphasizes “multilingualism”: “The Budget also includes a greater emphasis on multilingualism that embraces students’ native and home languages as a strength they bring to their school communities.”⁹³ Just as ED as a whole takes on too many missions, OELA sacrifices its focus on English language acquisition through its misguided newfound commitment to “multilingualism.”

OELA, moreover, acts as an effective subsidy for illegal aliens by underwriting the education of their children. OELA’s own resource kits, indeed, emphasize that illegal aliens have the right to educate their children in public schools:

All school-age children, regardless of their citizenship or immigration status, may access free public school education in the school district where they live. ... Schools cannot ask for documentation that would prohibit or discourage a student from enrolling in or attending school. For example, schools cannot ask for proof of citizenship status or a parent’s social security card.⁹⁴

So indeed the Supreme Court decision *Plyler v. Doe* (1982) requires schools to do. But we must note that this context converts OELA expenditures into a subsidy of illegal aliens—and an ever more important subsidy as the number of illegal aliens increases.⁹⁵ Of course, it is also an insufficient subsidy, since school districts still bear the lion’s share of the cost of educating illegal aliens. OELA funding does aid English language acquisition—but at the same time it increases the numbers of illegal aliens who require English language acquisition programs and thereby imposes further costs on school districts.

Moreover, OELA provides a perverse incentive *not* to increase English language proficiency. So long as ED dedicates funding for English language learners, school districts will have an incentive not to make their students fully proficient in English. The corollary creation of dedicated administrators and teachers within each school district devoted to English language instruction also acts as a permanent constituency to maintain OELA spending, regardless of need. Detailed accountability and assessment procedures can lessen the effects of this incentive—but these, then, require their own expensive bureaucracies. OELA, like many other government programs, functions as a subsidy for the problem it purportedly aims to eliminate.

OELA largely uses its funds to create and maintain resources, such as toolkits, on the national level; conduct research into the instruction of the English language; and provide

93 Fiscal Year 2025 Budget Summary, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget25/summary/25summary.pdf>.

94 *English Learner Family Toolkit*, U.S. Department of Education, 2, https://ncela.ed.gov/sites/default/files/2024-03/elfamily-toolkit_09012023-508.pdf.

95 Madison Marino Doan et al., *The Consequences of Unchecked Illegal Immigration on America’s Public Schools*, The Heritage Foundation, February 28, 2024, <https://www.heritage.org/education/report/the-consequences-unchecked-illegal-immigration-americas-public-schools>.

grants to states under Title III of the Elementary and Secondary Education Act of 1965. Most of the funding for these grants is given to state educational agencies (SEAs) and local educational agencies (LEAs). Some funds are available to non-SEA/LEA entities, and SEAs and LEAs may offer subgrants to other entities.

The Title III grants provided to the states for the benefit of these English learners have not produced desirable results. The Department's biennial report to Congress on Title III grants for school years 2018 to 2020 states that "the percentage of ELs [English learners] who participated in LIEPs [language instruction educational programs] in LEAs receiving Title III subgrants and who scored proficient or above proficient in English as measured by an ELP [English Language Proficiency] assessment in SY 2018–19 ranged from 27 percent (Mississippi) to less than 2 percent (Alaska), with a median of 11 percent. In SY 2018–19, the overall percentage of ELs in LEAs receiving Title III subgrants making progress in attaining ELP was 27 percent."⁹⁶ We may charitably judge that English language instruction cannot be expected to achieve universal proficiency—but a median achievement of *11% English language proficiency* suggests that OELA is not achieving minimally acceptable results in its core mission.

OELA houses two other programs for English language acquisition: the Native American & Alaska Native Children in School Program and the National Professional Development Program. The first program, the Native American & Alaska Native Children in School (NAM) Program, "awards discretionary grants to eligible entities to develop and enhance capacity to provide effective instruction and support to Native American students who are identified as English learners."⁹⁷ The Department, however, acknowledges that "the percentage of students served who attained proficiency in English on the state-approved English proficiency exam was 15%."⁹⁸ A proficiency rate of a mere 15% among students does not suggest that the program has developed or enhanced the capacity to provide effective instruction in the English language.

To put this number into perspective, the percentage of students who demonstrated English proficiency in Alaskan schools for all grades in the 2022–2023 school year was 31.8%.⁹⁹ While 31.8% suggests that Alaska's school system warrants its own reforms, the NAM Program ought to be able to do better than half the rate of English proficiency of Alaska's school system as a whole. NAM's inability to provide effective English language instruction to English learners should lessen the confidence of the public and policymakers in OELA's general capacity to foster English language proficiency.

96 *The Biennial Report to Congress on the Implementation of the Title III State Formula Grant Program: School Years 2018–2020*, Office of English Language Acquisition, U.S. Department of Education, 4, <https://ncela.ed.gov/sites/default/files/2023-05/OELABiennialReportSYs2018-20b-508.pdf>.

97 *Native American and Alaska Native Children in School (NAM) Program: 2018 & 2021 Cohorts: March 2024*, U.S. Department of Education, 1, <https://ncela.ed.gov/sites/default/files/2024-04/namdiscretionaryreport20240418-508.pdf>.

98 *Native American and Alaska Native Children in School (NAM) Program*, 1.

99 *A Summary of Alaska's Statewide Assessment Results, 2022–23*, https://education.alaska.gov/Media/Default/Assessments/AKAssessment_Brief_2023.pdf.

OELA's second dedicated program, the National Professional Development (NDP) Program, performs better on ED's metrics. This program

provides funding over a five-year period to institutions of higher education ... and/or public or private entities with relevant experience and capacity to support professional development activities that are designed to improve classroom instruction for [English learners] and assist education personnel working with such children to meet high professional standards.¹⁰⁰

This program appears to be exceeding the department's expectations:

More than 4,500 in-service teachers participated in programs on average, exceeding 2021 grantees' participation targets for in-service teachers. ... Close to 3,000 educators either completed or were making progress toward obtaining a certificate, endorsement, or license in teaching [English learners], with 2021 grantees exceeding their targets on average.¹⁰¹

But what the NPD Program reveals is that *ED's metrics are at best extraordinarily vague proxies for educational success and at worst meaningless*. Program participation does not mean teaching excellence in English language instruction, much less a correlation with the actual improvement of English language proficiency among these teachers' students. Neither does possession of a certificate, endorsement, or teaching license. NPD's assessment measures are extraordinarily vague:

As each grantee can specify their own project measures, data in these tables are derived from a qualitative analysis of the grantee-reported project-specific measures and accompanying grantee notes from the third reporting period in the KMS [the Knowledge Management System, an "online financial and performance monitoring tool for the U.S. Department of Education's ... discretionary grants"]. Using a purposeful sampling method, the qualitative analysis yielded six broad themes that grantees are working toward: enhancing the relevance of university coursework; offering graduate degrees or certificates; increasing English language achievement in students; increasing educator efficacy; enhancing the ability of educators to work with EL [English learner] families; and enhancing the relevance of professional development for EL stakeholders. It is important to note that while all grantees had intended to report on project-specific goals, some grantees reported an inability to complete activities due to lingering impacts from the COVID-19 pandemic, particularly ones associated with measuring English language achievement.¹⁰²

100 National Professional Development (NPD) Program: 2021 and 2022 Cohorts, Office of English Language Acquisition, U.S. Department of Education, May 2024, 1, <https://ncela.ed.gov/sites/default/files/2024-05/npddiscretionaryreport-21-22-20240525-508.pdf>.

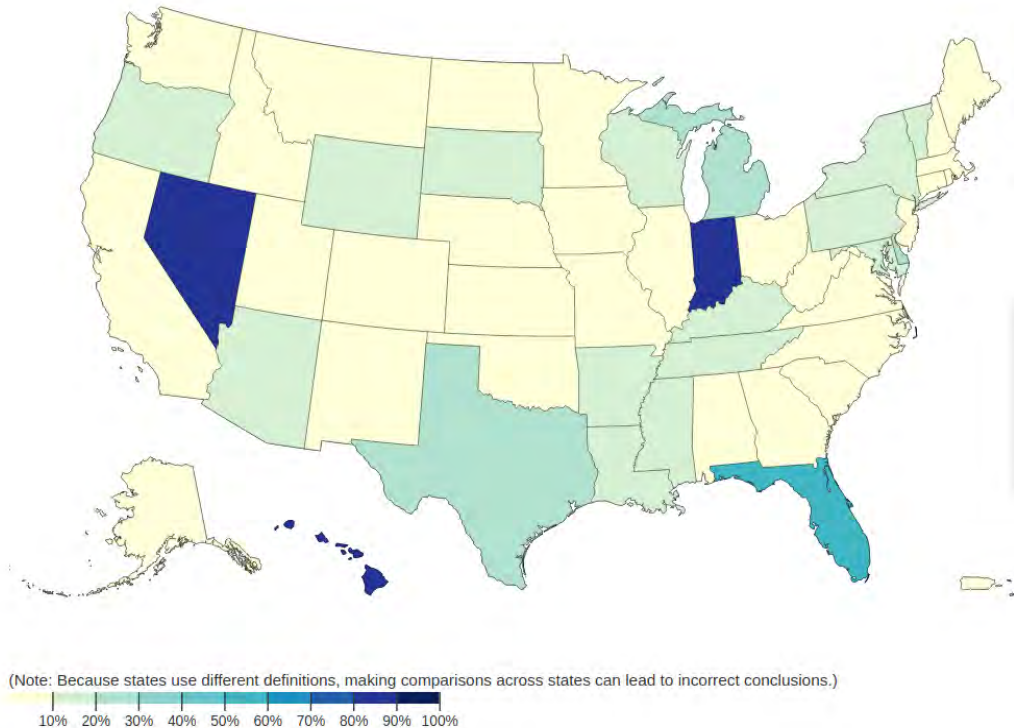
101 National Professional Development (NPD) Program, 1.

102 National Professional Development (NPD) Program, 14.

If “each grantee can specify their own project measures,” ED has no way to actually assess whether NPD is effective. Further, the use of the phrases “qualitative analysis” and “purposeful sampling method” are euphemisms for the inability or unwillingness to provide objective, *quantitative* assessment. And, while the COVID-19 pandemic allows for some charity in judgment, it is alarming that grantees were particularly unable to complete activities “associated with measuring English language achievement.” *NPD has no point, and should not be funded, if it cannot reliably increase English language achievement.*

We wish to emphasize that NPD, unfortunately, speaks to ED as a whole and not just to OELA. Consider that the several hundred pages of *The Biennial Report to Congress on the Implementation of the Title III State Formula Grant Program: School Years 2018–2020* do not provide any actual information on how effective federal OELA spending has been at improving English language acquisition.¹⁰³ Unless they are verified, we must presume that the internal assessments for every program in the U.S. Department of Education allow for vague proxies for actual accomplishment and rely on “qualitative” and subjective assessment. *The public and policymakers cannot rely on ED assurances that their programs are effective or that they have any positive result at all.*

Figure 1.6: Uncertified (%) of Title III (English Learner) Teachers, 2020–2021 School Year



Source: Percent of Title III (English Learner) Teachers Who Are Not Fully Certified as Defined by the State, Ed Data Express, https://eddataexpress.ed.gov/dashboard/educators/2020-2021?sy=2781&s=1035#not_fully_certified_pct.

103 *The Biennial Report to Congress on the Implementation of the Title III State Formula Grant Program*, 4.

When we look at external data, NPD has certainly left large gaps in the proxy of teacher certification. In the 2020–2021 school year, many states reported that more than 10% of their Title III (English learner) teachers were not fully certified (**Figure 1.6**).

Conclusions

- The Trump administration considered merging OELA with the Office for Elementary and Secondary Education (OESE):
- For fiscal year 2021, the Request would consolidate the English Language Acquisition program into the proposed Elementary and Secondary Education for the Disadvantaged Block Grant (ESED Block Grant), which would combine nearly all currently funded formula and competitive grant programs authorized by the ESEA [Elementary and Secondary Education Act], as well as several related programs, into a single State formula grant program.¹⁰⁴
- Such a decision should turn on a balanced assessment of what proportion of OELA funds goes to illegal aliens and their children, the extent to which OELA funds subsidize and encourage the entry of illegal aliens into the United States, and what costs OELA’s subsidy of illegal aliens imposes on school districts. To make possible that balanced assessment, ED (supported by congressional statute) should require school districts to count the number of illegal aliens and their children enrolled in each public school district. *Plyler v. Doe*, until such time as it is overturned, may require schools to enroll the children of illegal aliens, but it does not require that schools fail to enumerate them. That enumeration, and an analysis of the associated costs, should help education reformers to determine whether OELA should be preserved as a distinct part of ED or merged into OESE.
- The decision regarding whether to merge OELA also turns on an assessment of whether its subsidies for English language instruction do more to retard or accelerate English language instruction. Education reformers who are not funded by ED should provide a quantitative, objective assessment of the effects of OELA spending on English language acquisition. ED should require that all school districts using its funds openly provide the necessary information to independent researchers.
- Education reformers might also consider a state-option policy—namely, a policy that allows states the option of whether to retain dedicated OELA funds or to convert OELA funds into broader Title I formula grant funds.
- OELA cannot focus upon the goal of promoting English language acquisition so long as it maintains programmatic commitments to “multilingualism.” The larger national goal of promoting national cohesion via the English language also argues

¹⁰⁴ *English Language Acquisition: Fiscal Year 2021 Budget Request*, U.S. Department of Education, H-8, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget21/justifications/h-ela.pdf>.

against any OELA or ED commitment to “multilingualism.” OELA forthwith should end all programmatic commitments to “multilingualism,” and it should equally speedily end all spending aimed at the goal.

- A closer examination of NPD reveals that ED’s metrics to assess its own programs cannot be relied on, since they can be vague proxies that rely on ineffective procedures such as “qualitative analysis” or “purposeful sampling methods.” The several hundred pages of *The Biennial Report to Congress on the Implementation of the Title III State Formula Grant Program: School Years 2018–2020* are likewise uninformative regarding any means by which to actually assess the return on this particular investment of federal spending. The public and policymakers should subject ED programs to external, quantitative, objective assessments of their effectiveness. In general, ED’s role should be to openly provide the necessary information to independent researchers. Such studies should focus on assessing how much the proxies that ED uses, such as English learner teacher certification, actually correlate with improved English language acquisition.
- The interrelation of OELA funding and the effects of *Plyler v. Doe* underscores the larger point that ED policies and spending cannot be judged in isolation. We provide here an audit of ED that cannot address all the broader issues that intertwine with ED spending. Yet the public and policymakers must make their decisions about ED with these broader issues in mind.

Special Education

Program Overview

Special education programs within the Department of Education are handled by the Office of Special Education and Rehabilitative Services (OSERS), and more specifically by one of OSERS's suboffices, the Office of Special Education Programs (OSEP). OSEP's grant-making authority is provided for by the Individuals with Disabilities Education Act (IDEA) of 2004, which allows the Department to provide formula grants for the states and discretionary (i.e., competitive) grants to both institutions of higher education and other nonprofit organizations for various uses.

As of fiscal year 2022, the total appropriation for Special Education in the Department's budget tables was a little more than \$14 billion. The Department requested a \$4 billion increase to Special Education's appropriation, with \$3.3 billion going toward grants for states and the rest divided among OSERS's other programs and initiatives.¹⁰⁵ Between fiscal year 2022 and 2023, however, Special Education's appropriation was increased by only about \$1.4 billion, from a little more than \$14 billion in 2022 to \$15.45 billion in 2023.¹⁰⁶

OSERS/OSEP funds multiple projects. First among them is the IDEA Formula Grant Program; IDEA Part B provides for formula grants to states and grants to preschools, whereas IDEA Part C provides for intervention programs for infants and toddlers with disabilities. The formula used to determine funding is outlined in IDEA Section 611(d). IDEA Part B also provides discretionary grants for the "Technical Assistance on State Data Collection"; IDEA includes data collection and reporting requirements for grant recipients.

Part D provides for six different programs/services. First are the "State Personnel Development Grants," which help states reform and improve their professional development systems for those working in special education.¹⁰⁷ Second are the awards for "Personnel Development to Improve Services and Results for Children with Disabilities," which go directly to those working or intending to work in special education and help states meet their needs for adequate numbers of certified personnel.¹⁰⁸ Third are the services of "Technical Assistance and Dissemination," which, as the name suggests, provide technical assistance for the other services offered under IDEA.¹⁰⁹ Fourth are the grants for "Technical Assistance

105 *Special Education: Fiscal Year 2023 Budget Request*, U.S. Department of Education, 15, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget23/justifications/h-special.ed.pdf>.

106 *Special Education: Fiscal Year 2024 Budget Request*, United States Department of Education, 14, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/i-special.ed.pdf>.

107 Special Education — State Personnel Development Grants Program (ALN: 84.323), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/special-education-state-personnel-development-grants-program>.

108 Special Education — Personnel Development to Improve Services and Results for Children with Disabilities (ALN: 84.325), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/personnel-development-to-improve-services>.

109 Special Education — Technical Assistance and Dissemination (ALN: 84.326), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/special-education-technical-assistance-and-dissemination>.

on State Data Collection,” which complements “Technical Assistance and Dissemination” but focuses on grants to states.¹¹⁰ Fifth are the grants for “Education Technology, Media and Materials for Individuals with Disabilities,” which help make technology and educational materials available to those with disabilities.¹¹¹ Sixth, and finally, are the Parent Training and Information Centers, which help to ensure that parents of children with disabilities have access to information, training, and other resources.¹¹²

In order to manage these programs, OSEP itself is divided into two divisions: the Monitoring and State Improvement Planning Division¹¹³ and the Research to Practice Division,¹¹⁴ with the latter further divided into four teams. Three of those teams focus on particular stages of a disabled student’s educational attainment. There is the Early Childhood and Parent Team,¹¹⁵ the Elementary and Middle School Team,¹¹⁶ and the Secondary, Transition, and Post-Secondary Team.¹¹⁷ The fourth team focuses on OSEP’s National Initiatives.¹¹⁸ In addition to its very clear organizational structure and programs, IDEA also requires data collection and reporting on special education programs. The IDEA Data Center provides technical assistance for data collection to recipients of IDEA-funded programs.¹¹⁹

Political and Administrative Context

We have focused on special education, but the Office of Special Education and Rehabilitative Services (OSERS) also includes the Rehabilitation Services Administration (RSA)—which, save for a few individual programs, funds rehabilitation rather than education.¹²⁰ This administrative oddity proceeds from the fact that IDEA was created before ED. When the federal government established spending for special education and rehabilitation services, the Department of Health, Education, and Welfare held responsibility for both health and education, so it did not matter where precisely the Rehabilitation Services Administration was located.

110 Special Education — Technical Assistance on State Data Collection (ALN: 84.373), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/special-education-technical-assistance-on-state-data-collection>.

111 Special Education — Educational Technology, Media and Materials for Individuals with Disabilities Program (ALN: 84.327), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/special-education-educational-technology-media-and-materials-for-individuals-with-disabilities-program>.

112 Special Education — Parent Training and Information Centers. (ALN: 84.328), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-students-disabilities/special-education/special-education-parent-training-and-information-centers>.

113 OSEP: Monitoring and State Improvement Planning Division, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep/osep-monitoring-and-state-improvement-planning-division>.

114 OSEP: Research to Practice Division, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep/osep-rtp/osep-research-to-practice-division>.

115 OSEP: RTP, Early Childhood and Parent Team, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep/osep-rtp/osep-rtp-early-childhood-and-parent-team>.

116 OSEP: RTP, Elementary and Middle School Team, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep/osep-rtp/osep-rtp-elementary-and-middle-school-team>.

117 OSEP: RTP, Secondary, Transition, and Post-Secondary Team, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep/osep-rtp/osep-secondary-transition-and-post-secondary>.

118 OSEP: RTP, National Initiatives Team, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/osers/osep-rtp-national-initiatives-team>.

119 IDEA Data Center, U.S. Department of Education, <https://www.ideadata.org>.

120 Rehabilitation Services Administration, U.S. Department of Education, <https://rsa.ed.gov/about/programs>.

Any reform of special education programs must proceed with great caution and delicacy

We will not make any recommendations concerning RSA's precise operations, since our audit concerns education. Our sole and most important recommendation is that RSA ought to be relocated from OSERS, and ED as a whole, to the Department of Health and Human Services (HHS).

As for special education itself, we should state the obvious: aside from the intrinsic merits of special education, no policymaker wants to be accused of cruelty to the disabled. Any reform of special education programs must proceed with great caution and delicacy, to preclude even the appearance of such cruelty. We will recommend maintaining special education formula grant spending largely unchanged, not only because it does appear to be a core ED function but also because we do not anticipate that any policymaker can reasonably be expected to make more than minor changes to special education. Any major reforms to special education certainly should not be folded into broader reforms to federal education spending; rather, they should be part of a separate campaign, where they can be explained to all American citizens and defended in public.

We note here that other education reformers have recommended transforming the special education formula grants "into a no-strings formula block grant targeted at students with disabilities and distributed directly to local educational agencies by Health and Human Service's Administration for Community Living."¹²¹ Arguably, this reform would improve the administration of special education. It certainly would have the advantage for federal policymakers of shifting all responsibility for special education to state and local policymakers, save for the need to determine the total level of funding for special education.

We do not believe, however, that this shift would improve the accountability of *Congress* for special education. Federal law, alas, already allows Congress to avoid substantial accountability for its special education requirements, because of its resort to *unfunded mandates*. IDEA's greatest effect on states and LEAs is not via federal funding but via the legal requirement that states and LEAs provide adequate special education. This requirement is not funded and not explicitly defined. The consequence has been an explosion of spending in special education at the state and local level, arguably to the detriment of regular school expenditures. IDEA also has led to government by lawsuit—the provision of special education

¹²¹ Dans and Groves, *Mandate for Leadership*, 326.

services determined ad hoc by lawsuit rather than by consistent policy at the federal, state, or local level. If congressmen maintain IDEA and simply convert current spending into a formula block grant, they will exacerbate the fundamental federal irresponsibility, which takes credit for addressing special education by assigning its costs to states and localities.

We will not here make any sweeping recommendations for special education reform—we, too, wish to proceed with caution and delicacy. We will simply state here that the reform of special education should make the reform of IDEA's unfunded mandates a priority, in order to make federal special education policy truly accountable. We believe that any major reform of federal special education spending, to be truly effective, must be accompanied by a reform of these unfunded mandates.

Evaluation

Some special education requirements, however, are blatantly discriminatory and counterproductive—including the Equity Requirements in IDEA, which impose discrimination on special education programs. As *Mandate for Leadership* notes,

school districts deemed to overrepresent minority students in special education assignment, or in discipline amongst special education students, are tagged by their state education agencies as engaging in “significant disproportionality,” and are required to reallocate 15 percent of their IDEA Part B money into coordinated early intervening services that are intended to address the “root causes of disproportionality.” In practice, this can mean raiding special education funding to pay for CRT-inspired “equity” consultants and professional development.

This is especially problematic given that both of the assumptions behind Equity in IDEA are flawed. Special education services provide extra assistance to students; they do not harm them. And according to the most rigorous research on the subject, conducted by Penn State's Paul Morgan, black students are actually underrepresented in special education once adequate statistical controls are made. That means that this regulation effectively further depresses the provision of valuable services to an already underserved group.¹²²

ED, however, continues to boast of its efforts to promote Equity in IDEA, as well as similar programs such as Safe and Inclusive Classrooms or training funds for special education instructors that discriminate on grounds of race.¹²³ All such efforts, and all Equity Requirements, should be rescinded forthwith from special education. Every appeal to “disparate impact” is intellectual nonsense in service of discrimination; that, in this case, it

¹²² Equity Requirements in IDEA, IDEA Data Center, https://www.ideadata.org/sites/default/files/media/documents/2018-05/IDC_Equity_Comparison.pdf; Dans and Groves, *Mandate for Leadership*, 336; Paul L. Morgan et al., “Replicated Evidence of Racial and Ethnic Disparities in Disability Identification in U.S. Schools,” *Educational Researcher* 46, no. 6 (August/September 2017), 305–22, <https://doi.org/10.3102/0013189X17726282>.

¹²³ *Special Education: Fiscal Year 2024 Budget Request*, 25, 41–42, 53–54, 80–81.

forwards policy that actually serves to deprive minority children of needed special education is a Kafkaesque horror.

OSERS's own evaluation of its spending programs continues to present a hodgepodge of ineffective performance measures and occasional good practices. The following aspects of its own evaluations are worth noting:

Formula Grants

- OSERS disburses the great majority of its special education funding to the states. Its program performance information for formula grants includes objective measures of how disabled students score on various educational measures, but there is no way to assess how federal funds have contributed to those scores, or what has been their return on investment. OSERS also provides quantitative information about educational targets—and how, where data is provided,¹²⁴ these generally have not been met. These statistics do not break down disabled students by degree or nature of disability, which also makes said performance evaluations even less informative.¹²⁵
- OSERS included a performance evaluation of its own efficiency: “The average number of days between the completion of a site visit and the Office of Special Education Programs’ (OSEP) response to the State.”¹²⁶ While OSERS does not seem to have met its own targets, OSERS should be commended for providing an evaluation of how well its own personnel operate. All components of ED should do likewise.
- On the other hand, OSERS complied with “Section 664 of the IDEA[, which] requires the Department to conduct a national assessment of activities carried out with Federal funds”, by citing research published between 2010 and 2012. A further study, “awarded in 2015,” does not yet appear to have been published—or if it has, ED is not including that information in its 2024 Budget Request. ED clearly is not fulfilling the spirit of the obligation to carry out a reasonably up-to-date “national assessment of activities carried out with Federal funds.”¹²⁷

Preschool Grants

- OSERS's measures of its Preschool Grants generally comprise soft measures such as “the percentage of children who entered the program below age expectations in positive social-emotional skills (including social relationships) who substantially increased their rate of growth by the time they exited the program.”¹²⁸

124 The COVID-19 pandemic disrupted data collection.

125 *Special Education: Fiscal Year 2024 Budget Request*, 31–32, 34.

126 *Special Education: Fiscal Year 2024 Budget Request*, 34.

127 *Special Education: Fiscal Year 2024 Budget Request*, 34–38.

128 *Special Education: Fiscal Year 2024 Budget Request*, 45–46.

- OSERS's Preschool Grants, commendably, also include a measure of their own efficiency: "The average number of days between the completion of a site visit and the Office of Special Education Programs' (OSEP) response to the State."¹²⁹
- OSERS's Preschool Grants also cite research completed by 2010 for the office's 2024 Budget Request.¹³⁰

Grants for Infants and Families

- OSERS's measures of its Grants for Infants and Families generally comprise soft measures such as "the percentage of infants and toddlers who entered the program below age expectations in positive social-emotional skills (including social relationships) who substantially increased their rate of growth by the time they exited the program."¹³¹
- OSERS's Grants for Infants and Families, commendably, also include a measure of their own efficiency: "The average number of days between the completion of a site visit and the Office of Special Education Programs' (OSEP) response to the State."¹³²
- OSERS's Grants for Infants and Families also cite research completed by 2011 for the office's 2024 Budget Request.¹³³

State Personnel Development (SPD)

- OSERS cited remarkably weak and soft data to justify its work:

Of the 74 DCLT [District-Community Leadership Team] members who responded to the Inclusive Multi-Tiered System of Supports Implementation Scale: Mental Health Supplement, 95 percent reported knowing how to implement trauma-responsive practices and 100 percent responded that continued collaboration would improve mental health outcomes for children and youth. DCLTs translated these beliefs into practice, monitoring the progress of 30 students through a trauma-responsive support planning process, with 93 percent of students making progress in their targeted areas.¹³⁴

- OSERS's program performance measures included similarly weak and soft measures, such as "the percentage of SPD-funded initiatives that meet the benchmarks for use of evidence-based professional development practices over time" and "the percentage of SPD-funded initiatives that meet the benchmark for improvement in implementation over time."¹³⁵

129 *Special Education: Fiscal Year 2024 Budget Request*, 47.

130 *Special Education: Fiscal Year 2024 Budget Request*, 47-48.

131 *Special Education: Fiscal Year 2024 Budget Request*, 59-60.

132 *Special Education: Fiscal Year 2024 Budget Request*, 62.

133 *Special Education: Fiscal Year 2024 Budget Request*, 62-63.

134 *Special Education: Fiscal Year 2024 Budget Request*, 66-67.

135 *Special Education: Fiscal Year 2024 Budget Request*, 68-69.

Technical Assistance and Dissemination

- OSERS's program performance measures included weak and soft measures, such as "the percentage of Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice."¹³⁶
- OSERS's procedures are susceptible to abuse: "For each of the three annual performance measures, expert panels review a sample of products and services developed by grantees against a listing of evidence-based practices in areas the Department has identified as critical. ... The expert panels review and score all products and services based on an OSEP-designed rubric that is specific to each performance measure, rating the products and services on the extent to which they meet the measure's performance indicators."¹³⁷ "Expert panels" can be selected to form self-dealing cabals; "evidence-based practices" means nothing; and an "OSEP-designed rubric" can be designed to assess no practical information. OSERS should not have the freedom to design so easily gameable systems of self-assessment.

Personnel Preparation

- OSERS's program performance measures included weak and soft measures, such as "percentage of projects that incorporate scientifically- or evidence-based practices in their curricula." OSERS did, however, include more objective and quantifiable measures, such as "percentage of scholars who exit training programs prior to completion due to poor academic performance" and "percentage of degree/certification recipients who are working in the area(s) for which they are trained upon program completion." OSERS actually provided one very valuable piece of information: "The Federal cost per degree or certification program recipient working in the area(s) in which they were trained upon program completion."¹³⁸

Parent Information Centers

- As with Technical Assistance and Dissemination, OSERS here deputed review to "an independent review panel of experts."¹³⁹ This procedure is likewise subject to abuse.
- OSERS, commendably, includes a measure of its own efficiency: "An index of the Federal cost per unit of output provided by the Special Education Parent Training and Information Centers."¹⁴⁰ This efficiency measure, examined closely, is also soft:

136 *Special Education: Fiscal Year 2024 Budget Request*, 76–77.

137 *Special Education: Fiscal Year 2024 Budget Request*, 75.

138 *Special Education: Fiscal Year 2024 Budget Request*, 84–86.

139 *Special Education: Fiscal Year 2024 Budget Request*, 93.

140 *Special Education: Fiscal Year 2024 Budget Request*, 94.

The efficiency measure for the PTIs [Parent Training and Information Centers] program is “the index of Federal cost per unit of output.” The calculation of the Federal index of cost per unit of technical assistance is the total Federal cost of PTI grant funding for a given fiscal year divided by the sum of the numbers of parents and professionals receiving technical assistance during that fiscal year. Technical assistance is defined as: (1) letters, telephone calls, and e-mail exchanges; (2) the provision of training, participation in meetings, and home visits; and (3) participation in extended services, including IEP [Individualized Education Program] meetings, mediation sessions, and resolution sessions. The Department notes that it is difficult to attribute increases or decreases under this measure to the Federal share of funds due to the variability in other sources of funding. The result is expressed as an index of cost rather than a cost in dollars.

In fiscal year 2022, 2,106,570 services were provided to parents and professionals across the three technical assistance categories, and the total amount of program funding was \$30,152,000, yielding an index of cost of 14.3.¹⁴¹

Nevertheless, OSERS should be commended for providing an efficiency measure.

Educational Technology, Media, and Materials

- As with Technical Assistance and Dissemination, OSERS here deputed review to “two panels of subject matter experts who review a sample of products and services developed by grantees against a listing of evidence-based practices in key target areas the Department has identified as critical.”¹⁴² This procedure is likewise subject to abuse.
- OSERS again uses soft performance measures, such as “the percentage of Educational Technology, Media, and Materials projects judged to be of high relevance to improving outcomes of infants, toddlers, children and youth with disabilities.”¹⁴³
- OSERS, commendably, includes two measures of its own efficiency: “The Federal cost per download from the accessible educational materials production and distribution project funded by the Educational Technology, Media, and Materials program” and “The Federal cost per hour of video description funded by the Educational Technology, Media, and Materials program.”¹⁴⁴

141 *Special Education: Fiscal Year 2024 Budget Request*, 95.

142 *Special Education: Fiscal Year 2024 Budget Request*, 100.

143 *Special Education: Fiscal Year 2024 Budget Request*, 101.

144 *Special Education: Fiscal Year 2024 Budget Request*, 102.

Special Olympics Education Programs

- OSERS again uses soft performance measures, such as “the percent of school liaisons who report that Unified Champion Schools helps raise awareness about students with intellectual disabilities.”¹⁴⁵
- OSERS, commendably, includes two measures of its own efficiency: “The average total Federal cost per school” and “The percent of Federal funds spent on administration.”¹⁴⁶

OSERS shares the general ED predilection for weak measures of its own performance. It does, however, include a number of best practices for measuring its own efficiency that ought to be practiced more widely within ED.

The Trump administration would have ended funding for the Special Olympics Education Programs: “For fiscal year 2018, the Administration requests no funds for the Special Olympics education programs. This request is consistent with the Administration’s intent to eliminate programs that are more appropriately supported with State, local, or private funds. ... The Administration does not believe funding is necessary for the successful operation of these programs, given that in fiscal year 2015, Special Olympics reported over \$101 million in revenue from its individual and corporate donors.”¹⁴⁷ This judgment appears reasonable.

Conclusions

- The Rehabilitation Services Administration (RSA) ought to be relocated from OSERS, and ED as a whole, to the Department of Health and Human Services (HHS).
- Special education should not be reformed hastily. Special education is a core responsibility for ED—and education reformers should not open themselves up to specious charges that they do not care about the disabled.
- Education reformers should consider legislative changes to IDEA, so that it defines precisely the state and local responsibilities for special education rather than issuing unfunded mandates. Education reformers cannot properly reform Special Education public policy if they focus only on ED spending on special education.
- All discriminatory programs within special education, such as Equity Requirements in IDEA, should be rescinded. These programs not only are discriminatory in themselves but also have led to the Kafkaesque result that minority children are denied needed special education on the grounds of “disparate impact.”

145 *Special Education: Fiscal Year 2024 Budget Request*, 104.

146 *Special Education: Fiscal Year 2024 Budget Request*, 106.

147 *Special Education: Fiscal Year 2018 Budget Request*, U.S. Department of Education, H-114–H-115, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget18/justifications/h-special-ed.pdf>.

- OSERS performance measures generally include soft, weak measures that do not actually evaluate the effectiveness of federal spending. OSERS also uses measures that are liable to abuse, by delegating responsibility to putatively independent experts.
- OSERS performance measures do feature efficiency measures, including measures of their own administrators' efficiency. These best existing practices should be standardized throughout ED.
- OSERS proffers out-of-date research to satisfy legislative requirements for research to evaluate the effectiveness of its programs. Legislative requirements for research should include effective stipulations that ED use research no more than five years old and that ED state explicitly how many years it has been since the research it references was published, as well as how many years it has been since the research data was collected.

Elementary and Secondary Education

Safe Schools and Citizenship Education

Program Overview

Safe Schools and Citizenship Education is an initiative of the Department of Education's Office of Safe and Supportive Schools (OSSS), which itself is a division of the Office of Elementary and Secondary Education (OESE). OSSS exists (in its own words) to address the health and well-being of students, as well as school safety, security, and emergency management policies and preparedness. The office is split between two groups: the Safe and Supportive Schools Group and the Student Support and Academic Enrichment Group. Both groups support grantees with numerous programs, all of which are under one of three major programs: School Safety National Activities, Promise Neighborhoods, and Full-Service Community Schools. Each of these major programs is provided for under Title IV of the Elementary and Secondary Education Act (ESEA) of 1965.

Like OELA, OESE administers grants to state and local educational agencies (SEAs/LEAs), nonprofit organizations, charter management organizations, colleges and universities, and community organizations. The eligibility of grantees varies by program, but grants are broadly categorized as either formula grants (noncompetitive grants based on a predetermined formula, which are often referred to as state-administered grants) or discretionary grants, where the Department solicits applications for funding in a competitive process. The OSSS falls under the Office of Formula Grants within OESE, meaning that most OSSS grants are formula grants. OSSS also administers discretionary grant programs, particularly for emergency response, violence prevention, and mental health intervention.

In its 2023 budget request to Congress, the Department asked for a \$492 million increase to Safe Schools and Citizenship Education's stated 2022 total of \$201 million, bringing the proposed 2023 total to \$693 million.¹⁴⁸ The Department's rationale for the requested increase was that more funds were needed for the School Safety National Activities Project Prevent grants (project grants to LEAs affected by community violence) and for a proposed National Clearinghouse on School Infrastructure and Sustainability, as well as additional funding for Full-Service Community Schools and Promise Neighborhoods.¹⁴⁹

OSSS directs its funds to the three previously mentioned programs of School Safety National Activities, Full-Service Community Schools, and Promise Neighborhoods. The School Safety National Activities include grants, such as the aforementioned Project Prevent grants, intended to reduce violence in school communities. Full-Service Community Schools

148 *Safe Schools and Citizenship Education: Fiscal Year 2024 Budget Request*, U.S. Department of Education, 6, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/g-ssce.pdf>.

149 *Safe Schools and Citizenship Education: Fiscal Year 2024 Budget Request*, U.S. Department of Education, 7–12.

(FSCSs) are special grants for schools to serve not only students but also the broader community through what are referred to as “pipeline services” (a term coined in the Elementary and Secondary Education Act of 1965). The pipeline services that FSCSs offer, which fall under four “pillars,” are:

1. Integrated Student Supports:
 - Social, health, nutrition, and mental health services and supports;
 - Juvenile crime prevention and rehabilitation programs;
2. Expanded and Enriched Learning Time and Opportunities:
 - Early childhood education programs;
 - Out-of-school-time programs;
 - Support for a child’s education transitions;
 - Activities that support postsecondary and workforce readiness;
3. Active Family and Community Engagement:
 - Family and community engagement;
 - Community-based support for students;
4. Collaborative Leadership and Practices:
 - Each community school tailors the chosen pipeline services to local needs. FSCS offers support for capacity building and development grants, multi-LEA grants, and State scaling grants.¹⁵⁰

Finally, there are the Promise Neighborhoods, which are similar to FSCSs but much more centralized and beholden to the United States Government. A Promise Neighborhood is both “a place and a set of strategies.” Promise neighborhoods have experienced economic distress and may have inadequate learning opportunities, struggling schools, low rates of high school and college graduation, high rates of unemployment and/or crime, and other indicators of poor health. The strategies are a set of pipelines designed to alleviate these issues and assist children and youths from “cradle to career.”¹⁵¹

Evaluation

OSSS consistently fails to provide means to assess whether these programs provide an effective return on investment. The *Safe Schools and Citizenship Education: Fiscal Year 2025 Budget Request* provides minimal evidence that any of this federal spending is or can be assessed for effectiveness. Within School Safety National Activities,

150 Full-Service Community Schools Program (FSCS), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/school-community-improvement/full-service-community-schools-program-fscs>.
 151 Promise Neighborhoods, U.S. Department of Education, <https://promiseneighborhoods.ed.gov>.

Mental Health Services in Schools have no performance measures at all, only the unfootnoted assurance that ‘research shows that school-based access to health professionals can help identify and mitigate the impacts of these experiences.’

- Mental Health Services in Schools have no performance measures at all, only the unfootnoted assurance that “research shows that school-based access to health professionals can help identify and mitigate the impacts of these experiences.”¹⁵²
- Project Prevent grantees “report a measurable decrease in violent, aggressive, and disruptive behavior in schools served by the grant”—but there is no evidence that the decrease in these fifteen grantees has anything to do with the Project Prevent funds.¹⁵³ The “measurable increase in the number of students in schools served by the grant receiving school-based and community mental health services” says nothing about the effectiveness (or even relevance) of those mental health services.¹⁵⁴ The “measurable increase in the school engagement of students served by the grants” is meaningless.¹⁵⁵ The “measurable increase in the quality of family engagement and grantee engagement with community-based organization(s), as defined and measured by the grantee” is either meaningless, not least because “defined and measured by the grantee” adds a further level of inconsistent subjectivity, or counterproductive, if “engagement with community-based organization(s)” means engagement with politicized action-civics organizations.¹⁵⁶
- LEA School Climate Transformation Grants measure “decreasing disciplinary actions”—which provides an incentive to reduce disciplinary *actions*, such as suspensions and expulsions, not to actually restore discipline.¹⁵⁷ They also

152 *Safe Schools and Citizenship Education: Fiscal Year 2025 Budget Request*, U.S. Department of Education, 12, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget25/justifications/h-ssce.pdf>.

153 *Safe Schools and Citizenship Education*, 15.

154 *Safe Schools and Citizenship Education*, 16.

155 *Safe Schools and Citizenship Education*, 16.

156 *Safe Schools and Citizenship Education*, 17; David Randall, *Making Citizens: How American Universities Teach Civics* (New York: National Association of Scholars, 2017), https://www.nas.org/images/documents/NAS_makingCitizens_fullReport.pdf.

157 *Safe Schools and Citizenship Education*, 17–19.

measure “the number of training and/or technical assistance events to support implementing with fidelity provided annually by LEAs to schools implementing a multi-tiered system of support”—a proxy that can have no relationship at all to actually improving student well-being and academic performance.¹⁵⁸ The measure of “the number and percentage of schools annually that report an improved school climate based on the results of the ED School Climate Surveys or similar tool” is likewise meaningless.¹⁵⁹

- Grants to States for Emergency Management measure their effectiveness by “the number of training events provided by the GSEM program to assist LEAs in the development and implementation of high-quality school emergency operations plans (EOPs).”¹⁶⁰ We grant that you cannot tell how effective such events are until an actual emergency occurs—but this, again, is a highly bureaucratic proxy for actual effectiveness.
- Mental Health Services Professional Demonstration Grants measure their effectiveness by the growth of a trained and employed mental health bureaucracy.¹⁶¹ ED’s measure is the growth of an employed bureaucracy, not the growth of actual mental health—much less academic accomplishment.
- The School-Based Mental Health Services Grant Program likewise measures its effectiveness by the growth of a trained and employed mental health bureaucracy.¹⁶²

We may note here that *health, safety, and social and emotional learning* are notoriously politicized pieces of educational jargon.¹⁶³ We shall not attempt here to prove that programs that fund such programs are necessarily politicized—but we do believe that the public and policymakers should investigate all such programs for politicization and withhold funding when they indeed are determined to be politicized.

Full-Service Community Schools (FSCS), meanwhile, are miniature welfare states disguised as schools: “The unique feature of a community school is integrated student services, commonly referred to as wraparound services. The school coordinates with outside organizations to provide services ranging from tutoring, housing assistance, food banks, clothing, language classes, medical care, dental care, and mental health services.”¹⁶⁴ The Trump administration rightly sought to end funding for this program.¹⁶⁵ As critics note,

158 *Safe Schools and Citizenship Education*, 20.

159 *Safe Schools and Citizenship Education*, 20.

160 *Safe Schools and Citizenship Education*, 23.

161 *Safe Schools and Citizenship Education*, 25.

162 *Safe Schools and Citizenship Education*, 26–30.

163 See, e.g., John Sailer, “Social and Emotional Learning,” Civics Alliance, <https://civicsalliance.org/social-and-emotional-learning/>.

164 Keri D. Ingraham and Arina Grossu Agnew, “Community Schools’ ‘Woke’ Indoctrination Agenda,” *Discovery Institute*, July 28, 2022, <https://www.discovery.org/education/2022/07/28/community-schools-woke-indoctrination-agenda/>.

165 *Safe Schools and Citizenship Education: Fiscal Year 2018 Budget Request*, U.S. Department of Education, D-26, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget18/justifications/d-ssce.pdf>.

the community school model ... is championed by entities such as the National Education Association, the American Federation of Teachers, big pharma, and Community-Based Organizations. This model is rapidly being implemented nationwide, leaving no state untouched. It increases governmental and powerful non-government organization (NGOs) control in K-12 public schools while driving a wedge between parents and children.

Concerns surrounding school-based health clinics include adopting models like the Whole School, Whole Community, and Whole Child (WSCC). These “community schools” serve as conduits for expanding governmental control over children. Of particular concern are issues related to parental consent and notification rights, especially concerning Medicaid billing and medical procedures carried out without parental knowledge or presence.¹⁶⁶

Whether we should have such welfare states at all is beyond the scope of this report; but we are certain that they are beyond ED’s proper function—much less its ability to administer. But FSCSs, in addition to functioning as miniature welfare states, now also work to impose discriminatory identity-politics policies on schools.

This substantial investment in community-based “whole child” activities supports President Biden’s Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, which calls for “a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁶⁷

The public and policymakers, on principle, should not fund FSCSs, which are not a strictly educational expense, and which now forward discrimination on principle. Even on its own grounds, however, FSCS is not a good investment of taxpayer funds. As Sanders and Galindo note,

FSCSs are not without skeptics. This skepticism stems, in part, from studies that fail to show a definitive academic advantage for poor students and students of color attending FSCSs, despite the extensive time and resources required for their implementation. For example, Whitehurst and Croft (2010) found that a large scale FSC charter school in New York City, the Harlem Children’s Zone, did not produce higher academic gains than some other charter schools not identified as FSCSs. Similarly, while Cummings, Dyson, and Todd (2011) found evidence that FSCSs improved academic outcomes for the most economically disadvantaged students and narrowed the achievement gap between these students and their more affluent peers, the

166 Tamra Farah, “Socialist Healthcare Is Invading Public Schools,” *AZ Free News*, May 1, 2024, <https://azfreeneews.com/2024/05/socialist-healthcare-is-invading-public-schools/>.

167 *Safe Schools and Citizenship Education*, 39.

authors were unable to demonstrate an overall improvement in achievement for the majority of students attending FSCSs.¹⁶⁸

Aside from lack of efficacy, other skeptics are concerned about left-wing political bias among FSCS supporters.

School partnerships with youth associations, healthcare providers, social services, and community organizations can be positive. However, in the case of community schools, the partnerships sought include Planned Parenthood, LGBTQ activist organizations, or other left-wing community organizations. The goal is clear: leverage public funding to advance a radical worldview and political agenda. ... The true agenda of the community school effort can be seen as its proponents' emphasis on gender inclusivity and LGBTQ rights. Obviously, schools have a responsibility to promote respect for the dignity of each person as well as to implement strong anti-bullying policies. But that is quite different than the promotion of radical ideology and services provided toward life-changing decisions of minor children, kept secret from their parents.¹⁶⁹

ED's own measures to assess the effectiveness of FSCSs, of course, do not include "radicalization" as an explicit measure. The measures it does have, although it does include some objective measures such as "chronic absenteeism rates" and "graduation rates," include many empty or subjective measures of success:

- Student chronic absenteeism rates;
- Student discipline rates, including suspensions and expulsions;
- School climate information, which may come from student, parent, or teacher surveys;
- Provision of integrated student supports and stakeholder services;
- Expanded and enriched learning time and opportunities;
- Family and community engagement efforts and impact;
- Information on the number, qualifications, and retention of school staff, including the number and percentage of fully certified teachers, disaggregated by race and ethnicity, and rates of teacher turnover;
- Graduation rates;
- Changes in school spending information;

168 Mavis Sanders and Claudia Galindo, "Introduction: Research for a New Era of Full-Service Community Schools," *Journal of Education for Students Placed at Risk* 24, no. 3 (2019), 193–96, esp. 193–94, <https://doi.org/10.1080/10824669.2019.161598>.

169 Ingraham and Agnew, "Community Schools' 'Woke' Indoctrination Agenda."

- Collaborative leadership and practice strategies, which may include building the capacity of educators, principals, other school leaders, and other staff to lead collaborative school improvement structures, such as professional learning communities;
- Regularly convening or engaging all initiative-level partners, such as LEA representatives, city or county officials, children’s cabinets, nonprofit service providers, public housing agencies, and advocates;
- Regularly assessing program quality and progress through individual student data, participant feedback, and aggregate outcomes to develop strategies for improvement;
- Organizing school personnel and community partners into working teams focused on specific issues identified in the needs and assets assessment.¹⁷⁰

Simply repeating this list is unnecessary, but we wish to underscore that items such as “expanded and enriched learning time and opportunities” and “collaborative leadership and practice strategies” cannot be meaningfully assessed and are weak or useless proxies for academic success. ED provides no measure to assess FSCSs meaningfully. Lacking such measures, the public and policymakers must go on the common sense observation that ED should not be supporting radicalizing miniature welfare states at the expense of actual education funding.

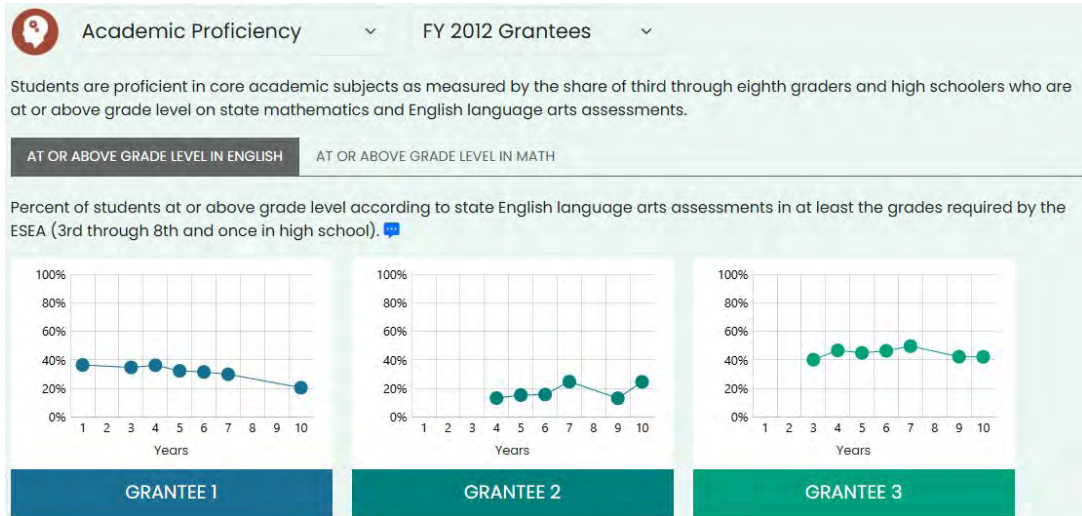
Promise Neighborhoods do not even display much success by ED’s own metrics. (See the ED data presented in **Figures 1.7–1.20.**) Of the three earliest Promise Neighborhoods, which have been funded since 2012, only Grantee 2 (ED anonymizes grantees in its data) has made any progress in terms of academic proficiency, having brought its students’ proficiency in English (determined as “at or above grade level”) from 13.2% by Year 4 up to 24.6% by Year 10, and having brought their proficiency in math (similarly determined) from 12.9% by Year 4 up to 35.6% by Year 10. In other words, after a decade of support, three out of four students are still not proficient in English, and two out of three are still not proficient in math. This Promise Neighborhood is the most-improved grantee in terms of academic proficiency.

Grantee 1 fared the worst of the initial three grantees, having declined in English proficiency from 36.4% at Year 1 to 20.5% by Year 10, as well as in math proficiency from 43.4% at Year 1 down to 22.8% by Year 10. Grantee 3 has largely remained stagnant in terms of academic proficiency and high school graduation rate, whereas Grantee 1, despite its deep decline in academic proficiency, has boosted its high school graduation rate from 72.7% at Year 1 to 83.3% by Year 10. Grantee 2 also boosted its high school graduation rate from 68% at Year 1 to 96.3% by Year 10. Though not as much time has passed for data collection, the grantees in more recent years have fared similarly to the original three in terms of academic

¹⁷⁰ *Safe Schools and Citizenship Education*, 42–43.

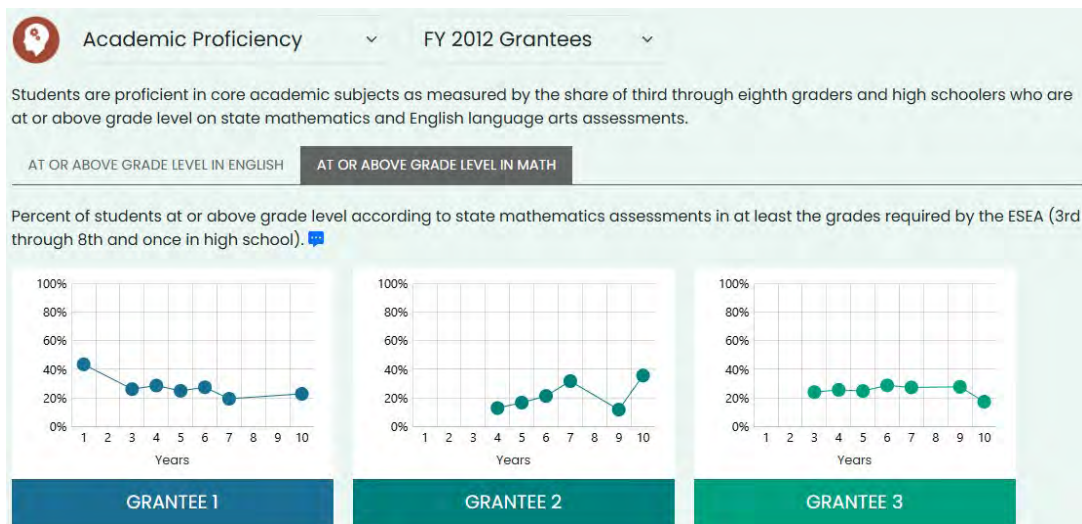
performance and high school graduation rates. Declines in academic proficiency are most common, and if an improvement on these two metrics within the Promise Neighborhood has occurred, the increase is almost always less than 10%. Consider the following fourteen figures (Figures 1.7–1.20):

Figure 1.7: 2012 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in English



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education, <https://promiseneighborhoods.ed.gov/data-and-results?cohortTypeId=2&cohortYearId=1&targetPage=undefined#views-exposed-form-data-dashboard-block-1>.

Figure 1.8: 2012 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in Math



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.9 2016 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in English

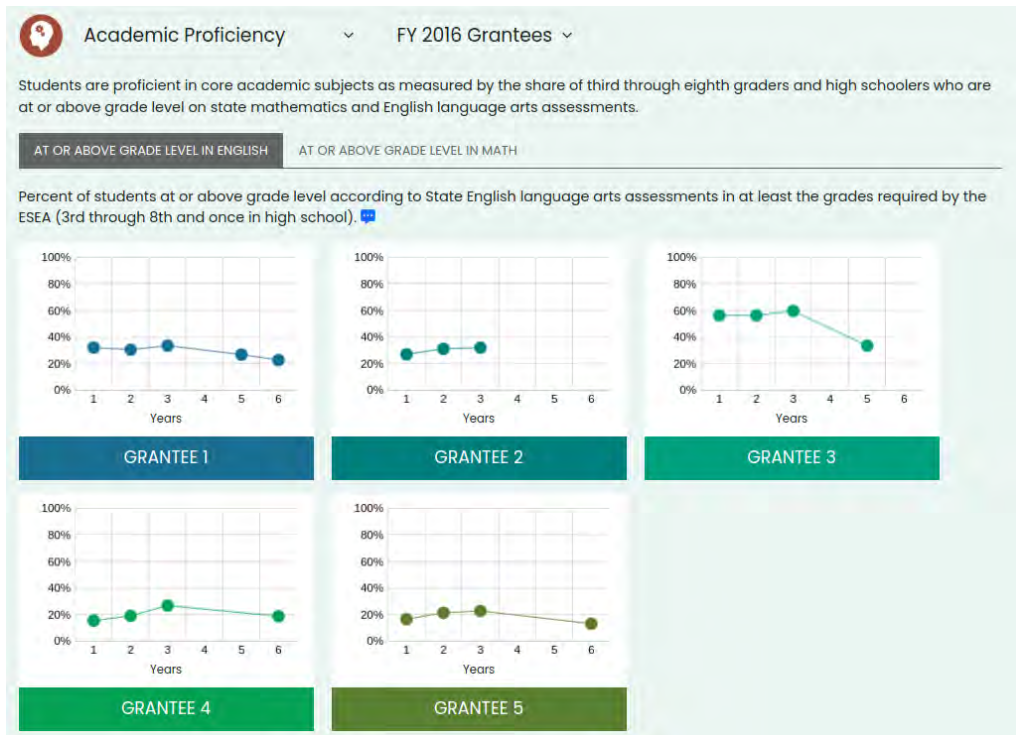
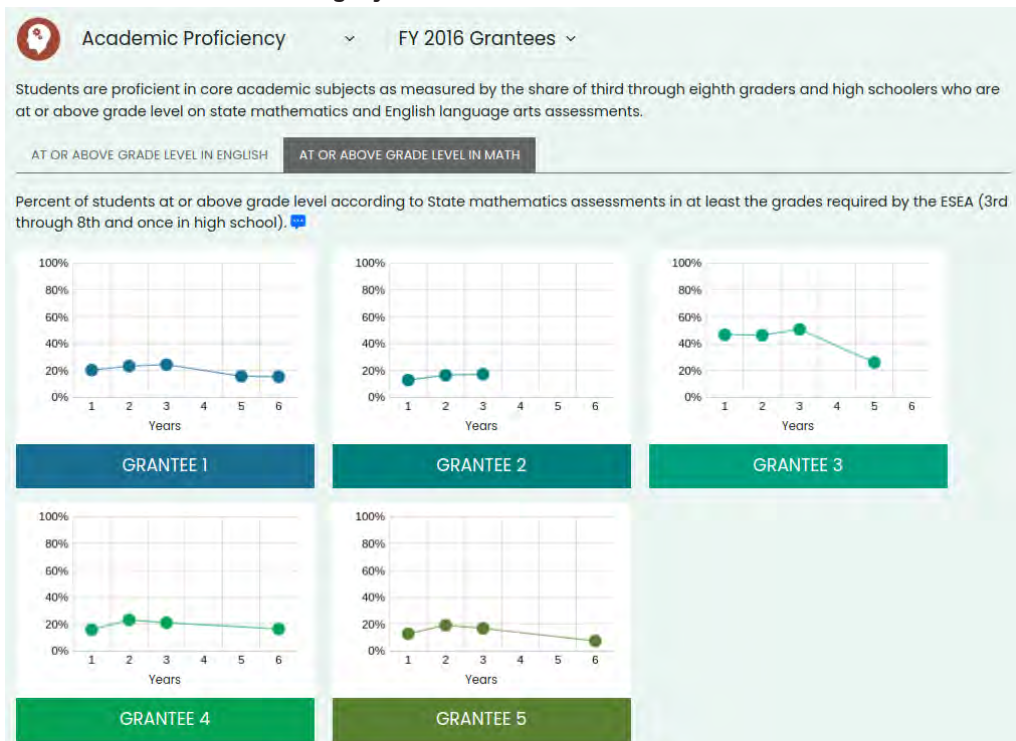


Figure 1.10: 2016 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in Math



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.11: 2017 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in English

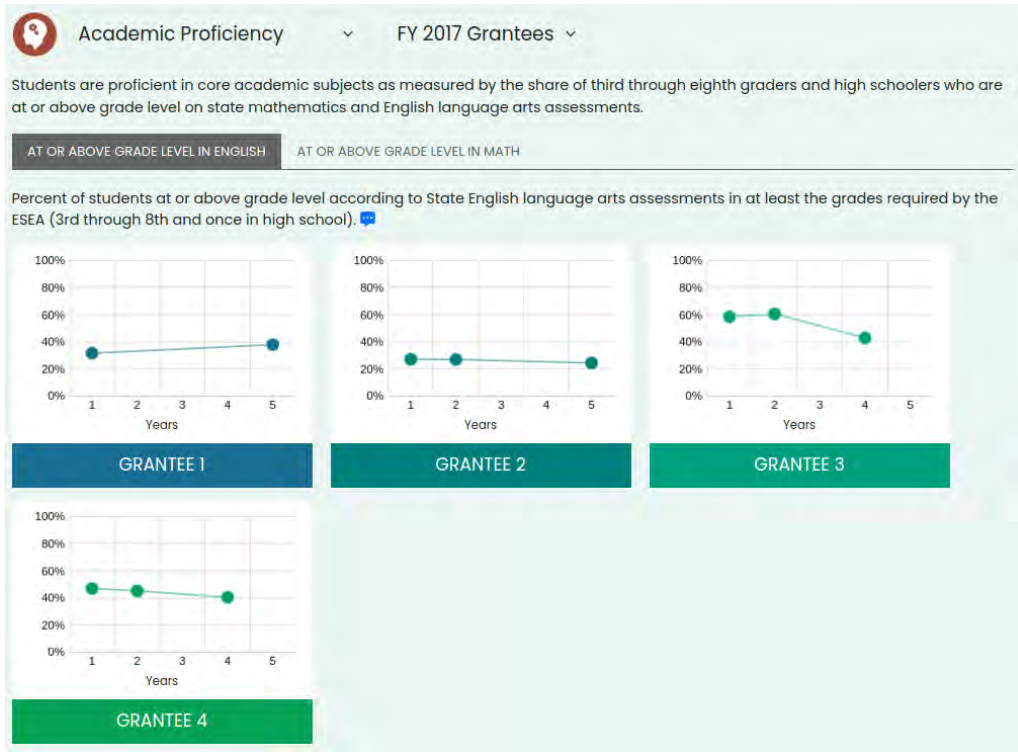
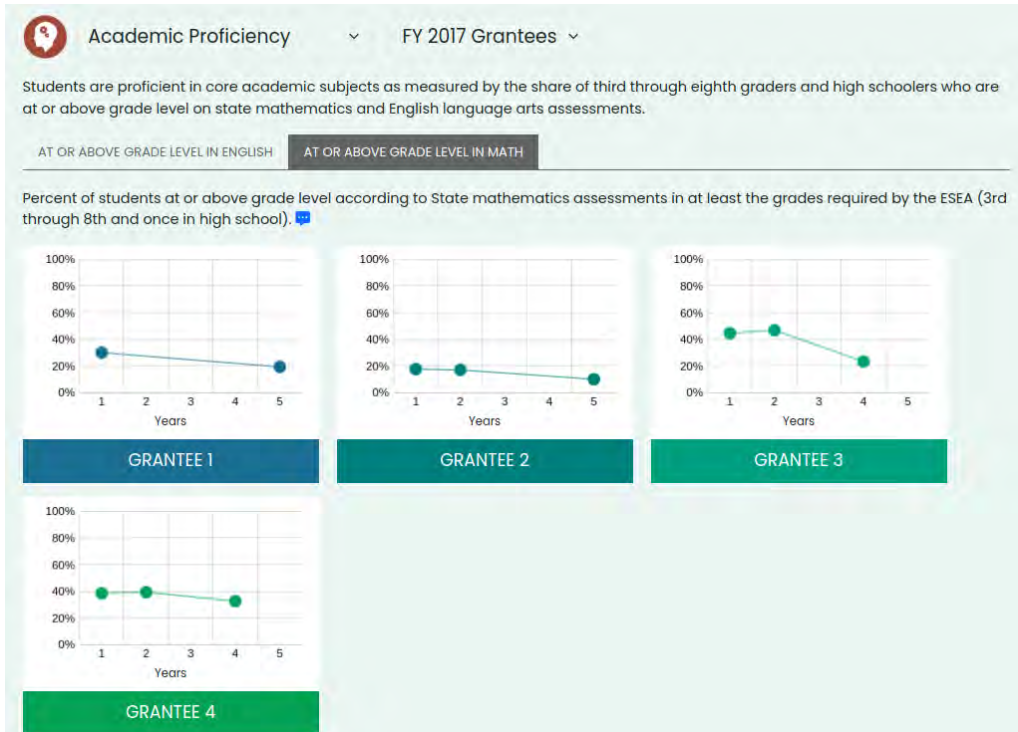
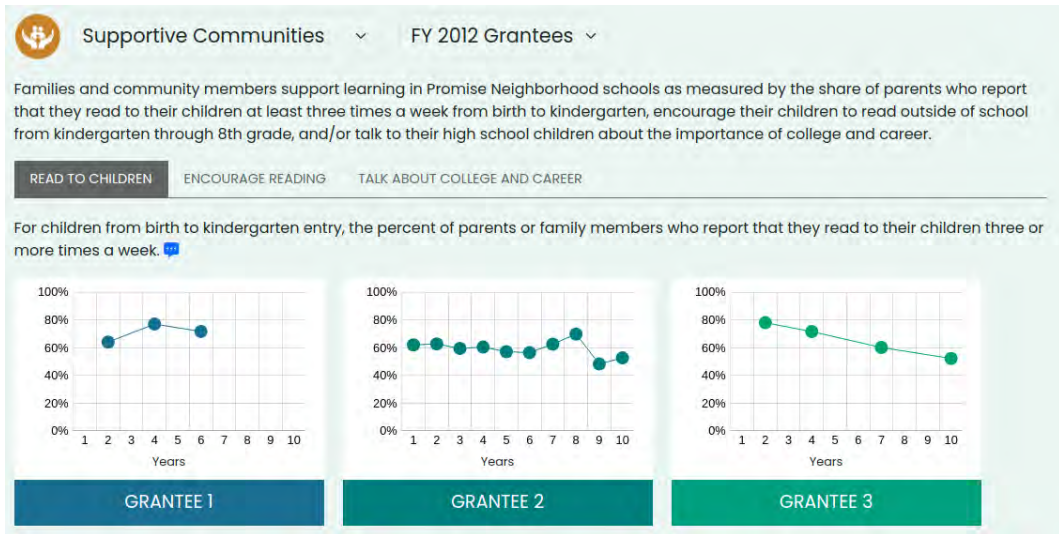


Figure 1.12: 2017 Grantees | Category: Academic Proficiency | Subcategory: At or Above Grade Level in Math



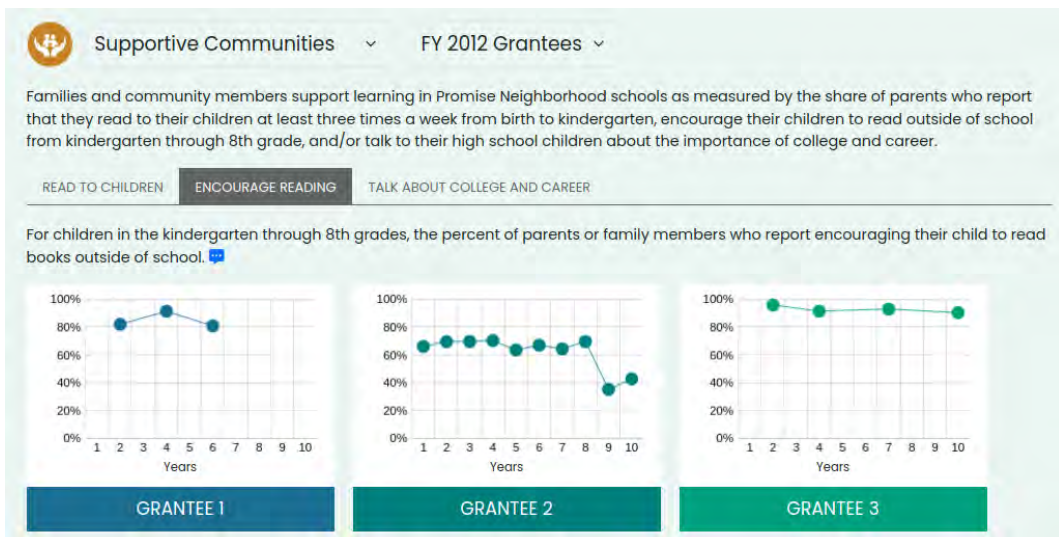
Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.13: 2012 Grantees | Category: Supportive Communities | Subcategory: Parents Reading to Children



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.14: 2012 Grantees | Category: Supportive Communities | Subcategory: Parents Encouraging Children to Read



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.15: 2016 Grantees | Category: Supportive Communities | Subcategory: Parents Reading to Children

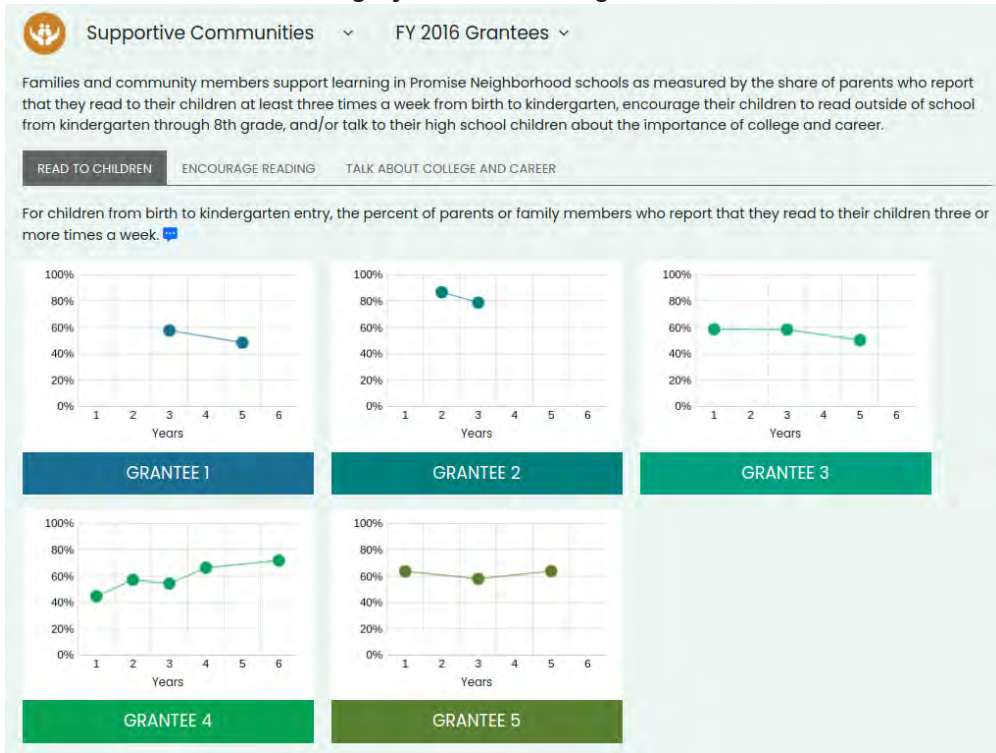
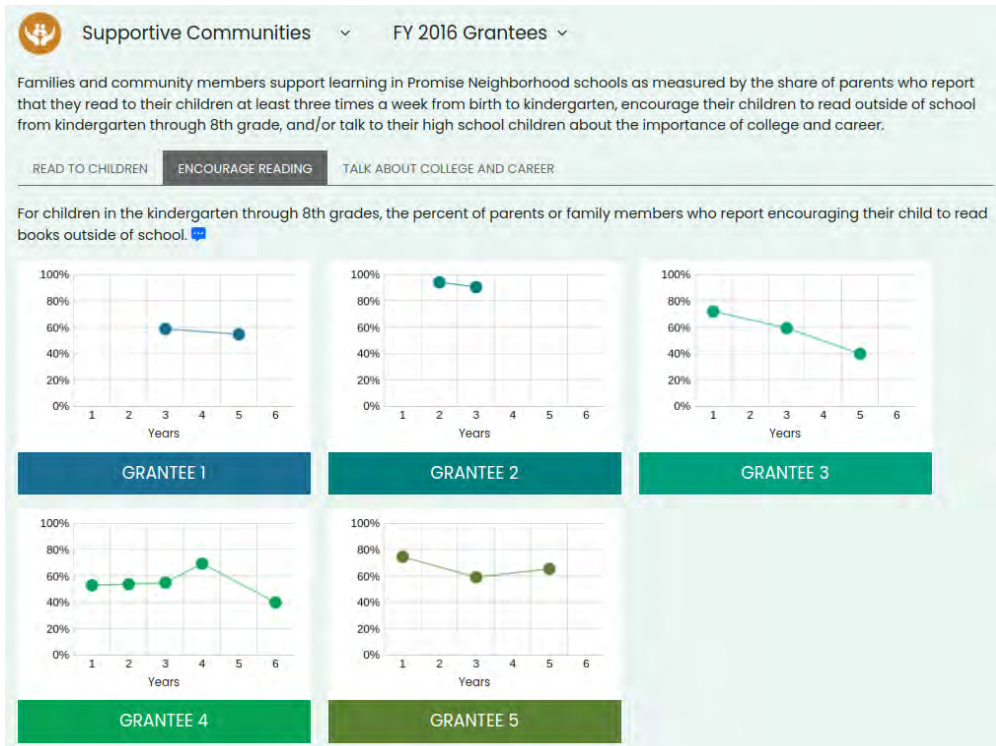
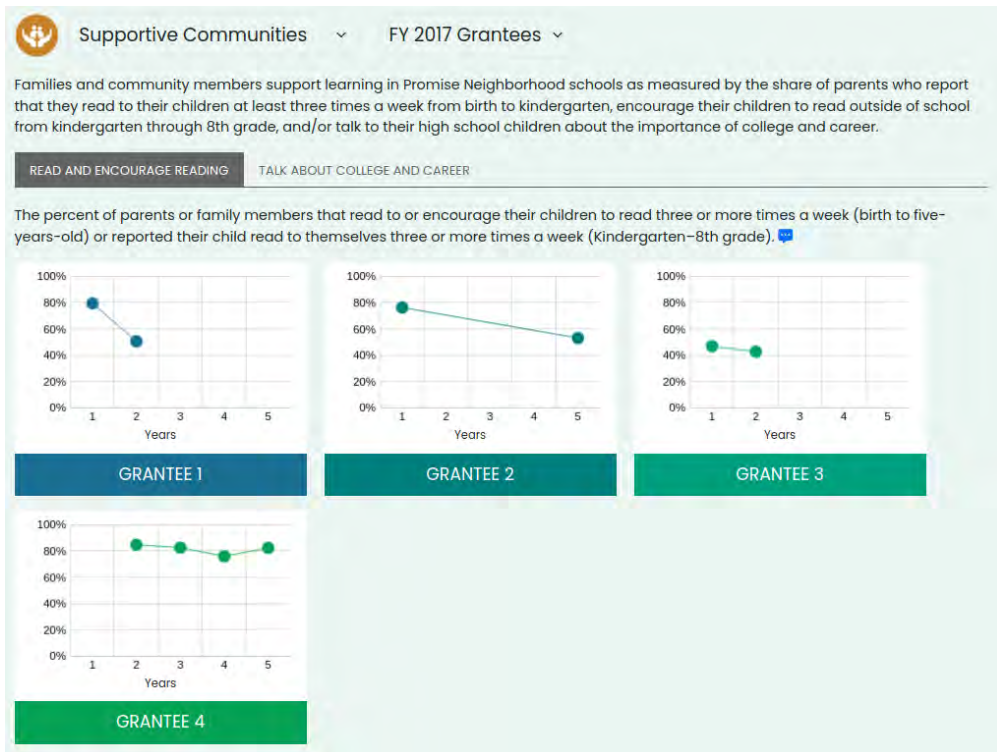


Figure 1.16: 2016 Grantees | Category: Supportive Communities | Subcategory: Parents Encouraging Children to Read



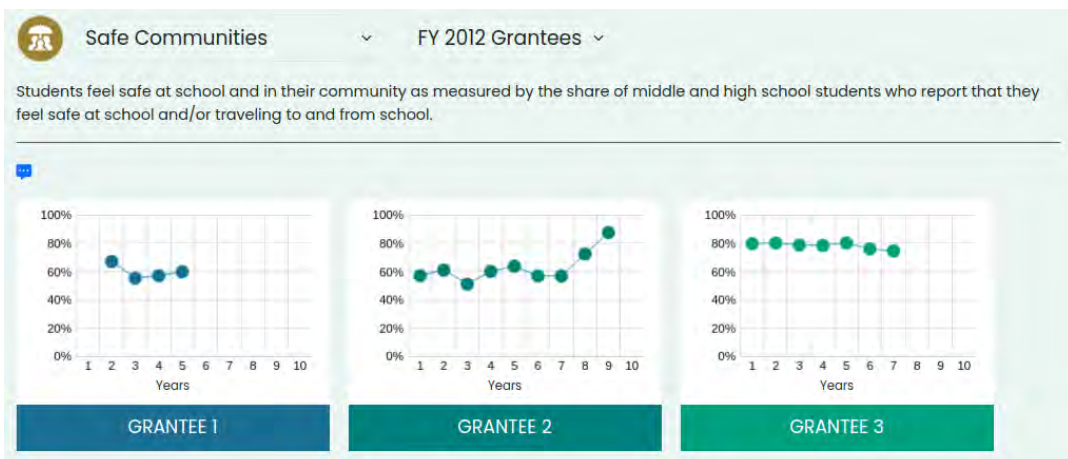
Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.17: 2017 Grantees | Category: Supportive Communities | Subcategory: Read and Encourage Reading



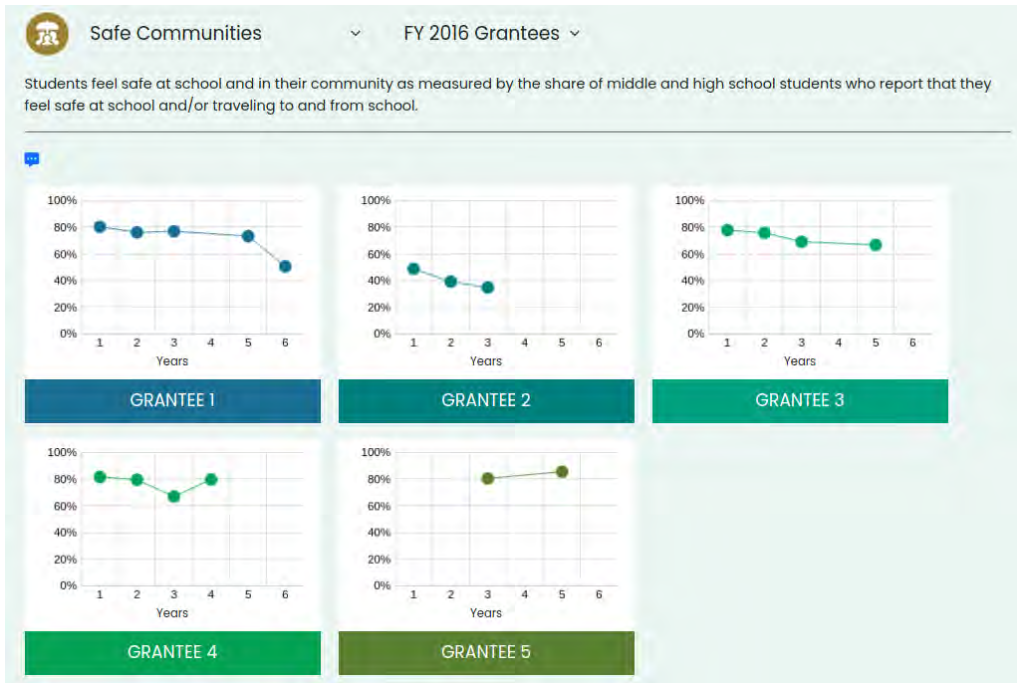
Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.18: 2012 Grantees | Category: Safe Communities



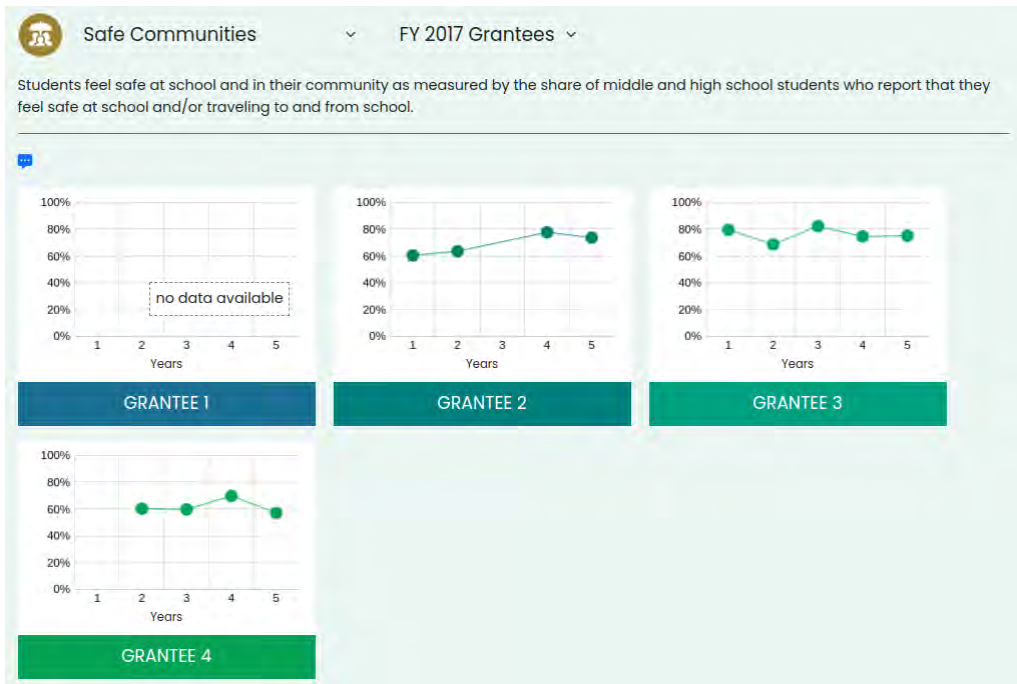
Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.19: 2016 Grantees | Category: Safe Communities



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Figure 1.20: 2017 Grantees | Category: Safe Communities



Source: Data Dashboard, Promise Neighborhoods, U.S. Department of Education.

Even if ED programs supported the Department's core functions and were not politicized, its inability to assess its own programs would argue for defunding them.

These data indicate general stagnation in Promise Neighborhoods, according to all the ED measures. Indeed, ED performance measures are actually more objective for Promise Neighborhoods, with measures such as attendance rates and graduation rates.¹⁷¹ Alas, the most effective program performance measures also revealed the weakest program performance. We suspect that this rule of thumb will hold across ED.

Conclusions

- Safe Schools and Citizenship Education generally supports programs that are not strictly speaking educational, whether they deal with mental health, Full-Service Community Schools, or Promise Neighborhoods. These are not core ED functions. Simply on grounds of tangential purpose, ED should not fund these programs.
- These programs are even more susceptible to politicization than ED's core programs. Key words such as *equity, health, safety, and social and emotional learning* generally camouflage radical ideology; ED's invocation of these terms suggests politicized programs. Significant numbers of critics have argued that these programs are not just susceptible to politicization but actually have been politicized. The public and policymakers also should consider defunding these programs because of the significant evidence that they forward ideological goals.
- Mental health is intrinsically subjective; it is difficult to provide objective, quantifiable assessments. To say so is not a rationale to say, *we should spend the money anyway, even if we can't assess it properly*. It is a reason not to spend any government money on mental health. The only thing government can ensure is the employment of mental health professionals. ED money would secure a far surer return on investment by ensuring the employment of actual teachers.
- The federal government already has a department devoted to social welfare—the Department of Health and Human Services (HHS). The ends sought by Full-Service Community Schools and Promise Neighborhoods, if they are worth pursuing, can

171 *Safe Schools and Citizenship Education*, 34–37.

and should be achieved via HHS programs—whose administrators are better qualified to execute and assess such programs. ED should be dedicated to education, not social welfare.

- Safe Schools and Citizenship Education contributes substantially more evidence that ED cannot be trusted to assess the efficacy of its own programs. ED assessed its mental health programs and Full-Service Community Schools with empty or subjective performance metrics and/or with proxies that are very weakly related to actual performance. The only program subject to objective metrics, Promise Neighborhoods, found little evidence that the program had done any good. *Even if ED programs supported the Department's core functions and were not politicized, its inability to assess its own programs would argue for defunding them.*
- Our audit of Safe Schools and Citizenship Education suggests that it should be eliminated entirely.

Indian Education

Program Overview

The Office of Indian Education (OIE) oversees the Indian Education Program, a part of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act (Title IV, Part A, specifically). The Indian Education Program establishes policies and provides support (both financial and otherwise) for local educational agencies (LEAs), Indian Tribes, and some postsecondary institutions.

OIE has three main responsibilities:

1. To meet the unique educational and culturally related academic needs of Indian students, so that such students can meet the challenging State academic standards;
2. To ensure that Indian students gain knowledge and understanding of Native communities, languages, Tribal histories, traditions, and cultures; and
3. To ensure that teachers, principals, other school leaders, and other staff who serve Indian students have the ability to provide culturally appropriate and effective instruction and supports to such students.¹⁷²

The Department's 2023 Budget Request lists the 2022 Annual Appropriation for Indian Education at \$181 million, with a requested increase of only \$5 million, the additional funds to be used only for grants to LEAs.¹⁷³ OIE is further divided into three subparts: Formula Grants to LEAs; Special Programs and Projects for Indian Children (Discretionary/Competitive Grants); and the Office of Indian Education's National Activities.

OIE's **Formula Grants** to LEAs are fairly straightforward: they serve as the "Department's principal vehicle for addressing the particular needs of Indian children."¹⁷⁴ While it is still a formula grant program, where awards are disbursed to LEAs based on a predetermined formula, the program also requires applicant LEAs to develop plans annually to meet the needs of Indian children. LEAs should make these plans in conjunction with a committee of the parents of Indian children. While applicants are required to describe how their programs will assess student progress and "provide results to the parent committee, Indian community tribes whose children are served by the LEA,"¹⁷⁵ such data does not appear to be provided to the public or aggregated on the Department's website.

The five major categories of Discretionary Grants are Demonstration Grants for Indian Children, Native American Language, the Native American Language Resource Center,

172 Office of Indian Education, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/oese/oie>.

173 *Indian Education: Fiscal Year 2023 Budget Request*, U.S. Department of Education, 3, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget23/justifications/e-indianed.pdf>.

174 Indian Education Formula Grants (Formula), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/formula-grants/formula-grants-special-populations/indian-education-formula-grants-formula>.

175 Indian Education Formula Grants (Formula).

the Indian Education Professional Development Program, and the State Tribal Education Partnership Program.¹⁷⁶

Demonstration Grants for Indian Children grants provide funds on a competitive basis for three main types of projects:

- Native Youth Community Projects, which work to ensure that native students are prepared for college or careers;
- Accessing Choices in Education (ACE) projects, which allow the Tribe (or LEA grantee and its tribal partner) broad discretion in the use of the funds as they see best fit to assist the education of their youth; and
- the Native American Teacher Retention Initiative (NATRI), which, as its name suggests, deals with teacher retention and professional development to serve native communities and those communities' schools. More specifically, NATRI projects "must be designed to ensure that (a) Teachers, principals, other school leaders, and other staff who serve Indian students have the ability to provide culturally appropriate and effective instruction and supports to such students and (b) Indian students gain knowledge and understanding of Native communities, languages, tribal histories, traditions, and cultures."¹⁷⁷

The **Native American Language** program has two main goals: to develop and maintain new native language programs; and to expand and improve upon extant native language programs. The general purpose of the program is to support those schools that use a Native American or Native Alaskan language as their primary language for instruction, which will help to maintain, protect, and promote those languages, as was the hopeful vision of the Native American Languages Act of 1990 (25 U.S.C. 2901 et seq.).¹⁷⁸

The **Native American Language Resource Center** supports both a national center and regional centers in order to "(1) support schools that use Native American and Alaska Native languages as the primary language of instruction; (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901, et seq.); and (3) support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities."¹⁷⁹ In other words, it

176 Discretionary Programs, Office of Indian Education, U.S. Department of Education, <https://www.ed.gov/about/ed-offices/oese/oie#Discretionary-Programs>.

177 Demonstration Grants for Indian Children (DEMO), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-native-alaskan-pacific/demonstration-grants-for-indian-children-demo>.

178 Native Language Revitalization and Native Language Immersion Curricula in Tribal Early Childhood Programs, U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-native-alaskan-pacific/native-american-language-grant-naled>.

179 Native American Language Resource Center/Grant Program (NALRC), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-native-alaskan-pacific/native-american-language-resource-center-grant-program-nalrc>.

supports an administrative structure that will in turn support Native American and Alaska Native instruction in schools.

The **Indian Education Professional Development Program** works to increase the number of teachers that serve Indians and provide additional training to those individuals who are already qualified to become teachers and administrators in their native-serving schools. Recipients of these awards are required to work in these native-serving schools for a period of time after their professional development; otherwise, they must pay back all or a prorated portion of the award.¹⁸⁰

The **State Tribal Education Partnership (STEP)** program has two main goals: to increase collaboration between state and local educational agencies (SEAs / LEAs) and their tribal education agency (TEA) counterparts; and to build up the capacity of TEAs to handle certain administrative functions as envisioned by the Elementary and Secondary Education Act of 1965. The STEP program funds four kinds of projects:

1. Recruit or retain educators employed by TEAs or otherwise partnered LEAs;
2. Develop and make accessible work-based learning experiences, such as internships, for elementary and secondary students;
3. If a TEA is located in a state with a statute authorizing the establishment of charter schools, the STEP program may fund projects to assist the TEA in building a charter school; and
4. Assist TEAs in converting Bureau of Indian Education (BIE)-operated schools into BIE-funded but Tribally operated schools.¹⁸¹

The Office of Indian Education's third and final category is its **National Activities**. OIE's National Activities funds research, data collection, and data analysis on OIE's other activities and provides the public with information regarding the education status of the native student demographic and the general effectiveness of the Indian Education programs. National Activities also appears to include miscellaneous grants that supplement OIE's Discretionary Grants.¹⁸²

Political and Administrative Context

The most important piece of political context in evaluating OIE is that it does not simply involve one category of American citizens. OIE provides funds to Indian Tribes and Alaska Native entities—organizations that the federal government has recognized as having distinct legal status within the United States of America. American recognition of Indian Tribes and

180 Indian Education Professional Development Program, United States Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-native-alaskan-pacific/indian-education-professional-development-pd>.

181 State Tribal Education Partnership (STEP), U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-special-populations/grants-native-alaskan-pacific/state-tribal-education-partnership-step#Home>.

182 *Indian Education: Fiscal Year 2024 Budget Request*, U.S. Department of Education, 3, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/e-indianed.pdf>.

All ED programming should treat Americans without distinction by race. All OIE programs that fund Indian Tribes and Alaska Native entities should be transferred to BIE, but all OIE programs that fund American citizens of American Indian or Alaska Native descent should be ended.

Alaska Native entities entitles them to government-to-government relationships with the United States. These relationships were established as part of the United States' territorial extension to its current boundaries and possess fundamental political importance to the United States. No analysis of ED policy, or prescription for reform, can ignore these government-to-government relationships or the United States' centuries-long legal commitments to Indian Tribes and Alaska Native entities.

This political context raises an administrative question: If ED's distribution of education funds to Indian Tribes and Alaska Native entities is a government-to-government relationship, shouldn't it be administered by the Bureau of Indian Affairs (BIA)? And, in particular, by the BIA's Bureau of Indian Education (BIE)?¹⁸³ OIE fundamentally duplicates BIE; it makes great sense to merge them, by transferring all OIE programs to BIE. Other education reformers have made this suggestion;¹⁸⁴ it also strikes us as sensible.

It also strikes us as sensible because OIE programs *can* fund programming for Americans of American Indian or Alaska Native descent who have no tribal affiliation—and this funding is race discrimination among Americans. More broadly, OIE funding provides a wedge for programs that support radical identity-politics ideology, and a precedent for supporting other such programs for other identity groups. All ED programming should treat Americans without distinction by race. All OIE programs that fund Indian Tribes and Alaska Native entities should be transferred to BIE, but all OIE programs that fund American citizens of American Indian or Alaska Native descent should be ended.

183 Bureau of Indian Education, Indian Affairs, U.S. Department of the Interior, <https://www.bie.edu>.

184 Dans and Groves, *Mandate for Leadership*, 326.

We acknowledge a gray area of existing support for Native American language programs, which can be located in public educational institutions. These programs also should be transferred to BIE, because they are in a gray area. But it is important to note that such language programs are open to all American citizens, even if, in practice, they will mostly be used by American citizens of American Indian or Alaska Native descent.

We will evaluate the effectiveness of OIE programs below. We note that education reformers across the political spectrum have decried the sorry shape of schooling for Native American tribes and proposed a broad variety of proposed solutions.¹⁸⁵ While we will point out the shortcomings of OIE programs, we will not propose great changes to their structure. Discussions of OIE program reform should be deferred until after the programs have been consolidated within BIE. Congressional conversations with Indian Tribes and Alaska Native entities should in any case precede programmatic reform.

Evaluation

ED apparently does not provide performance metrics for the effectiveness of its funds. ED's *National Indian Education Study 2019* does provide an evaluation of overall academic performance by American Indian/Alaska Native (AI/AN) students.¹⁸⁶ Given the heavy federal responsibility for schools in Indian Tribes and Alaska Native entities, this may be taken as an evaluation of overall federal involvement in their education systems. But that, of course, is an imperfect proxy for OIE's particular efforts.

The *National Indian Education Study 2019* states that, in 2019, AI/AN fourth graders' average reading scores in both low- and high-density public schools were "not significantly different from the scores in all previous assessment years."¹⁸⁷ The same can be said for eighth grade AI/AN students.¹⁸⁸ The fourth and eighth graders attending Bureau of Indian Education (BIE) schools, however, had higher scores in 2019 than they did in 2007 and 2009, with fairly significant improvements seen among the fourth graders—although, generally speaking, the trend lines have largely remained stagnant.¹⁸⁹ In regard to mathematics, much of the same can be said.¹⁹⁰ Not much difference can be seen anywhere except among those students who attended BIE schools, although the trend lines have largely remained stagnant. At the state level, reading and mathematics scores of AI/AN students appear more or less stagnant. BIE scores are lower than those for public schools but have improved more.

185 Lindsey Burke, *Education Savings Accounts for Children Attending Bureau of Indian Education Schools: A Promising Step Forward*, The Heritage Foundation, April 1, 2016, <https://www.heritage.org/education/report/education-savings-accounts-children-attending-bureau-indian-education-schools>; Alden Woods, "The Federal Government Gives Native Students an Inadequate Education, and Gets Away with It," ProPublica, August 6, 2020, <https://www.propublica.org/article/the-federal-government-gives-native-students-an-inadequate-education-and-gets-away-with-it>.

186 *National Indian Education Study 2019: American Indian and Alaska Native Students at Grades 4 and 8*, Institute of Education Sciences, U.S. Department of Education, <https://nces.ed.gov/nationsreportcard/subject/publications/studies/pdf/2021018.pdf>.

187 *National Indian Education Study 2019*, 46.

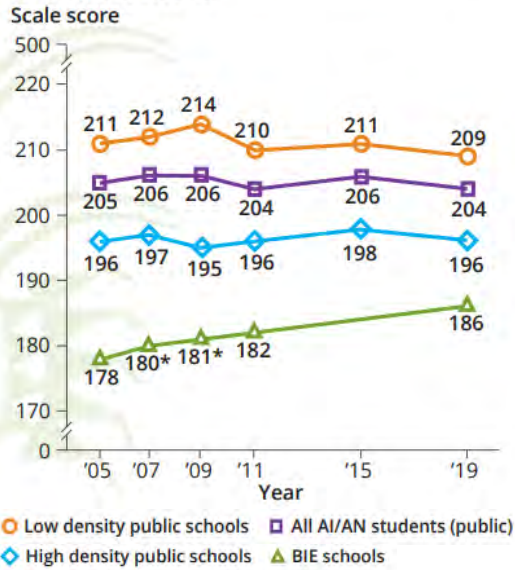
188 *National Indian Education Study 2019*, 46.

189 *National Indian Education Study 2019*, 46.

190 *National Indian Education Study 2019*, 47.

Figure 1.21: Trend in Fourth-Grade NAEP Reading Average Scores for AI/AN Students

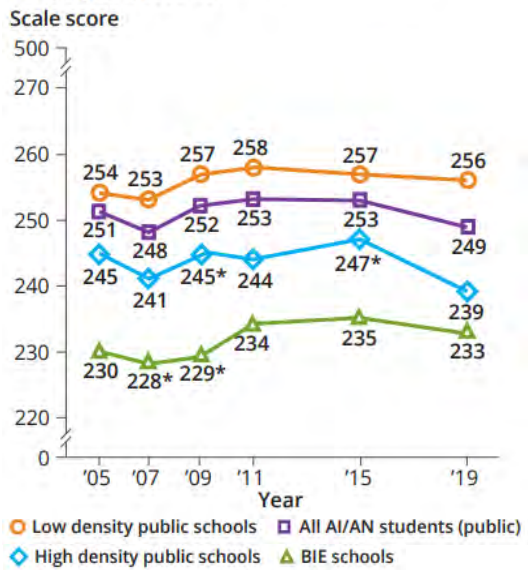
Figure 1. Trend in fourth-grade NAEP reading average scores for AI/AN students, by school type/density: Various years, 2005-19



Source: National Indian Education Study 2019, 46.

Figure 1.22: Trend in Eighth-Grade NAEP Reading Average Scores for AI/AN Students

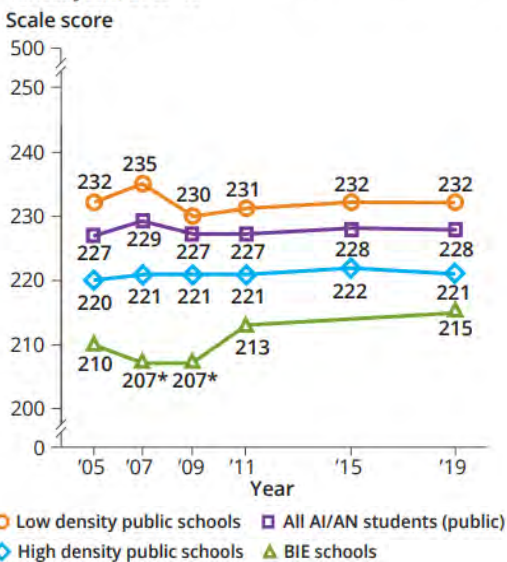
Figure 2. Trend in eighth-grade NAEP reading average scores for AI/AN students, by school type/density: Various years, 2005-19



Source: National Indian Education Study 2019, 46.

Figure 1.23: Trend in Fourth-Grade NAEP Mathematics Average Scores for AI/AN Students

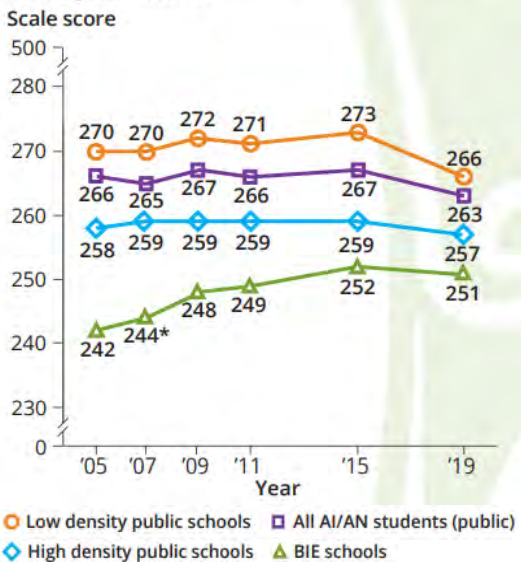
Figure 3. Trend in fourth-grade NAEP mathematics average scores for AI/AN students, by school type/density: Various years, 2005-19



Source: National Indian Education Study 2019, 47.

Figure 1.24: Trend in Eighth-Grade NAEP Mathematics Average Scores for AI/AN Students

Figure 4. Trend in eighth-grade NAEP mathematics average scores for AI/AN students, by school type/density: Various years, 2005-19



Source: National Indian Education Study 2019, 47.

Figure 1.25: Average NAEP Scores in Reading for Eighth-Grade AI/AN Students

Table 39. Average scores in NAEP reading for eighth-grade AI/AN students, by jurisdiction: Various years, 2005–19

Jurisdiction	2005	2007	2009	2011	2015	2019
Nation	249	247	251	252	252	248
Alaska	240*	236*	239*	234	231	229
Arizona	238	232	241	240	242	238
Minnesota	—	246	257	258	250	237
Montana	247*	249*	253*	256*	249*	239
Nebraska	—	—	—	—	—	237
New Mexico	236	233	236	240	241	237
North Carolina	—	236	235	245	250	248
North Dakota	248	246	242	244	245	247
Oklahoma	254	256	258	256	260*	253
Oregon	—	260	259	256	‡	257
South Dakota	238	241	242	240	245*	239
Utah	—	—	235	244	247	232
Washington	—	251	253	253	251	237
Wisconsin	—	—	—	—	253	251
Wyoming	—	—	—	—	‡	243

Source: National Indian Education Study 2019, 56.

Figure 1.26: Average NAEP Scores in Mathematics for Fourth-Grade AI/AN Students

Table 40. Average scores in NAEP mathematics for fourth-grade AI/AN students, by jurisdiction: Various years, 2005–19

Jurisdiction	2005	2007	2009	2011	2015	2019
Nation	226	228	225	226	227	227
Alaska	220*	218*	216*	213	219*	209
Arizona	215	213	213	215	218	216
Minnesota	—	234	232	232	223	222
Montana	223*	222*	227*	220	216	216
Nebraska	—	—	—	—	—	221
New Mexico	215	217	214	218	218	219
North Carolina	—	229	232	225	229	222
North Dakota	221	223	223	220*	224	226
Oklahoma	229*	234	234	234	235	237
Oregon	—	220	223	220	‡	219
South Dakota	217	215	217	218	215	213
Utah	—	—	218	214	‡	223
Washington	—	226	225	222	216	223
Wisconsin	—	—	—	—	231	229
Wyoming	—	—	—	—	220	219

— Not available.

‡ Reporting standards not met. Sample size insufficient to permit a reliable estimate.

* Significantly different ($p < .05$) from 2019.

NOTE: AI/AN = American Indian/Alaska Native. In 2019, NAEP mathematics results are from a digitally based assessment; prior to 2019, results were from a paper-and-pencil-based assessment. The NAEP mathematics scale ranges from 0 to 500 at grades 4 and 8. The NAEP reading scale ranges from 0 to 500. The national and state results reported here include only public and Bureau of Indian Education (BIE) schools.

SOURCE: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), various years, 2005–19 National Indian Education Studies.

Source: National Indian Education Study 2019, 57.

Figure 1.27: Average NAEP Scores in Mathematics for Eighth-Grade AI/AN Students

Table 41. Average scores in NAEP mathematics for eighth-grade AI/AN students, by jurisdiction: Various years, 2005–19

Jurisdiction	2005	2007	2009	2011	2015	2019
Nation	264	264	266*	265	266*	262
Alaska	264*	260*	262*	258*	257*	248
Arizona	256	255	254	253	258	257
Minnesota	—	266	275	263	261	267
Montana	259	260	260	263*	256	254
Nebraska	—	—	—	—	—	‡
New Mexico	251	250	252	256	258	253
North Carolina	—	261	256	265	261	262
North Dakota	260	260	260	262	259	264
Oklahoma	267	269	269	272	269	270
Oregon	—	264	273	260	‡	264
South Dakota	250	254	260	257	257	255
Utah	—	—	263	244	240	257
Washington	—	264	268	256	263	259
Wisconsin	—	—	—	—	273	266
Wyoming	—	—	—	—	252	258

Source: *National Indian Education Study 2019*, 58.

It is worth noting that the *National Indian Education Study 2019* does not provide any comparisons for educational attainment between AI/AN students and Americans of other races. Of course, this information can be extracted from other ED statistical sources and has been published elsewhere.¹⁹¹ Nevertheless, that information ought to be included centrally and clearly in ED documents such as the *National Indian Education Study 2019*. That absence alone raises questions about the effectiveness of OIE spending on “research.” Such data confirms that AI/AN students have some of the lowest educational attainment scores, by race, in America. That information is prerequisite for a discussion of the need for educational reform, as well as what should be changed at OIE and BIE.

OIE’s *Indian Education: Fiscal Year 2024 Budget Request* does contain some reasonable performance metrics, such as “the difference between the percentage of Indian students in grades 3–8 scoring at the proficient or advanced levels in reading on State assessments and the percentage of all students scoring at those levels.”¹⁹² But the data provided is spotty and does not demonstrate great educational effectiveness. The target for “the percentage of Indian students in grades 3–8 meeting State achievement standards by scoring at the proficient level or above in reading on State assessments” is 100%; the last recorded data for AI/AN students is 24.9%.¹⁹³ Even more encouraging data is not stellar; for “the percentage of

191 E.g., National Student Group Scores and Score Gaps, NAEP Report Card: Reading, The Nation’s Report Card, <https://www.nationsreportcard.gov/reading/nation/groups/?grade=8>.

192 *Indian Education: Fiscal Year 2024 Budget Request*, 16; and see also 13–17.

193 *Indian Education: Fiscal Year 2024 Budget Request*, 15.

American Indian and Alaska Native students in grade 4 who score at or above the basic level in math on NAEP,” the target in 2022 was 84%, while the actual achievement was 59%.¹⁹⁴ We commend OIE for providing objective, quantifiable performance metrics. That alone distinguishes it as superior to most ED programs. OIE allows us to know when it does not meet its targets, and that is the first requirement of transparency and accountability.

Conclusions

- The Office of Indian Education (OIE) serves the United States’ government-to-government relations with Indian Tribes and Alaska Native entities. It should not be casually reformed; any reforms should follow substantial congressional conversations with the leadership of the Indian Tribes and Alaska Native entities.
- Precisely because OIE *does* serve the United States’ government-to-government relations with Indian Tribes and Alaska Native entities, the office as a whole should be transferred to the Bureau of Indian Education (BIE) in the Bureau of Indian Affairs. This transfer should also be effected on grounds of administrative simplification, since much of what OIE does appears to duplicate or overlap with the work done by the BIE. Native American language programs housed in American public education, which particularly serve Americans of American Indian or Alaska Native descent, also should be administered by BIE.
- ED should end all funding of programs that distinguish between Americans of American Indian or Alaska Native descent and their fellow Americans. ED should not fund any program that discriminates racially, nor any program that provides a precedent for imposing radical identity-politics ideology. In practice, this will mean ending a fairly small portion of OIE spending, as the great majority will be disbursed to the Indian Tribes and Alaska Native entities.
- OIE provides some of the strongest performance metrics within ED—objective and quantifiable. OIE should be commended for best existing practices in performance metrics among ED offices; the entire Department should adopt OIE’s approach to performance metrics.
- OIE’s metrics could still be improved, in order to provide accountability regarding how effective OIE spending is at improving educational attainment among American Indian and Alaska Native students. Its metrics too often use weak proxies, such as numbers of centers created or teachers trained. OIE metrics should focus above all on how much each program has approved AI/AN educational attainment, so that the public and policymakers may judge what return on investment each program provides.

194 *Indian Education: Fiscal Year 2024 Budget Request*, 14.

Education for the Disadvantaged

Program Overview

Education for the Disadvantaged is an umbrella term for various initiatives dispersed throughout ED's Office of Elementary and Secondary Education (OESE) that are designed to assist impoverished children and youths. The Elementary and Secondary Education Act's (ESEA's) Title I-A provides grants to local educational agencies (LEAs). Title I-C and I-D provide "State Agency Programs" for migrant, neglected, delinquent, and at-risk children and youth. Title II-B provides grants for comprehensive literacy development and innovative approaches to literacy. Title IV-A, Section 5 provides further programs for migrant students.

In its 2023 Budget Request to Congress, the Department asked for a \$4 billion increase for Education for the Disadvantaged's stated 2022 *discretionary* appropriation of \$17.2 billion, and it also requested a proposed *mandatory* appropriation of \$16 billion, bringing the total requested increase for fiscal year 2023 to just over \$20 billion. The Department's rationale for this requested ~215% raise for Education for the Disadvantaged was that the extra \$20 billion would be used for increased grants to LEAs "consistent with President Biden's campaign promise to dramatically increase funding for Title I schools" as well as support funding for "voluntary efforts to identify and address inequities in State and local funding systems." An extra \$33.7 million would be used to increase funding for neglected, delinquent, and at-risk children and youth; provide additional resources for underserved populations; and fund competitive grants to improve educational opportunities and outcomes for foster children and youth. Finally, an extra \$20 million would be used to increase funding for special programs for migrant students in "support of the President's goal to advance equity in education."¹⁹⁵ As of 2023, however, the total appropriation for Education for the Disadvantaged was set at just above \$19 billion, rather than the Department's requested \$37 billion.¹⁹⁶

The Office of School Support and Accountability (SSA) within OESE disburses the funds under the category of Education for the Disadvantaged in four broad subcategories: grants to LEAs, literacy development, state agency programs, and special programs for migrant students.

Evaluation

The mechanisms for allocating Title I grants to states and LEAs—which are now divided among four different programs (Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants)—have become exceedingly complex: an overview published by the National Center for Education Statistics runs to forty-one pages.¹⁹⁷ Generally,

195 *Education for the Disadvantaged: Fiscal Year 2023 Budget Request*, U.S. Department of Education, 6, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget23/justifications/a-ed.pdf>.

196 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, U.S. Department of Education, 5, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/a-ed.pdf>.

197 William Sonnenberg, *Allocating Grants for Title I*, National Center for Education Statistics, January 2016, <https://nces.ed.gov/surveys/annualreports/pdf/titlei20160111.pdf>.

however, schools “in which children from low-income families make up at least 40 percent of enrollment are eligible to use Title I funds to operate schoolwide programs that serve all children in the school.”¹⁹⁸ As of school year 2016–2017, the Department’s data show that 59,743 public schools had received and used Title I funds to assist approximately 24.6 million children across the United States.¹⁹⁹

While, in general, Title I funds still seem to be directed toward disadvantaged children, detailed studies suggest that these complex formulas also have significant flaws:

The same study [Chambers et al. 2009] uncovered a notably less equitable distribution pattern when examining school-level Title I, Part A allocations: on average, the nation’s highest poverty schools received less funding overall than medium- or low-poverty schools. A key reason was that the program’s two-stage allocation process (with funds flowing first to eligible districts and then to schools within each district) meant that lower poverty districts tended to concentrate their Title I funds on schools that had high poverty rates for that district but low poverty rates when compared with Title I schools in other districts.²⁰⁰

Measured by the blunt proxy of educational attainment, these Title I-A funds do not appear to have been very effective. As regards mathematics proficiency, the gap between economically disadvantaged students and non-economically disadvantaged students has grown from 22.7% in school year 2012–2013 to 25.3% by school year 2021–2022—a 2.6% increase.²⁰¹ As regards reading/language arts proficiency, the gap between economically disadvantaged students and non-economically disadvantaged students grew from 22.3% in school year 2012–2013 to 25.6% by school year 2021–2022—a 3.3% increase.²⁰² The only subject area in which the academic proficiency gap closed between economically disadvantaged and non-economically disadvantaged students was science, where the gap shrunk from 24.2% in school year 2012–2013 to 23.6% by school year 2021–2022—a 0.6% reduction.²⁰³ Title I-A-sponsored instruction intended to close achievement gaps has failed to generate appreciable results.

198 Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies, U.S. Department of Education, <https://www.ed.gov/grants-and-programs/formula-grants/school-improvement/improving-basic-programs-operated-by-local-educational-agencies-esea-title-i-part-a>.

199 Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies.

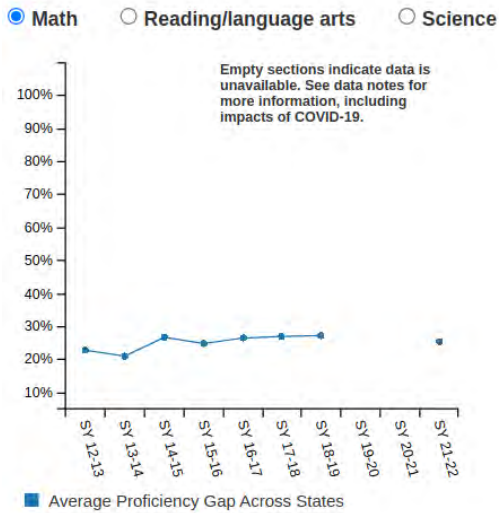
200 Andrea Boyle and Katelyn Lee, *Title I at 50: A Retrospective*, American Institutes for Research, 2015, 12, <https://www.air.org/sites/default/files/downloads/report/Title-I-at-50-rev.pdf>; Jay G. Chambers, et al., *State and Local Implementation of the No Child Left Behind Act: Volume VI—Targeting and Uses of Federal Education Funds* (Washington, DC: U. S. Department of Education, 2009), <https://www2.ed.gov/rschstat/eval/disadv/nclb-targeting/nclb-targeting.pdf>.

201 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

202 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

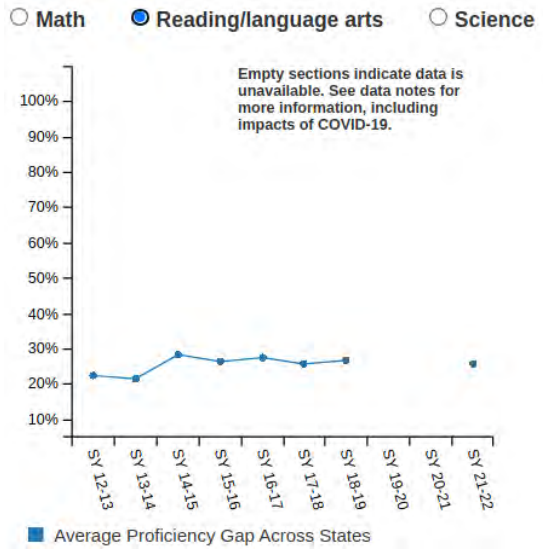
203 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

Figure 1.28: Mathematics — Average Proficiency Gap between Non-Economically Disadvantaged Students and Economically Disadvantaged Students



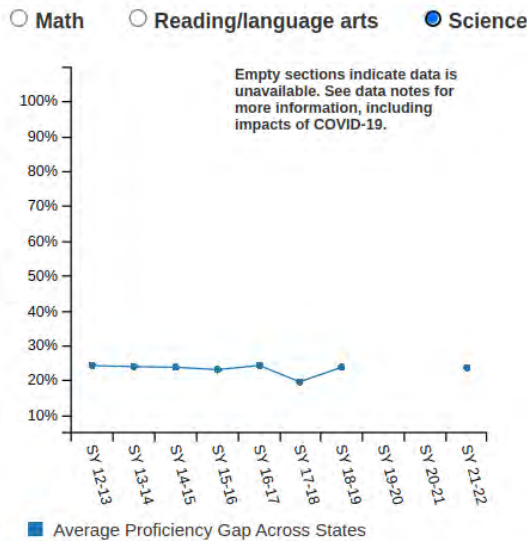
Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

Figure 1.29: Reading/Language Arts — Average Proficiency Gap between Non-Economically Disadvantaged Students and Economically Disadvantaged Students



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

Figure 1.30: Science — Average Proficiency Gap between Non-Economically Disadvantaged Students and Economically Disadvantaged Students



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-a/2021-2022?s=1035&sy=2919>.

Title I-C programs have produced similarly unimpressive results for education attainment for migratory students. As regards academic proficiency in mathematics, there was a 0.5% increase in the average proficiency gap between school years 2012–2013 and 2021–2022—from 18.9% to 19.4%.²⁰⁴ In regard to academic proficiency in reading/language arts, the gap grew a little larger: a 2.3% increase in the same time frame—from 22.5% to 24.8%.²⁰⁵

With respect to homeless students, their achievement gaps have not closed either. As regards mathematics proficiency, there was an average 20.8% gap between all enrolled students and homeless enrolled students in school year 2012–2013, and that gap widened to 21.8% by school year 2021–2022.²⁰⁶ As regards reading/language arts proficiency, the gap was 19.7% in school year 2012–2013 and increased to 22.6% by school year 2021–2022.²⁰⁷

Title I-D consists of two subparts. Subpart one is for state educational agencies (SEAs), and specifically for state-operated institutions such as juvenile incarceration centers or state-run institutions for neglected children. Subpart two is for local educational agencies (LEAs) and focuses mainly on locally run facilities like schools—especially schools with a focus on “at-risk” students (i.e., those students who are at risk of dropping out / failing out of school).

As regards subpart one (i.e., State Agency Programs), for the school year 2021–2022, there are noticeable academic improvements among over half of incarcerated students. Out of the 4,861 students in juvenile correction who received instruction, 2,651 (54.5%) improved up to one full grade level or more than one full grade level in reading/language arts. 1,142 students (23.5%) showed no improvement, and 1,068 students (22%) declined. Out of the 781 students in juvenile detention, 526 students (67.3%) improved up to one full grade level or more than one full grade level in reading/language arts, whereas 92 students (11.8%) showed no change, and 163 students (20.9%) showed declines. Students in programs for neglected children did not improve as much, proportionally speaking. Out of the 2,155 students involved in these programs, only 937 of them (43.5%) made any improvement. 883 students (41%) made no improvement, but only 335 students (15.5%) declined.²⁰⁸

204 ED Data Express, <https://eddataexpress.ed.gov/dashboard/mep/2021-2022>.

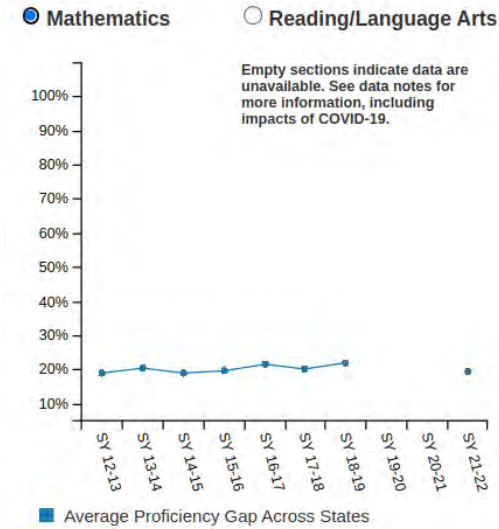
205 ED Data Express, <https://eddataexpress.ed.gov/dashboard/mep/2021-2022>.

206 ED Data Express, <https://eddataexpress.ed.gov/dashboard/homeless/2021-2022?s=1035&sy=2919&page=14>.

207 ED Data Express, <https://eddataexpress.ed.gov/dashboard/homeless/2021-2022?s=1035&sy=2919&page=14>.

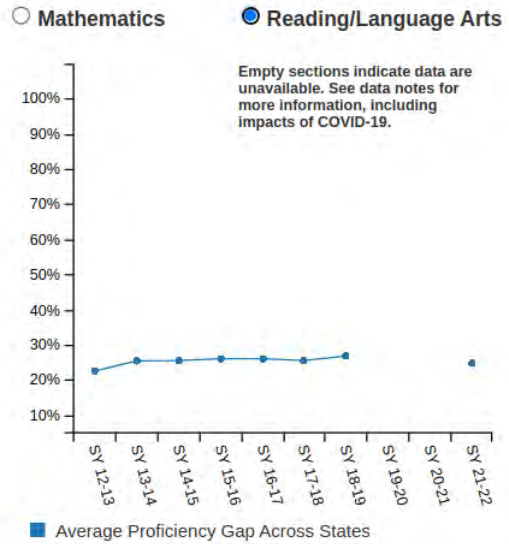
208 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-1/2021-2022?s=1035&sy=2919>.

Figure 1.31: Mathematics — Average Proficiency Gap between All Students and Migratory Students



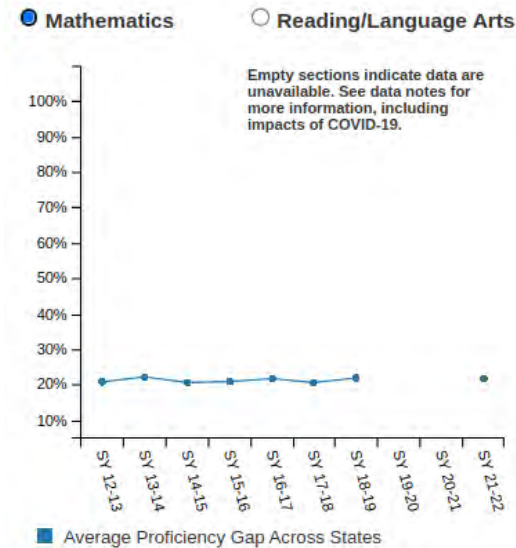
Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/mep/2021-2022>.

Figure 1.32: Reading — Average Proficiency Gap between All Students and Migratory Students



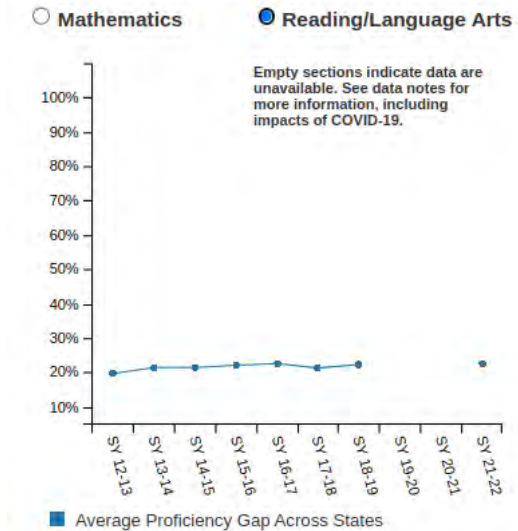
Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/mep/2021-2022>.

Figure 1.33: Proficiency Gap between All Student and Homeless Students in Mathematics



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/homeless/2021-2022?s=1035&sy=2919&page=14>.

Figure 1.34: Proficiency Gap between All Student and Homeless Students in Reading/Language Arts

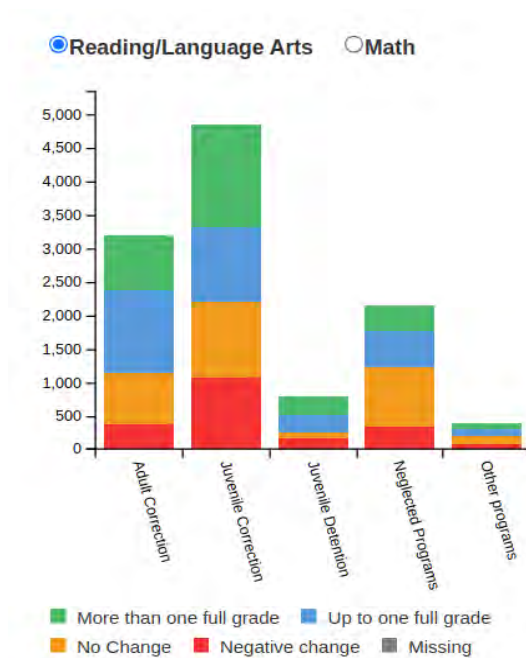


Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/homeless/2021-2022?s=1035&sy=2919&page=14>.

Similar trends were observed in mathematics instruction. Out of the 4,967 students in juvenile correction who received instruction in mathematics, 2,818 of them (56.7%) improved up to one full grade level or more than one full grade level. 1,070 students (21.5%) showed no improvement, and 1,079 students (21.7%) declined. Of those 772 students involved in juvenile detention, 543 (70.3%) improved up to one full grade level or more than one full grade level. 91 students (11.8%) showed no improvement, and 138 students (17.9%) showed decline. Here, too, we observe that those students in programs for neglected children did not improve as much, proportionally speaking. Out of the 2,132 students in such programs who received mathematics instruction, 1,070 of them (50.2%) improved up to one full grade level or more than one full grade level. 733 students (34.4%) made no improvement, but only 329 students (15.4%) declined.²⁰⁹

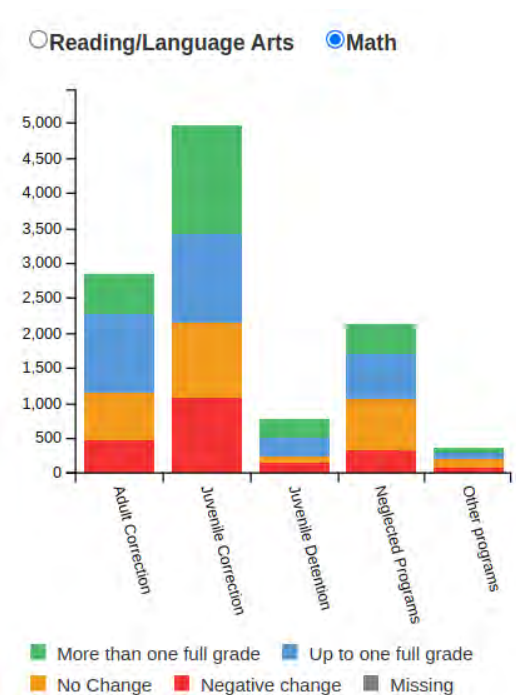
As regards subpart two (i.e., Local Educational Agency Programs), for the school year 2021-2022, there are also noticeable academic improvements among over half of incarcerated students. Out of the 6,929 students in juvenile correction who received instruction, 4,054 (58.5%) improved up to one full grade level or more than one full grade level in reading/language arts. 1,735 students (25%) showed no improvement, and 1,140 students (16.5%) showed

Figure 1.35: Title I-D, Subpart 1 — Reading/Language Arts Improvements for School Year 2021-2022



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-1/2021-2022?s=1035&sy=2919>.

Figure 1.36: Title I-D, Subpart 1 — Mathematics Improvements for School Year 2021-2022



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-1/2021-2022?s=1035&sy=2919>.

²⁰⁹ ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-1/2021-2022?s=1035&sy=2919>.

declines. Out of the 6,601 students in juvenile detention, 3,310 students (50.1%) improved up to one full grade level or more than one full grade level in reading/language arts, whereas 2,102 students (31.8%) showed no change, and 1,189 students (18%) declined. Students in programs for neglected children improved about as much, proportionally speaking. Out of the 5,113 students involved in these programs, 2,881 of them (56.3%) improved up to one grade level or more. 1,582 students (30.9%) made no improvement, but only 650 students (12.7%) declined.²¹⁰

Subpart two recipients also showed improvements in mathematics for the school year 2021–2022. Out of the 6,492 students in juvenile correction who received instruction, 3,804 (58.6%) improved up to one full grade level or more than one full grade level in mathematics. 1,694 students (26.1%) showed no improvement, and 994 students (15.3%) showed declines. Out of the 6,338 students in juvenile detention, 3,125 students (49.3%) improved up to one full grade level or more than one full grade level in mathematics, whereas 2,090 students (33%) showed no change, and 1,123 students (17.7%) declined. Students in programs for neglected children improved about as much, proportionally speaking. Out of the 5,006 students

Figure 1.37: Title I-D, Subpart 2 — Reading/Language Arts Improvements for School Year 2021–2022

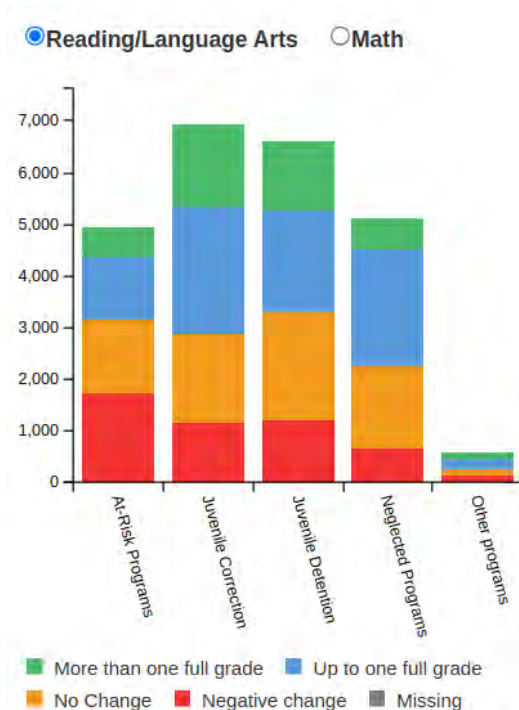
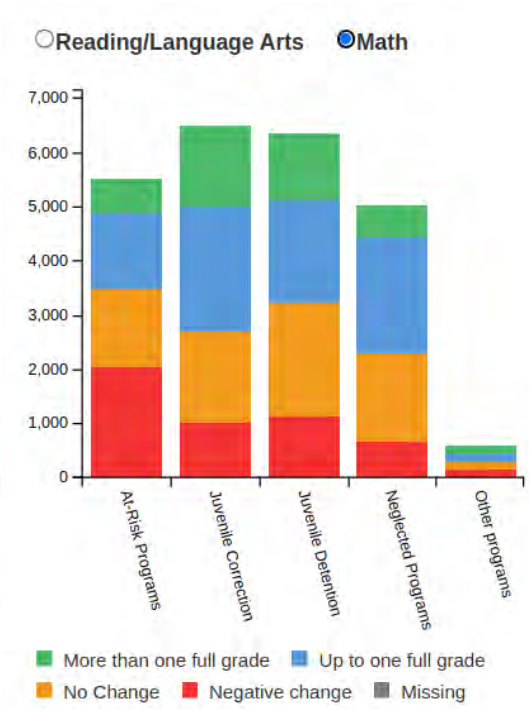


Figure 1.38: Title I-D, Subpart 2 — Mathematics Improvements for School Year 2021–2022



Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-2/2021-2022?s=1035&sy=2919>.

Source: ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-2/2021-2022?s=1035&sy=2919>.

210 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-2/2021-2022?s=1035&sy=2919>.

involved in these programs, 2,726 of them (54.5%) improved up to one grade level or more. 1,635 students (32.7%) made no improvement, and only 645 students (12.9%) declined.²¹¹

One should note, however, that the definition of “up to one full grade” is rather broad. Given that definition, a student’s improvement could be from 1% to 100% of a grade level. Title I-D appears to fund programs with better results than Title I-A programs—but the data only provides limited support for that conclusion.

ED’s own performance measures continue to be of limited use. Consider this measure:

The percentage of States that decrease the difference between the percentage of economically disadvantaged students in grades 3–8 scoring at or above proficient on State reading assessments and the percentage of non-economically disadvantaged students in grades 3–8 scoring at or above proficient on State reading assessments.²¹²

On the one hand, this is an objective, quantifiable measure. On the other hand, it measures “the percentage of States” rather than the percentage of students, it uses the very blunt assessment of “decrease the difference,” and what is being measured could actually register decreased academic proficiency by non-economically disadvantaged students as a measure of program success, so long as it decreased the difference in scores. ED’s own measure is a measure of socioeconomically defined “equity” rather than a measure of improved education.

The performance measures for Comprehensive Literacy Development Grants are similarly mixed. Commendably, some are objective and quantifiable, with measures such as “the percentage of participating 4-year-old children who achieve significant gains in oral language skills.”²¹³ Of course, these measures do not provide comparisons with *non-participating* children, which are essential to provide the public and policymakers a true sense of the return on investment of these programs. And then, some performance measures are very weak indeed: “The percentage of evidence-based activities implemented by subgrantees that meet the requirements of strong or moderate evidence.”²¹⁴ Such performance measures could measure anything or nothing.

The Trump administration would have ended funding for Comprehensive Literacy Development Grants, “because the programs have limited impact and duplicate activities that may be supported by other Federal, State, or local funds.”²¹⁵ This judgment seems reasonable.

A similar judgment applies to the performance measures of Innovative Approaches to Literacy. Some are objective and quantifiable, with measures such as “the percentage of 4-year-old children participating in the project who achieve significant gains in oral language

211 ED Data Express, <https://eddataexpress.ed.gov/dashboard/title-i-part-d-subpart-2/2021-2022?s=1035&sy=2919>.

212 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 22; and see 23–24.

213 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 29; and see 30.

214 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 31.

215 *Education for the Disadvantaged: Fiscal Year 2018 Budget Request*, U.S. Department of Education, A-13, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget18/justifications/a-ed.pdf>.

The provision of books, alas, is an extraordinarily weak proxy for actual improvements in literacy. It's a nice thing, but it doesn't tell the public or policymakers if the program actually does improve literacy.

skills.”²¹⁶ Once more, these measures do not provide the comparisons with non-participating children that the public and policymakers need to receive a true sense of the return on investment of these programs. Other measures are much less informative, such as “the percentage of schools participating in the project whose book to- student [sic] ratios increase from the previous year” and “the percentage of participating children who receive at least one free, grade- and language-appropriate book of their own.”²¹⁷ The provision of books, alas, is an extraordinarily weak proxy for actual improvements in literacy. It's a nice thing, but it doesn't tell the public or policymakers if the program actually does improve literacy.

The Trump administration would have ended funding for Innovative Approaches to Literacy Grants, “because the programs have limited impact and duplicate activities that may be supported by other Federal, State, or local funds.”²¹⁸ This judgment seems reasonable.

Migrant Education includes some objective and quantifiable assessments, such as “the percentage of migratory students in grades 3–8 who scored at the proficient level or above on State reading/language arts assessments.”²¹⁹ These targets are low, ca. 33%—and in the two years with actual data, they were not met. (26.9% in 2019; 21.4% in 2021.) Of course, the assessment does not say what portion of non-migratory students scored at the proficient level or above, and it provides no means of relating in detail if or how Migrant Education actually improved educational attainment among migratory students. Migrant Education also provided a summary of relatively recent research: *Study of the Implementation of the ESEA Title I, Part C Migrant Education Program* (2019).²²⁰ The report assesses the provision of local educational bureaucracies devoted to migrant education; it does not assess actual improvement of educational attainment by migrant students.

216 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 34; and see 35.

217 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 35–36.

218 *Education for the Disadvantaged: Fiscal Year 2018 Budget Request*, A-13.

219 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 41.

220 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 42–43; *Study of the Implementation of the ESEA Title I, Part C Migrant Education Program* (2019), <https://www.ed.gov/about/ed-offices/opepd/policy-and-program-studies-service--p-12#migrant>.

Special Programs for Migrant Students, which consists of the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP), includes some objective and quantifiable assessments, such as “the percentage of HEP participants receiving a high school equivalency credential.”²²¹ As usual, ED provides no means of relating in detail if or how these programs actually improved educational attainment among migratory students. ED, moreover, includes efficiency measures, such as the following:

Figure 1.39
Measure: Cost per participant earning a high school equivalency credential, commuter programs.

Year	Target	Actual
2019	\$10,131	\$8,594
2020	\$10,232	\$12,458
2021	\$10,334	\$12,104
2022	\$10,438	
2023	\$10,541	
2024	\$10,647	

Source: Education for the Disadvantaged: Fiscal Year 2024 Budget Request, 59; and see also 60–61.

ED came near to meeting its targets. But more than that, ED’s willingness to provide a solid measure of efficiency is to be greatly commended.

Neglected, Delinquent, and At-Risk Children and Youth also includes some objective and quantifiable assessments, such as “the percentage of students supported through the N and D [neglected and delinquent] program who obtain a secondary school diploma or its recognized equivalent.”²²² The target is 20–23% in different years; in 2019, 2020, and 2021, the actual numbers were 13.5%, 13.6%, and 14.4%, respectively. One can at least see that ED did not meet its own targets. ED, moreover, includes an efficiency measure:

Figure 1.40
Measure: The cost per high school diploma or equivalent.

Year	Target	Actual
2019	\$4,211	\$7,070
2020	\$4,170	\$8,127
2021	\$4,128	\$11,479
2022	\$4,087	
2023	\$4,087	
2024	\$4,087	

Source: Education for the Disadvantaged: Fiscal Year 2024 Budget Request, 50.

221 Education for the Disadvantaged: Fiscal Year 2024 Budget Request, 56; and see 57–58.

222 Education for the Disadvantaged: Fiscal Year 2024 Budget Request, 48; and see 49–50.

ED was far from meeting its targets. But ED's willingness to provide a solid measure of efficiency is to be greatly commended.

Neglected, Delinquent, and At-Risk Children and Youth also provided a summary of relatively recent research: *Promoting Education and Transition Success for Neglected and Delinquent Youth: An Evaluation of the Title I, Part D Program (2019)*.²²³ The report assesses the provision of local educational bureaucracies devoted to neglected, delinquent, and at-risk students; it does not assess the students' actual improvement of educational attainment.

Conclusions

- Education for the Disadvantaged includes a core ED function: the provision of funds for poorer LEAs throughout America. The public and policymakers have made long-term commitments to this spending. It should be maintained.
- ED provides extraordinarily weak means by which the public and policymakers can assess whether this spending actually does any good, or how it can be improved. ED can assess whether books have been bought, but not whether literacy has been improved. It can measure the growth of education bureaucracies, but not whether they have done any good. When it does measure educational attainment, it often provides imprecise measures ("up to one full grade level") or measures of educational "equity" rather than educational achievement. ED fundamentally does not or cannot provide the information that the public and policymakers need to determine the return on investment for any program.
- ED's systematic inability to assess the effectiveness of its own programs argues for bolder reform. Some education reformers, for example, recommend that Title I spending should be transformed at once into a formula block grant to the states, and Title I funding responsibility transferred to the states in the medium term.²²⁴ The ED establishment might be able to argue for the status quo if it could maintain that it provides a reasonable return on investment. But current ED performance measures make it nearly impossible to determine the status quo's return on investment. Since ED is incapable of providing informative performance measures, the argument for a transfer of education funding to the states—or for any similarly bold reform—becomes far stronger.
- At present, ED appears incapable of telling the public and policymakers whether *any* of its programs does any good. Nevertheless, we do not at present recommend so bold a reform as formula block grants or transfers to the states. But we do recommend a vast simplification of ED's labyrinth of programs. It will be difficult for ED to establish informative performance measures for just a few core programs; it

223 *Education for the Disadvantaged: Fiscal Year 2024 Budget Request*, 50–51; *Promoting Education and Transition Success for Neglected and Delinquent Youth: An Evaluation of the Title I, Part D Program (2019)*, <https://www.ed.gov/about/ed-offices/oepdp/policy-and-program-studies-service--p-12>.

224 Dans and Groves, *Mandate for Leadership*, 325–26.

will be nearly impossible for it do so for hundreds of different programs. ED must drastically simplify its programmatic structure as a prerequisite to establishing accountability to the public and policymakers by means of informative performance measures, including efficiency measures.

- While we have not gone into the matter in great detail, we note that Title I grants to states and LEAs are now divided among four different programs (Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants) and that this core disbursement mechanism has become exceedingly complex. Policymakers and ED should work together to amalgamate these four formula grants into one.
- Education for the Disadvantaged does include several Efficiency Measures among its program performance measures. ED should adopt equivalent efficiency measures for all its programs—as well as more rigorous efficiency measures.
- ED needs to include wherever possible basic comparisons between LEAs (or other administrative units) that benefit from its programs and those that do not. Without such comparisons, it is impossible to conduct the most basic evaluation of ED's return on investment.

School Improvement Programs

Program Overview

School Improvement Programs (SIP) is another umbrella term for numerous programs and initiatives within ED. SIP include initiatives such as 21st Century Community Learning Centers and Comprehensive Centers, rural education initiatives, grants for supporting effective instruction, grants for state assessments, and grants for student support and academic enrichment. School Improvement Programs also include initiatives that overlap with other categories/initiatives previously discussed, such as Native Alaskan and Hawaiian education initiatives, and education for homeless children and youth.

In its 2023 budget request to the Congress, the Department asked for just over a \$1 billion increase to SIP's 2022 total appropriation of \$5,444,217,000. The Department listed several ways in which these additional funds would be spent. An additional \$5.5 million would go to state grants for supporting effective instruction. \$50 million would be spent on 21st Century Community Learning Centers. An additional \$3.5 million would be used to improve education for homeless children and youths, and an additional \$15 million would be allocated for the support of rural education. The grants program for supplemental education would receive an additional \$7.765 million, but the major request of the department was exactly \$1 billion in new funding for School-Based Health Professionals.²²⁵ In 2023, however, the total appropriation for School Improvement Programs was set at \$5,810,642,000, a little more than \$716 million short of the Department's request.²²⁶

A summary of the particular programs within SIP includes:

- *Supporting Effective Instruction State Grants* “provide formula grants to State educational agencies (SEAs), which subgrant most funds to local educational agencies (LEAs) to support activities designed to increase educational opportunity and student achievement.”²²⁷
- The *Nita M. Lowey 21st Century Community Learning Centers* (21st CCLC) program “enables communities to establish or expand centers that provide additional student learning and enrichment opportunities through before- and after-school programs and summer school programs aimed at improving student academic outcomes. ... In the 2020–2021 program year, 21st CCLC provided funding to more than 10,600 centers serving over 900,000 students and over 200,000 adults and family members. Approximately 48 percent of the more than 780,000 school year participants attended a center for 30 or more days during the academic year.”²²⁸

225 *School Improvement Programs: Fiscal Year 2023 Budget Request*, U.S. Department of Education, 5–6, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget23/justifications/c-sip.pdf>.

226 *School Improvement Programs: Fiscal Year 2024 Budget Request*, U.S. Department of Education, 5–6, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/c-sip.pdf>.

227 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 14.

228 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 19.

- *State Assessments* includes the *Grants for State Assessments* program, which “provides formula grants to States to pay the costs of developing the challenging academic standards and high-quality, fully aligned assessments required by Title I of the ESEA”; the Assessment System Audit program, as yet unimplemented, which “supports audits of State and local assessment systems as part of a State plan to eliminate unnecessary or low-quality assessments, support dissemination of best practices for improving assessment quality and efficiency, and assist LEAs in streamlining local assessment systems, including the establishment of a regular process to review and evaluate local assessments to help ensure that all assessments are worth taking”; the Competitive Grants for State Assessments program, which provides a variety of discretionary grants; and reserved funds for the Bureau of Indian Education and Outlying Areas.²²⁹
- The *Education for Homeless Children and Youths* program “helps ensure that all children and youths experiencing homelessness have equal access to the same free, appropriate public education available to other children and youths through grants to States.”²³⁰
- The *Native Hawaiian Education* program “awards 3-year competitive grants to support a variety of authorized activities.”²³¹
- The *Alaska Native Education* program “awards 3-year competitive grants to eligible applicants, which include Alaska Native organizations and entities located in Alaska with experience operating Alaska Native programs that have been granted a charter from an Alaska Native tribe or Alaska Native organization.”²³²
- The *Training and Advisory Services* program “supports efforts to achieve the intent of Title IV of the Civil Rights Act by aiding educators in preparing, adopting, and implementing plans for desegregating public schools and solving equity problems related to race, sex, national origin, and religion. To carry out those activities, the Department awards grants to Equity Assistance Centers (EACs).”²³³
- The *Rural Education Achievement Program* (REAP) includes “the Small, Rural School Achievement program (SRSA)[, which] provides funds to rural LEAs that serve small numbers of students; [and] the Rural and Low-Income School program (RLIS) [, which] provides funds to rural LEAs that serve high concentrations of students living in poverty, regardless of the total number of students served.”²³⁴
- *Supplemental Education Grants* provide education funds to the Federated States of Micronesia and the Republic of the Marshall Islands.²³⁵

229 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 23–24.

230 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 29.

231 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 35.

232 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 40.

233 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 44.

234 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 49.

235 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 56.

- The *Comprehensive Centers* program “is authorized to fund not fewer than 20 Comprehensive Centers, including regional centers and content centers, that provide training, technical assistance, and professional development to build State capacity to provide high-quality education for all students, particularly those in local educational agencies (LEAs) and schools with low rates of performance.”²³⁶
- *Student Support and Academic Enrichment Grants* “are intended to improve academic achievement by increasing the capacity of States and local educational agencies (LEAs) to provide students with access to a well-rounded education and improve school conditions and use of technology.”²³⁷

Evaluation

- *Supporting Effective Instruction State Grants*: In 2018, the Trump administration ED unsuccessfully requested that Congress terminate this program, on the grounds that it was not effective:

The Administration is not requesting funding for the SEI State Grants program for fiscal year 2018. The SEI State Grants program duplicates activities that may be supported with other Federal, State, and local funds; has not demonstrated success in contributing to improved teacher quality or student outcomes; and makes formula-based allocations to LEAs that often are too small to have a meaningful impact on student outcomes.²³⁸

The Trump administration ED noted several further critiques of the program:

- Recent studies show that professional development, as currently provided, has limited impact on student achievement.²³⁹
- While there are inequities in the distribution of effective teachers, the effects on low-income students may be relatively small.²⁴⁰
- Incentive programs can attract and retain effective teachers, but only for as long as incentives are provided.²⁴¹

²³⁶ *School Improvement Programs: Fiscal Year 2024 Budget Request*, 59.

²³⁷ *School Improvement Programs: Fiscal Year 2024 Budget Request*, 66.

²³⁸ *School Improvement Programs: Fiscal Year 2018 Budget Request*, U.S. Department of Education, C16, <https://www.ed.gov/sites/ed/files/about/overview/budget/budget18/justifications/c-sip.pdf>.

²³⁹ *School Improvement Programs: Fiscal Year 2018 Budget Request*, C19–C20; Elementary School Math Professional Development Impact Evaluation, National Center for Education Evaluation and Regional Assistance, https://ies.ed.gov/ncee/projects/evaluation/tq_mathpd.asp; Middle School Mathematics Professional Development Impact Study, National Center for Education Evaluation and Regional Assistance, https://ies.ed.gov/ncee/projects/evaluation/tq_mathematics.asp; Elementary School Reading Professional Development Impact Study, National Center for Education Evaluation and Regional Assistance, https://ies.ed.gov/ncee/projects/evaluation/tq_reading.asp; “Does Content-Focused Teacher Professional Development Work? Findings from Three Institute of Education Sciences Studies,” NCEE Evaluation Brief, November 2016, <https://ies.ed.gov/ncee/pubs/20174010/pdf/20174010.pdf>.

²⁴⁰ *School Improvement Programs: Fiscal Year 2018 Budget Request*, C20; Study of the Distribution of Effective Teaching, National Center for Education Evaluation and Regional Assistance, https://ies.ed.gov/ncee/projects/evaluation/tq_distribution.asp/.

²⁴¹ *School Improvement Programs: Fiscal Year 2018 Budget Request*, C20; Impact Evaluation of Moving High-Performing Teachers to Low-Performing Schools, National Center for Education Evaluation and Regional Assistance, https://ies.ed.gov/ncee/projects/evaluation/tq_recruitment.asp#:~:text=The%20transfer%20incentive%20had%20a%20positive%20impact%20on%20math%20and,students%20in%20their%20home%20state..

- Most states have adopted laws or regulations related to educator evaluation systems, but only a small minority of districts has implemented systems consistent with research.²⁴²

ED's own 2024 data does not provide any reason to think better of the program. Some of its performance measures measure educational equity rather than educational achievement: "The difference between the lowest and highest LEA poverty quartile in percentage of teachers with provisional credentials."²⁴³ Other measures are weak proxies for educational achievement: "The percentage of LEAs indicating that one of their top two uses of Title II, Part A professional development funds was for professional development that is sustained, job-embedded, and/or collaborative."²⁴⁴

- *Nita M. Lowey 21st Century Community Learning Centers (21st CCLC)*: In 2018, the Trump administration ED unsuccessfully requested that Congress terminate this program, on the grounds that it was not effective:

The Administration is not requesting funding for 21st CCLC for fiscal year 2018. While limited evaluation and survey data from certain States and individual centers highlights benefits from participation, such as improved behavior and classroom grades, overall program performance data show that the 21st CCLC is not achieving its goal of helping students, particularly those who attend low-performing schools, meet challenging State academic standards. For example, on average from 2013 to 2015, less than 20 percent of program participants improved from not proficient to proficient or above on State assessments in reading and mathematics. Additionally, student improvement in academic grades was limited, with States reporting higher math and English grades for less than half of "regular program participants."

Indeed, low attendance rates at the program's centers likely are a key explanation for the program's longstanding failure to contribute meaningfully to improved academic outcomes. For example, States reported that fewer than half of all students served (752,000 out of 1.8 million) attended programs for 30 days or more during the 2014–2015 school year. These recent results are consistent with findings of the last rigorous national evaluation of the program, conducted in 2005, which found the program had limited academic impact and low student attendance rates.²⁴⁵

242 *School Improvement Programs: Fiscal Year 2018 Budget Request, C20–C21; Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions*, U.S. Department of Education, <https://www2.ed.gov/policy/elsec/leg/essa/essa-faqstranition62916.pdf>.

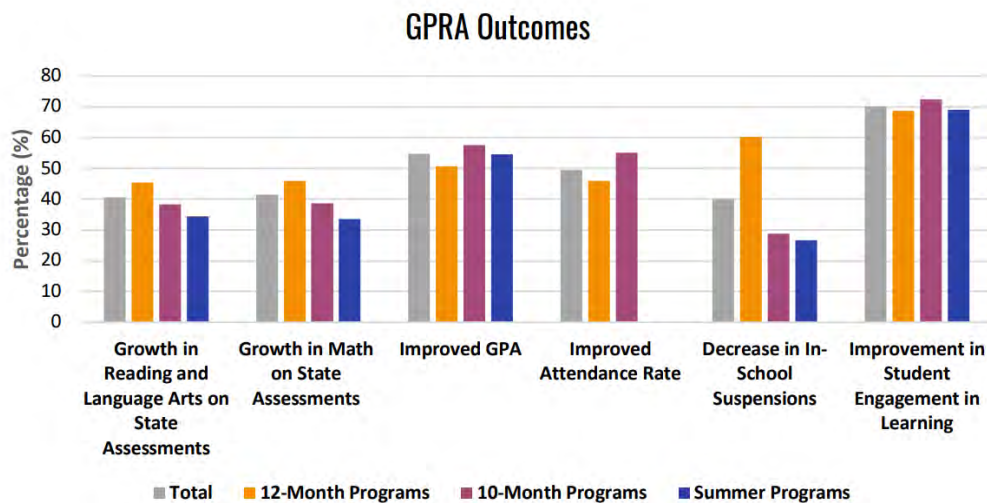
243 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 18.

244 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 18.

245 *School Improvement Programs: Fiscal Year 2018 Budget Request, C23–C24*; citation of <https://www2.ed.gov/rschstat/>

ED's own performance measures do not provide much reason to think better of the program. The performance measures are indeed objective and quantifiable, such as “the percentage of students in grades 4–8 participating in 21st CCLC programming during the school year and summer who demonstrate growth in reading/language arts on State assessments.”²⁴⁶ But these performance measures, as others throughout ED, fail to provide comparisons to non-participants, much less to provide means of assessing what precise relationship exists between ED funding and these performance measures. Even by these performance measures, a majority of students fail to show improvements on most measures, and the strongest result is in the very weakly defined measure of “Student Engagement in Learning.”²⁴⁷

Figure 1.41: 21st CCLC Programs 2021–2022 Outcomes



Source: Nita M. Lowey *21st Century Community Learning Centers (21st CCLC): Overview of the 21st CCLC Annual Performance Data: 2021–2022*, Tactile Group and Juniper Education Consulting Report, Office of Elementary and Secondary Education, U.S. Department of Education, 26, <https://www.ed.gov/sites/ed/files/2024/03/21APR-2021-2022-Report-2024.03.05.pdf>.

- *State Assessments*: State Assessments provides financial support for state assessment programs—which is to say, it assumes that the highly bureaucratic process of state assessment has a real and positive relationship with educational attainment. We therefore understand why its performance measures are of administrative attainment rather than of educational attainment, such as “the number of States (including the District of Columbia and Puerto Rico) that have reading/language arts and mathematics assessments that align with the State’s academic

[eval/other/cclcfinalreport/cclcfinal.pdf](#), no longer preserved at website.

246 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 22.

247 Nita M. Lowey *21st Century Community Learning Centers (21st CCLC): Overview of the 21st CCLC Annual Performance Data: 2021–2022*, Tactile Group and Juniper Education Consulting Report, Office of Elementary and Secondary Education, U.S. Department of Education, 26, <https://www.ed.gov/sites/ed/files/2024/03/21APR-2021-2022-Report-2024.03.05.pdf>.

content standards for all students in grades 3–8” and “States that develop alternate assessments for students with the most significant cognitive disabilities must also demonstrate that such assessments are based on alternate academic achievement standards.”²⁴⁸ We note, however, the possibility of abuse in a system where “success in meeting these requirements is determined primarily by formal peer reviews of State assessment systems by panels of external assessment experts.”²⁴⁹ We further note that ED has not done research by which one could evaluate whether state assessments do have a real and positive relationship with educational attainment, much less whether ED’s financial support for state assessments has a significant return on investment in educational attainment.

We should add that we do not engage here in a direct critique of either the College Board’s assessments or of the Common Core. We and other reformers have provided cogent critiques elsewhere of both.²⁵⁰ These critiques generally should make education reformers skeptical that State Assessments grants do more than subsidize politicized assessment monopolies that actively harm American education. But these critiques are not themselves part of our audit of ED. The public and policymakers should consider whether they ought to end all funding for State Assessments—but we do not at present make that recommendation.

- *Education for Homeless Children and Youths (EHCY)*: EHCY relies on the vague definition of homelessness provided in the McKinney-Vento Homeless Assistance Act, which does not specify a minimum duration to be defined as homeless.²⁵¹ ED therefore does not provide information to clarify the most important information—the amount of time students have been homeless, as well as the subdivision of performance measures by duration of homelessness. ED should seek out this information. Within the limitation, ED performance measures once again seek out objective information without providing an assessment of the return on investment of ED funds—e.g., “The percentage of assessed students experiencing homelessness, grades three through eight, enrolled in all LEAs, who meet or exceed proficiency on State assessments in reading and mathematics.”²⁵² We note, however, that ED drastically lowered its targets in English and math in 2021, to ca. 20%–30% of homeless students meeting or exceeding proficiency.²⁵³ ED did commendably

248 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 27.

249 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 27.

250 Peter W. Wood, ed., *Drilling through the Core: Why Common Core is Bad for American Education* (Boston: Pioneer Institute, 2015); David Randall, *Disfigured History: How the College Board Demolishes the Past* (New York: National Association of Scholars, 2020), <https://www.nas.org/reports/disfigured-history>.

251 “The McKinney-Vento Definition of Homeless,” National Center for Homeless Education, <https://nche.ed.gov/mckinney-vento-definition/>.

252 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 32; and see 33.

253 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 32.

include an efficiency measure, “the average number of days it takes the Department to send a monitoring report to States after monitoring events.”²⁵⁴ ED also cited research on EHCY effectiveness—namely, *State and District Implementation of the Education for Homeless Children and Youth Program* (2015).²⁵⁵ While this research is not as out of date as other cited research, ED should not be relying on research nearly a decade old.

- *Native Hawaiian Education*: In 2018, the Trump administration ED unsuccessfully requested that Congress terminate this program, on the grounds that it was duplicative: “Native Hawaiian Education ... duplicates activities that may be supported by other Federal programs as well as State, local, and private funding. For example, school districts in Hawaii may use Title I Grants to LEAs funds to carry out some activities authorized under the Native Hawaiian Education program.”²⁵⁶ This critique continues to be true. Within the limitation, ED performance measures once again seek out objective information without providing an assessment of the return on investment of ED funds—e.g., “The percentage of students served by the program who scored at the proficient level or higher in reading on the State’s annual assessments.”²⁵⁷
- *Alaska Native Education*: In 2018, the Trump administration ED unsuccessfully requested that Congress terminate this program, on the grounds that it was duplicative:

Alaska Native Education ... duplicates activities that may be supported by other Federal programs as well as State, local, and private funding. For example, entities in Alaska are eligible for the Title VI Indian Education Grants to LEAs program, which supports supplemental education services for Alaska Native students. Additionally, entities that serve Alaska Native students also are eligible for Title VI Indian Education competitive grants, including Native Youth Community Project demonstration grants to support local initiatives to meet the specific educational needs of Alaska Native communities. School districts in Alaska also may use Title I Grants to LEAs to carry out some activities authorized under the Alaska Native Education program.²⁵⁸

This critique continues to be true. Within the limitation, ED performance measures once again seek out objective information without providing an assessment of the

254 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 34.

255 *State and District Implementation of the Education for Homeless Children and Youth Program*, Policy and Program Studies Service, Office of Planning, Evaluation and Policy Development, U.S. Department of Education, 2015, <https://www.ed.gov/sites/ed/files/rschstat/research/pubs/homeless/state-district-implementation-homeless-children-report.pdf>.

256 *School Improvement Programs: Fiscal Year 2018 Budget Request*, C-40.

257 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 37; and see 38–39.

258 *School Improvement Programs: Fiscal Year 2018 Budget Request*, C-43–C-44.

return on investment of ED funds—e.g., “The percentage of Alaska Native students in schools served by the program who meet or exceed proficiency standards for reading, mathematics, and science on the State’s annual assessments.”²⁵⁹

- *Training and Advisory Services (TAS)*: TAS is dedicated to “solving equity problems related to race, sex, national origin, and religion.”²⁶⁰ Whatever “equity” originally meant, it now means the imposition of the discriminatory ideology and political program of diversity, equity, and inclusion (DEI). Indeed, ED’s Office for Civil Rights (OCR) explicitly cites TAS-funded Equity Assistance Centers among its “Diversity & Inclusion Activities Under Title VI.”²⁶¹ TAS performance measures now measure its effectiveness at imposing discriminatory ideology on America’s schools. ED’s performance measures once more tend to be weak proxies for accomplishment—e.g., “The percentage of clients reporting an increase in capacity resulting from technical assistance provided.”²⁶² Yet one may fear that at least one measure is all too real: “The percentage of clients who report changed policies or practices related to providing students with a full opportunity for participation in all educational programs regardless of their sex, race, religion, and national origin.” As of 2021, this success rate was reported as 82%.²⁶³ While ED’s general inability to measure its own efficiency, much less achieve efficiency, gives cause for hope that ED is less effective than it claims, the public and policymakers may fear that ED has achieved success here.
- *Rural Education Achievement Program (REAP)*: ED performance measures once again seek out objective information without providing an assessment of the return on investment of ED funds—e.g., “The percentage of students enrolled in LEAs participating in SRSA [the Small, Rural School Achievement program] who score at or above the proficient level on State reading assessments.”²⁶⁴ In general, REAP’s proficiency targets were 100% in reading and mathematics; actual achievement was 31%–49%.²⁶⁵ ED performance measures allow us to see that they have not been very successful at their own goals.
- *Supplemental Education Grants (SEG)*: SEG provides funds to the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), which before

259 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 43.

260 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 44.

261 “Fact Sheet: Diversity & Inclusion Activities under Title VI,” Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-factsheet-tvi-dia-202301.pdf>.

262 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 47.

263 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 47.

264 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 54; and see 55.

265 *School Improvement Programs: Fiscal Year 2024 Budget Request*, 54–55.

their independence were administered by the United States. These funds should be disbursed by the State Department, not ED. ED does not even provide performance measures for these funds:

The Department has not established performance measures for this program because it is operated by the Department of the Interior.

A December 2006 General Accounting Office report, entitled “Compacts of Free Association: Micronesia and the Marshall Islands Face Challenges in Planning for Sustainability, Measuring Progress, and Ensuring Accountability,” documented both the continuing need for improvement in the public education systems of the Freely Associated States and the difficulties in obtaining and reporting performance data for this program. The RMI, according to the report, was not able to measure progress towards its educational goals because the data collected were inadequate, inconsistent, and incomplete. Tests to measure achievement were not administered in 2005 and 2006, and some of the tests were not aligned with the curriculum used in RMI schools and thus were not adequate measures of student achievement. The FSM also lacked consistent performance outcomes and measures; measures and outcomes had been established but had constantly changed, making it difficult to track progress.²⁶⁶

ED cannot be blamed for a foreign country failing to provide useful information; but neither should ED have responsibility for this program.

- *Comprehensive Centers:* Comprehensive Centers have a fundamentally bureaucratic goal, “to fund not fewer than 20 Comprehensive Centers, including regional centers and content centers, that provide training, technical assistance, and professional development to build State capacity to provide high-quality education for all students, particularly those in local educational agencies (LEAs) and schools with low rates of performance.”²⁶⁷ The program by its nature has a very indirect relationship to educational attainment. Nevertheless, ED’s performance measures include no measure that is objective or quantifiable, much less one that provides any information on the return on investment of Comprehensive Centers in educational attainment:

- The extent to which Comprehensive Center Clients are satisfied with the quality, usefulness, and relevance of services provided.

²⁶⁶ School Improvement Programs: Fiscal Year 2024 Budget Request, 58.

²⁶⁷ School Improvement Programs: Fiscal Year 2024 Budget Request, 59.

- The extent to which Comprehensive Centers provide services and products to a wide range of recipients.
- The extent to which Comprehensive Centers demonstrate that capacity building services were implemented as intended.
- The extent to which Comprehensive Centers demonstrate that recipient outcomes were met.²⁶⁸

ED performance measures provide no reason to believe that Comprehensive Centers actually do anything to improve educational attainment.

- *Student Support and Academic Enrichment Grants (SSAEG)*: In 2018, the Trump administration ED unsuccessfully requested that Congress terminate this program, on the grounds that it was duplicative and ineffective:

The activities authorized under this program, which received \$400 million under the Department of Education Appropriations Act, 2017, generally can be supported with funds from other Federal, State, local, and private sources, including similarly flexible funds provided under the \$15 billion Title I Grants to LEAs program. In addition, although the 2017 appropriations act allows States to make subgrants competitively, funds may be awarded by formula, which at the current funding level of \$400 million would result in allocations of less than \$30,000 for the vast majority of LEAs. The Administration believes that limited Federal resources should not be allocated to a program under which LEA formula allocations would be too small to have a meaningful impact.²⁶⁹

This critique continues to be true. Within the limitation, ED performance measures also fail to provide any objective, quantifiable measure of educational attainment, much less the return on investment of ED funds.²⁷⁰ Several grant programs also focus on discriminatory, counterproductive, ineffective, and/or unmeasurable goals, including “increasing school socioeconomic diversity,” “evidence-based strategies for social and emotional learning,” and “mental health services.”²⁷¹ Much of SSAEG is unnecessary and ineffective, and parts of it would harm American students.

²⁶⁸ *School Improvement Programs: Fiscal Year 2024 Budget Request*, 63–64.

²⁶⁹ *School Improvement Programs: Fiscal Year 2018 Budget Request*, C-72.

²⁷⁰ *School Improvement Programs: Fiscal Year 2024 Budget Request*, 69–72.

²⁷¹ *School Improvement Programs: Fiscal Year 2024 Budget Request*, 71.

Conclusions

- Much of School Improvement Programs (SIP) consists of programs that are duplicative, better housed in other areas of the federal government, ineffective, or even counterproductive. The Trump administration ED rightly wished to eliminate many of these programs.
- ED performance measures for SIP generally do not measure useful information. Even where they provide objective, quantifiable measures, they generally do not provide relevant information about the return on investment in educational attainment of federal ED spending.
- A few ED programs measure their own efficiency; these efficiency measures are commendable and should be used throughout ED.
- ED should institute performance measures that assess the presumptions of programs—e.g., that improving state assessment actually will improve educational attainment.
- No SIP program actually provides solid proof of its usefulness. Those with the most popular support, such as state assessment, should be preserved, pragmatically—and reformed, so that the public and policymakers have information about their actual effectiveness. Those without such popular support ought to be terminated, since there is no proof that they do any good.
- This final judgment is generalizable throughout ED. ED generally cannot provide information to establish that its spending does any good. Pragmatically, the larger programs should be preserved but reformed so that there actually are means to assess their return on investment in educational attainment—and they should explicitly inform Congress when they lack that information. All smaller programs should, as a rule of thumb, be eliminated, since ED generally has no evidence that they do any good, and since the public has demonstrated no enduring attachment to them.

Conclusion

Our Central Audit reveals that ED is simply incapable of evaluating whether much of its spending does any good. At best, if it is capable of such evaluation, it chooses not to make that information easily available to Congress when Congress determines at what level it should continue to fund the different components of ED. ED is a black box: the public and policymakers throw money in, but they have no way of telling whether the money does any good, much less of telling which aspects of ED spending do the *most* good.

We cannot assume that all ED spending is wasted. Directing money to poor school districts probably does some good. So, too, does directing money toward special education. In higher education, which we have not audited in this report, Pell Grants and federal student loans must help some students to attend college—students who otherwise would not have—and thereby to improve their lives. But ED does not make it easy for the public to find out how much money is needed to produce how much of a good result. If it actually is impossible to determine this information, then the public should be informed.

ED's unwillingness or inability to provide clear information on the return on investment for its spending certainly strengthens the case for systematic reform arguments such as converting all ED formula programs into block grants to the states. If ED cannot tell Congress how well it spends its money now, it is difficult to believe that the states will spend the money *more* inefficiently. The possibility that the state education departments will be more accountable to their policymakers and constituents might make such a reform a distinct improvement on the status quo.

We do not at present make this recommendation. We think it is better at first to attempt reform within the existing system—although, if such reforms fail, or prove ineffective, we would turn to these bolder alternatives.

As noted above, our Central Audit provides evidence that supports three categories of reforms:

- **Simplify:** Eliminate or relocate to other parts of the federal government most of the small ED programs. There is no evidence that they do any good, they do not have as much bipartisan support as the larger ED programs, and it will be impossible to reform ED while it remains such a sprawling labyrinth of programs. The remaining ED programs and formula grants in turn should be simplified as much as possible. ED must be drastically simplified to enable real reform of the remainder of the Department.
- **Provide Real Performance Measures:** Provide objective, quantifiable measures of all remaining programs, including efficiency measures of ED's own bureaucratic efficiency.
- **Depoliticize and End Discrimination:** Remove all discriminatory requirements and performance measures for "equity" and other political goals.

At slightly greater detail, we provide here a collation of all our recommendations from the different sections of the Central Audit.

General

- *Core Functions:* ED should focus on its four core functions, which constitute the large majority of its fiscal responsibilities: Title I aid to disadvantaged school districts;

special education; Pell Grants; and federal student loans. A few other functions, such as support for English language acquisition and state standards, may be worth some funding. Policymakers should eliminate virtually all other programs, which would enable them to create proper accountability mechanisms for the simpler core of ED.

- *Depoliticization and Ending Discrimination:* All ED programs that discriminate on grounds such as race or sex, such as Equity Requirements in IDEA, should be rescinded. So, too, should all performance measures of “equity” and similar concepts. Programs that fund politicized activities such as social and emotional learning also should be rescinded.
- *Noneducational Programs:* ED funds activities related to mental health and social welfare. Some of these cannot be assessed objectively (mental health), others are susceptible to politicization, and all are activities that should be funded by departments such as Health and Human Services, if they are to be funded by the federal government at all. ED should only fund programs *directly* related to education.
- *Administrative Bloat:* Total ED personnel has risen about 12% from 2019 to 2023, from ca. 4,100 to 4,614. The public and policymakers should scrutinize the Department for administrative bloat. They should examine particularly carefully the Office of Finance and Operations; the Office of Planning, Evaluation, and Policy Development; the Office of Elementary and Secondary Education; and the Immediate Office of the Secretary of Education, all of which have grown sharply in numbers over the last few years.
- *Transparent Budgeting:* ED should provide the funding source, the budget, and the personnel for each of its administrative units in a clear, easy-to-find portion of its website.

Assessments

- *Objective Assessments:* The public and policymakers should require ED to provide quantitative, objective, and precise assessments of its programs' effectiveness. These assessments all should focus on informing the public and policymakers about the return on investment for ED spending in educational attainment. Wherever possible, ED should provide comparisons between beneficiaries of ED funds and control groups who have not received ED funds. ED should also be required to make this data easily accessible to independent researchers. ED should state explicitly the known relationship of proxies for educational attainment, such as teacher certification, to actual educational attainment. ED should also be required to state explicitly when it does not have information on the return on investment for ED spending in educational attainment.

- *Assessments of Program Assumptions*: ED should institute performance measures that assess the presumptions of programs—e.g., that improving state assessment actually will improve educational attainment.
- *Independent Experts*: “Independent Experts” used to assess programs can be a self-interested cabal. Policymakers should require ED to reform all program assessment measures, to ensure that they cannot be captured by cabals.
- *Efficiency Measures*: ED should adopt efficiency measures—measures of their own administrators’ efficiency—throughout the department. Best existing practices should be standardized throughout ED, and an array of new efficiency measures should be introduced forthwith.
- *Effectiveness Research*: Legislative requirements for research should include effective stipulations that ED use research no more than five years old and that ED state explicitly how many years it has been since the research it references was published, as well as how many years it has been since the research data was collected.

Programs

- *Office for Civil Rights (OCR)*: OCR employs 633 employees to serve a total American student population of ca. 70 million, while the Justice Department’s Civil Rights Division has 764 employees to serve a total American population of ca. 330 million. OCR’s large number of employees serve to impose a progressive political agenda rather than to defend civil rights. OCR employees should be reduced to ca. 175, so that their ratio to the population they serve is in proportion to that of the Justice Department’s Civil Rights Division.
- *Office of English Language Acquisition (OELA): Multilingualism*: OELA forthwith should end all programmatic commitments to “multilingualism,” and it should equally speedily end all spending aimed at the goal.
- *Office of English Language Acquisition (OELA): Illegal Aliens*: ED, supported by congressional statute, should require school districts to count the number of illegal aliens and their children enrolled in each public school district. This will help the public and policymakers assess the costs of, and the effect of spending by OELA, Migrant Education, and other components of ED on, the growth of America’s illegal alien population.
- *Special Education: Rehabilitation Services Administration (RSA)*: RSA ought to be relocated from OSERS, and ED as a whole, to the Department of Health and Human Services (HHS).

- *Special Education: Unfunded Mandates*: Education reformers should reform IDEA, so that it precisely defines the state and local responsibilities for special education rather than issuing unfunded mandates.
- *Office of Indian Education (OIE)*: OIE in its entirety should be transferred to the Bureau of Indian Education (BIE) in the Bureau of Indian Affairs, since much of what OIE does appears to duplicate or overlap with the work done by the BIE.
- *Miscellaneous Small Programs*: Those with the most popular support, such as state assessment, should be preserved, pragmatically—and reformed, so that the public and policymakers have information regarding their actual effectiveness. Those without such popular support ought to be terminated, since there is no proof that they do any good.



CASE STUDIES

Case Studies: Ashland, OH; Winchester, VA; Philadelphia, PA

Introduction

We have conducted three case studies on the effects of ED policies on local school districts. Our three case studies are of Ashland City School District in Ohio, Winchester Public Schools in Virginia, and the School District of Philadelphia in Pennsylvania. These three school districts are, respectively, small and rural, small town, and large and urban. They also reflect the political variation of the country—one in a conservative locale, one in a politically mixed locale, one in a progressive locale. These three school districts give some sense of how ED policies affect a broad range of schools.

ED has not been able to ruin all three districts. Its influence is pernicious, but it works slowly and unevenly. Our case studies reveal school districts that have retained substantial local autonomy and variation in policy. Yet in all three, ED policies either threaten harm or already have caused harm. Philadelphia is the worst off of these three school districts, but that should not give residents of school districts similar to those of Ashland or Winchester too much cause for hope. What Philadelphia is today, Winchester will be tomorrow, and Ashland the day after.

Case Study: Ashland City School District, Ashland, Ohio

Introduction

Ashland City School District (ACSD) is a small, rural school district threatened by ED policies, but it is not yet a ruined school district. ACSD receives a variety of ED monies, especially Title I funds, which it uses to fund a variety of programs. These programs include

supplementary instructional materials for students, professional development training for teachers, and physical improvements to school buildings.

ACSD appears to use the ED funding it receives appropriately, and not for grossly politicized and/or illegal activities. Federal funding may have made ACSD more bureaucratic, as it does devote a considerable portion of its expenditure to “Student and Staff Support” and “Administration.” But ACSD is still fairly traditional in its structure.

It may not be for long. ACSD, like every other school district in America, is one lawsuit or complaint away from an ED investigation and case resolution that will impose upon it the full weight of compliance with ED policy. Americans should be delighted that ACSD, and school districts like it, are relatively undamaged. But they also need to be aware of ED policies that imperil ACSD.

Below we will describe first, and relatively briefly, what ED funds ACSD receives and how ACSD uses them. ED’s funds are what give it the power to impose its policies on Ashland—and what give ACSD personnel an incentive to comply with ED dictates.

We will then describe various ED policies that imperil ACSD. We will focus on the perils posed by ED’s gender identity policies. The most significant such policy affecting the district is the 2021 ED Title IX Notice of Interpretation regarding gender identity. The Notice of Interpretation multiplies both the possibilities of coercing ACSD to conduct Title IX violations and the risk of subsequent lawsuits against the district. Several of ED’s largest offices enforce this new gender identity policy. School districts such as Ashland need a major revision of Title IX interpretation to protect them from being coerced into legal jeopardy.

We will also discuss how ED’s disapproval of school discipline policies with “disparate impact” on students inhibits effective school discipline policies.²⁷² ACSD needs a new ruling from ED stating that Title VI prohibits only intentional discrimination to protect it from the adverse consequences of requiring “equitable” school discipline policies.

Profile: Ashland County, Ashland City, and The Ashland City School District

Ashland County, Ohio is halfway between Cleveland and Columbus, off the I-71 interstate. The total population of Ashland County is 52,447. It has a 58.4% employment rate, and its median household income is \$62,254. Only 21.9% of the county has a baccalaureate degree or higher. 54.3% of households are a married-couple family household. The high school graduation rate is 90.1%, and 96.4% of the county is white. The county’s two largest industries are manufacturing and educational services (22.3%) and healthcare and social assistance (19.6%).²⁷³

272 Naaz Modan, “Ed Dept Revives Systemic Racial Discrimination Reviews of School Districts,” *K-12 Dive*, April 26, 2023, <https://www.k12dive.com/news/Biden-Cardona-revive-disparate-impact-OCR-Department-of-Education/648543/>. See also Von Spakovsky and Butcher, *Misusing “Disparate Impact” to Discriminate Against Students in School Discipline*.

273 “Ashland County, Ohio,” United States Census Bureau, https://data.census.gov/profile/Ashland_County,_Ohio?q=050XX-00US39005#populations-and-people.

Ashland city is the county seat of Ashland County. The city is rather conservative; it is located within Ohio House of Representatives District 67, represented by Melanie Miller (Republican), who received 70.2% of the vote in the 2022 general election for the Ohio House of Representatives.²⁷⁴ Her husband, Matt Miller (Republican), is the mayor of Ashland. Since 1968, the majority of Ashland County has voted for the Republican ticket in the presidential election.²⁷⁵ The Ohio Residents Database shows that the ACSD superintendent and three of the district's five school board members are registered with the Republican Party.²⁷⁶ Yard signs bearing "Trump 2024" line the streets,²⁷⁷ local parents have requested the public library to remove sexuality explicit books from the children's section,²⁷⁸ and schools across the county honor veterans with Veterans Day assemblies.²⁷⁹ A sizeable conservative Amish group lives just outside the city; their buggies roll regularly along the city streets.²⁸⁰ Ashland is home to a dozen churches of various denominations.²⁸¹

Ashland is also the home of Ashland University (AU), which is affiliated with the Brethren Church. Both the superintendent and the mayor are alumni of ACSD and AU.²⁸²

The Ashland City School District (ACSD) consists of two elementary schools (grades K–3), one intermediate school (grades 4–5), one middle school (grades 6–8), and one high school (grades 9–12). 3,125 students are enrolled in the district.²⁸³

ACSD's total population is 24,991, and the district has an 89% employment rate. Its median household income is \$54,543. 32.1% of the district has a baccalaureate degree or higher, and 66% of households are a married-couple family household. 93% of the district is white.²⁸⁴ Within ACSD, 83.3% of households are equipped with broadband internet, 9.3% of families live below the poverty line, and 15.9% of families are enrolled in the Supplemental Nutrition Assistance Program.²⁸⁵

274 "Ohio House of Representatives District 67," Ballotpedia, https://ballotpedia.org/Ohio_House_of_Representatives_District_67.

275 "United States Presidential Election Results," Dave Leip's Atlas of U.S. Elections, <https://uselectionatlas.org/RESULTS/>.

276 "Steve B Paramore," Ohio Resident Database, <https://www.ohioresidentdatabase.com/person/OH0012236438/paramore-steve>; "John O Teevan," Ohio Resident Database, <https://www.ohioresidentdatabase.com/person/OH0022963982/teevan-john>; Pamela Mowry, Ohio Resident Database, <https://www.ohioresidentdatabase.com/person/OH0012234419/mowry-pamela>; Greg Daniel Summers, Ohio Resident Database, <https://www.ohioresidentdatabase.com/person/OH0018839206/summers-greg>.

277 Personal observation by Nathaniel Urban.

278 "Letter to the Editor: Here's a Challenge to the Ashland Public Library Board," *Ashland Source*, July 8, 2022, <https://www.ashlandsource.com/2022/07/08/letter-to-the-editor-heres-a-challenge-to-the-ashland-public-library-board/>.

279 Mariah Thomas, "Ashland County Schools Celebrate Veterans Day with Assemblies," *Ashland Source*, November 10, 2023, <https://www.ashlandsource.com/2023/11/10/ashland-county-schools-celebrate-veterans-day-with-assemblies/>.

280 Erik Wesner, "The Amish of Ashland and Medina County, Ohio," *Amish America*, May 19, 2011, <https://amishamerica.com/amish-ashland-medina-county-ohio/>.

281 "Churches in Ashland, Ohio," Google Maps search, https://www.google.com/maps/search/churches+in+ashland+ohio/@40.8662376,-82.3459365,13z/data=!3m1!4b1!entry=tту&_ep=EgoyMDIOMTAxNi4wKlXMDSoASAFAQw%3D%3D.

282 "Meet Matt," Matt Miller for Ashland, <https://www.mattmillerforashland.com/meet-matt>; Kylie Van Dine, "Ashland City Schools Superintendent, Steve Paramore, Continues to Grow the Ashland Community," *The Collegian*, February 9, 2024, <https://ashland-collegian.com/17607/features/ashland-city-schools-superintendent-steve-paramore-continues-to-grow-the-ashland-community/#:~:text=Open%20Search%20Bar-,Ashland%20City%20Schools%20Superintendent%2C%20Steve%20Paramore%2C%20continues.to%20grow%20the%20Ashland%20community>.

283 "Ashland City," Common Core of Data, National Center for Education Statistics, https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=2&details=1&ID2=3904350&DistrictID=3904350.

284 "Ashland City School District, Ohio," Education Demographic and Geographic Estimates, National Center for Education Statistics, <https://nces.ed.gov/Programs/Edge/ACSDashboard/3904350>.

285 "Ashland City School District, Ohio."

ACSD receives about 60% of the taxes collected in the city of Ashland and the townships in the district. Local revenue accounts for over one half of the district's annual budget.²⁸⁶ The district employs 152 teachers; 359 other staff members are assigned to administrative roles and student support services.²⁸⁷

Figure 2.1
Fiscal Data for the 2022–2023 School Year

	Amount	Amount per Student	Percent
Total Revenue:	\$43,002,000	\$13,975	
Revenue by Source			
Federal:	\$3,986,000	\$1,295	9%
Local:	\$23,772,000	\$7,726	55%
State:	\$15,244,000	\$4,954	35%
Total Expenditures:	\$40,614,000	\$13,199	
Total Current Expenditures:			
Instructional Expenditures:	\$32,208,000	\$10,467	
Student and Staff Support:	\$19,910,000	\$6,471	62%
Administration:	\$3,840,000	\$1,248	12%
Operations, Food Service, other:	\$4,326,000	\$1,406	13%
Total Capital Outlay:	\$5,603,000	\$1,821	
Construction:	\$4,623,000	\$1,502	
Total Non EI-Sec & Other:	\$198,000	\$64	
Interest on Debt:	\$896,000	\$291	

Source: "Ashland City," Common Core of Data, National Center for Education Statistics, https://nces.ed.gov/ccd/district-search/district_detail.asp?Search=2&ID2=3904350&DistrictID=3904350&details=4.

Ashland citizens contribute to ACSD not only by paying taxes but also through small and large philanthropy.²⁸⁸ In the 2023–2024 school year, ACSD received \$770,000 from community members and local foundations.²⁸⁹ One extraordinarily generous Ashland resident bequeathed her property to ACSD.²⁹⁰

286 "Ashland City."

287 "Ashland City."

288 Steve Paramore, "2024 State of the City Address," City of Ashland, Ohio, January 24, 2024, YouTube video, 1:34:20, <https://www.youtube.com/watch?v=BJssBIO5J58>.

289 Paramore, "2024 State of the City Address."

290 Kristi Schweitzer, "District Gets New Outdoor Learning Center," *Times-Gazette*, September 29, 2016, <https://www>.

Ed Funds and Their Uses

In the 2023–2024 fiscal year, ACSD received \$1,011,971 in Title I grants; \$1,055,005 in Special Education/Individuals with Disabilities Education Act (IDEA) grants; \$192,666 in Comprehensive Literacy State Development grants; \$137,111 in Title II, Part A grants; \$2,988 in Title III, Part A grants; \$100,055 in Title IV, Part A grants; and \$4,111,297 in Elementary and Secondary School Emergency Relief (ESSER) and American Rescue Plan (ARP) grants.²⁹¹

ACSD's total receipts that year were \$45,795,561.²⁹² ED funds provided 14.4% of that total. If one adds in funds received from the United States Department of Agriculture (\$1,364,808), then ACSD received a total of \$7,975,901 from the federal government²⁹³—17.4% of total receipts. Most of this money came via the emergency Elementary and Secondary School Emergency Relief (ESSER) and American Rescue Plan (ARP) grants, which ACSD cannot presume will be received indefinitely. If we remove those grants from the total, ACSD received \$2,499,796 from ED, or 5.5% of its total revenue.

Figure 2.2
Ashland City School District, 2023–2024 School Year,
U.S. Department of Education Funding

Grant Program Funding	Amount
Title I	\$1,011,971
Special Education/Individuals with Disabilities Education Act (IDEA)	\$1,055,005
Comprehensive Literacy State Development	\$192,666
Title II, Part A	\$137,111
Title III, Part A	\$2,988
Title IV, Part A	\$100,055
Elementary and Secondary School Emergency Relief (ESSER) and American Rescue Plan (ARP)	\$4,111,297
Total	\$6,611,093

Source: Ashland City School District: Ashland County, Ohio: Single Audit for the Fiscal Year Ended June 30, 2023, Julian & Grube, 46, https://ohioauditor.gov/auditsearch/Reports/2024/Ashland_CSD_2023_Ashland_FINAL.pdf.

“Only” 5.5% is still a large enough portion of ACSD’s revenue that ACSD administrators must think carefully about any action that would endanger this flow of money. In the ordinary course of events, no ACSD administrator will defy an ED requirement, if it means losing that large a proportion of ACSD revenue.

ACSD received the following types of ED grants:

times-gazette.com/story/news/2016/09/29/district-gets-new-outdoor-learning/19088801007/.

291 “Ashland City School District: Ashland County, Ohio: Single Audit for the Fiscal Year Ended June 30, 2023,” Julian & Grube, 46, https://ohioauditor.gov/auditsearch/Reports/2024/Ashland_CSD_2023_Ashland_FINAL.pdf.

292 “Ashland City School District: Ashland County, Ohio,” 8.

293 “Ashland City School District Ashland County, Ohio,” 46.

- *Title I, Part A* grants, under the Elementary and Secondary Education Act (ESEA) of 1965, are federal funds that provide “supplemental financial assistance to school districts for children from low-income families.”²⁹⁴
- *IDEA, Part B* grants “assist states in providing a free appropriate public education in the least restrictive environment for children with disabilities, ages three through 21.”²⁹⁵ The program also authorizes preschool grants for children ages three to five.
- *Comprehensive Literacy State Development (CLSD)* grants, whose purpose “is to create a comprehensive literacy program to advance literacy skills, including pre-literacy skills, reading, and writing, for children from birth through grade 12, with an emphasis on disadvantaged children, including children living in poverty, English learners, and children with disabilities.”²⁹⁶
- *Title II, Part A (Supporting Effective Instruction)* grants are federal funds that “can be used to provide supplemental activities that strengthen the quality and effectiveness of teachers, principals and other school leaders.”²⁹⁷ Title II funds pay teachers outside their contract hours for professional development and training on new programs and curricula.
- *Title III, Part A*, which certifies that “English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English.”²⁹⁸
- *Title IV, Part A (Student Support and Academic Enrichment)*, whose funds are used to “(1) provide all students with access to a well-rounded education, (2) improve school conditions for student learning, and (3) improve the use of technology in order to improve the academic achievement and digital literacy of all students.”²⁹⁹ Title IV funds are used for instructional resources that enhance core subjects and can, for example, pay for outside services to come into schools.
- *Elementary and Secondary School Emergency Relief (ESSER)* and *American Rescue Plan (ARP)* grants, which “address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools across the Nation.”³⁰⁰

294 “Fast Facts: Title I,” National Center for Education Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=158>.

295 “State Formula Grants,” Individuals with Disabilities Education Act, <https://sites.ed.gov/idea/state-formula-grants/>.

296 “Comprehensive Literacy State Development,” U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/well-rounded-education-grants/comprehensive-literacy-state-development#:~:text=The%20purpose%20of%20the%20CLSD.in%20poverty%2C%20English%20learners%2C%20and>.

297 “Title II, Part A – Supporting Effective Instruction, Ohio Department of Education & Workforce, <https://education.ohio.gov/Topics/Federal-Programs/Programs/Improving-Teacher-Quality>.

298 “20 USC 6812: Purposes,” [https://uscode.house.gov/view.xhtml?req=\(title:20%20section:6812%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:20%20section:6812%20edition:prelim)).

299 “Title IV, Part A: Student Support and Academic Enrichment Program Profile,” T4PA Center, https://t4pacenter.ed.gov/docs/T4PA_ProgramProfileFlyer_508C.pdf.

300 “Elementary and Secondary School Emergency Relief Fund,” U.S. Department of Education, <https://www.ed.gov/grants-and-programs/formula-grants/response-formula-grants/covid-19-emergency-relief-grants/elementary-and-secondary-school-emergency-relief-fund>.

Generally speaking, ACSD seems to have used these funds in straightforward ways. ACSD used part of its ESSER and ARP grants in this fashion: “Ashland City Schools spent 40% of its \$5.9 million on salaries and benefits, which includes the creation of a chief innovation officer. Funds also went to removing asbestos from Taft Intermediate School and renovating windows and doors at Ashland High School.”³⁰¹ The chief innovation officer’s responsibilities are digital technological resources—which include possibly useful functions such as digital classroom management, as well as more dubious functions such as educational Minecraft games.³⁰² It is not clear if ACSD spending on salaries and benefits will be sustainable when these grant funds expire. In September 2024, a public records request provided the further information that ACSD also used its ESSER and ARP grants for summer programs, extended school days, transportation improvements, family outreach, monetary incentives to retain employees, remote teaching and learning software, and intervention efforts for students who were identified as below grade level in reading and math.³⁰³ None of these efforts seems obviously politicized—although many of them seem peripheral to ACSD’s core educational responsibilities.

ACSD’s lack of politicization means that it is vulnerable to legal harassment, whether by ED or by the private-sector radical-activist complex.

One administrator stated that “Ashland City Schools uses Title II federal funds to improve the quality and effectiveness of teachers and principals through the use of embedded coaching.”³⁰⁴ *Embedded coaching* apparently is a form of classroom management training.³⁰⁵ It is difficult to tell whether *embedded coaching* is a proper use of money, or even an effective one; we note that ACSD has used these federal funds to foster the growth of a complex educational administrative structure rather than simply hiring more teachers. Ashland citizens might well query whether this was an effective use of ED funds.

301 Dillon Carr, “Follow the (ARPA) Money: Exploring the Impact of \$46.6 Million Federal Stimulus Funds in Ashland County,” *Ashland Source*, August 19, 2024, <https://www.ashlandsource.com/2024/08/19/following-the-arpa-money/>.

302 “Chief Innovation Officer,” Ashland City Schools, <https://www.ashlandcityschools.org/district/administration-of-office-staff-directory/technology-innovation>.

303 “Budget Details,” Ashland City, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/Ashland%20ESSER%20ARP.pdf.

304 Anonymous to Nathaniel Urban, email, May 28, 2024, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/Title%20II%20and%20IV%20ACSD.pdf.

305 “Job-Embedded Coaching,” Catapult Learning, <https://catapultlearning.com/programs/professional-development/job-embedded-coaching/>.

Another administrator stated that “Title IV funds were used to support a well-rounded educational experience for students in a STEM class, and to support a safe and healthy environment through specially designed instruction through the use of technology.”³⁰⁶ This administrator specified that Title IV money was used for a coding class.³⁰⁷ This testimony raises some flags—*well-rounded* and *safe and healthy environment* are education jargon that can camouflage radical, politicized pedagogy. But sometimes a coding class is just a coding class.

We may note that ACSD *does* change its policies significantly to secure federal funds. In 2024, for example, ACSD reconfigured its elementary schools to “put pre-kindergarten and first graders in one building and second and third graders in another.” This change was made to secure federal funding: “The configuration will allow Ashland City Schools to increase funding, [Superintendent Steve] Paramore said, noting Reagan Elementary is on the verge of not qualifying for federal dollars.”³⁰⁸ That ACSD would make such a major change to its internal structure to ensure it receives the largest possible amount of federal monies is dramatic testimony of the power federal money has to change ACSD policy.

ACSD does appear to have used ED funds to subsidize administrative bloat—but the responsibility for this choice seems to lie more with ACSD than with ED. ACSD may not have used federal monies usefully, but neither does it appear to have used ED funds for politicized purposes.

ACSD’s lack of politicization means that it is vulnerable to legal harassment, whether by ED or by the private-sector radical-activist complex.

Legal Jeopardy

ACSD has not yet implemented the worst aspects of ED policy. ACSD, in other words, is vulnerable to any legal complaint that can set in motion the machinery of ED enforcement of Title IX or civil rights law. We outline here the parameters of the risks ACSD faces.

As we stated in our History chapter above, ED now imposes a radical political agenda via its Office for Civil Rights (OCR). Among the most prominent administrative aspects of this campaign is the 2014 Obama administration Dear Colleague Letter (DCL) by ED and the Department of Justice, which claimed that the federal government could and should investigate school districts for violations of civil rights if school discipline policies affected minority students disproportionately.³⁰⁹ The 2014 DCL crippled student discipline policies, thereby greatly facilitating disruptive behavior in the classroom—up to and including student assaults of teachers, all of which went virtually unpunished. While the Trump administration

306 Anonymous to Nathaniel Urban, email, May 28, 2024, https://www.nas.org/storage/app/media/New%20Documents/FOIA/ED_FOIA_MATERIALS/Title%20II%20and%20IV%20ACSD.pdf.

307 Anonymous to Nathaniel Urban, interview, June 13, 2024.

308 Samantha Whidden, “Ashland City Schools Superintendent Announces Reconfiguration of Elementary Schools,” *Times-Gazette*, January 27, 2024, <https://www.times-gazette.com/story/news/education/campus/2024/01/27/ashland-city-schools-changing-elementary-school-configuration/72364140007/>.

309 Dear Colleague Letter, May 8, 2014, Civil Rights Division, U.S. Department of Justice, Office for Civil Rights, U.S. Department of Education, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>.

ED rescinded the 2014 DCL, the Biden Administration ED in turn restored it.³¹⁰ In general, Ohio public schools have been badly affected by this transformation. In 2024, 77% of more than 600 Ohio teachers said they were subjected to physical violence by a student at least once.³¹¹

Progressive activists within ED also have abused Title IX law through statutorily undefined expansions of the meaning of “sex,” as well as extremely intrusive decisions on how school districts must act to be deemed in compliance with the law. So, on January 20, 2021, President Biden issued an *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*.³¹² On March 8, 2021, President Biden issued another executive order titled an *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*.³¹³ In June 2021, ED confirmed this interpretation of Title IX in a Notice of Interpretation that cited the U.S. Supreme Court decision in *Bostock v. Clayton County* and stated that the Office for Civil Rights would enforce this Notice of Interpretation.³¹⁴

ACSD therefore faces significant legal peril simply for continuing its traditional policies. For example, ED’s current interpretation of Title IX states that using a student’s ‘incorrect’ pronouns is grounds for a Title IX violation. At present, ACSD’s elementary, middle, and high school handbooks all refer to students by traditional he/she pronouns.³¹⁵ A student now could file a claim against ACSD for violation of Title IX law because the student handbooks ‘misrepresent their gender identity.’ The same can be done for every nonconforming ACSD document and policy.

ED also presses for the imposition of gender ideology via the resources it suggests that schools use. The Office of Program and Grantee Support Services (PGSS), located within OESE,³¹⁶ funds four regional Equity Assistance Centers under Title IV of the Civil Rights Act of 1964. The purpose of the Equity Assistance Centers is

310 Evie Blad, “Biden Administration Asks Districts to Investigate Their Discipline Disparities,” *Education Week*, June 9, 2023, <https://www.edweek.org/leadership/biden-administration-asks-districts-to-investigate-their-discipline-disparities/2023/06>.

311 WHIO Staff and John Bedell, “I-TEAM: Teachers Assaulted in Their Own Classrooms; How Safe Do They Feel?” WHIO TV, May 9, 2024, <https://www.whio.com/news/local/i-team-teachers-assaulted-their-own-classrooms-how-safe-do-they-feel/KD7YQSGVZJBHXENT52LDMI6WFEU/>.

312 “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>.

313 “Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,” March 8, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity/>.

314 “U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity,” U.S. Department of Education, June 16, 2021, <https://www.ed.gov/about/news/press-release/us-department-of-education-confirms-title-ix-protects-students-from-discrimination-based-on-sexual-orientation-and-gender-identity>.

315 Ashland City Schools Elementary Parent/Student 2024–2025 Handbook, https://resources.finalsite.net/images/v1721142257/ashlandcityschoolsorg/dxpm5p6bsatib8fse5uk/2023-24_elementary_student_handbook_updated_62123.pdf; Ashland Middle School Student Handbook, <https://resources.finalsite.net/images/v1721128769/ashlandcityschoolsorg/eum3cojobvjrjrpymfvr/AMSHandbook.pdf>; Ashland High School 2024–2025 Student/Parent Handbook, <https://resources.finalsite.net/images/v1721134773/ashlandcityschoolsorg/rduzbc3tzbpzmbbosx/AHSHandbook.pdf>.

316 “Program and Grantee Support Services,” U.S. Department of Education, <https://www.ed.gov/about/ed-offices/oes/e/program-and-grantee-support-services>.

to provide technical assistance and training, upon request, in the areas of race, sex, national origin, and religion to public school districts and other responsible governmental agencies to promote equitable education opportunities. The centers work in the areas of civil rights, equity, and school reform.³¹⁷

Ohio is assigned to the Midwest & Plains Equity Assistance Center (MAP).³¹⁸ The center's website offers a variety of resources that promote gender ideology and identity politics. These include LGBT-related book lists for high school, middle school, and elementary school students, a "safe space" kit, and resources for creating "inclusive classrooms" and "LGBT visibility" in elementary schools.³¹⁹ The website also features pronoun guides, lists of transgender picture books, microaggression learning labs, how-to brochures for supporting transgender athletes, and interpretations of Title IX affirming LGBT students.³²⁰ There are more than thirteen pages of gender-related materials on the MAP website.³²¹ Many of these resources are affiliated with the Gay, Lesbian & Straight Education Network (GLSEN),³²² an organization that encourages students to start Gender and Sexuality Alliances in their schools.³²³

The Midwest & Plains Equity Assistance Center also promotes race discrimination. There are more than thirty pages of materials on race, including resources on so-called "anti-racism" (which is a rallying cry for discrimination and cultural revolution³²⁴), structural racism, internalized racism, equity, and classism.³²⁵ The anti-racism resources include such radical and discriminatory resources as the 1619 Project, *How to Be an Antiracist*, and the Anti-Racist Reading List.³²⁶

ED, by way of the Midwest & Plains Equity Assistance Center, pervasively informs ACSD that best educational practices include the imposition of gender ideology and race discrimination. Even where ED does not impose this ideology on ACSD by main force, this major funder of ACSD makes it clear that the path of least resistance is to adopt these ideologies.

The Office of Safe and Supportive Schools (OSSS) likewise steers ACSD toward adopting radical ideologies, in the guise of "health," "safety," and "well-being." OSSS's National Center on Safe Supportive Learning Environments (NCSSLE) "offers information and technical assistance to states, districts, schools, institutions of higher education, and communities focused on improving school climate and conditions for learning."³²⁷ This information and

317 "Training and Advisory Services - Equity Assistance Centers," U.S. Department of Education, <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/training-and-advisory-services--equity-assistance-centers>.

318 Midwest & Plains Equity Assistance Center, <https://greatlakesequity.org/map-eac>.

319 "Gender" search, Midwest & Plains Equity Assistance Center, <https://greatlakesequity.org/search/node/gender>.

320 "Gender" search, Midwest & Plains Equity Assistance Center.

321 "Gender" search, Midwest & Plains Equity Assistance Center.

322 GLSEN, <https://www.glsen.org>.

323 "GSA Resources," GLSEN, <https://www.glsen.org/support-student-gsas>.

324 Frederick M. Hess and Grant Addison, "'Anti-racist' Education Is Neither," American Enterprise Institute, December 18, 2020, <https://www.aei.org/articles/anti-racist-education-is-neither/>.

325 "Race" search, Midwest & Plains Equity Assistance Center, <https://greatlakesequity.org/search/node/race>.

326 "Anti-Racism Resources," Midwest & Plains Equity Assistance Center, <https://greatlakesequity.org/anti-racism-resources>.

327 National Center on Safe Supportive Learning Environments, <https://safesupportivelearning.ed.gov/about>.

ED, with a chokehold on the federal money flowing to ACSD, proclaims that best educational practices include winking at the mutilation of minors.

technical assistance includes the *Lessons from the Field* webinar series, which hosts webinars such as *Promoting Health and Well-Being in LGBTQ+ Students* and *Supporting Transgender & Nonbinary Students in K–12 Schools*.³²⁸ The materials on NCSSE’s website praise the Chicago, Seattle, and Albuquerque public school systems for their “inclusive” gender-ideology policies.³²⁹ It must be underscored that ED’s *Lessons from the Field* website does not even hint at, much less include information on, the dangers of sex-reassignment surgery,³³⁰ the regret people may feel when they undergo sex transitions,³³¹ or the impropriety—or even legal jeopardy—of foisting sex-change surgery on minors. That last point matters most. ED, with a chokehold on the federal money flowing to ACSD, proclaims that best educational practices include winking at the mutilation of minors. Of course, this stance would place ACSD in moral hazard, but it would also open the district up to grave legal jeopardy.

ED’s Office for Civil Rights (OCR), meanwhile, publishes resources for LGBT students that provide them a catalogue of occasions for filing civil rights complaints against school districts. These resources include “Supporting LGBTQI+ Youth and Families in School,”³³² “Supporting Intersex Students,”³³³ the “Back-to-School Message for Transgender Students,”³³⁴ “Supporting Transgender Youth in School,”³³⁵ and “Confronting Anti-LGBTQI+ Harassment in Schools.”³³⁶ These resources generally recommend that school districts use “welcoming

328 “Lessons from the Field: Promoting Health and Well-Being in LGBTQ+ Students,” Best Practices Clearinghouse, https://safesupportivelearning.ed.gov/sites/default/files/2023-10/LftFWebinarSeries_52_Promoting%20Health%20and%20Well%20Being%20LGBTQ%2BFINAL.pdf; “Lessons from the Field: Supporting Transgender & Nonbinary Students in K–12 Schools,” Best Practices Clearinghouse, https://safesupportivelearning.ed.gov/sites/default/files/2022-04/Lessonsfrom-theField_Session20-Transgender-Nonbinary_Slides_2022.04.12_FINAL.pdf.

329 “Lessons from the Field: Supporting Transgender & Nonbinary Students in K–12 Schools.”

330 Ryan T. Anderson, “Sex Reassignment Doesn’t Work. Here Is the Evidence,” The Heritage Foundation, March 9, 2018, <https://www.heritage.org/gender/commentary/sex-reassignment-doesnt-work-here-the-evidence>.

331 Rikki Schlott, “‘I Literally Lost Organs’: Why Detransitioned Teens Regret Changing Genders,” *New York Post*, June 18, 2022, <https://nypost.com/2022/06/18/detransitioned-teens-explain-why-they-regret-changing-genders/>.

332 “Supporting LGBTQI+ Youth and Families in School,” Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ed-supporting-lgbtqi-youth-202306.pdf>.

333 “Supporting Intersex Students,” Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>.

334 “Back-to-School Message for Transgender Students from the U.S. Department of Justice, U.S. Department of Education, and U.S. Department of Health and Human Services,” Office of Public Affairs, U.S. Department of Justice, <https://www.justice.gov/opa/video/back-school-message-transgender-students-us-department-justice-us-department-education-and>.

335 “Supporting Transgender Youth in School,” Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.

336 “Confronting Anti-LGBTQI+ Harassment in Schools,” Civil Rights Division, U.S. Department of Justice, Office for Civil Rights, U.S. Department of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

and inclusive language in school and district mission statements and other similar communications that express a commitment to providing a safe, supportive, and nondiscriminatory educational environment for all students, including LGBTQI+ students.”³³⁷ ACSD does indeed appear to have adopted the recommended vocabulary in several of its student handbooks:

- *Ashland High School*: “Positive,” “inclusive,” “safe,” “supported.”³³⁸
- *Ashland Middle School*: “Cultural sensitivity,” “supportive,” “safe,” “caring,” “secure,” “empower.”³³⁹

While we may hope that the adoption of such vocabulary is as yet pro forma, ACSD’s use of this vocabulary registers how it must eventually acquiesce to ED strictures. If “Supporting Transgender Youth in School” recommends that districts adopt “policies that respect all students’ gender identities—such as the use the name [sic] a student goes by, which may be different from their legal name, and pronouns that reflect a student’s gender identity,”³⁴⁰ then ACSD will eventually adopt this policy, to guarantee its continued access to ED funds.

Conclusion

America works best when the federal government does not involve itself in its citizens’ affairs. When the federal government must act, it is better that it delegates power to states and localities. ED’s existing system works best when it follows these strictures. ED transfers funds to ACSD, and ACSD, within the limits of the grant funds, then decides how to use them. ACSD seems to have chosen to use the funds to build up complex, dubiously useful educational administrations—but these administrations bear substantial responsibility for their own choices. ED’s funding of ACSD is successful, or at least harmlessly bureaucratic, to the extent that ED delegates control of its funds to ACSD. And that extent is not trivial.

Yet ED’s regulatory requirements, and its statements of educational best practices, place ACSD in continuing legal jeopardy. If ACSD does not comply with ED interpretations of civil rights and Title IX law, it can be sued and lose its ED funds. If ACSD does comply, it can be sued for discriminatory policies, for failing to maintain discipline, and even for complicity in the abuse of minors in the name of “gender-identity” protections. ACSD faces a catch-22. Should the progressive-activist complex direct its Eye of Sauron toward ACSD, the district will be forced to comply with its radical and discriminatory policies.

ACSD does not itself appear to politicize the ED funds it receives. ACSD’s experience does not justify a call for eliminating ED funds. To the extent that ACSD does well at disbursing ED

337 “Supporting LGBTQI+ Youth and Families in School”; and see “Supporting Intersex Students.”

338 *Ashland High School 2024–2025 Student/Parent Handbook*.

339 *Ashland Middle School Student Handbook*.

340 “Supporting Transgender Youth in School.”

funds, this strengthens the case for converting ED funds into no-strings grants to states or school districts.

Yet ACSD is vulnerable to the strings that ED attaches to these funds. We recommend that policymakers institute strong protections to shield ACSD from legal jeopardy. These include:

- Discontinue investigating school discipline policies for “disparate impact” and allow states and local districts to hold students accountable for their behavior and protect the physical safety of teachers.
- Define Title IX law as applying to sex, not gender.
- Remove all ED-recommended educational materials that one-sidedly promote gender ideology and racial discrimination.

ACSD will continue to face legal peril until these changes have been made.

But Ashland’s students are fortunate; their administration has resisted ED pressure with some success. The students in Winchester, Virginia, are not so lucky.

Case Study: Winchester Public Schools, Winchester, Virginia

Introduction

The U.S. Department of Education (ED) is involved in Winchester, Virginia schools to implement federal civil rights laws, to administer federal programs designed for needy students, and to oversee pandemic relief funds.

ED's influence on schools in Winchester, Virginia was relatively limited until the COVID-19 pandemic in 2020. Congress's Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 increased the amount of federal funds in Winchester schools by almost 600% from 2018 to 2023, from \$3,355,022 to \$19,467,695.³⁴¹

ED also exerts influence on public schools by means of year-long civil rights audits conducted by its Office for Civil Rights (OCR). These audits, ostensibly conducted to ensure that public schools comply with Title VI of the Civil Rights Act of 1964 (banning discrimination based on race) and Title IX of the Education Amendments of 1972 (banning discrimination based on sex), introduce race and sex quotas into school programs.

This language, it should be emphasized, is not found in the federal nondiscrimination statutes themselves. ED's audits perpetuate, or even manufacture, discrimination by race and sex among teachers, administrators, and students.

OCR conducted a review of the Winchester City Public Schools during the 2023–2024 academic year. These audits are typically carried out by state education departments. School officials in Winchester, therefore, were scheduled to meet in person with education officials from Richmond on behalf of civil rights officials in Washington, DC.

Officials in both local schools and the Virginia Department of Education have deflected inquiries regarding the processes of the Winchester civil rights audit. Their behavior suggests a default mistrust by school and education department employees toward the general public. Such guardedness erodes the spirit of public accountability that should animate government employees in a free republic.

Profile of Winchester City and Winchester Public Schools

Founded in 1744, Winchester is one of Virginia's oldest cities. Located 75 miles west of Washington, DC. in the scenic Shenandoah Valley, it is the county seat of Frederick County and is regarded as the most historic Virginia town west of the Blue Ridge Mountains. The setting is more rural than urban. Winchester city's population is almost 30,000, while the

341 "Approved Budget FY23," Winchester City School Board, 21, <https://www.wps.k12.va.us/cms/lib/VA02201702/Centricity/Domain/1108/WPS%20FY23%20Budget%20Book.pdf>.

greater metropolitan area has approximately 145,000 residents. It qualifies, therefore, as a small- to medium-sized town.

In the town itself, approximately 64% of the population is employed, and roughly one-third have a college degree. Winchester families have middle- to upper-middle incomes: the median household income is \$62,495,³⁴² which is above the national average but lower than the median income across the state.³⁴³ Virginia's median income, however, is skewed upward, since Virginia is home to the wealthiest county in America, Loudoun County of Northern Virginia, just outside Washington, DC. Winchester Public Schools (WPS) is similar in income to most American suburban school districts.

Winchester votes with a slight tilt toward the Democratic party. In the 2020 senatorial race, the Democratic candidate received 57.58% of the vote, and the Republican candidate 42.37%, while, in the 2021 gubernatorial race, the Democratic candidate received 50.54% of the vote, and the Republican candidate 48.69%.³⁴⁴ At the local level, the Democratic candidate for mayor won 52.34% of the vote in 2020 against 46.99% for the Republican candidate; in that same year, Republicans and Democrats each won two of the City Council elections, and Democrats won three out of four School Board elections—one of the School Board seats by 50.00% to 49.57%.³⁴⁵

WPS has four elementary schools, one middle school, and one high school, although a second high school is “in the county.”³⁴⁶ The elementary schools are Frederick Douglass Elementary,³⁴⁷ John Kerr Elementary,³⁴⁸ Virginia Avenue Charlotte Dehart Elementary,³⁴⁹ and Garland R. Quarles Elementary.³⁵⁰ The middle school is Daniel Morgan Middle,³⁵¹ and the local high school is John Handley High.³⁵² Millbrook High School is nearby but not in Winchester proper.

342 “Winchester City, Virginia,” United States Census Bureau, https://data.census.gov/profile/Winchester_city_Virginia?q=050XX00US51840.

343 “Winchester, Virginia (VA) Income Map, Earnings Map, and Wages Data,” City-Data, <https://www.city-data.com/income/income-Winchester-Virginia.html>.

344 “Winchester City,” Virginia Public Access Project: <https://www.vpap.org/localities/winchester-city-va/election-results-map/>.

345 “Live Election Results: Winchester City,” Virginia Public Access Project, <https://www.vpap.org/electionresults/20201103/local/winchester-city-va/>.

346 “Winchester City Public Schools,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/divisions/winchester-city-public-schools>.

347 “Frederick Douglass Elementary,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/frederick-douglass-elementary-2>.

348 “John Kerr Elementary,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/john-kerr-elementary>.

349 “Virginia Avenue Charlotte Dehart Elementary,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/virginia-avenue-charlotte-dehart-elementary>.

350 “Garland R. Quarles Elementary,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/garland-r-quarles-elementary>.

351 “Daniel Morgan Middle,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/daniel-morgan-middle>.

352 “John Handley High,” School Quality Profiles, Virginia Department of Education, <https://schoolquality.virginia.gov/schools/john-handley-high>.

Their behavior suggests a default mistrust by school and education department employees toward the general public.

The schools enroll approximately 4,268 students, more than half of whom score on state tests as proficient in both math and reading.³⁵³ Winchester students do well enough that the schools are viewed as above average.³⁵⁴

Graduates and parents tend to view the Winchester school system as good, if imperfect. “John Handley High School was a good experience,” said one recent alumnus, “[but it] should offer more advanced courses.”³⁵⁵ Many are happy that “everyone knows each other,” but some commenters say that administrators often “change things up,” while others say that the administration may be “behind.”³⁵⁶ It is not clear if these characterizations concern teaching methods, school equipment, or the general culture. Teacher salaries in the school division are trending upward and are on par with those in neighboring counties, although not at the level of teacher salaries in wealthier Loudoun County.³⁵⁷

Parental involvement in Winchester schools is encouraged.³⁵⁸ “School Community Council”³⁵⁹ activities are featured on multiple websites, as are the minutes of the School Community Council meetings.³⁶⁰ Some of these documents date from before the COVID-19 shutdowns, however, and it is possible that there has been less popular involvement in the schools in the pandemic’s aftermath.

The Winchester School Board “oversees a 800+ member school staff[,] which includes teachers, staff professionals, and support personnel, and carries out the responsibilities connected with the ownership and maintenance of school buildings and sites worth over \$200 million.”³⁶¹ Population projections for Winchester expect continued growth, which means that the school district will also likely continue to grow.³⁶²

353 “Winchester City Public Schools,” Niche, <https://www.niche.com/k12/d/winchester-city-public-schools-va/#>.

354 “Winchester City Public Schools,” Niche.

355 “Winchester City Public Schools,” Niche.

356 “Winchester City Public Schools,” Niche.

357 “Winchester Public School Board Work Session,” Winchester Public Schools, February 12, 2024, YouTube video, 1:37:07, <https://www.youtube.com/watch?v=Ht-jgMM5fX0>.

358 “Parent Engagement,” Winchester Public School, Durham District School Board, <https://winchester.ddsb.ca/en/families/parent-engagement.aspx>.

359 “Parent Engagement.”

360 “Meeting Minutes,” Winchester Public School, School Community Council, November 4, 2019, <https://winchester.ddsb.ca/en/families/resources/Documents/SCC-Minutes/SCC-Meeting-Minutes-November-4-2019.pdf>.

361 “About Our School Board,” Winchester Public Schools, <https://www.wps.k12.va.us/domain/58>.

362 Molly Williams, “Winchester, Frederick, Clarke Schools to Outpace State’s 5-Year Enrollment Projections,” *The Winchester Star*, January 29, 2024, https://www.winchesterstar.com/winchester_star/winchester-frederick-clarke-schools-to-outpace-states-5-year-enrollment-projections/article_a4b51234-8c8a-567c-8ea1-f241293a16f7.html.

Federal Funds and Programs

The Virginia Department of Education (VDOE) administers federal education programs that “support instruction and services” for Virginia students and schools, including those in Winchester.³⁶³ These federal programs include:

1. The Every Student Succeeds Act (ESSA);
2. The Individuals with Disabilities Education Act (IDEA);
3. Federal pandemic relief programs such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act;
4. The Safe and Drug-Free Schools and Communities Act (SDFSCA);
5. The Strengthening Career and Technical Education for the 21st Century Act (Perkins V); and
6. Federal civil rights laws such as Title IX of the Education Amendments of 1972 (which bans sex discrimination in federally funded educational programs) and Title VI of the Civil Rights Act of 1964 (which bans banning race discrimination in education).

The approved budget for WPS for fiscal year 2023 was \$105,057,542.³⁶⁴ The breakdown for fiscal year 2021 shows that state funding generally accounts for 42.11% of total revenue, city appropriations account for 43.86%, local sources provide 0.77%, and federal sources account for 13.72%.³⁶⁵ Federal monies generally fund categorical programs such as Title I of the Elementary and Secondary Education Act of 1965, which seeks to improve teaching and learning in high-poverty schools, or Part B of the Individuals with Disabilities Education Act, which seeks to ensure that all children with disabilities have access to a free, appropriate public education. WPS also receives significant funding from the CARES Act and the Teacher and School Leader (TSL) grant program.³⁶⁶

The federal contribution rose dramatically in the past few years, however, jumping from \$3,355,022 in 2018 to \$19,467,695 in 2023, an increase of almost 600%.³⁶⁷

While the focus of many federal programs is “high-poverty” or “high-need” schools, in Winchester most federal funds (from federal grant awards) come from the CARES Act (\$7,173,025), TSL (\$2,542,622), the Rural Education Achievement Program (\$2,069,406), and Title I of the Elementary and Secondary Education Act (\$1,793,150).³⁶⁸ CARES Act revenues

363 “Federal Programs,” Virginia Department of Education, <https://www.doe.virginia.gov/programs-services/federal-programs>.

364 “FY 2024 Annual Budget,” Winchester Public Schools, https://stories.opengov.com/winchesterva/published/KAHu_wOdB.

365 “Approved Budget FY23.”

366 “Approved Budget FY23,” 19.

367 “Approved Budget FY23,” 21.

368 “Approved Budget FY23,” 27.

are almost three times greater than the funds received from TSL, the next most generous federal program.

Of these federal programs and laws, the most complicated and time-consuming for local schools are the pandemic relief programs and the federal civil rights laws. These involve complicated paperwork and enforcement efforts, as well as time to prepare for and complete compliance checks. Federal civil rights laws also involve “periodic, on-site reviews to determine compliance” required by the federal Education Department’s Office for Civil Rights (OCR).³⁶⁹ Because of the special, and even in-person, attention given to the enforcement of federal civil rights laws, ED influence on Winchester particularly acts through these programs.

VDOE places federal civil rights enforcement primarily under Career and Technical Education (CTE).³⁷⁰ VDOE decides which schools should be visited for “on-site compliance reviews” by means of a complicated point system devised in collaboration with OCR.³⁷¹ This point system appears to involve sex and race quotas: the Department’s “targeting plan criteria” count the number of enrollees in CTE and asks whether CTE has “unrepresentative enrollment of either sex” or insufficient enrollment of “students with minority status.”³⁷² VDOE’s civil rights audit system itself injects explicit race and sex considerations into Virginia’s local school districts.

WPS has complied with this background of constant ED and VDOE pressure not least by creating an Equity and Family Empowerment department, which is staffed by an “equity and family empowerment coordinator.”³⁷³ This department affirms WPS’s commitment to the illiberal ideologies of “equity” and “diversity, equity, and inclusion,” and it includes a quote from the Winchester superintendent stating that “we will always think from an equity point of view.”³⁷⁴ The department further boasts an “equity framework” consisting of:

- Culturally Responsive Instruction
- Professional Development, Learning & Coaching
- Youth Leadership & Stewardship
- Family Engagement & Community Collaboration
- Diverse Recruitment, Hiring, Supports, and Retention
- Reducing Disparities & Opportunity Gaps³⁷⁵

369 “Federal Programs,” Virginia Department of Education, <https://www.doe.virginia.gov/programs-services/federal-programs>.

370 “CTE Civil Rights,” Virginia Department of Education, <https://www.doe.virginia.gov/programs-services/federal-programs/civil-rights-laws>.

371 “CTE Civil Rights.”

372 “Overview of the CTE Civil Rights Review Process,” CTE Civil Rights, Virginia Department of Education, 1–2, <https://www.doe.virginia.gov/home/showpublisheddocument/1898/638599407844900000>.

373 “Equity and Family Empowerment,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/8920>.

374 “Equity and Family Empowerment.”

375 “Equity and Family Empowerment.”

The Equity and Family Empowerment webpages contain a remarkably large amount of radical material. These include:

- *Culturally Responsive Instruction*, which includes politicized resources such as “Courageous Conversations about Race,” “Cultivating Genius, An Equity Framework for Culturally and Historically Responsive Literacy,” “Harvard University–Project Implicit,” and “Using Correct Pronouns and Names.”³⁷⁶
- *Student Equity Advisory Council*, which has extended itself school by school: “Presently, a School Equity Advisory Council exists at John Handley High School, Daniel Morgan Middle School (in progress), and Virginia Avenue Charlottee Dehart [sic] Elementary School.” These councils extend DEI ideology and recruitment into K–12 student bodies:

Each council consists of student leaders who reflect the diversity within their school. Diversity, in this context, refers to social identities such as race, socio-economic status, ethnicity, indigenous background, immigration status, nationality, gender identity/expression, language, ability/disability, religion/spirituality, sexual orientation, age, and physical appearance. Identified students meet as a group with the principal or principal designee, the division equity and family empowerment coordinator, and other designated school staff to provide ideas on how to best support them through the lens of equity and family empowerment.³⁷⁷

- *Winchester, VA: Equity Case Study*, which provides an elaborate strategic plan for the extension of DEI policy throughout WPS.³⁷⁸
- *How Can I Engage?*, which catalogues identity-group student clubs in WPS and calls on students, staff, and community members to join the district’s Equity and Family Empowerment efforts.³⁷⁹
- *Newsletters*, which discuss miscellaneous DEI-related material.³⁸⁰

“Equity” also informs WPS’s statement of “beliefs”; *Empower 2025*, WPS’s DEI-related strategic plan; and a November 2020 School Board document affirming WPS’s commitment to “equity.”³⁸¹ WPS’s staff also includes, in addition to the equity and family empowerment

376 “Culturally Responsive Instruction,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/11110>.

377 “Student Equity Advisory Council,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/11772>.

378 *Winchester, VA: Equity Case Study*, AASA Leadership Network, Winchester Public Schools, https://drive.google.com/file/d/1YBkYRV0dA0HI2TkRE_VM2fkc5fvsCsq8/view.

379 “How Can I Engage?,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/10860>.

380 “Newsletter,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/12425>.

381 “Mission | Vision | Beliefs,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/8918>; “Empower 2025 Strategic Plan,” Winchester Public Schools, <https://www.wps.k12.va.us/Page/11925>; Equity, November 23, 2020, Winchester Public Schools, <https://go.boarddocs.com/vsba/wps/Board.nsf/goto?open&id=BY9J9F4BEC0E>. See also “Resolution Condemning Racism and Affirming Our Commitment to Educational Equity for All Students, Families and Staff,” Winchester Public School Board, [https://go.boarddocs.com/vsba/wps/Board.nsf/files/BOQRLF6CBD3F/\\$file/WPS%20School%20Board-Resolution%20Condemning%20Racism.pdf](https://go.boarddocs.com/vsba/wps/Board.nsf/files/BOQRLF6CBD3F/$file/WPS%20School%20Board-Resolution%20Condemning%20Racism.pdf).

coordinator, two Title IX coordinators, a Section 504 (disabilities) coordinator, and two Equal Employment Opportunity coordinators.³⁸²

WPS depends upon federal funds for a considerable portion of its budget. It has responded to the general pressure by ED's Office for Civil Rights by creating a progressive bureaucracy dedicated to advancing DEI.

Conclusion

Winchester Public Schools in Virginia, unlike the Ashland City School District in Ohio, has not been able to resist ED pressure to conform to progressive policies. WPS has created a bureaucracy within the schools to impose DEI, and the district avows that "equity" is part of its mission. If Ashland exemplifies the school district that mostly has resisted ED pressure, Winchester exemplifies the school district that has begun to collapse.

But however badly Winchester Public Schools has begun to collapse, it cannot compare to what has happened in the School District of Philadelphia.

382 "Non-Discrimination Notice," Winchester Public Schools, <https://www.wps.k12.va.us/domain/4509>.

Case Study: School District of Philadelphia, Philadelphia Pennsylvania

Introduction

Philadelphia boasts a large, urban school system, one that is vastly larger in size and complexity than the school systems of Ashland and Winchester. Philadelphia's political complexion is also considerably more progressive than that of Ashland or Winchester. Philadelphia's schools operate in a much more bureaucratic manner, and they include a panoply of progressive policies and bureaucracies. Some of these are the result of Philadelphians' own initiatives—but some, as everywhere, register federal pressure.

Profile of Philadelphia and the School District of Philadelphia

Philadelphia, the great city of eastern Pennsylvania, has a population of 1,593,208. Its median household income is \$57,537. Only 22.3% of the county has a baccalaureate degree or higher. 39% of households are a married-couple family household; 45% are single-female households. The high school graduation rate is 84.5%. 37% of the county is white, 40% is black, and 16% (possibly overlapping with these other categories) is Hispanic.³⁸³

Philadelphia votes heavily Democratic. In 2023, the Democratic candidate for mayor won 75.3% of the vote, and the Republican candidate won 24.7%, while Democratic candidates won 14 out of 17 City Council races, many of which were uncontested. The Republicans only won 1.³⁸⁴ Philadelphia has been under uninterrupted Democratic control since 1951.

The School District of Philadelphia (SDP) employs 8,144 teachers and 10,238 other staff.³⁸⁵ SDP enrolls more than 197,000 students across 331 schools, making it one of the largest school districts in the country. Upwards of 90% of students come from economically disadvantaged households. One in five students are English language learners. And nearly 20% of students require some kind of special education through an Individualized Education Program. Black students comprise 50% of the district, followed by Hispanic students (24%), white students (14%), Asian students (7%), and multiracial students (5%).³⁸⁶

383 "Philadelphia City School District, Pennsylvania," National Center for Education Statistics, <https://nces.ed.gov/Programs/Edge/ACSDashboard/4218990>.

384 "Philadelphia 2023 Election Results: Mayor, City Council Races," WHYY, November 7, 2023, <https://whyy.org/articles/philadelphia-election-results-2023-mayor-city-council-at-large-general/>.

385 "Philadelphia City School District," Common Core of Data, National Center for Education Statistics, https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=1&details=2&InstName=philadelphia&DistrictType=1&DistrictType=2&DistrictType=3&DistrictType=4&DistrictType=5&DistrictType=6&DistrictType=7&DistrictType=8&DistrictType=9&NumOfStudentsRange=more&NumOfSchoolsRange=more&ID2=4218990; https://nces.ed.gov/ccd/schoolsearch/school_list.asp?Search=1&DistrictID=4218990.

386 "School Profiles," School District of Philadelphia, <https://schoolprofiles.philasd.org/>; "Fast Facts," School District of Philadelphia, <https://www.philasd.org/fast-facts/>.

The broader issues of poverty and crime that affect the city of Philadelphia creep into the local schools. SDP schools conducted more than 300 lockdowns between 2018 and 2022.³⁸⁷ SDP reported the highest number of simple (1,370 incidents) and aggravated (149 incidents) assaults against teachers in Pennsylvania for the 2022–2023 school year.³⁸⁸ Teachers cite violence and burnout as two reasons for leaving the district.³⁸⁹ The 2022–2023 school year saw the highest teacher attrition rate, at 13%.³⁹⁰ Teacher shortages affect high-poverty schools the most.³⁹¹ Despite receiving millions in federal funds, students perform poorly in the classroom: 35% and 18% of students scored proficient or higher on 2022–2023 state reading and math exams, respectively.³⁹²

Budget

SDP's budget for the 2023–2024 school year was \$4.5 billion. Local sources accounted for \$1.86 billion (41%), state funds accounted for \$2 billion (44%), and federal sources accounted for around \$580 million (13%).³⁹³ Within the federal sources, federal grants accounted for \$31 million, and funds from COVID-19 relief accounted for \$550 million. SDP doesn't appear to include the funds it receives from Title I grants, which are allocated for schools serving majority-poor students. The Pennsylvania Department of Education, which distributes the various federal grants, reports that SDP received the following amounts from typical federal grants:³⁹⁴

Title I: \$174 million

Title II: \$10 million

Title III: \$4 million

Title IV: \$12 million

Despite receiving millions in federal funds, SDP students are not performing well. A major reason could be the time and money the district spends on initiatives that are outright ineffective, that are biased, or that simply do not have enough evidence to justify their implementation.

387 Danny Freeman and Claudia Vargas, "From 2018 to 2022, Philly Schools Have Had More Than 300 Lockdowns," *NBC10*, November 22, 2022, <https://www.nbcphiladelphia.com/investigators/from-2018-to-2022-philly-schools-have-had-more-than-300-lockdowns/3432298/>.

388 Cheryl Mettendorf, "Data Shows Uptick in Violence Against Pennsylvania Teachers in Classroom," *ABC6*, June 25, 2024, <https://6abc.com/post/pennsylvania-department-education-data-shows-uptick-violence-teachers/15000047/>.

389 "'There Will Be No Teachers Left': Educators in Philadelphia Talk about Quitting, School Violence and Paying for Classroom Supplies," *NBC10*, November 11, 2019, <https://www.nbcphiladelphia.com/investigators/you-basically-have-no-say-until-now-teachers-in-philadelphia-talk-on-quitting-school-violence-and-paying-for-classroom-supplies/2153166/>.

390 Ed Fuller, "Where Did They Go? Teacher Attrition in Philadelphia County (2018–2022)," Center for Education Evaluation and Policy Analysis, February 8, 2024, <https://ceepablog.wordpress.com/2024/02/08/where-did-they-go-teacher-attrition-in-philadelphia-county-2018-2022/>.

391 Dale Mezzacappa, "Philly Needs to Hire More Than 450 Teachers, with the Worst Shortage in Special Ed," *Chalkbeat*, June 24, 2024, <https://www.chalkbeat.org/philadelphia/2024/06/24/teacher-shortage-special-education-recruitment-event/#:~:text=And%20the%20vacancies%20now%20don,quit%20their%20jobs%20in%202022.>

392 "School Profiles."

393 "Fast Facts."

394 "2023–2024 Allocations," Pennsylvania Department of Education, <https://www.education.pa.gov/Teachers%20-%20Administrators/Federal%20Programs/Fiscal/Pages/20232024Allocations.aspx>.

Despite receiving millions in federal funds, SDP students are not performing well. A major reason could be the time and money the district spends on initiatives that are outright ineffective, that are biased, or that simply do not have enough evidence to justify their implementation.

Policies

SDP would have had radical impulses even without federal intervention. Philadelphia, for example, seems to have begun the disassembly of school discipline on the grounds of “disparate impact” in 2012—two years before the United States Department of Education (ED) issued its Dear Colleague Letter (DCL) stating that racially “disproportionate” school discipline could be a civil rights violation.³⁹⁵ (A 2012 ED study on ‘racially disproportionate’ school discipline might have played a role in Philadelphia’s contemporaneous decision, but the chronology still likely precludes direct ED influence on Philadelphia.³⁹⁶)

In 2012, Philadelphia Public Schools approved a new Code of Conduct, which eliminated zero tolerance discipline policies across the district. ... In addition to addressing practices related to suspension and expulsion, Philadelphia Public Schools adopted a program in July 2014 aimed toward decreasing student arrests, which totaled 1,600 in 2013. ... Thus, the Philadelphia Public Schools, the Philadelphia Police Department, the Philadelphia Juvenile Court, and the Department of Human Services collaborated to form a program to combat student arrests and the school-to-prison pipeline. ... The program allows students without a criminal record to enroll in an alternative discipline program in lieu of an arrest.³⁹⁷

395 Max Eden, “Enforcing Classroom Disorder: Trump Has Not Called Off Obama’s War on School Discipline,” Manhattan Institute, August 13, 2018, <https://manhattan.institute/article/enforcing-classroom-disorder-trump-has-not-called-off-obamas-war-on-school-discipline>.

396 “New Data from U.S. Department of Education Highlights Educational Inequities around Teacher Experience, Discipline and High School Rigor,” March 6, 2012, http://www.elegantbrain.com/edu4/classes/readings/depository/edu/dep_edu_report_race_edu.pdf.

397 Kelly Capatosto, *School Discipline Policy: Updates, Insights, and Future Directions*, Kirwan Institute for the Study of Race

SDP now “is committed to achieving educational equity and reducing disproportionality in exclusionary discipline.”³⁹⁸

ED's DCL hardwired Philadelphia's policy; ED grants have reinforced Philadelphia's policy yet further. In 2023, for example,

the Philadelphia School District has won a \$3.97 million grant from the U.S. Department of Education to expand a program aimed at community-building and restorative justice as a way to enhance school climate and academics. ... The funds come from the federal Education Department's Education Innovation and Research program, designed to support programs that “help solve education's most pressing problems.”³⁹⁹

The Education Innovation and Research (EIR) program is “designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students.”⁴⁰⁰ The ED grant money was awarded for the Relationships First (RF) program, which subsidizes Philadelphia policy by supporting “restorative justice” programs:

Relationships First currently serves about 30,000 students in 65 schools. Expanding the program will extend coaching, training, and implementation to an additional 40,000 students in an additional 72 schools. Schools can implement the three tiers of support to meet the needs of all students based on their school community:

- Tier 1 activities benefit the entire school community, and include proactive measures designed to build trust and improve relationships. These include Community-Building Circles and Restorative Conversations.
- Tier 2 supports include harm and healing circles, which help resolve conflicts peacefully and prevent further issues.
- Tier 3 activities include targeted circle-based interventions for students needing intensive support. This includes students experiencing behavioral challenges and those entering or re-entering the school community.⁴⁰¹

and Ethnicity, June 2015, 10, <https://kirwaninstitute.osu.edu/sites/default/files/documents/School-Discipline-Policy-Updates-Insights-and-Future-Directions.pdf>.

398 Tony B. Watlington Sr., *Code of Conduct 2022–2023*, School District of Philadelphia, 15, <https://www.philasd.org/school-board/wp-content/uploads/sites/892/2022/09/Code-of-Conduct-2022-2023.pdf>.

399 Kristen A. Graham, “Philly Schools Are Getting \$4 Million for Program That Favors Community-Building Over Punitive Discipline,” *Philadelphia Inquirer*, January 31, 2023, <https://www.inquirer.com/news/philadelphia-school-district-relationships-first-grant-discipline-20230131.html>.

400 “Education Innovation and Research,” Office of Elementary and Secondary Education, U.S. Department of Education, <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/>.

401 “SDP Awarded \$3.9M from the US Department of Education for ‘Relationships First,’” School District of Philadelphia, January 25, 2023, <https://www.philasd.org/blog/2023/01/25/sdp-awarded-3-9m-from-the-us-department-of-education-for-relationships-first/>.

RF is the district’s approach to student discipline, which emphasizes discussion and remediation over punitive measures. RF falls under the broader umbrella of “restorative justice” practices, which aim to reduce racial disparities in school disciplinary procedures. ED’s grant expands the RF program from 65 to 72 schools in the district, affecting 40,000 students.⁴⁰²

SDP’s research proposal already reveals a progressive ideological agenda. SDP claims that RF helps high-need students, and it defines “high-need” students as those “whose personal and/or familial circumstances have been negatively impacted by historical marginalization, structural racism, and/or economic inequity.” This definition assumes that racism is the only factor behind the poor conditions of students and excludes other factors such as poverty, poor schooling, individual decisions, and so forth. In a section called “Quality of Project Personnel,” SDP lists an individual who is a “long-time social justice activist.” SDP also lists a person with previous experience working for the California-based social justice group Restorative Justice for Oakland Youth. Two out of the three ED grant evaluators did not notice any weaknesses in the quality of project personnel. One evaluator did notice a weakness in the personnel quality—namely, that SDP hadn’t included “their current staff demographics which would demonstrate their current practice of attracting employees from underrepresented groups.” SDP’s independent evaluator for the project is Philadelphia-based Research for Action, a group that conducts “education research for racial and social justice.”⁴⁰³

But the failures of that policy are significantly Philadelphia’s. Early critiques of criminally lax school discipline policies focused on Philadelphia because the consequences of such policies were apparent earlier than in school districts that changed policy because of the 2014 DCL.⁴⁰⁴ These consequences included reduced academic achievement,⁴⁰⁵ increasing truancy rates, and student indiscipline so severe that teachers in SDP have been leaving the system at extremely high rates.

During my first two years at McDaniel Elementary, I have witnessed some terrible and tragic things — countless staff leaving and violence between students, toward staff, and from outside adults attacking students.⁴⁰⁶

402 “SDP Awarded \$3.9M from the US Department of Education for ‘Relationships First.’”

403 “Relationships First: Scaling Up a Multi-Tiered Schoolwide Restorative Approach in the School District of Philadelphia,” School District of Philadelphia, 2022, https://oese.ed.gov/files/2022/12/S411C220120_The-School-District-of-Philadelphia_Narrative.pdf; “U.S. Department of Education - EDCAPS G5-Technical Review Form (New) - Application #S411C220120 TRF,” https://oese.ed.gov/files/2022/12/S411C220120_The-School-District-of-Philadelphia_TRF.pdf; “About Us,” Research for Action, <https://www.researchforaction.org/mission-history/>.

404 Matthew P. Steinberg and Johanna Lacoë, *The Academic and Behavioral Consequences of Discipline Policy Reform: Evidence from Philadelphia*, Thomas B. Fordham Institute, December 2017, <https://stopradicaled.com/wp-content/uploads/2020/10/The-Academic-and-Behavioral-Consequences-of-Discipline-Policy-Reform-Evidence-from-Philadelphia.pdf>; Max Eden, “Exclusive: How Safe Are Philadelphia’s Schools? New Interactive Map Shows Discipline Reform Has Created a School Climate Catastrophe,” *The 74*, January 17, 2018, <https://www.the74million.org/article/exclusive-how-safe-are-philadelphias-schools-new-interactive-map-shows-discipline-reform-has-created-a-school-climate-catastrophe/>.

405 Max Eden, “Philly Schools Tormented by Decision to Reduce Suspensions,” *Manhattan Institute*, December 27, 2017, <https://manhattan.institute/article/philly-schools-tormented-by-decision-to-reduce-suspensions>.

406 Brian Gallagher, “Teaching at a Philly School Left Me So ‘Utterly Broken’ I Had to Quit,” *Philadelphia Inquirer*, November 26, 2019, <https://www.inquirer.com/opinion/commentary/philadelphia-school-district-teacher-quit-testimony-20191126.html#loaded>.

Things were rocky for months, but the height of the crescendo hit this music teacher's school year when he was assaulted and chased out of the school building by a student. He never returned to work; he didn't feel safe, and his administration could not guarantee that the student would be removed from the school.⁴⁰⁷

One of Posnan's students put his name on a "kill list," which a team of district staff deemed a credible threat, and there still was a dispute over whether the student had the right to return to Conwell. (The student ultimately did not.)⁴⁰⁸

As even the rose-glassed *Philadelphia Inquirer* recognized,

Educators across the city say that they are hampered by district policies and procedures, and that a well-intentioned move away from reactive and exclusionary student discipline has not been replaced with meaningful alternatives systemwide. ... "Restorative justice can only go so far," the South Philadelphia educator said. "If kids are bullying each other, harassing each other, you mediate it, but if the bullying and harassment continues, you can't keep doing that. What's plan B? We don't have a plan B."⁴⁰⁹

All this, it should be emphasized, is a disaster. But it is a disaster of Philadelphia's own making, not one imposed by ED.

In any case, certain lax school discipline policies have arisen from IDEA legislation, and consequent lawsuits, rather than from SDP's embrace of disparate impact theory.

The School District of Philadelphia filed a lawsuit on Friday in Pennsylvania Eastern District Court under the Individuals with Disabilities Education Act. The case arises from an incident at Girard Academic Music Program where a freshman discharged pepper spray in a classroom; according to the complaint, a hearing officer ruled that the school could not discipline the student because her discharge of the pepper spray was a manifestation of ADHD and depression. The suit, brought by Fox Rothschild, seeks a declaration that the incident was not a manifestation of ADHD or depression and that the school may proceed with a disciplinary hearing.⁴¹⁰

407 Kristen A. Graham, "'I'm Never Going Back': Philly Teachers on Why There's a Surge in Midyear Resignations," *Philadelphia Inquirer*, March 4, 2022, <https://www.inquirer.com/news/philadelphia-teacher-shortage-turnover-burnout-quitting-20220304.html#loaded>.

408 Kristen A. Graham, "These Philadelphia Teachers Considered Leaving the Profession. Here's Why They Decided to Stay or Go," *Philadelphia Inquirer*, June 4, 2023, <https://www.inquirer.com/news/philadelphia-teacher-quitting-attrition-rate-20230604.html#loaded>.

409 Kristen A. Graham, "Safety Concerns Are Widespread in Philly Schools. Staff Say the District's Policies Are in Part to Blame," *Philadelphia Inquirer*, December 9, 2022, <https://www.inquirer.com/education/dobbins-philadelphia-school-district-discipline-behavior-20221209.html#:~:text=Safety%20concerns%20are%20widespread%20in,been%20replaced%20with%20meaningful%20alternatives>.

410 "Phila. School District Files Suit Seeking to Discipline Student Who Claimed ADHD Led Her to Discharged Pepper Spray in Classroom," *The Legal Intelligencer*, August 8, 2023, <https://www.law.com/thelegalintelligencer/2023/08/08/phila-school-district-files-suit-seeking-to-discipline-student-who-claimed-adhd-led-her-to-discharged-pepper-spray-in-classroom/>.

We should note here that Philadelphia, like many other school districts, had instituted a “zero-tolerance” school discipline policy in 2002.⁴¹¹ These new policies, instituted in the 1990s and 2000s, were responding to previous policies of more lenient school discipline, which had been associated with astonishingly poor academic results. Philadelphia’s invocation of “disparate impact,” as in ED’s DCL, was a response to this previous generation of school discipline policies. On the whole, we believe the “zero-tolerance” policies had better results. But Philadelphia, like many other localities, could *choose* which policies it preferred. ED’s policies took this choice away. Should Philadelphia’s citizens and policymakers decide that they want to reverse their unwise school discipline policies, ED policy now makes such a reversal impossible.

SDP might also have created new “gender-identity” policies on its own; Philadelphia policymakers have been reasonably enthusiastic for such policies (see School District of Philadelphia Policy Sections 102 (August 2004), 248–49 (September 2010); City of Philadelphia Bill No. 130224 (April 2013)), and current SDP policies conform to city law.⁴¹² But Philadelphia’s current gender-identity policy was enacted in June 2016 in the wake of ED policies declaring that sex discrimination covered “gender identity”:

Additionally, the U.S. Departments of Education and Justice have stated that under Title IX, “discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex” and asserted a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination in public schools.⁴¹³

Current Philadelphia gender-identity policy hews closely to ED priorities:

Names/Pronouns

A student has the right to be addressed by a name and pronoun that corresponds to the student’s gender identity. ...

Gender-neutral Language

To the extent possible, schools should use gender-neutral language in written communication with all students and families, regardless of student’s gender identity. This included employing “they” (singular) instead of “he/she.” ...

411 Paul Socolar, “Zero Tolerance Kicks In,” *Chalkbeat*, November 27, 2002, <https://www.chalkbeat.org/philadelphia/2002/11/27/22184833/zero-tolerance-kicks-in/>.

412 “Policy 252: Transgender and Gender Non-Conforming Students,” School District of Philadelphia, <https://vaux.philasd.org/wp-content/uploads/sites/738/2021/09/Policy-252.pdf>.

413 “Policy 252: Transgender and Gender Non-Conforming Students,” School District of Philadelphia; “Policy 252: Reference Guide,” School District of Philadelphia, <https://www.philasd.org/studentrights/wp-content/uploads/sites/67/2023/10/Policy-252-Reference-Guide-1.pdf>.

Restroom Access

Students shall have access to the restroom that corresponds to their gender identity. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to a single stall restroom, but no student shall be required to use such a restroom.

Locker Room Access

Students shall have access to the locker room that corresponds to their gender identity. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative changing area such as the use of a private area. Any alternative arrangement should be provided in a way that protects the student's ability to keep their transgender identity confidential.

Physical Education Classes & Intramural Sports

Transgender and gender nonconforming students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity.

Interscholastic Competitive Sports Teams

Participation in competitive athletic activities and contact sports will be resolved on a case-by-case basis.⁴¹⁴

Further Philadelphia “gender-identity policies” also hew closely to ED priorities, such as those extending the use of “non-binary gender options” within SDP—which, in some cases, do not require parental consent—and furthering “gender-identity” protections.⁴¹⁵ Philadelphia remains a more willing participant than other Pennsylvania school districts, most of which have been less enthusiastic about introducing “gender-identity” policies: “Out of 440 [Pennsylvania] school districts [using the web portal BoardDocs, about 88% of the state’s districts], only 36 districts (8%) had policies that included the word ‘transgender’ somewhere in the text.”⁴¹⁶ Yet here, too, Philadelphia’s citizens and policymakers no longer have a choice regarding “gender-identity” policies. These must be retained under threat of lawsuit.

414 “Policy 252: Transgender and Gender Non-Conforming Students, School District of Philadelphia.”

415 “The District to Offer A Non-Binary Gender Option for Students in Infinite Campus,” December 9, 2021, <https://www.philasd.org/blog/2021/12/09/selectnonbinaryoption/>; Talia Wise, “Philadelphia School District Allows Kids to Go ‘Non-binary’ without Parental Consent,” *CBN*, December 16, 2021, <https://www2.cbn.com/news/us/philadelphia-school-district-allows-kids-go-non-binary-without-parental-consent>; “City Expands Protections for Transgender and Gender Nonconforming Youth,” Philadelphia Commission on Human Relations, Office of LGBTQ+ Affairs, City of Philadelphia, July 19, 2022, <https://www.phila.gov/2022-07-19-city-expands-protections-for-transgender-and-gender-nonconforming-youth/>.

416 Chris Ullery and Bethany Rodgers, “These Pennsylvania School Districts Have Enacted Transgender Student Protection Policies,” *PhillyBurbs.com*, November 13, 2023, <https://www.phillyburbs.com/story/news/education/2023/11/13/pa-school-districts-trans-gender-noncoforming-student-protection-policies/71332323007/>.

SDP's policies do not seem to have inhibited a wave of antisemitic harassment by students and teachers in 2023–2024.⁴¹⁷ For example,

several SDP teachers and administrators have used their platform within the district to distribute antisemitic content, including professional development classes and lectures in which “Zionists” were referred to as “exterminators,” and to create a hostile environment for Jewish students. Among other things, these SDP teachers have also used their publicly available social media feeds—which are a virtual extension of their classrooms—to spread hateful antisemitic tropes, as well as virulently anti-Israel and anti-“Zionist” messages.⁴¹⁸

Neither SDP nor ED seem to have made a priority of preventing this particular type of discriminatory behavior.

SDP, meanwhile, both benefits and suffers financially from federal intervention. SDP is a net beneficiary of federal funds—but it has had to establish a remarkably extensive bureaucracy, centered in its Office of Federal Programs, to secure as many federal funds as possible, execute the grants, and ensure compliance with federal requirements.⁴¹⁹ SDP’s “Policies and Procedures” webpage, with its formidably lengthy catalogue of documents and requirements, gives a sense of the complexity of the district’s compliance for any grant, federal, state, or private.⁴²⁰ SDP must then select grants to apply for, even as it suffers major losses. SDP secured \$29.5 million over 7 years for a Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant;⁴²¹ it might have done better simply to employ

SDP’s policies do not seem to have inhibited a wave of antisemitic harassment by students and teachers in 2023–2024.

417 Michael Rubinkam, “Antisemitism Runs Rampant in Philadelphia Schools, Jewish Group Alleges in Civil Rights Complaint,” *Associated Press*, July 23, 2024, <https://apnews.com/article/philadelphia-school-district-antisemitism-complaint-2f0ad-56849a91c66033853a3433bddec>.

418 “ADL Files Title VI Complaint Against School District of Philadelphia, Charging Severe Climate of Antisemitic Bullying and Harassment,” Anti-Defamation League, July 23, 2024, <https://www.adl.org/resources/press-release/adl-files-title-vi-complaint-against-school-district-philadelphia-charging>. See also, David Swindle, “Philadelphia Teacher ‘Reassigned Offsite’ While Public School District Investigates Alleged Jew-Hatred,” *Jewish News Syndicate*, September 6, 2024, <https://www.jns.org/philadelphia-teacher-reassigned-offsite-while-public-school-district-investigates-alleged-jew-hatred/>.

419 “Financial Services,” School District of Philadelphia, <https://www.philasd.org/finance/#grantcompli>; “Federal Programs,” Philadelphia Public School District, https://www.phillytornadoes.com/apps/pages/index.jsp?uREC_ID=1586248&-type=d&pREC_ID=1727883.

420 Policies and Procedures, Office of Grant Compliance & Fiscal Services, <https://www.philasd.org/grantcompliance/policies-and-procedures-2/>.

421 “\$29.5M ‘GEAR UP’ Grant Awarded to School District of Philadelphia,” School District of Philadelphia, January 18, 2022, <https://www.philasd.org/blog/2022/01/18/gearupgrant2021/>.

more elementary school teachers. We cannot say how SDP would have chosen to direct funding if it had full control over the funds it received. But as it is, SDP must go through elaborate efforts to secure funds that meet federal priorities, not its own.

SDP suffers further fiscal harassment from federal civil rights law. In 2012, the district suffered a complaint to the U.S. Department of Education's Office of Civil Rights when it attempted to close schools to save money:

Seeking a moratorium on dozens of planned school closings, community organizing group Action United filed a federal civil rights complaint Wednesday against the School District of Philadelphia.

The eight schools approved for closure last spring serve a disproportionately high percentage of African-American students, resulting in a negative "disparate impact" on the city's African-American communities, argued Action United member Theodore Stones during a Wednesday morning rally outside district headquarters.⁴²²

Even SDP's COVID-19 vaccine policy was opposed on grounds of civil rights violations, since forced vaccination had a disparate impact on black employees.⁴²³ SDP's immoral, ineffective, and coercive COVID-19 vaccine policy deserved opposition on far stronger grounds, but even praiseworthy stances in local education now find legal articulation in terms of federal civil rights law.

SDP, meanwhile, suffers from IDEA's unfunded mandate of special education funding: in 2022, special education expenses in the district were \$862 million, which was 25% of operating revenue and only approximately equal to the total federal aid received that year due to the temporary \$369 million received in federal COVID-19 aid.⁴²⁴ Pennsylvania state policies exacerbated these financial effects: to prevent school districts from inflating the number of claimed special education students, and thereby raising the amount of federal funds they received, Pennsylvania put a cap on the proportion of students who would be regarded as having special needs.⁴²⁵ Philadelphia actually had a higher proportion of special education students. Federal and state policies combined to put severe financial constraints on SDP. The district's underfunding of regular education must be considered in the light of the federal mandate to spend substantially for special education.

Philadelphia also funds programs guilty of discriminatory behavior, such as the School Resource Academies:

422 "Civil Rights Complaint Filed over Philadelphia School Closings," WHYY, October 3, 2012, <https://whyy.org/articles/community-group-files-civil-rights-complaint-over-school-closings/>.

423 "Employees Claim Private School Discriminated against Them Based on Religion, Race, and Disability Due to School's COVID-19 Vaccine Policy," LCW, August 31, 2023, <https://www.lcwlegal.com/news/employees-claim-private-school-discriminated-against-them-based-on-religion-race-and-disability-due-to-schools-covid-19-vaccine-policy/>.

424 "Philadelphia School District, PA," Credit Opinion, Moody's Investors Service, June 29, 2023, 4, <https://www.philasd.org/finance/wp-content/uploads/sites/789/2023/06/MoodysReportPhISchoolDistrict2023.pdf>.

425 Chris Satullo, "How Is Special Education Paid for in Pennsylvania Public Schools?," WHYY, April 29, 2015, <https://whyy.org/articles/how-is-special-education-paid-for-in-pennsylvania-public-schools/>.

We aspire to create a fundraising environment that empowers school leadership and communities to prioritize specific classroom needs that will help to foster equitable learning spaces for all students, especially students of color, students with disabilities and English language learners (ELL). ... Addressing racist practices. We believe that every student should be given the opportunity to reach their fullest potential; this means providing equitable resources, including but not limited to school community fund development training.⁴²⁶

Participants will have the opportunity to choose speaker topics to discuss issues affecting their school communities—i.e. environmental justice, food access, redlining, etc.⁴²⁷

Title II grants, which support professional development for educators, require activities, strategies, or interventions that are evidenced-based or that demonstrate “a statistically significant effect on improving student outcomes or other relevant outcomes.”⁴²⁸ Yet SDP used some of the funds to train teachers in Illustrative Mathematics, a math curriculum with little proof of effectiveness.⁴²⁹ Founded by Common Core math standards writer William McCallum, Illustrative Mathematics focuses on discussion to solve math problems. Teachers and education researchers have pointed out that such a curriculum may not be suitable for students who are struggling with the vocabulary or behind on math skills.⁴³⁰

Part of the problem is the federal government’s definition of what constitutes high-quality evidence in the first place. Federal law includes correlational studies and programs that have received “positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.”⁴³¹ The definition encompasses too many kinds of research, which allows schools to spend money on programs with no guarantee of effectiveness.

An investigation into SDP’s recent five-year strategic plan, for instance, found that the district often cited weak forms of evidence for school safety initiatives. Only 4 out of 44 research papers were high-quality studies that measured causality, a key factor for knowing which policies will be effective. SDP often relied on cross-sectional studies, which makes evidence strictly correlational. SDP “could be spending significant amounts of time and money

426 “School Resource Academy SY 2024–2025,” Office of Grant Development, School District of Philadelphia, <https://www.philasd.org/grants/school-resource-academy/>.

427 “School Resource Academy,” School District of Philadelphia, https://www.philasd.org/grants/wp-content/uploads/sites/61/2022/07/SY22_23_School-Resource-Academy-Full-Descrip_WEBSITE-VERSION.pdf.

428 “Title II, Part A Overview,” U.S. Department of Education, March 27, 2024, <https://oese.ed.gov/files/2024/04/Navigating-Title-IIA-March-2024.pdf>.

429 Compliance monitoring documents obtained through public records requests: <https://www.education.pa.gov/Teachers%20-%20Administrators/Federal%20Programs/Monitoring/Pages/default.aspx>.

430 Leonie Haimson and Daniel Alicia, “Talk Out of School: NYC New Math Curriculum & the Common Core Standards,” *Talk Out of School*, podcast, July 14, 2024, <https://thewire.educators.nyc/p/talk-out-of-school-nyc-new-math-curriculum>; Michael Elsen-Rooney, “NYC’s New Algebra Curriculum Mandate Divides Educators,” *Chalkbeat*, November 10, 2023, <https://www.chalkbeat.org/newyork/2023/11/10/high-school-algebra-curriculum-mandate-divides-teachers/>.

431 Every Student Succeeds Act, <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.

on safety strategies that, at best, are unproven and, at worst, do not work.” Indeed, SDP spent \$14 million on school security equipment based on one cross-sectional study and advertisements, even as higher quality research found that school security equipment alone did not reduce crime.⁴³²

Conclusion

SDP suffers from progressive policies, both homegrown and adopted under federal pressure. It also suffers from using federal monies for programs with no proven return on investment. Too much of SDP is counterproductive or ineffective—and ED policies and funding contribute to the district's woes.

432 Neetu Arnold, “Philly Schools May Not Be ‘Following the Research’ on School Safety,” *RealClearPennsylvania*, February 26, 2024, https://www.realclearpennsylvania.com/articles/2024/02/26/philly_schools_may_not_be_following_the_research_on_school_safety_1014373.html.

Conclusion

Ashland, Winchester, and Philadelphia register a progression of school districts that are increasingly harmed by federal policies. Some of their variation registers local preference. But it would be wiser to regard these school districts as registering the stages of increasing influence by ED, and above all by OCR. What Philadelphia is now, Winchester will be in ten years, and Ashland in twenty. America's principles of local control have slowed the rate of destruction imposed by ED and OCR. But they cannot prevent the constant erosion of local school districts' ability to educate their students properly, absent systematic reform of ED.

Our case studies demonstrate the need for systematic, prudent reform of the United States Department of Education.

A ROADMAP TO REFORM

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Programmatic Structure: A Roadmap to Reform

ED includes more than 200 programs, but a large majority of its expenditures fall into relatively few categories. In 2024, the [Education Department’s Annualized CR](#) (Continuing Resolution) was \$79,593,262,000. Of that amount approximately \$18 billion went to aid local educational agencies (LEAs) via Title I spending. Another \$14 billion went to aid special education—education for handicapped children. A further \$29 billion provided Pell Grants for students to attend higher education. These three expenditures alone, in other words, accounted for about \$61 billion of the ED budget, or approximately three-quarters of the whole. Federal student loans accounted for another \$106 billion—which, thanks to abuses by ED, effectively have been partly converted into grants by means of blatantly illegal “loan forgiveness.” The vast majority of ED funding comprises these four pots of money. The hundreds of other programs take up no more than about \$18 billion of the ED budget.

We recommend, therefore, that ED retain these four major financial commitments, in simpler and more accountable form. We make detailed recommendations for eliminating or transferring to other departments most of the many other programs that make up the remaining \$18 billion of the ED budget. We further recommend that the strategic focus for the short-term reform of ED’s programmatic structure be to drastically reduce the number of separate programs but to retain the bulk or (if necessary) the entirety of current ED spending within a few core programs.

We will repeat the phrase “small, bureaucratic, and ineffective” throughout *Programmatic Structure: A Roadmap to Reform*, generally before recommending that programs be eliminated. The diagnosis is the same for program after program throughout ED.

If and when ED spending is simplified in this manner, education reformers will be in a stronger position to make the case for more thorough reform—whether to convert existing programs into block grants to the states, or to eliminate ED entirely. We believe this simplification to be both good in itself and a practical prerequisite for further reform.

English Language Acquisition

2024 ANNUALIZED CR: \$890,000,000

Office of English Language Acquisition

The Office of English Language Acquisition (OELA) poses a quandary to education reformers. On the one hand, it is a vital American interest that everyone in the country speak English, so as to hasten the assimilation of immigrants into the American nation. On the other hand, ED's English language acquisition programs have often supported "bilingual education" and other pedagogies that actively retard learning English. Such programs also effectively serve as a subsidy for illegal aliens, since there are no limits to who qualifies for them.

ED, furthermore, has begun to abandon its institutional focus on English acquisition. OELA now contains an Office of Multilingual Initiatives, and "the Budget proposes a name change to the Office of English Language Acquisition to the Office of Multilingual and English Learners."⁴³³ There *should* be an Office of English Language Acquisition—but only if it is thoroughly reformed to support English language acquisition, and not to serve as a subsidy for illegal aliens.

Recommendations

- OELA should eliminate the Office of Multilingual Initiatives. The Office of English Learners, which will then be the entirety of the Department, can also be eliminated, and the three programs cited below for retention can be administered directly by OELA.
- Policymakers should relocate the [Native American and Alaska Native Children in School Program](#) to the [Department of the Interior's Bureau of Indian Education](#).
- Policymakers should focus OELA programs upon English language acquisition. OELA therefore should retain the following three programs:

[English Language Acquisition State Grants – Title III, Part A](#)
[National Clearinghouse for English Language Acquisition](#)
[National Professional Development Program](#)

- Policymakers should relocate this program to OELA: School Support & Accountability, [English Language Acquisition – Title III, Part A](#).
- Policymakers should overturn *Plyler v. Doe* (1982) and specify that only citizens and legal residents may be included in calculations of formula grants or receive monies or other benefits from any OELA programs.

⁴³³ *Fiscal Year 2025 Budget Summary*, U.S. Department of Education, 9, <https://www2.ed.gov/about/overview/budget/budget25/summary/25summary.pdf>.

- Policymakers should condition the continued funding of OELA on concrete, detailed, and objective goals for outcomes for English language acquisition in programs funded by OELA. Should OELA-funded programs fail to meet these outcome goals in 5-10 years, policymakers should eliminate OELA.

Special Education

Office of Special Education and Rehabilitative Services

The Office of Special Education and Rehabilitative Services is responsible for IDEA spending, above all for special education (ca. \$14 billion) and rehabilitative services (ca. \$4 billion). We will address Rehabilitative Services first, since it simply does not belong in ED and should be transferred to a different cabinet department.

Rehabilitative Services

2024 ANNUALIZED CR: \$4,397,033,000

Rehabilitation Services Administration

The “Rehabilitative Services” half of this office does not belong in ED. Save for a few individual programs, noted below, its programs do not concern students and fund rehabilitation rather than education.

When the federal government established spending for special education and rehabilitation services, the Department of Health, Education, and Welfare held responsibility for both health and education, so it did not matter where precisely the Rehabilitation Services Administration was located. Since ED is now separate from the Department of Health and Human Services (HHS), Rehabilitative Services should be relocated to HHS.

The administrative unit of Rehabilitative Services, including the following programs, should be relocated to HHS, either as its own unit or as a component of the Administration for Community Living, which already operates programs to aid Americans with disabilities.

- Disability Employment Programs
 - State Vocational Rehabilitation Services Program
 - State Supported Employment Services Program
 - American Indian Vocational Rehabilitation Services
 - Randolph-Sheppard Vending Facility Program
- Advocacy Programs
 - Client Assistance Program
 - Protection and Advocacy of Individual Rights
- Independent Living Program
 - Independent Living Services for Older Individuals Who Are Blind
- Technical Assistance Centers
 - American Indian Vocational Rehabilitation Training and Technical Assistance Center
 - Older Individuals who are Blind Training and Technical Assistance Center
 - Vocational Rehabilitation Technical Assistance Center for Quality Management
 - Vocational Rehabilitation Technical Assistance Center for Quality Employment
- Training Programs

- [Rehabilitation Training - Long-Term](#)
- [Rehabilitation Training - Short-Term](#)
- [Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind](#)
- [Innovative Rehabilitation Training](#)
- [National Clearinghouse of Rehabilitation Training Materials](#)
- Disability Innovation Fund Programs
 - [84.421C: DIF - Career Advancement](#)
 - [84.421D: DIF - Subminimum Wage to Competitive Integrated Employment](#)
 - [84.421E: DIF - Pathways to Partnerships](#)
- Underserved Populations
 - [Activities for Underserved Populations](#)
- Special Institutions
 - [Helen Keller National Center](#)

We do not possess expertise on rehabilitative services, so we will not generally recommend cutting any individual program—although the proliferation of programs suggests that some could be amalgamated or eliminated.

If ED does retain Rehabilitative Services, [American Indian Vocational Rehabilitation Services](#) and the [American Indian Vocational Rehabilitation Training and Technical Assistance Center](#) should be relocated to the [Department of the Interior's Bureau of Indian Education](#).

[Activities for Underserved Populations](#), meanwhile, reserves “one percent of funds appropriated each year for programs under titles III, VI and VII to provide grant, contract or cooperative agreement awards” for “minority entities and Indian tribes.” This program will serve to fund race discrimination; wherever it is located, it should be eliminated entirely.

Several programs within Rehabilitative Services focus on education rather than rehabilitation. The following programs should be retained in a renamed and more narrowly focused Office of Special Education.

- Technical Assistance Centers
 - [National Technical Assistance Center on Transition for Students with Disabilities: The Collaborative](#)
- Training Programs
 - [Braille Training](#)
 - [Parent Information and Training](#)

- Disability Innovation Fund Programs
 - [84.421F: DIF - Creating a 21st Century Workforce of Youth and Adults with Disabilities Through the Transformation of Education, Career, and Competitive Integrated Employment](#)
- Special Institutions
 - [American Printing House for the Blind](#)
2024 ANNUALIZED CR: \$43,431,000
 - [Gallaudet University](#)
2024 ANNUALIZED CR: \$165,361,000
 - [National Technical Institute for the Deaf](#)
2024 ANNUALIZED CR: \$92,500,000
- Transition Steering Committee
 - [OSERS Transition Activities](#)

Recommendations

- The administrative unit of Rehabilitative Services, including a majority of its programs, should be relocated to the Department of Health and Human Services, either as its own unit or as a component of the Administration for Community Living, which already operates programs to aid Americans with disabilities.
- A minority of programs should be retained in a renamed and more narrowly focused Office of Special Education.
- If ED does retain Rehabilitative Services, American Indian Vocational Rehabilitation Services and the American Indian Vocational Rehabilitation Training and Technical Assistance Center should be relocated to the Bureau of Indian Education.
- Activities for Underserved Populations will serve to fund race discrimination; wherever it is housed, it should be eliminated entirely.

Special Education

2024 ANNUALIZED CR: \$15,453,264,000

OSEP (Office of Special Education Programs) Programs and Projects

A bipartisan majority of American policymakers and the public support the federal funding of special education. ED therefore should retain responsibility for special education as one of its core missions. The first step to establish ED accountability for special education is to collect all the special education programs scattered throughout ED—for K–12 education, postsecondary education, and research—into one focused Office of Special Education, which should replace the current Office of Special Education and Rehabilitative Services.

ED's budgetary lines for Special Education do not map neatly onto OSEP's tangle of programs. These budgetary lines include:

2024 ANNUALIZED CR	
Grants to states	\$14,193,704,000
Preschool grants	\$420,000,000
Grants for infants and families	\$540,000,000
State personnel development	\$38,630,000
Technical assistance and dissemination	\$45,345,000
Personnel preparation	\$115,000,000
Parent information centers	\$33,152,000
Educational technology, media, and materials	\$31,433,000
Special Olympics education programs	\$36,000,000

The Office of Special Education should retain as its core the following programs, which include the grants to states (\$14,193,704,000), preschool grants (\$420,000,000), and grants for infants and families (\$540,000,000) that make up more than 98% of the ED special education budget.

- IDEA Formula Grant Programs, Part B Formula Grants
 - [Preschool Grants](#)
 - [Grants to States](#)
- IDEA Formula Grant Programs, Part C Formula Grants
 - [Early Intervention Program for Infants and Toddlers with Disabilities](#)
- IDEA Discretionary Grant Programs, IDEA Part B
 - [Technical Assistance on State Data Collection](#)
- IDEA Discretionary Grant Programs, IDEA Part D

- [State Personnel Development Grants](#)
- [Personnel Development to Improve Services and Results for Children with Disabilities](#)
- [Technical Assistance and Dissemination](#)
- [Educational Technology, Media, and Materials for Individuals with Disabilities](#)
- [Parent Training and Information Centers](#)

The following programs also should be relocated within the Office of Special Education:

Rehabilitative Services

- Technical Assistance Centers
 - [National Technical Assistance Center on Transition for Students with Disabilities: The Collaborative](#)
- Training Programs
 - [Braille Training](#)
 - [Parent Information and Training](#)
- Disability Innovation Fund Programs
 - [84.421F: DIF - Creating a 21st Century Workforce of Youth and Adults with Disabilities Through the Transformation of Education, Career, and Competitive Integrated Employment](#)
- Special Institutions
 - [American Printing House for the Blind](#)
2024 ANNUALIZED CR: \$43,431,000
 - [Gallaudet University](#)
2024 ANNUALIZED CR: \$165,361,000
 - [National Technical Institute for the Deaf](#)
2024 ANNUALIZED CR: \$92,500,000
- Transition Steering Committee
 - [OSERS Transition Activities](#)

Impact Aid Program

- [Payments for Federally Connected Children](#)
- Payments for children with disabilities
2024 ANNUALIZED CR: \$48,316,000

Postsecondary Education

- Institutional Service

- [Fund for the Improvement of Postsecondary Education](#)
- [National Center for Information and Technical Support for Postsecondary Students with Disabilities](#)
- [Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education](#)
- [Transition and Postsecondary Programs for Students with Intellectual Disabilities](#)
- [Transition Programs for Students with Intellectual Disabilities Coordinating Center](#)

2024 ANNUALIZED CR, “Model transition programs for students with intellectual disabilities into higher education (HEA VII-D-2)”: \$13,800,000

Institute of Education Sciences

A large number of the programs run by the Institute of Education Sciences concern special education. Many or all of them are funded by these two budget lines:

2024 ANNUALIZED CR, “Research in special education (ESRA, Part E)”: \$64,255,000

2024 ANNUALIZED CR, “Special education studies and evaluations (IDEA, section 664)”: \$13,318,000

These programs, however funded, should be relocated to the Office of Special Education:

- [National Center for Special Education Research](#)
- [Assessment for Accountability – Special Education Research](#)
- [Autism Spectrum Disorders – Special Education Research](#)
- [Individualized Education Program – Special Education Research](#)
- [Language and Vocabulary Development Special Education Research](#)
- [Quality of Teachers and Other Service Providers for Students with Disabilities – Special Education Research](#)
- [Research in Special Education](#)
- [Response to Intervention – Special Education Research](#)
- [Secondary and Postsecondary Outcomes – Special Education Research](#)
- [Secondary and Transition Services – Special Education Research](#)
- [Special Education Research – Reading, Writing, and Language Development](#)
- [Special Education Research: Serious Behavior Disorders](#)
- [Special Education Teacher Quality Research – Mathematics and Science](#)
- [Special Education Teacher Quality Research – Reading and Writing](#)

All these programs, and any other programs concerning special education, should be gathered into the Office of Special Education. Policymakers and the public will be better able to hold ED accountable for Special Education when all these programs have been relocated within one administrative unit.

Other education reformers have recommended transforming the Special Education grants, which make up more than 98% of the ED special education budget, “into a no-strings formula block grant targeted at students with disabilities and distributed directly to local education agencies by Health and Human Service’s Administration for Community Living.”⁴³⁴ While we do not rule this out as a long-term aspiration, we believe that uniting these programs into one administrative unit is a prerequisite for policymakers and the public to consider broader reform. Once policymakers and the public are able to easily analyze the entirety of ED special education funding, it should be easier for education reformers to make the case for converting special education grants into block grants, or for reforming, amalgamating, or eliminating any of the thirty-five programs that would be located in the new Office of Special Education. But our immediate recommendation is simply to unite all special education programs in one administrative unit and to consider further reform of special education as a core continuing responsibility of ED.

Other education reformers have also noted the counterproductive effects of the discriminatory Equity in IDEA; all equity requirements in IDEA should be rescinded.

Recommendations

- Unite all K–12, postsecondary, and research special education programs in a new Office of Special Education, so that federal lawmakers, their staff, and the public can then determine what further reforms should be made at a later date.
- Rescind all equity requirements in IDEA, which impose discrimination on special education programs.⁴³⁵
- Consider further reforms to address the counterproductive effects of federal spending on special education, including:
 - Reforming, amalgamating, or eliminating ineffective or counterproductive programs;
 - Simplifying special education grant formulas, conceivably to the extent of transforming grants into no-strings block grants to the states;
 - Addressing the incentive special education grant programs gives to states and LEAs to classify students as in need of special education, so as to secure more federal funds;

⁴³⁴ Dans and Groves, *Mandate for Leadership*, 326.

⁴³⁵ “Equity Requirements in IDEA,” IDEA Data Center, <https://ideadata.org/sites/default/files/media/documents/2021-07/EquityInIDEA.pdf>; Dans and Groves, *Mandate for Leadership*, 336.

- Addressing the related loosening definition of disability—“defining disability down”—which redefines an ever-increasing portion of the American population as disabled; and
 - Addressing the use of special education funds to subsidize radical identity-politics activism, in the guise of “disability rights.”
- Preserve special education as a core mission of ED.

Unfunded Mandates

IDEA's greatest effect on states and LEAs is not via federal funding but via the legal requirement that states and LEAs provide adequate special education. This requirement is neither funded nor explicitly defined. The consequence has been an explosion of spending on special education at the state and local level, arguably to the detriment of regular school expenditures. IDEA has also led to government by lawsuit—the provision of special education services determined *ad hoc* by lawsuit, rather than by consistent policy at the federal, state, or local level. Education reformers should consider legislative changes to IDEA, so that it precisely defines the state and local responsibilities for special education. Education reformers cannot properly reform special education public policy if they focus only on ED spending on special education and leave untouched IDEA's unfunded and undefined legislative mandates.

Recommendations

We do not recommend in detail what federal law should require for special education. We recommend that whatever is required be framed so that the federal government does not impose unfunded, undefined mandates on states and LEAs.

We suggest the following points as principles for IDEA reform:

- IDEA currently commits the federal government to pay 40% of states' average per-pupil special education expenditure. The federal government has never met this commitment. We suggest that IDEA be reformed such that it requires states and LEAs to match federal special education expenditures at a 3:2 ratio but does not legally require them to spend more. The federal government's current 40% commitment, in other words, would provide a cap to the mandate for special education funding. It also would mean that the federal government would become accountable for IDEA and require it to increase its own special education funding if it wished the states and LEAs to increase their special education funding.
- IDEA should concretely spell out the state and LEA responsibilities for special education and affirm that it includes no further undefined rights to special education or responsibilities to provide special education.
- Education reformers should work to ensure best practices at the state level for special education.⁴³⁶

436 Ian Kingsbury, *Perverse Incentives, High Costs and Poor Outcomes: Understanding and Improving Special Education in New York*, Empire Center for Public Policy, November 25, 2020, <https://www.empirecenter.org/publications/perverse-incentives-high-costs-and-poor-outcomes/>.

Elementary and Secondary Education

Office of Elementary and Secondary Education

The Office of Elementary and Secondary Education (OESE) contains a very large grab bag of programs, which we will discuss below—but its most important function is to distribute Title I aid to disadvantaged children via LEAs.

Title I Grants

Title I grants are administered within School Support & Accountability (SSA) by [Improving Basic Programs Operated by Local Educational Agencies – Title I, Part A](#).

2024 ANNUALIZED CR

1. Grants to local educational agencies (ESEA I-A):	
(a) Basic grants (section 1124)	\$6,459,401,000
(b) Concentration grants (section 1124A)	\$1,362,301,000
(c) Targeted grants (section 1125)	\$5,282,550,000
(d) Education finance incentive grants (section 1125A)	\$5,282,550,000
Subtotal, Grants to LEAs	\$18,386,802,000

The mechanisms for allocating Title I grants to states and LEAs, now divided among four different programs, have become exceedingly complex: an overview published by the National Center for Education Statistics runs to forty-one pages.⁴³⁷ More broadly, as education reformers have repeatedly noticed, the complexity of these grants' programmatic structure and allocation formulas has spawned the growth of enormous state and local education bureaucracies dedicated to ensuring that each state and LEA qualifies for as much federal funding as possible—as well, of course, as spawning an enormous bureaucracy within ED to administer these grants. Education reformers, in consequence, have suggested that policymakers should “transfer Title I, Part A, which provides federal funding for lower-income school districts, to the Department of Health and Human Services, specifically the Administration for Children and Families. It should be administered as a no-strings-attached formula block grant.”⁴³⁸ The complexities of the Title I allocation process, and the counterproductive results of that complexity, justify such a recommendation.

Recommendations

While we believe that policymakers and the public should consider such a long-term goal, we recommend more immediately:

437 William Sonnenberg, *Allocating Grants for Title I*, National Center for Education Statistics, January 2016, <https://nces.ed.gov/surveys/annualreports/pdf/titlei20160111.pdf>.

438 Dans and Groves, *Mandate for Leadership*, 325.

- Policymakers should amalgamate these four Title I grants into one grant program, with as simple a formula as possible. This formula should be as close as possible either to:
 - a formula that provides block grants to the states; or
 - a formula that provides portable individual education savings accounts to parents of disadvantaged children.
- Consider whether to transform the amalgamated Title I grant program either into a block grant to states or into portable individual education savings accounts for parents of disadvantaged children.
- Create an “Office of Title I Grants” exclusively devoted to administering and disbursing Title I grants, so that policymakers and the public are better able to hold ED accountable for how it administers these grant funds.
- OESE also distributes Title IV-A funds—Student support and academic enrichment grants (ESEA IV-A), **2024 ANNUALIZED CR: \$1,380,000,000**—to the states and LEAs, but with different formulas and programmatic intent.⁴³⁹ These formula grants might also be administered within a unified Office of Title I and Title IV Grants.
- Preserve Title I aid to disadvantaged children as a core mission of ED.

⁴³⁹ *Title IV, Part A: Student Support and Academic Enrichment Program Profile*, T4PA Center, U.S. Department of Education, <https://oese.ed.gov/files/2020/09/Title-IV-A-Program-Profile.pdf>.

Office of Formula Grants

Office of Formula Grants

This office administers a large number of OESE programs. Our recommendations for each of its subunits are:

Impact Aid Program

2024 ANNUALIZED CR: \$1,618,112,000

Impact Aid Program

The Impact Aid Program (IAP)

provides assistance to local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other Federal properties and, to a lesser extent, concentrations of children who have parents in the uniformed services or employed on eligible Federal properties who do not live on Federal property.

In other words, IAP ensures that the federal government does not impose on states and LEAs an unfunded mandate to educate children residing on federal property. IAP embodies federal accountability and responsibility and should be preserved.

IAP’s programs include, with budget numbers from the **2024 ANNUALIZED CR:**

2024 ANNUALIZED CR

Student Financial Assistance	\$4,835,000
Discretionary School Construction Payments	\$18,406,000
Payments for Federal Property	\$78,313,000
Payments for Federally Connected Children	\$1,468,242,000
(a) Basic support payments	\$1,468,242,000
(b) Payments for children with disabilities	\$48,316,000
Subtotal	\$1,516,558,000 ⁴⁴⁰

IAP should be maintained—but it can and should be reduced in scope, such that ED might be reformed to focus on its core missions.

Recommendations

- IAP programs and expenditures for children residing on Indian lands should be relocated to the [Department of the Interior’s Bureau of Indian Education](#).
- IAP programs and expenditures for children residing in military bases should be relocated to the [Department of Defense’s Department of Defense Education Activity](#).

⁴⁴⁰ Other programs, not listed here, bring the total to the \$1,618,112,000 mentioned above.

- IAP “Payments for children with disabilities” should be relocated to the Office of Special Education.
- Policymakers should see whether further portions of the Impact Aid Program can be relocated to other federal agencies.
- Policymakers should consider whether to eliminate Facilities Maintenance, Discretionary School Construction Payments, and Payments for Federal Property and replace them with equivalent funds added to Payments for Federally Connected Children.

Program and Grantee Support Services

Office of Program and Grantee Support Services

The Office of Program and Grantee Support Services (PGSS)

empowers technical assistance programs to meet the diverse needs of all students by facilitating the delivery of results-driven, research-informed technical assistance to all states and U.S. territories; fostering collaboration opportunities for stakeholders internal and external to the Department; and disseminating promising practices, tools, and resources to education officials and practitioners.

It is telling that these sentences provide no clue as to what PGSS actually funds. These are among the many small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability.

Policymakers should eliminate this office as a whole, along with the following programs:

- Comprehensive Centers

The Comprehensive Centers Program supports the establishment of not less than twenty Comprehensive Centers (CCs) to provide capacity-building services to state educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

2024 ANNUALIZED CR: \$55,000,000

- Equity Assistance Centers

Equity Assistance Centers (EACs) are funded by the U.S. Department of Education to provide technical assistance and training, upon request, in the areas of race, sex, national origin, and religion to public school districts and other responsible governmental agencies in order to promote “equitable” educational opportunities.

2024 ANNUALIZED CR: \$6,575,000

- Student Engagement and Attendance Technical Assistance Center

The Student Engagement and Attendance Technical Assistance Center (SEAC) supports state education agencies (SEAs) and local educational agencies (LEAs) in their efforts to reduce chronic absenteeism and increase student engagement.

All three of these programs are bureaucratic, at best ineffective, and outside of ED's core mission. All three programs should be eliminated on these grounds. The Equity Assistance Centers, moreover, should be eliminated because they will serve to fund race discrimination.

Recommendations

- Eliminate PGSS and all its programs.

Rural, Insular & Native Achievement Programs

Rural, Insular & Native Achievement Programs

Rural, Insular & Native Achievement Programs (RINAP) serves a variety of special educational constituencies—Alaska Native Education, Native Hawaiian Education, Pacific Islands associated with the United States, and Rural Education. ED should not discriminate among American citizens; neither should it be responsible for programs in associated territories or foreign states. Most of these programs should be relocated outside of ED, to different units within the Department of the Interior.

The Rural Education Achievement Program “is designed to help rural districts that may lack the personnel and resources to compete effectively for Federal competitive grants and that often receive grant allocations in amounts that are too small to be effective in meeting their intended purposes.” Our suggested reforms to reduce the number of ED grant programs should render this program unnecessary, and thus it should be eliminated. Policymakers might choose to compensate for the elimination of this program by altering the formula for Title I grants to give a set and simple advantage to rural districts.

Recommendations

- Relocate Alaska Native Education (2024 ANNUALIZED CR: \$44,953,000) and Native Hawaiian Education (2024 ANNUALIZED CR: \$45,897,000) to the Department of the Interior’s Bureau of Indian Education.
- Relocate the Consolidated Grant for Insular Areas (2024 ANNUALIZED CR: \$24,464,000) and the Republic of Palau Grant (2024 ANNUALIZED CR: \$215,000,000) to the Department of the Interior’s Discretionary Financial Assistance to the U.S. Territories and Freely Associated States program.
- Eliminate the Rural Education Achievement Program; policymakers might choose to compensate for the elimination of this program by altering the formula for Title I grants to give a set and simple advantage to rural districts.
- Eliminate RINAP entirely.

Safe and Supportive Schools

2024 ANNUALIZED CR: \$216,000,000

Safe and Supportive Schools

The Office of Safe and Supportive Schools (OSSS) consists almost entirely of small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability. "Safety," moreover, is a euphemism used to smuggle in a vast expansion of the therapeutic-welfare state and aligned radical ideology, such as "transformational social and emotional learning," into the schools. The entire unit is outside ED's core mission, is more counter-productive than ineffective, and should be eliminated.

Recommendations

- Eliminate OSSS entirely, including these programs:
 - Center to Improve Social and Emotional Learning and School Safety
 - Expanding Access to Well-Rounded Courses Demonstration Grants Program
 - Mental Health Service Professional Demonstration Grant Program
 - Project Prevent Grant Program
 - School Climate Transformation Grant - Local Educational Agency (LEA) Grants Program
 - School Climate Transformation Grant - State Educational Agency (SEA) Grants Program
 - School Emergency Response to Violence (Project SERV)
 - School-Based Mental Health Services Grant Program
 - Stronger Connections Technical Assistance and Capacity Building Grant Program
 - Student Support and Academic Enrichment Program / Title IV-A
 - Trauma Recovery Demonstration Grant Program
- Relocate the Grants to States for School Emergency Management Grant Program, the Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center, and any other program in OSSS devoted to real emergencies to the Department of Health and Human Services' Emergency Preparedness & Response unit.

School Support & Accountability

School Support & Accountability

The Office of School Support & Accountability (SSA) administers miscellaneous programs. Of these by far the largest is [Improving Basic Programs Operated by Local Educational Agencies – Title I, Part A](#), which we have suggested should be its own Office of Title I Grants. Of the remaining programs within SSA, many are small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability. The most useful of these programs support state assessments, as a way of promoting academic standards. The federal government probably should not involve itself in state education policy to this extent, but those supporting state assessments are the most justifiable of these programs.

Recommendations

- Rename the Office of School Support & Accountability as the Office of Education Standards.
- Relocate [Improving Basic Programs Operated by Local Educational Agencies – Title I, Part A](#) to a new Office of Title I Grants.
- Relocate [English Language Acquisition State Grants – Title III-A](#) to the Office of English Language Acquisition.
- Relocate [Students in Foster Care](#) and [Education for Homeless Children and Youths Grants for State and Local Activities](#) (2024 ANNUALIZED CR: \$129,000,000) to the Office of Migrant Education (OME), and from there, with OME as a whole, to the Department of Health and Human Services' [Social Services unit](#).
- Relocate [Prevention and Intervention Programs for Children and Youths Who Are Neglected, Delinquent, or At-Risk](#) to the Department of Health and Human Services' [Social Services unit](#).
- Eliminate these programs as ineffective and bureaucratic:
 - [Well-Rounded-Education-Student-Centered-Funding-Demonstration-Grants](#)
 - [Nita M. Lowey 21st Century Community Learning Centers – Title IV-B](#)
2024 ANNUALIZED CR: \$1,329,673,000
 - [Out-of-School Time Career Pathway Program](#)
2024 ANNUALIZED CR: \$49,239,000
 - [21st CCLC National Technical Assistance Center](#)
 - [Supporting Effective Instruction State Grants – Title II, Part A](#)
2024 ANNUALIZED CR: \$2,190,080,000
 - [School Improvement Grants](#)

Policymakers might choose to compensate for the elimination of these programs by adding equivalent funds to the Title I grants disbursed to disadvantaged students.

- Retain these programs as the entirety of the Office of Education Standards:
 - [Grants for State Assessments – Title I-B](#)
2024 ANNUALIZED CR: \$390,000,000
 - [Competitive Grants for State Assessments – Title I-B Competitive](#)

Policymakers should then consider, for future rounds of education reform, whether it is appropriate and effective for the federal government to be involved at all in funding state assessments.

Office of Indian Education

2024 ANNUALIZED CR: \$194,746,000

[Office of Indian Education](#)

The United States has institutional obligations to support the Indian tribes. These obligations to the tribes as legal entities are distinct from programs that engage in race discrimination among American citizens. The federal government should continue to fulfil these institutional obligations. The government, however, should not fulfil them via ED, since that will provide a mechanism for ED to slip into race discrimination among American citizens. The Office of Indian Education (OIE) and all its programs should be relocated to the [Department of the Interior's Bureau of Indian Education](#) (BIE).

2024 ANNUALIZED CR

Indian Education (ESEA VI)	\$194,746,000
1. Grants to local educational agencies (Part A-1)	\$110,381,000
2. Special programs for Indian children (Part A-2)	\$72,000,000
3. National activities (Part A-3)	\$12,365,000

The federal government also now provides resources for American Indian education outside Indian tribal lands, especially for American Indian language education. While we generally recommend the elimination of all programs that serve to forward race discrimination among American citizens, we understand that policymakers may wish to preserve these programs as a component of America's institutional obligations to the Indian tribes. Policymakers should relocate all such programs from ED to the [Department of the Interior's Bureau of Indian Education](#).

Recommendations

- Relocate the OIE to the BIE. All programs administered by the OIE should be relocated to the BIE as well, including:
 - [American Rescue Plan – American Indian Resilience in Education \(ARP-AIRE\)](#)
 - [Demonstration Grants for Indian Children](#)
 - [Indian Education Formula Grants](#)
 - [Indian Education Professional Development](#)
 - [Native American Language Grant](#)
 - [Native American Language Resource Center \(NALRC\)](#)
 - [National Advisory Council on Indian Education – OIE](#)
 - [State Tribal Education Partnership Program](#)
 - [Indian Education – National Activities](#)

Office of Migrant Education

Office of Migrant Education

The Office of Migrant Education (OME) provides “excellent leadership, technical assistance, and financial support to improve the educational opportunities and academic success of migratory children, youth, agricultural workers, fishers, and their families.” While it is a reasonable goal to ensure that migrant children have a chance to get a K–12 education, ED itself should not be engaged in this activity. This program should be relocated to the Department of Health and Human Services’ [Social Services unit](#).

OME also effectively serves as a subsidy for illegal aliens, since there are no limits to who qualifies for such programs. It should be reformed to ensure that no illegal aliens receive OME funds.

2024 ANNUALIZED CR

Migrant (ESEA I-C)	\$375,626,000
Special programs for migrant students (HEA IV-A-5)	\$52,123,000

OME should incorporate [Students in Foster Care](#) and [Education for Homeless Children and Youths Grants for State and Local Activities](#) (2024 ANNUALIZED CR: \$129,000,000), to unite in one administrative unit every ED program that addresses students who frequently move from residence to residence.

Recommendations

- Relocate [Students in Foster Care](#) and [Education for Homeless Children and Youths Grants for State and Local Activities](#) in the Office of Migrant Education.
- Relocate OME to the Department of Health and Human Services’ [Social Services unit](#). All programs administered by OME should be relocated to Social Services as well, including:
 - [College Assistance Migrant Program](#)
 - [High School Equivalency Program](#)
 - [Title I, Part C: Migrant Education Program \(MEP\)](#)
 - [Migrant Education Consortium Incentive Grants](#)
 - [Students in Foster Care](#)
 - [Education for Homeless Children and Youths Grants for State and Local Activities](#)

- Policymakers should overturn *Plyler v. Doe* (1982) and specify that only citizens and legal residents may be included in calculations of formula grants or receive monies or other benefits from any OME programs.
- OME's core responsibility should be to help states and LEAs to provide American students a K-12 education. Policymakers should consider eliminating the [College Assistance Migrant Program](#), since it does not serve that core focus.

School Infrastructure Programs

School Infrastructure Programs

School Infrastructure Programs (SIP) includes small, bureaucratic, and ineffective programs.

- Supporting America's School Infrastructure Grant Program

“The purpose of this program is to increase the capacity of States to support high-need local educational agencies (LEAs) and schools in leveraging other available Federal, State, and local resources to improve school facilities and environments through public school infrastructure improvements to ensure that their public school facilities are safe, healthy, sustainable, and equitable learning environments for all students.”

- National Center on School Infrastructure (NCSI)

“The purpose of the NCSI program is to establish a national center on school infrastructure that will serve as a clearinghouse of resources for States and local educational agencies (LEAs) related to improving and developing safe, healthy, sustainable, and equitable public school infrastructure through public school infrastructure improvements, and provide technical assistance (TA) to Supporting America's School Infrastructure (SASI) grantees and high-need LEAs seeking to leverage available resources to improve public school facilities for all students.”

SIP should be eliminated.

Recommendations

- Eliminate SIP and all its programs.

American Rescue Plan

[American Rescue Plan](#)

Education Stabilization Fund

[Education Stabilization Fund](#)

The American Rescue Plan (ARP) and the Education Stabilization Fund (ESF) were enacted to provide emergency relief to K-12 and postsecondary education in the wake of the COVID-19 pandemic. These were supposed to be temporary programs—but temporary programs have an unfortunate track record of becoming permanent. Policymakers should make sure that these administrative units expire, including the following programs:

- American Rescue Plan
 - [American Rescue Plan Elementary and Secondary School Emergency Relief – Homeless Children and Youth \(ARP-HCY\)](#)
 - [American Rescue Plan – American Indian Resilience in Education \(ARP-AIRE\)](#)
- Education Stabilization Fund
 - [Emergency Assistance to Non-Public Schools](#)
 - [Education Stabilization Fund – Rethink K12 Education Models](#)
 - [Education Stabilization Fund – Reimagine Workforce Preparation](#)
 - [Elementary and Secondary School Emergency Relief Fund](#)
 - [Governor’s Emergency Education Relief Fund](#)
 - [Higher Education Emergency Relief Fund](#)
 - [Formula Grants to the Outlying Areas](#)
 - [Bureau of Indian Education](#)

Of these programs, [American Rescue Plan – American Indian Resilience in Education \(ARP-AIRE\)](#) and [Bureau of Indian Education](#) should in any case be relocated to the [Department of the Interior’s Bureau of Indian Education](#).

Some of these programs also fund postsecondary education. We will repeat our recommendation that these programs be eliminated in our discussion of the Office of Postsecondary Education.

Recommendations

- Eliminate ARP, ESF, and all their programs.

Disaster Recovery Unit

Disaster Recovery Unit

The Disaster Recovery Unit (DRU) was created in 2018 “to spearhead disaster recovery work across the United States Department of Education (Department). The DRU will support all school community stakeholders affected by Federally declared natural disasters across the K–12 and higher education spectrum.” ED is not the appropriate home for these programs; they should be relocated to the Department of Health and Human Services’ [Emergency Preparedness and Response unit](#).

Recommendations

- Relocate the DRU to the Department of Health and Human Services’ [Emergency Preparedness and Response \(EPR\)](#) unit. All programs administered by OME should be relocated to EPR as well, including:
 - [Education for Homeless Children and Youths Grants for State and Local Activities](#)
 - [Immediate Aid to Restart School Operations](#)
 - [Temporary Emergency Impact Aid for Displaced Students](#)
 - [School Emergency Response to Violence \(Project SERV\)](#)

K-12 Congressionally Funded Community Projects

2024 ANNUALIZED CR: \$200,443,000

[K-12 Congressionally Funded Community Projects](#)

K-12 Congressionally Funded Community Projects funds projects earmarked by individual senators and congressmen ([House and Senate Recipients](#)). ED, of course, is not responsible if legislators earmark funds for education purposes. We recommend that policymakers cease all such earmarks. We believe that when ED has become more streamlined and accountable to the public, with fewer small programs, lawmakers will be less willing to seek earmarked education spending.

Recommendations

- Eliminate K-12 Congressionally Funded Community Projects.

Office of State and Grantee Relations and Evidence Based Practices

[Office of State and Grantee Relations and Evidence Based Practices](#)

The Office of State and Grantee Relations and Evidence Based Practices (OSGREBP) funds education bureaucracies at the federal, state, and local level, particularly to help state and local education bureaucracies navigate ED's granting labyrinth.

Evidence-Based Practices

The Evidence-Based Practices team “identifies and promotes effective practices for internal and external stakeholders to support academic and program excellence; ensures educational opportunities and equity for all children; and improves the quality of teaching and learning.”

State and Grantee Relations

The State and Grantee Relations team “provides front-line support and additional customer service for States and grantees. The State and Grantee Relations team will serve as the primary contact for the states and grantees, resolve issues, and be responsible for customer service to all grantees in those states (SEAs, LEAs, and other entities), as well as general knowledge of all discretionary grant funding opportunities.”

Simplifying the ED bureaucracy will make these programs unnecessary.

Within OSGREBP, [Ed-Flex](#) “is a program that allows the Secretary of Education to delegate to states with strong accountability safeguards the authority to waive certain federal education requirements that may, in particular instances, impede local efforts to reform and improve education.”

Policymakers should simply universalize the freedoms granted in Ed-Flex, without any “accountability safeguards.” This reform will build upon ED's best existing practices to pave the way for further reforms, such as block grants to the states.

Recommendations

- Eliminate OSGREBP, including its two programs of [State and Grantee Relations](#) and [Evidence Based Practices](#).
- Universalize the freedoms granted in Ed-Flex, without any “accountability safeguards.”

Office of Discretionary Grants & Support Services

Within the miscellaneous grab bag of OESE, the Office of Discretionary Grants & Support Services (ODGSS) is a further miscellaneous grab bag. Within ODGSS, we make the following recommendations.

Charter Schools Programs

2024 ANNUALIZED CR: \$440,000,000

[Charter Schools Program](#)

School Choice & Improvement Programs

[School Choice Programs]

[School Choice & Improvement Programs](#)

As with the Office of English Language Acquisition, these two units have mixed qualities. On the one hand, charter schools and school choice are excellent policy ideas. On the other hand, any ED involvement may tend to sabotage them. We recommend that, for the present, these units be preserved, as well as separated into an entirely separate Office of School Choice, Charter Schools, and Gifted Education (OSCCSGE), directly responsible to the Office of the Deputy Secretary rather than subordinated to OESE. Policymakers should ensure that bureaucrats working in this office are philosophically supportive of school choice and charter schools.

Policymakers should examine whether this new OSCCSGE is facilitating school choice and charter schools. OSCCSGE might, for example, be useful if it prevented state and local bureaucrats from sabotaging laws authorizing school choice and charters schools. If OSCCSGE fails to forward these goals, then it should be eliminated—perhaps to be replaced with a simple block grant or formula grant to the states.

We also recommend that reformers relocate the [Jacob K. Javits Gifted and Talented Students Education Program](#) to this new OSCCSGE. School choice, charter schools, and gifted education all are intended to provide better educational options than what is provided in regular public schools; it makes sense to locate all these programs in one administrative unit.

Policymakers should also consider whether the two school choice programs for Washington, DC. students—[DC SOAR](#) and the [DC Opportunity Scholarship Program](#)—might be reformed to provide model school choice programs for the states.

Recommendations

- Create a new Office of School Choice, Charter Schools, and Gifted Education (OSCCSGE), directly responsible to the Office of the Deputy Secretary rather than subordinated to OESE.
- Relocate to the OSCCSGE the following programs:
 - Charter Schools Programs
 - [Charter School Program State Educational Agencies \(SEA\)](#)
 - [Expanding Opportunities through Quality Charter Schools Program \(CSP\) Grants to State Entities](#)
 - [Charter Schools Program Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools \(CMO Grants\)](#)
 - [Charter Schools Program \(CSP\) Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools](#)
 - [Credit Enhancement for Charter School Facilities Program](#)
 - [Expanding Opportunity through Quality Charter School Programs \(CSP\) – National Dissemination Grants](#)
 - [National Leadership Grants](#)
 - [State Charter School Facilities Incentive Grants](#)
 - School Choice & Improvement Programs
 - [DC SOAR](#)
 - [DC Opportunity Scholarship Program](#)
 - [Well-Rounded Education Programs](#)
 - [Jacob K. Javits Gifted and Talented Students Education Program](#)
 - [Institute of Education Sciences](#)
 - [Jacob K. Javits Gifted and Talented Students Education Program--](#)
 - [National Research and Development Center](#)
- Consider how to simplify and amalgamate the eight charter school programs, possibly by replacing them with a simple formula grant or a block grant to the states.
- Consider how to reform [DC SOAR](#) and the [DC Opportunity Scholarship Program](#) to provide model school choice programs for the states.
- Consider whether to eliminate ODGSS and its programs entirely, if it proves ineffective in forwarding school choice, charter schools, and gifted education.

Effective Educator Development Programs

Effective Educator Development Programs

Effective Educator Development Programs (EEDP) administers discretionary programs with the intention of increasing teacher effectiveness. These are among the many small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability. Policymakers should eliminate EEDP as a whole and all of its programs.

A few years ago, we might have recommended that policymakers relocate [American History and Civics Academies](#) and [American History and Civics – National Activities Grants to the National Endowment for the Humanities’ Division of Education Programs](#). The federal government, unfortunately, has demonstrated that its bureaucrats are overwhelmingly likely to introduce critical race theory and “action civics” into any American history and civics activities that it funds and regulates.⁴⁴¹ We therefore also recommend that these programs be eliminated. American schools absolutely should teach American history and civics properly.⁴⁴² But states and school districts should be responsible for this mission, not ED.

Recommendations

- Policymakers should eliminate EEDP as a whole and all its programs, including:
 - [School Ambassador Fellowship Program](#)
 - [Supporting Effective Educator Development Grant Program](#)
2024 ANNUALIZED CR: \$90,000,000
 - [Teach to Lead](#)
 - [Teacher and School Leader Incentive Program](#)
2024 ANNUALIZED CR: \$173,000,000
 - [Teacher Quality Partnership Program](#)
2024 ANNUALIZED CR: \$70,000,000
 - [American History and Civics Academies](#)
 - [American History and Civics – National Activities Grants](#)
**2024 ANNUALIZED CR (American history and civics education):
 \$23,000,000**

441 Stanley Kurtz, “Bill to Federalize CRT Must Be Stopped,” *National Review*, March 8, 2022, <https://www.nationalreview.com/corner/bill-to-federalize-crt-must-be-stopped/>.

442 *American Birthright: The Civics Alliance’s Model K–12 Social Studies Standards*, Civics Alliance, <https://civicsalliance.org/american-birthright/>.

Innovation & Early Learning Programs

Innovation & Early Learning Programs

Innovation & Early Learning Programs (IELP) administers discretionary programs to “support innovations and early learning programs.” These also are among the many small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability. Policymakers should eliminate IELP as a whole and all its programs:

Recommendations

- Policymakers should eliminate IELP as a whole and all its programs, including:
 - Education Innovation and Research
2024 ANNUALIZED CR: \$284,000,000
 - Preschool Development Grant Birth through Five Program
PROGRAM DESCRIPTION: \$250,000,000
 - Ready to Learn Programming
2024 ANNUALIZED CR: \$31,000,000
 - Investing in Innovation (i3)

School Choice & Improvement Programs

School Choice & Improvement Programs

The School Choice subsection of School Choice & Improvement Programs (SCIP), which consists of the two programs of [DC SOAR](#) and [DC Opportunity Scholarship Program](#), should be relocated to a new Office of School Choice, Charter Schools, and Gifted Education. The remaining Improvement Programs subsection of SCIP consists of small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability. These should be eliminated.

Of these SCIP programs, three essentially seek to transform schools into a vessel for welfare state services:

- [Full-Service Community Schools Program](#)
2024 ANNUALIZED CR: \$150,000,000
- [Promise Neighborhoods](#)
2024 ANNUALIZED CR: \$91,000,000
- [Statewide Family Engagement Centers Program](#)
2024 ANNUALIZED CR: \$20,000,000

Neither education nor ED should be subordinated to distributing welfare services. Any necessary welfare services can and should be provided by the Department of Health and Human Services.

Two further SCIP programs serve to fund race discrimination:

- [Fostering Diverse Schools Demonstration Grants Program \(FDS\)](#)
- [Magnet Schools Assistance Program](#)
2024 ANNUALIZED CR: \$139,000,000

These programs should be eliminated to uphold America's proud tradition of nondiscrimination.

Recommendations

- Policymakers should relocate [DC SOAR](#) and [DC Opportunity Scholarship Program](#) to a new Office of School Choice, Charter Schools, and Gifted Education.
- Policymakers should eliminate SCIP as a whole and all its remaining programs, including:
 - [Full-Service Community Schools Program](#)
 - [Promise Neighborhoods](#)
 - [Statewide Family Engagement Centers Program](#)
 - [Fostering Diverse Schools Demonstration Grants Program \(FDS\)](#)
 - [Magnet Schools Assistance Program](#)

Well-Rounded Education Programs

Well-Rounded Education Programs Office

The Well-Rounded Education Programs Office (WEPO) “administers discretionary grant programs that support activities designed to advance literacy skills, provide professional learning opportunities to teachers, support arts education, and identify and meet the special educational needs of gifted and talented students.” On the one hand, this is yet another office that consists of small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated. On the other hand, some of these programs might be useful outside of ED and could be relocated to different components of the federal government.

Policymakers in all circumstances should eliminate these two programs:

- [Comprehensive Literacy State Development](#)
2024 ANNUALIZED CR: \$194,000,000
- [Innovative Approaches to Literacy](#)
2024 ANNUALIZED CR: \$30,000,000

These programs fit the general definition of small, bureaucratic, and ineffective. These should be eliminated, and their worthy goal of improving literacy taken up by the states and LEAs.

Four of these programs, if they are not eliminated, should be moved to the [National Endowment for the Arts' Arts Education unit](#).

- [Arts in Education National Program](#)
- [Assistance for Arts Education](#)
- [Assistance for Arts Education Development and Dissemination](#)
- [Professional Development for Arts Educators](#)
2024 ANNUALIZED CR (Arts in Education): \$36,500,000

The remaining program, the [Jacob K. Javits Gifted and Talented Students Education Program](#), currently only receives a small amount of support (**2024 ANNUALIZED CR: \$16,500,000**). This is small enough that it might be eliminated to no great consequence—but the remit of gifted and talented education is terribly important and possibly should have ED programmatic support.

American education schools are in the grips of an ideological and counterproductive egalitarianism that leads them to discount and destroy gifted and talented education. America arguably ought to support gifted and talented education at roughly the same level at which it supports special education—\$14 billion, rather than \$16.5 million. It should do this

not least as a national security measure, to ensure we have a body of scientists and engineers capable of maintaining our rivalry with China and other great powers.

Yet ED involvement in gifted and talented education might be counterproductive—not least because directing federal money toward gifted and talented education might, as has happened with special education, lead LEAs and states to declare students to be “gifted,” so as to qualify for more federal funds, but not actually provide more gifted education.

We recommend that policymakers relocate the Javits Program to a new Office of School Choice, Charter Schools, and Gifted Education. Should policymakers wish to make a strategic commitment to gifted education, they might form an Office of Gifted Education (OGE), directly responsible to the Office of the Deputy Secretary. The Javits Program then could be the kernel of a further, and conceivably much expanded, commitment to gifted education.

Recommendations

- Relocate the following programs to the [National Endowment for the Arts' Arts Education unit](#).
 - [Arts in Education National Program](#)
 - [Assistance for Arts Education](#)
 - [Assistance for Arts Education Development and Dissemination](#)
 - [Professional Development for Arts Educators](#)
- Relocate the [Jacob K. Javits Gifted and Talented Students Education Program](#) to a [new](#) Office of School Choice, Charter Schools, and Gifted Education.
- Eliminate the Well-Rounded Education Programs Office and the following programs:
 - [Comprehensive Literacy State Development](#)
 - [Innovative Approaches to Literacy](#)

Office of Post Secondary Education

Office of Postsecondary Education

The Office of Postsecondary Education (OPE) funds a wide variety of programs—none of which include ED's primary financial responsibilities for postsecondary education, Pell Grants and student loans. These are the responsibilities of Federal Student Aid. OPE generally funds small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated.

Education Stabilization Fund

Education Stabilization Fund

The Education Stabilization Fund (ESF) was enacted to provide emergency relief to K-12 and postsecondary education in the wake of the COVID-19 pandemic. These were supposed to be temporary programs—but, as we have noted elsewhere, temporary programs have an unfortunate track record of becoming permanent. Policymakers should make sure that these administrative units expire, including the following programs:

- [Emergency Assistance to Non-Public Schools](#)
- [Education Stabilization Fund – Rethink K12 Education Models](#)
- [Education Stabilization Fund – Reimagine Workforce Preparation](#)
- [Elementary and Secondary School Emergency Relief Fund](#)
- [Governor's Emergency Education Relief Fund](#)
- [Higher Education Emergency Relief Fund](#)
- [Formula Grants to the Outlying Areas](#)
- [Bureau of Indian Education](#)

Of these programs, [Bureau of Indian Education](#) should in any case be relocated to the [Department of the Interior's Bureau of Indian Education](#).

Some of these programs fund K-12 education. We also recommended that these programs be eliminated in our discussion of K-12 education.

Recommendations

- Eliminate ESF and all its programs.

Institutional Service

Institutional Service

Institutional Service generally funds small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated. These programs include many that serve to promote race discrimination and that also should be eliminated. Some of these programs forward historic American commitments to Indian education and to Historically Black and Colleges and Universities (HBCUs) and should be preserved. Some programs should be relocated to other administrative units, such as the National Science Foundation.

Strengthening Historically Black Colleges and Universities Division

America has a historical commitment to Historically Black Colleges and Universities (HBCUs), which should be preserved. America also should eliminate all programs that serve to promote race discrimination among its citizens. ED should establish an Office of Historically Black Colleges and Universities (OHBCU), directly responsible to the Office of the Undersecretary, which contains programs that aid HBCUs as institutions. It should eliminate all programs that serve to promote race discrimination. When it has established the OHBCU, it should consider whether to amalgamate all remaining programs into a simple formula grant or block grant.

Recommendations

- Establish an Office of Historically Black Colleges and Universities (OHBCU), directly responsible to the Office of the Undersecretary.
- Relocate to the OHBCU the following programs from the Strengthening Historically Black Colleges and Universities Division:
 - [Augustus F. Hawkins Centers of Excellence \(Hawkins\) Program](#)
2024 ANNUALIZED CR: \$15,000,000
 - Master's Degree Programs at Historically Black Colleges and Universities
2024 ANNUALIZED CR: \$19,937,000
 - [Strengthening Historically Black Colleges and Universities Program \(Title III, Part B\)](#)
2024 ANNUALIZED CR (Strengthening HBCUs): \$395,986,000
2024 ANNUALIZED CR (Mandatory strengthening HBCUs): \$80,155,000
 - [Strengthening Historically Black Graduate Institutions Program \(Title III, Part B\)](#)
2024 ANNUALIZED CR: \$100,782,000

- Relocate to the OHBCU the following programs from Other Programs and Activities:
 - [Historically Black College and University Capital Financing](#)
2024 ANNUALIZED CR: \$48,229,000
 - [Howard University](#) (General support)
2024 ANNUALIZED CR: \$226,693,000
 - [Howard University](#) (Hospital)
2024 ANNUALIZED CR: \$127,325,000
- Consider whether to amalgamate all OHBCU programs into a simple formula grant or block grant.
- Eliminate the following programs, which serve to promote race discrimination:
 - [Master's Degree Programs at Predominantly Black Institutions](#)
 - [Minorities and Retirement Security Program](#)
 - [Minority Science and Engineering Improvement](#)
2024 ANNUALIZED CR: \$16,370,000
 - [Predominantly Black Institutions Competitive Program](#)
 - [Predominantly Black Institutions – Formula Grants](#)
2024 ANNUALIZED CR (Strengthening predominantly black institutions): \$22,300,000
2024 ANNUALIZED CR (Mandatory strengthening predominantly black institutions): \$14,145,000

Strengthening Institutions Division

The Strengthening Institutions Division (SID) funds small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated. Most of these programs serve to promote race discrimination and also should be eliminated on those grounds. Some that forward America's historic commitment to Indian tribes should be relocated to the [Department of the Interior's Bureau of Indian Education](#).

Recommendations

- Relocate these programs to the [Department of the Interior's Bureau of Indian Education](#):
 - [Alaska Native and Native Hawaiian-Serving Institutions](#)
 - 2024 ANNUALIZED CR** (Strengthening Alaska Native and Native Hawaiian-serving institutions): \$24,433,000
 - 2024 ANNUALIZED CR** (Mandatory strengthening Alaska Native and Native Hawaiian-serving institutions): \$14,145,000
 - [American Indian Tribally Controlled Colleges and Universities](#)
 - 2024 ANNUALIZED CR** (Strengthening tribally controlled colleges and universities): \$51,549,000
 - 2024 ANNUALIZED CR** (Mandatory strengthening tribally controlled colleges and universities): \$28,290,000
- Eliminate the following programs, which serve to promote race discrimination:
 - [Asian American and Native American Pacific Islander-Serving Institutions](#)
 - 2024 ANNUALIZED CR** (Strengthening Asian American- and Native American Pacific Islander-serving institutions): \$18,589,000
 - 2024 ANNUALIZED CR** (Mandatory strengthening Asian American- and Native American Pacific Islander-serving institutions): \$4,715,000
 - [Native American-Serving Nontribal Institutions](#)
 - 2024 ANNUALIZED CR** (Strengthening Native American-serving non-tribal institutions): \$11,405,000
 - 2024 ANNUALIZED CR** (Mandatory strengthening Native American-serving nontribal institutions): \$4,715,000

- If policymakers believe that any programs for Native Americans and Pacific Islanders at nontribal institutions support core American historical responsibilities, they also should be relocated to the [Department of the Interior's Bureau of Indian Education](#).
- Eliminate the following program, which is one of many that is small, bureaucratic, and ineffective, and which makes it impossible to establish ED accountability.
 - [Strengthening Institutions](#)
2024 ANNUALIZED CR: \$122,070,000

Hispanic-Serving Institutions Division

The Hispanic-Serving Institutions Division (HISD) consists entirely of programs that serve to promote race discrimination. The division and all its programs should be eliminated.

Recommendations

- Eliminate HISD and all its programs, including:
 - [Developing Hispanic-Serving Institutions \(Title V\)](#)
2024 ANNUALIZED CR: \$227,751,000
 - [Hispanic-Serving Institutions – Science, Technology, Engineering, or Mathematics \(HSI STEM\) and Articulation Programs](#)
2024 ANNUALIZED CR: \$94,300,000
 - [Promoting Postbaccalaureate Opportunities for Hispanic Americans](#)
2024 ANNUALIZED CR: \$27,314,000

Fund for the Improvement of Postsecondary Education

2024 ANNUALIZED CR: \$184,000,000

Fund for the Improvement of Postsecondary Education

Fund for the Improvement of Postsecondary Education (FIPSE) funds small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated. Many of these programs serve to promote race discrimination and also should be eliminated on those grounds. Some programs should be relocated away from ED to more suitable administrative units.

Recommendations

- Eliminate or relocate to the Department of Health of Human Services the [Basic Needs for Postsecondary Students Program](#).
- Eliminate the [Center of Educational Excellence for Black Teachers Program at Historically Black Colleges and Universities](#), because it serves to promote race discrimination.
- Relocate to the [National Science Foundation's Directorate for STEM Education](#) the [Center of Excellence in Spatial Computing Grant Program](#) and the [Modeling and Simulation Program](#).
- Relocate to the [Department of Veterans Affairs' Education and Training](#) unit (within the [Veterans Benefits Administration](#)) the [Centers of Excellence for Veteran Student Success](#).
- Eliminate the [Digital Learning Infrastructure and IT Modernization Pilot program](#) and the [Research and Development Infrastructure Grant Program](#), because they serve to promote race discrimination.
- Components of these two programs support HBCUs and Tribally Controlled Colleges and Universities (TCCUs). Policymakers may choose to continue the components that support HBCUs within the new OHBCU. Policymakers may choose to relocate the components that support TCCUs to the [Department of the Interior's Bureau of Indian Education](#).
- Relocate to the new Office of Special Education the [National Center for Information and Technical Support for Postsecondary Students with Disabilities](#).
- Eliminate, or relocate along with TRIO programs to OESE, the [Postsecondary Student Success Grant Program](#).
- Eliminate, or relocate to the [Department of Justice's Office of Juvenile Justice and Delinquency Prevention](#), the [Transitioning Gang-Involved Youth to Higher Education Program](#).

- Eliminate the [Open Textbooks Pilot Program](#), the [Rural Postsecondary and Economic Development \(RPED\) Program](#), and [Postsecondary Earmarks \(2024 ANNUALIZED CR: \\$429,587,000\)](#).
- Eliminate FIPSE.

Institutional Development Division

Institutional Programs Development Division

The Institutional Programs Development Division (IPDD) funds small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability and that should be eliminated. Some programs should be relocated away from ED to more suitable administrative units.

Recommendations

- Relocate to the new Office of Special Education these programs:
 - [Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education](#)
 - [Transition and Postsecondary Programs for Students with Intellectual Disabilities](#)
 - [Transition Programs for Students with Intellectual Disabilities Coordinating Center](#)
- Eliminate the following programs:
 - [Teacher Shortage Areas](#)
 - [Teachers for a Competitive Tomorrow](#)
 - The Secretary's Annual Report on Teacher Quality
- Eliminate IPDD.

Other Programs and Activities

Other Programs and Activities (OPA) is self-evidently a “miscellaneous programs” division. These either should be eliminated as unnecessary or relocated to appropriate administrative units.

Recommendations

- Relocate to the new OHBCU the following programs:
 - [Historically Black College and University Capital Financing](#)
2024 ANNUALIZED CR: \$48,229,000
 - [Howard University](#) (General support)
2024 ANNUALIZED CR: \$226,693,000
 - [Howard University](#) (Hospital)
2024 ANNUALIZED CR: \$127,325,000
- Eliminate these programs:
 - Annual Interest Subsidy Grants (Title VII, Higher Education Act, as amended, Title V Housing Act of 1950)
 - College Housing and Academic Facilities Loans
 - Endowment Challenge Grant Activities
- Eliminate OPA.

International and Foreign Language Education

2024 ANNUALIZED CR (Domestic programs): \$75,353,000

2024 ANNUALIZED CR (Overseas programs): \$10,311,000

International and Foreign Language Education

The International and Foreign Language Education (IFLE) office “administers Title VI (domestic) and Fulbright-Hays (overseas) grant and fellowship programs that strengthen foreign language instruction, area/international studies teaching and research, professional development for educators, and curriculum development at the K-12, graduate, and postsecondary levels.” These are subject matters that should be administered by the Department of State or the Department of Defense. Since America funds foreign language study to enhance our national security, all foreign language programs should be relocated to the Department of Defense. IFLE should be eliminated, and all its programs relocated away from ED.

ED should also adopt procedures that 1) prevent foreign powers from exerting influence on American education; and 2) ensure that progressive activists do not hijack education spending meant to forward American national security interests. We will address these areas elsewhere.

Recommendations

- Eliminate, or relocate to the [Department of State’s Bureau of Educational and Cultural Affairs](#), these programs:
 - [American Overseas Research Centers](#)
 - [Business and International Education](#)
 - [Centers for International Business Education](#)
 - [Fulbright-Hays Seminars Abroad](#)
 - [Fulbright-Hays Doctoral Dissertation Research Abroad](#)
 - [Fulbright-Hays Faculty Research Abroad](#)
 - [Fulbright-Hays Group Projects Abroad](#)
- Eliminate, or relocate to the [Department of Defense’s Defense Language Institute Foreign Language Center](#), these programs:
 - [Foreign Language and Area Studies](#)
 - [International Research and Studies](#)
 - [Language Resource Centers](#)
 - [National Resource Centers](#)
 - [Undergraduate International Studies and Foreign Language Program](#)
- Eliminate IFLE.

Student Service

Student Service

Student Service “performs planning, program development, and grant administration functions for the Federal TRIO programs” and other programs generally devoted to “student success.” (TRIO Programs: **2024 ANNUALIZED CR:** \$1,191,000,000.) In general, such programs are entirely counterproductive and are at best useless. The best means to ensure student success is to maintain high standards; “student success” programs give colleges and universities an incentive to admit students who are not prepared for undergraduate coursework. ED badly serves both students and undergraduate institutions by subsidizing unprepared students to attend college.

Student Service should be eliminated. Policymakers would most profitably redirect its funds toward Title I funding for disadvantaged students. If policymakers wish to preserve dedicated funding for high school graduates, to enhance their ability to complete undergraduate coursework, this component of ED funding should be transferred to OESE. If policymakers wish to preserve a portion of Student Service, only programs for K-12 students should be retained, not funding for undergraduate students.

Recommendations

- Eliminate, or relocate to the [Department of Health and Human Services' Social Services unit](#), [Child Care Access Means Parents in School](#) (**2024 ANNUALIZED CR:** \$75,000,000).
- Eliminate, or relocate to the [Department of Defense's National Security Education Program](#), [Graduate Assistance in Areas of National Need \(GAANN\)](#) (**2024 ANNUALIZED CR:** \$23,547,000).
- Relocate to the [Department of Veterans Affairs' Education and Training unit](#) (within the [Veterans Benefits Administration](#)) the program [Veterans Upward Bound](#).
- Eliminate, or relocate to the Office of Elementary and Secondary Education, these programs:
 - [Gaining Early Awareness and Readiness for Undergraduate Programs \(GEAR UP\)](#)
2024 ANNUALIZED CR: \$388,000,000
 - TRIO Programs
 - [Educational Opportunity Centers](#)
 - [Talent Search](#)
 - [Upward Bound](#)
 - [Upward Bound Math/Science](#)

If these programs are eliminated, policymakers should consider redirecting these funds toward Title I funding for disadvantaged K–12 students.

- Eliminate these programs:

- **TRIO Programs**

- [Ronald E. McNair Postbaccalaureate Achievement Student Support Services](#)
 - [Training Program for Federal TRIO Staff](#)

Policymakers should consider redirecting these funds toward Title I funding for disadvantaged K–12 students.

- Adopt the National Association of Scholars' recommended reforms to [Federal Student Aid](#), which will ensure that a far greater proportion of undergraduate students are capable of undergraduate coursework: to be eligible for Title IV federal student aid, students must have family incomes below 150% of the poverty level; maintain a 2.5 grade point average; and have received federal loans and/or grants for no more than four previous years.
- Eliminate Student Service.

Office of Career, Technical, and Adult Education

2024 ANNUALIZED CR: \$2,191,436,000

Office of Career, Technical, and Adult Education

The Office of Career, Technical, and Adult Education (OCTAE) “administers, [and] coordinates programs that are related to adult education and literacy, career and technical education, and community colleges.” These programs centrally draw upon authorizing legislation in the Workforce Investment Act (1998). OCTAE’s primary purpose is to provide a more skilled workforce. Therefore, while some individual programs should be relocated to more appropriate administrative units, OCTAE as a whole should be relocated to the [Department of Labor’s Employment and Training Administration](#).

Policymakers might consider whether these programs should be further simplified into block grants to the states.

Recommendations

- Relocate OCTAE to the [Department of Labor’s Employment and Training Administration](#), including these programs:
 - Adult Education & Literacy
 - [Adult Education – Basic Grants to States](#)
2024 ANNUALIZED CR: \$715,455,000
 - [Adult Education – National Leadership Activities](#)
2024 ANNUALIZED CR: \$13,712,000
 - Career and Technical Education
2024 ANNUALIZED CR (state grants): \$1,429,848,000
2024 ANNUALIZED CR (other programs): \$32,421,000
 - [Career and Technical Education – Title I \(Basic Grants to States\)](#)
 - [Career and Technical Education National Programs](#)
 - [Perkins Collaborative Resource Network](#)
 - [Community Colleges](#)
- Relocate to the [Department of the Interior’s Bureau of Indian Education](#) these programs:
 - Career and Technical Education
 - [Native American Career and Technical Education Program](#)
 - [Native Hawaiian Career and Technical Education Program](#)
 - [Tribally Controlled Postsecondary Career and Technical Education Program](#)
2024 ANNUALIZED CR: \$11,953,000
- Relocate to the [Department of Justice’s Bureau of Justice Assistance](#) the [Correctional Education program](#).

Institute of Education Sciences

2024 ANNUALIZED CR: \$807,605,000

Institute of Education Sciences

The Institute of Education Science (IES) works “to provide rigorous evidence on which to ground education practice and policy.” IES provides useful services, but some of its programs should be relocated elsewhere within ED (e.g., its special education research), while other portions should be relocated away from ED to other administrative units.

Recommendations

- Relocate to the new Office of Special Education the following programs:
 - [National Center for Special Education Research](#)
 - [Assessment for Accountability – Special Education Research](#)
 - [Autism Spectrum Disorders – Special Education Research](#)
 - [Individualized Education Program – Special Education Research](#)
 - [Language and Vocabulary Development Special Education Research](#)
 - [Quality of Teachers and Other Service Providers for Students with Disabilities – Special Education Research](#)
 - [Research in Special Education](#)
 - [Response to Intervention – Special Education Research](#)
 - [Secondary and Postsecondary Outcomes - Special Education Research](#)
 - [Secondary and Transition Services – Special Education Research](#)
 - [Special Education Research - Reading, Writing, and Language Development](#)
 - [Special Education Research: Serious Behavior Disorders](#)
 - [Special Education Teacher Quality Research - Mathematics and Science](#)
 - [Special Education Teacher Quality Research - Reading and Writing](#)

2024 ANNUALIZED CR, “Research in special education (ESRA, Part E)”: \$64,255,000

2024 ANNUALIZED CR, “Special education studies and evaluations (IDEA, section 664)”: \$13,318,000
- Relocate to the new Office of School Choice, Charter Schools, and Gifted Education (OSCCSGE) the program [Jacob K. Javits Gifted and Talented Students Education Program—National Research and Development Center](#).
- Relocate to the [National Science Foundation’s Directorate for Social, Behavioral and Economic Sciences](#) the IES, including the following programs:
 - [National Center for Education Research](#)
 - [National Center for Education Statistics](#)

- [National Center of Education Evaluation and Regional Assistance](#)
- [Education Resources Information Center](#)
- [National Assessment of Educational Progress Secondary Analysis Grant Program](#)
- [National Assessment of Educational Progress](#)
- [National Research and Development Centers](#)
- [Regional Educational Laboratories](#)
 - 2024 ANNUALIZED CR: \$58,733,000**
- [Statewide Longitudinal Data System Grants](#)
 - 2024 ANNUALIZED CR: \$38,500,000**
- [Unsolicited Grant Opportunities](#)

Federal Student Aid

Federal Student Aid

Federal Student Aid (FSA) disburses the great majority of ED funds for postsecondary education. The \$29 billion disbursed in Pell Grants, directed toward disadvantaged students, almost equals the amount ED disburses to the states and LEAs for disadvantaged K–12 students (Title I funds) and special education. Federal student loans, at about \$111 billion, are a greater sum than ED’s entire annual budget. ED, by means of FSA, provides a far larger proportion of total American spending on postsecondary education than it does of total American spending on K–12 education. ED’s influence on postsecondary education, potential and actual, is accordingly greater than its equivalent influence on K–12 education.

2024 ANNUALIZED CR

Student Financial Assistance	
1. Federal Pell Grants (HEA IV-A-1):	\$29,199,352,000
2. Campus-based programs:	
(a) Federal supplemental educational opportunity grants (HEA IV-A-3)	\$910,000,000
(b) Federal work-study (HEA IV-C)	\$1,230,000,000
Subtotal, Campus-based programs	\$2,140,000,000
3. Iraq and Afghanistan service grants (P.L. 111-39)	\$530,000
Total	\$31,339,882,000

Student Aid Administration (HEA I-D and IV-D, section 458)	
1. Salaries and expenses	\$1,058,943,000
2. Servicing activities	\$975,000,000
Total	\$2,033,943,000

TEACH Grants (HEA IV-A-9)	\$61,721,000
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Federal Direct Student Loans Program Account (HEA IV-D)	\$99,380,979,000
Federal Family Education Loans Program Account (HEA IV-B)	\$11,976,626,000
Health Education Assistance Loans Program Account	\$409,000,000

ED should simplify further the number of programs by which it disburses grants and loans, to just Pell Grants and federal direct student loans. ED can easily amalgamate its other grant and loan programs into these two programs, which comprise the very great majority of the funds FSA disburses. ED also should change the incentive structure of its grants and loans, so that they do not subsidize postsecondary institutions, raise the cost of tuition, and

encourage students to go into crippling, lifelong debt. Policymakers should reform FSA 1) to limit eligibility for grants and loans to prepared students; and 2) to require postsecondary institutions to assume partial responsibility for student loan defaults.

ED largely directs its K-12 funds to states and LEAs; FSA generally distributes these postsecondary grants and loans to individuals, who can choose where to use FSA funds. This disbursement structure, which articulates the principle of educational choice, ought to lessen the amount of influence ED can bring to bear on postsecondary institutions. It does not. Students can only use FSA grants and loans at eligible institutions—and ED and the accrediting organizations it recognizes together determine which institutions are eligible. A complex array of ED regulations and accreditation requirements imposes a tight web of direct and indirect governmental control on postsecondary education. This control is all the greater because the Civil Rights Restoration Act of 1987 stipulates that postsecondary institutions must apply civil rights law to everything they do, and not just to their institutional components that receive federal funding.

FSA reform therefore should include substantial regulatory reform, to prevent the politicization, bureaucratization, and homogenization of postsecondary institutions—above all, to prevent the imposition of gender ideology and discriminatory concepts on institutions in the name of civil rights. This regulatory reform should include substantial reform of the accreditation system as well, to weaken the power of accreditors and to ease the entry of new accreditors.

All these reforms must now be accompanied by urgent reform of federal student loan programs. The Biden administration's lawless "forgiveness" of student loans has effectively converted much of the federal student loan program into a grant program. Should a Supreme Court majority provide a spurious justification for such illegal actions, and should a future administration use the precedent to convert the entire \$110 billion in annual student loans into student grants, it would more than double the size of the ED budget. Even if future administrations engage in lesser illegalities, billions or tens of billions are at stake.

Policymakers should place strict controls on ED's ability to forgive student loans. If they do not have confidence that parchment barriers can restrain an executive bent on lawless actions, policymakers should consider whether to relocate federal student loan programs away from the discretionary power of executive branch officials. Policymakers must act swiftly and resolutely to make sure that no future administration can abuse the \$110 billion in annual student loans entrusted to their care.

Recommendations

- Consolidate all federal student grant programs into Pell Grants. Policymakers should redirect the funding for eliminated grant programs to the Pell Grants.

- Relocate Iraq and Afghanistan service grants, as well as grants for veterans of any future conflict, to the [Department of Veterans Affairs' Education and Training unit](#) (within the [Veterans Benefits Administration](#)).
- Consolidate all federal student loan programs into the William D. Ford Federal Direct Loan Program. Policymakers should redirect the funding for eliminated loan programs to the Ford program.
- Limit total Title IV loans to \$75,000 per borrower.⁴⁴³
- Link Title IV eligibility to:
 - Students who have family incomes below 150% of the poverty level; maintain a 2.5 grade point average; and have received federal loans and/or grants for no more than four previous years.⁴⁴⁴
 - A reduction of the size of higher education administration and nonacademic support staff.⁴⁴⁵
 - A redirection of institutional resources toward lowering tuition.⁴⁴⁶
 - Public institutions and private institutions with endowments of less than \$600 million.⁴⁴⁷
 - Institutions that transparently reveal the extent of their dependence on part-time instructors and reduce their dependence on part-time instructors.⁴⁴⁸
 - Institutions that accept responsibility for 50% of loans (including accruing interest) defaulted on by students at their institution, to be repaid to lending institutions over a 20-year period.⁴⁴⁹
 - Paying only for non-remedial coursework.⁴⁵⁰
- Remove all ED discretionary power to discharge or forgive loans, save for narrowly enumerated circumstances such as clearly demonstrated fraud by an educational institution.⁴⁵¹
- Consider whether to convert the federal direct loan program into a professionally governed and managed autonomous government corporation, immune from abusive misgovernment by the executive branch.⁴⁵²

443 "Federal Student Aid," Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/federal-student-aid>.

444 "Federal Student Aid."

445 "Title IV Federal Funds Eligibility," Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/title-iv-federal-funds-eligibility>.

446 "Title IV Federal Funds Eligibility."

447 "Title IV Federal Funds Eligibility."

448 "Title IV Federal Funds Eligibility."

449 "Federal Student Aid."

450 "Rigorous Academic Standards," Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/rigorous-academic-standards>.

451 Dans and Groves, *Mandate for Leadership*, 354–55.

452 Dans and Groves, *Mandate for Leadership*, 327–30.

Office for Civil Rights

2024 ANNUALIZED CR: \$140,000,000

[Office for Civil Rights](#)

The Office for Civil Rights (OCR) ensures that all recipients of ED funds comply with all civil rights laws.

Important Authorizing Statutes

34 C.F.R. Part 100

Implementing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in all programs or activities that receive federal financial assistance.

34 C.F.R. Part 104

Implementing Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance.

34 C.F.R. Part 106

Implementing Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in all education programs or activities that receive federal financial assistance.

34 C.F.R. Part 108

Implementing the Boy Scouts of America Equal Access Act of 2002, which prohibits certain entities that receive federal funds from the Department of Education from discriminating against certain designated youth groups that wish to meet at public schools.

34 C.F.R. Part 110

Implementing the Age Discrimination Act of 1975, which generally prohibits discrimination on the basis of age in all programs or activities that receive federal financial assistance.

28 C.F.R. Part 35

Implementing Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities.

Unfortunately, radical activists in ED and elsewhere in the government have hijacked OCR to impose gender ideology and race discrimination on K-12 schools and postsecondary institutions, all in the name of civil rights. OCR has become the most prominent enforcer of abusive ED impositions on America's schools.

Reformers must wholly constrain OCR's powers, to prevent further such abuses. In addition to constraints of OCR from within ED, reformers should also transfer OCR's power to the Department of Justice. Judicial judgments of civil rights violations by educational entities should be divorced from ED's power to cut off education funding.

We make recommendations below about specific policy changes that should be implemented to reverse OCR's activist initiatives. Here we make recommendations about structural reform of OCR.

Recommendations

- Relocate OCR to the Justice Department.
- Delimit OCR enforcement powers such that the office may only enforce via litigation,⁴⁵³ with no ability to issue DCLs or conduct case resolutions.
- Rescind the Civil Rights Restoration Act (1987), to reduce the consequences of OCR investigation.
- OCR employees should be reduced to ca. 175, so that their ratio to the population they serve is in proportion to that of the Justice Department's Civil Rights Division.

⁴⁵³ Dans and Groves, *Mandate for Leadership*, 330.

Other Offices

OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

Office of Planning, Evaluation and Policy Development

The Office of Planning, Evaluation and Policy Development (OPEPD) “advises the Secretary [of Education] on all matters relating to policy development, implementation, and review.” Some of the work it does is necessary, such as developing ED’s budget. Other portions are unnecessary or are better accomplished within an administrative unit outside ED.

Recommendations

- Relocate the Office of Educational Technology to the National Science Foundation’s Directorate for Social, Behavioral and Economic Sciences, Research Infrastructure in the Social and Behavioral Sciences.
- Eliminate the Grants Policy Office, which will be unnecessary once reformers have eliminated all the small, bureaucratic, and ineffective programs that make it impossible to establish ED accountability.
- Retain the Office of the Chief Data Officer, the Student Privacy Policy Office, and the U.S. Department of Education Budget Office.

Office of the General Counsel

Office of the General Counsel

The Office of the General Counsel (OGC) provides legal services both to the Secretary of Education and to all other members of ED.

- Immediate Office of the General Counsel
- Program Service
 - Division of Educational Equity
 - Division of Elementary, Secondary, Adult, and Vocational Education
- Departmental Law and Postsecondary Education
 - Division of Business and Administrative Law
 - Division of Postsecondary Education
- Ethics, Legislative, and Regulatory Service
 - Division of Legislative Counsel
 - Division of Regulatory Services
 - Ethics Division

ED should retain OGC, but policymakers should expect it to shrink in size proportionately as ED sloughs off the mass of bureaucratic, unnecessary programs and focuses upon its core functions.

Recommendations

- Retain OGC.
- Reduce the number of OGC personnel and functions to match the reduced size and remit of ED.

Office of Communications and Outreach

Office of Communications and Outreach

The Office of Communications and Outreach (OCO) handles ED public relations, as well as ED's awards—its Recognition Programs, which include:

- U.S. Presidential Scholars Program
- National Blue Ribbon Schools Program
- President's Education Awards Program
- U.S. Department of Education Green Ribbon Schools
- Recognizing Inspiring School Employees Award

ED should not be given money to publicize itself. Nor do Americans need a superfluity of prizes from the federal government. Policymakers should eliminate OCO.

Recommendations

- Eliminate OCO and all its programs.

Office of the Chief Information Officer

Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) “advises and assists the Secretary [of Education] and other senior officers in acquiring information technology (IT) and managing information resources.” It should be retained.

Recommendations

- Retain OCIO.
- Reduce the number of OCIO personnel and functions to match the reduced size and remit of ED.

Office of Finance and Operations

Office of Finance and Operations

The Office of Finance and Operations (OFO) “serves as the principal advisor to the Secretary [of Education] and Senior Officials on all matters related to financial management, financial management systems, financial control and accounting, cooperative agreements and acquisition management, and related training.” Its components include:

- Immediate Office of the Assistant Secretary
- Office of Small and Disadvantaged Business Utilization
- Office of Equal Employment Opportunity Services
- Executive Office
- Office of Hearings and Appeals
- Office of Financial Management
- Office of Grants Management
- Office of Acquisitions Management
- Office of Human Resources
- Office of Security, Facilities and Logistics
- Office of Business Support Services

ED should retain OFO, but policymakers should expect it to shrink in size proportionately as ED sloughs off the mass of bureaucratic, unnecessary programs and focuses upon its core functions.

Recommendations

- Retain OFO.
- Reduce the number of OFO personnel and functions to match the reduced size and remit of ED.

Office of the Chief Economist

Office of the Chief Economist

The Office of the Chief Economist (OCE) “provides analysis and advice to guide real-time higher education policy while building a culture of experimentation, including partnerships with leading social science researchers to pilot-test new ways to serve students and borrowers.” OCE duplicates education research done elsewhere. It should be eliminated.

Recommendations

- Eliminate OCE and all its programs.

Office of Inspector General

2024 ANNUALIZED CR: \$67,500,000

Office of Inspector General

The Office of Inspector General (OIG) is “responsible for identifying fraud, waste, abuse, and criminal activity involving Department funds, programs, and operations.” Policymakers and the public should not expect OIG to be useful at judging programs whose goals are nebulous and whose outputs are not assessable.

ED should retain OIG, but policymakers should expect it to shrink in size proportionately as ED sloughs off the mass of bureaucratic, unnecessary programs and focuses upon its core functions.

Recommendations

- Retain OIG.
- Reduce the number of OIG personnel and functions to match the reduced size and remit of ED.

Office of Legislation and Congressional Affairs

Office of Legislation and Congressional Affairs

The Office of Legislation and Congressional Affairs (OLCA) “primarily acts as the liaison between the Department and Congress, coordinating all Department matters relevant to Congress.” OLCA should be retained, to maximize ED’s accountability to Congress. Policymakers should expect it to shrink in size proportionately as ED sloughs off the mass of bureaucratic, unnecessary programs and focuses upon its core functions.

Recommendations

- Retain OLCA.
- Reduce the number of OLCA personnel and functions to match the reduced size and remit of ED.

Boards and Commissions

Boards & Commissions

ED uses ten different boards and committees:

- Federal Advisory Committee Act (FACA) Boards/Committees
 - President's Board of Advisors on Historically Black Colleges and Universities
 - Presidential Advisory Commission on Advancing Educational Equity, Excellence and Economic Opportunity for Black Americans
 - Presidential Advisory Commission on Advancing Educational Equity, Excellence and Economic Opportunity for Hispanics
 - Historically Black College and University Capital Financing Advisory Board
 - National Advisory Committee on Institutional Quality and Integrity
 - National Advisory Council on Indian Education
 - National Board for Education Sciences
- Operational Committees
 - Commission on Presidential Scholars
 - National Committee on Foreign Medical Education and Accreditation
- Independent Organizations Affiliated with the Department of Education
 - National Assessment Governing Board

ED should eliminate or relocate all boards and committees associated with programs that should themselves be eliminated or relocated.

Recommendations

- Eliminate the following boards and committees:
 - Presidential Advisory Commission on Advancing Educational Equity, Excellence and Economic Opportunity for Black Americans
 - Presidential Advisory Commission on Advancing Educational Equity, Excellence and Economic Opportunity for Hispanics
 - Commission on Presidential Scholars
- Relocate the National Advisory Council on Indian Education to the [Department of the Interior's Bureau of Indian Education](#).
- Relocate the National Board for Education Sciences to the [National Science Foundation's Directorate for Social, Behavioral and Economic Sciences](#).
- Retain the following boards and committees:
 - President's Board of Advisors on Historically Black Colleges and Universities
 - Historically Black College and University Capital Financing Advisory Board
 - National Advisory Committee on Institutional Quality and Integrity
 - National Committee on Foreign Medical Education and Accreditation

Policy Recommendations

Programs

Wherever we recommend eliminating programs, policymakers should consider compensating for the elimination of these programs by adding equivalent funds to the Title I Grants for disadvantaged students.

General

Core Functions: ED should focus on its four core functions, which constitute the large majority of its fiscal responsibilities: Title I aid to disadvantaged school districts; special education; Pell Grants; and federal student loans. A few other functions, such as support for English language acquisition and state standards, may be worth some funding. Policymakers should eliminate virtually all other programs, to enable them to create proper accountability mechanisms for the simpler core of ED.

Depoliticization and Ending Discrimination: All ED programs that discriminate on grounds such as race or sex, such as Equity Requirements in IDEA, should be rescinded. So, too, should all performance measures of “equity” and similar concepts. Programs that fund politicized activities such as social and emotional learning should also be rescinded.

Non-Educational Programs: ED funds activities such as mental health and social welfare. Some of these cannot be assessed objectively (e.g., mental health), others are susceptible to politicization, and all are activities that should be funded by departments such as Health and Human Services, if they are to be funded by the federal government at all. ED only should fund programs *directly* related to education.

Administrative Bloat: Between 2019 and 2023, total ED personnel has risen about 12%, from ca. 4,100 to 4,614. The public and policymakers should scrutinize ED generally for administrative bloat. They should examine particularly carefully the Office of Finance and Operations; the Office of Planning, Evaluation, and Program Development; the Office of Elementary and Secondary Education; and the Immediate Office of the Secretary of Education (IOSE), all of which have grown sharply in numbers in the last few years.

Transparent Budgeting: ED should provide the funding source, the budget, and the personnel for each of its administrative units in a clear, easy-to-find portion of its website.

Assessments

Objective Assessments: The public and policymakers should require ED to provide quantitative, objective, and precise assessments of its programs' effectiveness. These assessments all should focus on informing the public and policymakers about the return on investment for ED spending in educational attainment. Wherever possible, ED should provide comparisons between beneficiaries of ED funds and control groups who have not received ED funds. ED also should be required to make this data easily accessible to independent researchers. ED should state explicitly the known relationship of proxies for educational attainment such as teacher certification. ED should also be required to state explicitly when it does not have information on the return on investment for ED spending in educational attainment.

Assessments of Program Assumptions: ED should institute performance measures that assess the presumptions of programs; e.g., that improving state assessment actually will improve educational attainment.

Independent Experts: "Independent experts" used to assess programs can be a self-interested cabal. Policymakers should require ED to reform all program assessment measures, to ensure that they cannot be captured by cabals.

Efficiency Measures: ED should adopt efficiency measures—measures of their own administrators' efficiency—throughout the department. Best existing practices should be standardized throughout ED, and an array of new efficiency measures should be introduced forthwith.

Effectiveness Research: Legislative requirements for research should include effective stipulations that ED use research no more than five years old and that ED state explicitly how many years it has been since the research it references was published, as well as how many years it has been since the research data was collected.

Simplification

Office of English Language Acquisition

- Eliminate the Office of Multilingual Initiatives.
- Overturn *Plyler v. Doe* (1982) and specify that only citizens and legal residents may be included in calculations of OELA formula grants.
- Condition the continued funding of OELA on concrete, detailed, and objective goals for outcomes for English language acquisition.

Office of Special Education and Rehabilitative Services

- Rename as Office of Special Education.

- Relocate Rehabilitative Services and all its programs the Department of Health of Human Services, either as its own unit or as a component of the Administration for Community Living.
- Unite all K-12, postsecondary, and research special education programs in the new Office of Special Education.
- Reform IDEA so that it does not impose unfunded, undefined mandates on states and LEAs.

Office of Elementary and Secondary Education

Title I Grants

- Create an “Office of Title I Grants,” reporting directly to the Deputy Secretary, exclusively devoted to administering and disbursing Title I grants. Relocate all Title I grant disbursement to this office.
- Amalgamate the four existing Title I grants into one grant program, with as simple a formula as possible.

Office of Formula Grants

Impact Aid Program

- Relocate programs and expenditures for children residing on Indian lands to the Bureau of Indian Education.
- Relocate programs and expenditures for children residing in military bases to Department of Defense Education Activity.
- Relocate “Payments for children with disabilities” to the Office of Special Education.

Office of Program and Grantee Support Services

- Eliminate PGSS and all its programs.

Rural, Insular, and Native Achievement Programs

- Relocate Alaska Native Education and Native Hawaiian Education to the Bureau of Indian Education.
- Relocate the Consolidated Grant for Insular Areas and the Republic of Palau Grant to the Discretionary Financial Assistance to the U.S. Territories and Freely Associated States program.
- Eliminate the Rural Education Achievement Program; perhaps compensate by altering the formula for Title I grants to advantage rural districts.
- Eliminate RINAP.

Safe and Supportive Schools

- Relocate programs devoted to real emergencies to the Department of Health and Human Services' Emergency Preparedness & Response unit.
- Eliminate OSSS and all other programs.

School Support and Accountability

- Rename School Support & Accountability as the Office of Education Standards.
- Retain Grants for State Assessments – Title I-B [and](#) Competitive Grants for State Assessments – Title I-B Competitive.
- Relocate or eliminate all other programs.

Office of Indian Education

- Relocate all ED programs concerning Indian education to the Office of Indian Education (OIE).
- Relocate OIE and all its programs to the Bureau of Indian Education

Office of Migrant Education

- Relocate Students in Foster Care and Education for Homeless Children and Youths Grants for State and Local Activities in the Office of Migrant Education.
- Relocate OME and all its programs to the Department of Health and Human Services' Social Services unit.
- Overturn *Plyler v. Doe* (1982) and specify that only citizens and legal residents may be included in calculations of OME formula grants.

School Infrastructure Programs

- Eliminate SIP and all its programs.

American Rescue Plan and Education Stabilization Fund

- Eliminate ARP, ESF, and all their programs.

Disaster Recovery Unit

- Relocate DRU and all its programs to the Department of Health and Human Services' Emergency Preparedness and Response unit.

K12 Congressionally Funded Community Projects

- Eliminate all K12 Congressionally Funded Community Projects.

Office of State and Grantee Relations and Evidence Based Practices

- Eliminate OSGREBP and all its programs.
- Universalize the freedoms granted in Ed-Flex, without any “accountability safeguards.”

Office of Discretionary Grants & Support Services

- Charter Schools Programs
- School Choice and Improvement Programs
 - Create a new Office of School Choice, Charter Schools, and Gifted Education (OSCCSGE), directly responsible to the Office of the Deputy Secretary rather than subordinated to OESE.
 - Relocate to OSCCSGE all charter school, school choice, and gifted education programs.
- Effective Educator Development Programs
 - Eliminate EEDP and all its programs.
- Innovation and Early Learning Programs
 - Eliminate IELP and all its programs.
- School Choice & Improvement Programs
 - Relocate DC SOAR and the DC Opportunity Scholarship Program to a new Office of School Choice, Charter Schools, and Gifted Education.
 - Eliminate SCIP and all its remaining programs.
- Well Rounded Education Programs
 - Relocate arts programs to the National Endowment for the Arts’ Arts Education unit.
 - Relocate the Jacob K. Javits Gifted and Talented Students Education Program [to a new](#) Office of School Choice, Charter Schools, and Gifted Education.
 - Eliminate WREP and its remaining programs.

Office of Postsecondary Education

Education Stabilization Fund

- Eliminate ESF and all its programs.

Institutional Service

Strengthening Historically Black Colleges and Universities Division

- Create a new Office of Historically Black Colleges and Universities directly responsible to the Assistant Secretary.
- Relocate to OHBCU all programs that provide institutional support for HBCUs.
- Eliminate all programs that promote race discrimination among American citizens.
- Eliminate Institutional Service.

Strengthening Institutions Division

- Relocate programs serving American Indians, Alaska Natives, and Native Hawaiians to the Bureau of Indian Education.
- Eliminate all other programs.
- Eliminate SID.

Hispanic-Serving Institutions Division

- Eliminate HSID and all its programs.

Fund for the Improvement of Postsecondary Education

- Relocate or eliminate all programs.
- Eliminate FIPSE.

Institutional Programs Development Division

- Relocate special education programs to the new Office of Special Education.
- Eliminate IPDD and all remaining programs.

Other Programs and Activities

- Relocate HBCU programs to the new OHBCU.
- Eliminate OPA and all remaining programs.

International and Foreign Language Education

- Relocate all programs to the Department of State's Bureau of Educational and Cultural Affairs or to the Department of Defense's Defense Language Institute Foreign Language Center.
- Eliminate IFLE.

Student Service

- Relocate or eliminate all programs.
- If TRIO Programs must be retained, relocate them to the Office of Elementary and Secondary Education, and only retain programs directed to K-12 students. Policymakers should consider redirecting TRIO Program funds toward Title I funding for disadvantaged K-12 students.
- Adopt the National Association of Scholars' recommended reforms to Federal Student Aid, which will ensure that a far greater proportion of undergraduate students are capable of undergraduate coursework.
- Eliminate Student Service.

Office of Career, Technical, and Adult Education

- Relocate programs for Native Americans and Native Hawaiians to the Bureau of Indian Education.
- Relocate Correctional Education to the Department of Justice's Bureau of Justice Assistance.
- Relocate OCTAE and all its remaining programs to the Department of Labor's Employment and Training Administration.

Institute of Education Sciences

- Relocate all special education programs to the new Office of Special Education.
- Relocate the Jacob K. Javits Gifted and Talented Students Education Program—National Research and Development Center to the new Office of School Choice, Charter Schools, and Gifted Education (OSCCSGE).
- Relocate IES and all remaining programs to the National Science Foundation's Directorate for Social, Behavioral and Economic Sciences.

Federal Student Aid

- Consolidate all federal student grant programs into Pell Grants.
- Relocate Iraq and Afghanistan service grants, as well as grants for veterans of any future conflict, to the Department of Veterans Affairs' Education and Training unit.

- Consolidate all federal student loan programs into the William D. Ford Federal Direct Loan Program.
- Limit total Title IV loans to \$75,000 per borrower.
- Link Title IV eligibility to student qualifications and administrative reforms suggested by the National Association of Scholars in its federal legislation suggestions for Federal Student Aid, Title IV Federal Funds Eligibility, and Rigorous Academic Standards.
- Remove all ED discretionary power to discharge or forgive loans, save for narrowly enumerated circumstances such as clearly demonstrated fraud by an educational institution.
- Consider whether to convert the federal direct loan program into a professionally governed and managed autonomous government corporation, immune from abusive misgovernment by the executive branch.

Office for Civil Rights

- Relocate OCR to the Justice Department.
- Delimit OCR enforcement powers such that the office may only enforce via litigation, with no ability to issue DCLs or conduct case resolutions.
- Rescind the Civil Rights Restoration Act (1987), to reduce the consequences of OCR investigation.
- OCR employees should be reduced to ca. 175, so that their ratio to the population they serve is in proportion to that of the Justice Department's Civil Rights Division.

Office of Planning, Evaluation and Policy Development

- Relocate the Office of Educational Technology to the National Science Foundation's Directorate for Social, Behavioral and Economic Sciences, Research Infrastructure in the Social and Behavioral Sciences.
- Eliminate the Grants Policy Office.
- Retain the Office of the Chief Data Officer, the Student Privacy Policy Office, and the U.S. Department of Education Budget Office.

Office of Communications and Outreach *and* Office of the Chief Economist

- Eliminate OCO and OCE, along with all their programs.

Office of the General Counsel, Office of the Chief Information Officer, Office of Finance and Operations, Office of Inspector General, *and* Office of Legislation and Congressional Affairs

- Retain these offices.
- Reduce the number of personnel and functions to match ED's reduced size and remit.

Boards and Commissions

- Retain the President's Board of Advisors on Historically Black Colleges and Universities, the Historically Black College and University Capital Financing Advisory Board, the National Advisory Committee on Institutional Quality and Integrity, and the National Committee on Foreign Medical Education and Accreditation.
- Relocate the National Advisory Council on Indian Education to the Bureau of Indian Education.
- Relocate the National Board for Education Sciences to the National Science Foundation's Directorate for Social, Behavioral and Economic Sciences.
- Eliminate all other boards and committees.

Regulations

We have made a series of recommendations for policymakers on how to reform ED's programmatic structure, by simplifying it to make it more accountable to policymakers and the public. We have placed these recommendations with the offices to be reformed. Several categories of recommendations, however, don't fit this framework. A great many recommendations about the substance of OCR activism, for example, concern policy or regulatory change rather than programmatic change. Other recommendations concern new roles or emphases for ED, which might involve entirely new programs. Below we catalogue those recommendations that concern policy more than program structure.

Discriminatory Policies, Gender Ideology, and Title IX

For too long, ED has favored discriminatory policies among American citizens, including informal quotas, usually along the lines of group identities defined by race or sex. These discriminatory policies have been variously denominated as "affirmative action," "diversity," "equity," and other euphemisms. ED should cease to support such discriminatory policies.

ED, moreover, should use whatever powers it retains to prevent the educational institutions it funds from engaging in such discriminatory policies. ED may originally have prompted many educational institutions to adopt discriminatory policies, but distributed activist bureaucracies will continue to discriminate, even absent further support from ED. ED is duty bound to counter as much as possible the harm it has caused.

What is true of discriminatory policies is also true of gender ideology and Title IX. ED has played a lamentable role in their promotion, and ED has a duty both to cease promoting them and to remove them from educational institutions.

Discriminatory Policies

- Rescind the Title IX "prong" requiring "substantial proportionality" in athletics.
- Declare that the disparate impact standard has no legal standing at ED.
 - Rescind all policies, documents, case resolutions, and investigations that depend upon the disparate impact standard.
 - Particularly rescind all policies, documents, case resolutions, and investigations concerning school discipline and special education that depend upon the disparate impact standard.
 - Inform all educational institutions that they are not obliged to use any policy that depends upon the disparate impact standard.
 - Inform all educational institutions that policies that depend upon the disparate impact standard may themselves constitute violations of civil rights if they are conducted with discriminatory intent.

- Link Title IV eligibility to:
 - Transparency about the effects of discriminatory policies on student admissions, faculty hiring, and administrative staffing.⁴⁵⁴
 - Providing information on the consequences and costs of discriminatory policies.⁴⁵⁵
 - Dismantling neo-segregation policies.⁴⁵⁶
 - Dismantling policies that forward discriminatory concepts.
 - Dismantling policies that provide benefits or punishments based on group identity.

Gender Ideology

- Define “sex” to mean only biological sex recognized at birth.⁴⁵⁷
- Declare that civil rights laws concerning sex do not concern sexual orientation, gender identity, or gender expression.
 - Rescind all policies, requirements, documents, case resolutions, and investigations that depend upon defining sex to include sexual orientation, gender identity, or gender expression.
 - Rescind requirements that Civil Rights Data Collection (CRDC) create and collect data on a “nonbinary” sex category.
 - Rescind any requirement or permission to use pronouns that do not match biological sex.
- Declare that civil rights laws concerning sexual discrimination do not concern sexual harassment or sexual violence.
 - Rescind all policies, requirements, documents, case resolutions, and investigations that depend upon defining sexual discrimination to include sexual harassment or sexual violence.
- Inform all educational institutions that policies that draw upon gender ideology may not violate constitutional rights to freedom of expression, freedom of religion, freedom of assembly, and due process.

454 “Equal Opportunity,” Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/equal-opportunity>.

455 “Equal Opportunity.”

456 “Equal Opportunity.”

457 “Freedom to Learn,” Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/freedom-learn>.

Due Process

- Rescind existing Title IX due process regulations⁴⁵⁸ and restore the Title IX due process regulations promulgated by then-Secretary Betsy DeVos on May 19, 2020.⁴⁵⁹
- Link Title IV eligibility to Title IX due process protections.⁴⁶⁰

Procedures

- Require all DCLs and case resolutions concerning civil rights and Title IX law to cite and rely exclusively upon authorizing statutory language.
- ED's prior abuses of its authority relied substantially upon simply ignoring the plain meaning of its authorizing statutes. Ultimately, no parchment barrier can prevent ED bureaucrats from doing the same again. But establishing such a regulation will at least provide policymakers a way to gauge whether ED misbehavior requires greater sanctions, such as eliminating its ability to issue DCLs or (as a last resort) abolishing it entirely. Policymakers should offer ED the chance to return to lawful norms—and be prepared for further action if it will not.

458 "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," April 29, 2024, <https://www.federalregister.gov/documents/2024/04/29/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

459 "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," May 19, 2020, <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

460 "Title IX Due Process Protections," Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/title-ix-due-process-protections>.

Parental Rights

ED abuses, usually with reference to gender-ideology initiatives, have as a corollary abrogated parental rights. For example, educational institutions now regularly hide from parents their children’s “gender transition”—not least because they fear being accused of abrogating civil rights if they provide that information. Reformers must ensure that ED treats parental rights as fundamental, and not as an afterthought.

- Make clear that the Family Educational Rights and Privacy Act (FERPA) gives parents complete access to their children’s educational records.⁴⁶¹
- Give parents and adult students the right to seek injunctive and declaratory relief by means of a private right of action against educational institutions that abrogate rights enumerated in FERPA and the Protection of Pupil Rights Amendment (PPRA).⁴⁶²
- Enact a Parents’ Bill of Rights, which enumerates parental rights and requires any laws or regulations that might abrogate them to satisfy “strict scrutiny” judicial review.⁴⁶³

461 Dans and Groves, *Mandate for Leadership*, 334.

462 Dans and Groves, *Mandate for Leadership*, 344–45.

463 Dans and Groves, *Mandate for Leadership*, 344–45.

Accreditation

ED exerts an extraordinary amount of its influence over postsecondary institutions by means of accrediting organizations. ED oversees accrediting organizations by way of its National Advisory Committee on Institutional Quality and Integrity (NACIQI), and the accrediting organizations determine which postsecondary institutions are eligible to receive federal funds. These accrediting organizations have abused their powers to impose discriminatory policies, enforcing bureaucracies, and other progressive political goals on postsecondary institutions—with the complaisant approval of ED bureaucrats, who can claim that the accrediting organization, and not they, are responsible for the politicization of postsecondary education.

The reform of ED influence on postsecondary education requires a dedicated and extensive reform of accrediting organizations and of ED's oversight of accreditation. The first essential step already has been completed, by a 2019 ED rule that ended the accrediting organizations' regional monopolies.⁴⁶⁴ Further and extensive reforms are needed to build upon this first step.

- Rescind three 2022 DCLs and letters that seek to vitiate the 2019 ED rule.⁴⁶⁵
- Federal policymakers should more carefully nominate NACIQI members, to ensure that NACIQI includes as many dedicated accreditation reformers as possible.⁴⁶⁶
- Reduce the scope of accreditation to assessing fiscal health and institutional transparency.⁴⁶⁷
- Remove accrediting organizations' monopolies and allow states to create their own accrediting organizations.⁴⁶⁸
- Remove the institutional bias against new accrediting organizations and new institutions of higher education.⁴⁶⁹
- Prohibit accrediting organizations from imposing discriminatory policies on institutions of higher education.⁴⁷⁰

464 "Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies," November 1, 2019, <https://www.federalregister.gov/documents/2019/11/01/2019-23129/student-assistance-general-provisions-the-secretarys-recognition-of-accrediting-agencies-the>.

465 "(GEN-22-10) Guidance for Institutions Seeking to Change or Add Accrediting Agencies," July 19, 2022, <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies>; "(GEN-22-11) Procedures for Institutions Seeking Approval of a Request to Change or Add Accrediting Agencies," July 19, 2022, updated September 26, 2022, <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/procedures-institutions-seeking-approval-request-change-or-add-accrediting-agencies-updated-sept-26-2022>; ED letter to institutional accrediting agencies, July 19, 2022, <https://www2.ed.gov/admins/finaid/accred/letter-to-institutional-accreditors.pdf>.

466 "Model Accreditation and Licensure Code," Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code>.

467 "Accreditation Scope Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code/accreditation-scope-act>.

468 "Accreditation Freedom Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code/accreditation-freedom-act>.

469 "Accreditation Innovation Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code/accreditation-innovation-act>.

470 "Accreditation Nondiscrimination Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars,

- Prohibit accrediting organizations from imposing politicized policies on institutions of higher education.⁴⁷¹
- Prohibit accrediting organizations from violating the religious mission of institutions of higher education.⁴⁷²

<https://www.nas.org/model-accreditation-and-licensure-code/accreditation-nondiscrimination-act>.

471 "Accreditation Depoliticization Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code/accreditation-depoliticization-act>.

472 "Accreditation Religious Freedom Act," Model Accreditation and Licensure Code, Policy, National Association of Scholars, <https://www.nas.org/model-accreditation-and-licensure-code/accreditation-religious-freedom-act>.

Liberty

ED has persistently winked at or encouraged the abrogation of liberties within education organizations. Policymakers should strengthen liberty protections in educational institutions, by means of legislation and by exercising oversight on ED.

The strongest argument for maintaining ED, along with its scope of regulatory power, is that no other practical means exists by which to restrain the illiberal activists that have seized control of educational bureaucracies throughout state government, local government, and private institutions. While we generally favor reducing ED's regulatory power, some of our recommendations here presume that ED retains its current powers but dedicates them to sustain rather than abrogate liberty.

- Establish, and link Title IV eligibility, to:
 - Strengthened Title I protections for students' intellectual freedom, including an Intellectual Freedom Charter, freedom of religion, and maintenance of law and order.⁴⁷³ The reestablishment of law and order in postsecondary institutions is particularly essential, since the steady politicization of these institutions has proceeded not least from administrative acquiescence to activist intimidation. ED would do well to examine the 1964 memo by Edward Strong, then-chancellor of the University of California at Berkeley, on what was needed to restore law and order at Berkeley, and link Title IV eligibility to the effective implementation of the policies that Strong advocated.⁴⁷⁴
 - Strengthened protections for intellectual diversity.⁴⁷⁵

Broader measures to restrain illiberal activists in education bureaucracies fall beyond the scope of this report. But policymakers and the public might profitably consider suggestions such as:

- Senator Tom Cotton's proposed WEST (Woke Endowment Security Tax) Act, which would institute a six-percent excise tax on the endowments of ten American universities.⁴⁷⁶

473 "Freedom to Learn."

474 Edward W. Strong, "Student Demonstrations at Berkeley," December 16, 1964, Edward W. Strong: Philosopher, Professor, and Berkeley Chancellor, 1961–1965, California Digital Library, <http://texts.cdlib.org/view?docId=kt2p30025k;NAAN=13030&doc.view=frames&chunk.id=d0e10404&toc.depth=1&toc.id=d0e10404&brand=calisphere>.

475 "De-Politicizing Campuses," Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/de-politicizing-campus>.

476 "Cotton Introduces Woke Endowment Security Tax Act to Tax College Endowments," December 12, 2023, <https://www.cotton.senate.gov/news/press-releases/cotton-introduces-woke-endowment-security-tax-act-to-tax-college-endowments#:~:text=The%20tax%20would%20establish%20a,operate%20a%20state%20contract%20college>.

- AEI Senior Fellow Frederick Hess’s suggestion in *National Review*: “Institutions that apply ideological litmus tests—such as mandatory DEI statements for admission, hiring, or academic promotion—should be stripped of state subsidies and rendered ineligible for taxpayer-funded financial aid or student loans.”⁴⁷⁷

Whether or not ED is involved in such reforms, reforms of such scale may well be necessary to restore liberty to American education.

⁴⁷⁷ Frederick M. Hess, “Rolling Back Woke Higher Ed,” *National Review*, December 1, 2022, <https://www.aei.org/op-eds/rolling-back-woke-higher-ed/>.

National Interest

America now must resist concerted efforts by foreign entities to use our K–12 schools and postsecondary institutions as venues to exert and gain influence. China and various Islamic countries and organizations are the most notable actors engaged in this campaign—and the most notable result has been the wave of Jew-hating intimidation that has swept over America's educational institutions since October 7, 2023.⁴⁷⁸ These varied foreign efforts warrant the creation of an office in ED dedicated to addressing national security threats to American education, as well as further legislation to secure the American national interest.

- Establishment of the Office of National Security (ONS) within ED, dedicated to addressing national security threats to American education. ONS's responsibilities should include:
 - Enforce existing law that requires postsecondary institutions to report foreign gifts of \$250,000 or more.
 - Lower the gift-reporting threshold to \$50,000 and apply it to “pass-through” institutions operating on behalf of educational institutions.⁴⁷⁹
 - Investigate tolerance by educational institutions of foreign espionage and other illegal actions and enforce existing laws to punish such hostile acts.
 - Limit Chinese influence on American educational institutions.⁴⁸⁰
 - Require educational institutions that receive Title VI area studies grants, especially those to Middle East studies, to live up to their commitments to educate students capable and willing to support American foreign policy.⁴⁸¹
 - Require educational institutions to report, and render deportable, foreign students who engage in illegal actions—especially foreign students engaged in Jew-hating intimidation.
- Policymakers should forbid sanctuary campuses.⁴⁸²
- Policymakers should overturn *Plyler v. Doe* (1982) and specify that only citizens and legal residents may be included in calculations of formula grants or receive monies or other benefits from any OELA programs. States and LEAs should only be required to educate citizens and legal residents.

478 Rachelle Peterson, *Outsourced to China: Confucius Institutes and Soft Power in American Higher Education* (National Association of Scholars, 2017), <https://www.nas.org/reports/outsourced-to-china>; Neetu Arnold, *Outsourced to Qatar: A Case Study of Northwestern University-Qatar* (National Association of Scholars, 2022), <https://www.nas.org/reports/outsourced-to-qatar>; Neetu Arnold, *Hijacked: The Capture of America's Middle East Studies Centers* (National Association of Scholars, 2022), <https://www.nas.org/reports/hijacked>; Ian Oxnevad, *The Company They Keep: Organizational and Economic Dynamics of the BDS Movement* (National Association of Scholars, 2023), <https://www.nas.org/reports/the-company-they-keep>; Ian Oxnevad, *China and Our Children* (National Association of Scholars, 2024), <https://www.nas.org/reports/china-and-our-children>.

479 “America's National Interest,” Federal Legislation, Policy, National Association of Scholars, <https://www.nas.org/policy/federal-legislation/americas-national-interest>.

480 “America's National Interest.”

481 “America's National Interest.”

482 “America's National Interest.”

Conclusion

The United States Department of Education (ED) wastes much and harms much. It funds a tangle of programs, which range from the ineffective to the counterproductive. It has imposed a progressive political agenda on the states and school districts by tendentious misinterpretations of the meanings of “sex” and “discrimination.” It has created collaborator bureaucracies in states, school districts, and postsecondary institutions, dedicated to ensuring compliance with federal dictates to secure continuing federal funds. The Biden administration ED has illegally “forgiven” billions of dollars of student loans. ED cries out for reform.

But ED is not so terrible in its effects that we can simply call for its elimination. It disburses the great majority of its funds to states, school districts, and postsecondary students, and the recipients often put those funds to good use. Our case studies reveal differing effects in several school districts: some bureaucracies are eager to impose malign federal policies, while others comply with them as little as possible. ED’s methods of lawsuit and case resolution likewise lead to patchy outcomes, as states and school districts move with more or less reluctance to accommodate ED goals. Our analysis of the Department’s own offices focused on K–12 education show varying effectiveness of its programs—albeit, “effectiveness” is often defined in very vague terms, which are apparently coined by bureaucrats to justify continuing funding. Policymakers and the public have continued to judge ED as a net contribution to public welfare—including good numbers of policymakers and citizens who are aware of the malign consequences of ED politicization. We concur with this judgment.

But we concur with this proviso: *ED will only continue to be a net contribution to public welfare if it is thoroughly reformed.* ED has acted increasingly egregiously, with ever greater reliance on procedures such as Dear Colleague Letters and case resolutions that sidestep the accountability requirements of the Administrative Procedure Act. At least since the Obama administration, it has engaged in extraordinarily tendentious misinterpretations of the meaning of “sex” and “harassment.” The Biden administration has slipped into outright illegality in its “forgiveness” of student debt. ED’s investigations, lawsuits, DCLs, and other means of administrative pressure have worked piecemeal—but the cumulative effect threatens to become revolutionary. If ED cannot be reformed, and swiftly, the case for eliminating it will become far more persuasive.

But here we add another proviso: *ED may have a new justification—restraining illiberal, discriminatory progressive activism by states, school districts, and postsecondary institutions.* These distributed activist bureaucracies have grown enormously in size and power, and it may be that ED provides the only practical means by which to protect American liberty in our schools and universities. We may add as a corollary: *ED may be justified as a means to prevent foreign entities from exerting undue influence on American education.* We urge the preservation of ED not least so that education reformers can think more deeply about whether to embrace these new functions, and rationales, for ED.

What we recommend is practical reform to make ED more accountable to policymakers and the public. We do not recommend timid reform. We suggest that policymakers eliminate dozens of ED programs, which collectively disburse billions of dollars. We suggest an end to all ED programs and regulations that foster race and sex discrimination. We suggest rescinding all ED policies that rely on disparate impact theory, which redefine harassment as discrimination, and which redefine sex to include sexual orientation, gender identity, and gender expression. We suggest ending the lawless forgiveness of student loans.

But we also suggest that policymakers retain the vast majority of ED spending—Title I spending for disadvantaged students, special education, Pell Grants, and direct student loans. We also suggest that policymakers consider maintaining the ED budget at a constant level, so that the moneys for all eliminated programs are redirected to Title I spending for disadvantaged students. We believe that the public and policymakers will be more willing to embrace ED reform that maintains these central fiscal commitments.

We believe that we have suggested a program to renovate ED that has a reasonable chance of securing majority political support. We hope that this is a contribution to the conversation of education policy reform.

Index

Symbols

21st CCLC. *See* 21st Century Community Learning Centers
 21st Century Community Learning Centers 126, 129, 130, 201

A

Accessing Choices in Education 29, 106
 Accreditation 31, 246, 251, 259, 264, 265
 ACSD. *See* Ashland City School District
 Administration for Community Living 31, 81, 185, 187, 191, 253
 Administrative Procedure Act 27, 30, 40, 54, 273
 Age Discrimination Act 27, 236
 Alaska Native 29, 71, 74, 106, 107, 108, 109, 113, 127, 132, 133, 182, 199, 221, 253
 Alaska Native Education 29, 127, 132, 199, 253
 Alaska Native entities 29, 107, 108, 109, 113
 American Printing House for the Blind 187, 189
 American Rescue Plan 7, 22, 26, 39, 149, 150, 203, 207, 254
 American Rescue Plan Act 26, 39
 Americans with Disabilities Act 27, 236
 Annualized CR. *See* Continuing resolution
 Antisemitism 173
 Appropriation 24, 105
 ARP. *See* American Rescue Plan
 Arts Education (National Endowment for the Arts) 32, 216, 217, 255
 Ashland, Ashland City, Ashland County 7, 17, 145, 146, 147, 148, 149, 151, 152, 153, 156, 157, 164, 165, 177
 Ashland City School District 7, 145, 146, 147, 149, 164
 Ashland University 147
 Assessment. *See* Performance measures
 Athletics 41

B

Basic Grants 24, 38, 114, 125, 230
 BIA. *See* Bureau of Indian Affairs
 BIE. *See* Bureau of Indian Education
 Bilingual education 37
 Bilingual Education Act 26, 37
 Boards and Commissions 24, 246, 259
 Boards and committees 246, 259
 Boy Scouts of America Equal Access Act 27, 236
 Budget Request 24, 71, 72, 77, 79, 82, 83, 84, 85, 86, 87, 89, 90, 91, 92, 105, 107, 112, 113, 114, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135
 Bureau of Educational and Cultural Affairs (Department of State) 32, 227, 257
 Bureau of Indian Affairs (Department of the Interior) 31, 108, 113, 140
 Bureau of Indian Education (Department of the Interior) 31, 107, 108, 109, 113, 127, 140, 182, 186, 187, 196, 199, 203, 207, 218, 221, 222, 224, 230, 246, 253, 254, 256, 257, 259

C

Career and Technical Education (Virginia) 161, 162, 230
 CARES (Coronavirus Aid, Relief, and Economic Security) Act 26, 39, 158, 161, 162
 Carl D. Perkins Vocational and Technical Education Act 26, 38
 Case resolutions. *See* Resolution agreements
 Civil Rights Division (Justice Department) 32, 50, 68, 139, 152, 155, 238, 258
 Civil Rights Restoration Act 27, 38, 234, 237, 258
 College Assistance Migrant Program 123, 204, 206
 College athletics. *See* Athletics
 College Board 31, 131
 Common Core 31, 131, 147, 148, 165, 175
 Comprehensive Centers 126, 128, 134, 135, 198
 Comprehensive Literacy Development Grants, Comprehensive Literacy State Development grants 121
 Concentration Grants 24, 38, 114, 125
 Congress 8, 9, 10, 12, 15, 23, 24, 25, 27, 29, 48, 50, 69, 74, 76, 78, 81, 89, 114, 126, 128, 129, 132, 135, 136, 137, 158, 245
 Congressmen. *See* Congress
 Contractors 39
 Coronavirus Response and Relief Supplemental Appropriations Act 26, 39
 COVID-19 22, 26, 39, 75, 76, 83, 150, 158, 160, 166, 174, 207, 218
 CR. *See* Continuing Resolution
 CRT. *See* Critical Race Theory
 CTE (Virginia) *See* Career and Technical Education (Virginia) 162

D

Davis v. Monroe County Board of Education 27, 47
 DCL. *See* Dear Colleague Letters
 Dear Colleague Letters 12, 15, 28, 30, 40, 41, 54, 273
 Defense Department 9
 Defense Language Institute Foreign Language Center (Defense Department) 31, 227, 257
 DEI. *See* Diversity, equity, and inclusion
 Demonstration Grants for Indian Children 29, 105, 106, 203
 Department of Agriculture 31, 149
 Department of Defense. *See* Defense Department
 Department of Defense Education Activity 9, 31, 37, 197, 253
 Department of Health and Human Services 31, 81, 87, 103, 140, 155, 185, 187, 194, 201, 204, 208, 215, 228, 254, 255
 Department of Health, Education, and Welfare 25, 31, 41, 80, 81, 87, 103, 140, 155, 185, 187, 194, 201, 204, 208, 215, 224, 228, 253, 254, 255
 Department of Justice. *See* Justice Department
 Department of the Interior 31, 108, 134, 182, 186, 196, 199, 203, 207, 218, 221, 222, 224, 230, 246
 Department of Veterans Affairs 32, 224, 228, 235, 258

Directorate for Social, Behavioral and Economic Sciences (National Science Foundation) 32, 231, 238, 246, 257, 258, 260
 Direct student loans. See Federal student loans
 Disaster Recovery Unit 7, 31, 208, 254
 Disparate impact 12, 40, 43, 44, 45, 47
 Diversity 5, 9, 133, 163
 Diversity, equity, and inclusion 5, 9, 133, 163
 Due process 12, 29, 32, 40, 48, 51, 52, 53, 261, 262

E

ED. See Education Department
 Ed-Flex 25, 210, 211, 255
 Education and Training (Department of Veterans Affairs) 32, 224, 228, 235, 258
 Education Consolidation and Improvement Act 26, 38
 Education Department 2, 6, 9, 10, 21, 33, 37, 61, 72, 162, 168, 181
 Education Finance Incentive Grants 24, 38, 114, 125
 Education for All Handicapped Children Act 26, 37, 38
 Education for Homeless Children and Youths 127, 131, 201, 204, 205, 208, 254
 Education for the Disadvantaged 22, 65, 77, 114, 121, 122, 123, 124, 125
 Education Innovation and Research 168, 214
 Education Sciences Reform Act 26, 38
 Education Stabilization Fund 7, 22, 207, 218, 254, 256
 Education Technology, Media, and Materials for Individuals with Disabilities 80
 EEDP. See Effective Educator Development Programs
 Effective Educator Development Programs 213, 255
 Efficiency measures 30
 ELR. See Education Innovation and Research
 Elementary and Secondary Education Act 25, 37, 38, 74, 77, 89, 90, 105, 107, 114, 150, 161, 162
 Elementary and Secondary Education for the Disadvantaged Block Grant 77
 Elementary and Secondary School Emergency Relief 149, 150, 207, 218
 ELP. See English language proficiency
 Emergency Preparedness and Response (Department of Health and Human Services) 31, 208, 255
 Employment and Training Administration (Department of Labor) 32, 230, 257
 English Language Acquisition. See Office of English Language Acquisition
 English language proficiency 30, 71, 72, 73, 74, 75
 English learners 30, 71, 72, 74, 75, 150
 Equal Educational Opportunities Act 27, 37
 Equity 5, 9, 28, 57, 58, 59, 82, 87, 93, 127, 133, 138, 153, 154, 162, 163, 191, 198, 239, 246, 251
 Equity Assistance Centers 28, 127, 133, 153, 154, 198
 Equity Requirements in IDEA 28, 82, 87, 138, 191, 251
 ESEA. See Elementary and Secondary Education Act
 ESED Block Grant. See Elementary and Secondary Education for the Disadvantaged Block Grant
 ESF. See Education Stabilization Fund
 ESSER. See Elementary and Secondary School Emergency Relief
 Every Student Succeeds Act 26, 39, 105, 129, 161, 175

F

FAFSA. See Free Application for Federal Student Aid
 FAFSA Simplification Act 10, 26
 Family Educational Rights and Privacy Act 26, 37, 263
 Federal Bureau of Prisons 32, 37
 Federal Charter School Program 32, 38
 Federal Direct Loan Program. See Federal student loans
 Federal Family Education Loan Program 38, 39

Federal Student Aid 7, 10, 22, 26, 218, 229, 233, 235, 257, 258
 Federal student loans 181, 233
 FERPA. See Family Educational Rights and Privacy Act
 FIPSE. See Fund for the Improvement of Postsecondary Education
 First Amendment 32, 52, 53
 Formula grants 11, 14, 23, 24, 25, 26, 38, 65, 79, 81, 83, 89, 125, 126, 127, 137, 182, 195, 205, 252, 254, 268
 Free Application for Federal Student Aid 10, 26
 Freedom. See Liberty
 Freedom of assembly 32, 53, 261
 Free speech 12, 40, 48, 51, 52, 53
 FSCS. See Full-Service Community Schools
 Full-Service Community Schools 89, 90, 92, 94, 103, 104, 215
 Fund for the Improvement of Postsecondary Education 190, 224, 256

G

Gallaudet University 187, 189
 GAO. See Government Accountability Office
 Gebser v. Lago Vista Independent School District 27, 47
 Gender expression 12, 29, 47, 49, 50, 53, 54, 261, 274
 Gender identity 12, 29, 47, 49, 50, 53, 54, 146, 153, 156, 163, 171, 172, 261, 274
 Gender nonconformity 29, 50
 Gender transition 29, 50, 263
 G.I. Bill 27, 37
 Government Accountability Office 10, 39
 Graduate students. See Postsecondary students
 Grants for Infants and Families 25, 84
 Griggs v. Duke Power Co 27, 43
 Grove City College v. Bell 27, 38

H

Harassment 27, 47, 48, 50, 155, 173
 HBCU. See Historically Black Colleges and Universities
 Health Care and Education Reconciliation Act 26, 39
 Helen Keller National Center 186
 HHS. See Department of Health and Human Services
 Higher Education Act 24, 26, 27, 37, 226
 High School Equivalency Program 123, 204
 HISD. See Hispanic-Serving Institutions Division
 Hispanic-Serving Institutions Division 28, 223, 256
 Historically Black Colleges and Universities 15, 28, 219, 224, 246, 256, 259
 Homosexuality. See LGBT, LGBTQ, LGBTQ+, LGBTQI+
 House. See Congress

I

IAP. See The Impact Aid Program
 IDC. See IDEA Data Center
 IDEA. See Individuals with Disabilities Education Act
 IDEA Data Center 80, 82, 191
 IDEA Part B, IDEA Part B Grants 79, 82, 188
 IDEA Part C, IDEA Part C Grants 79
 IDEA Part D, IDEA Part D Grants 189
 IELP. See Innovation & Early Learning Programs
 IES. See Institute of Education Sciences
 IFLE. See International and Foreign Language Education
 Illegal aliens 27, 30, 73, 77, 139, 182, 204
 Illegal immigrants. See Illegal aliens
 Immediate Office of the Secretary of Education 21, 67, 69, 138, 251
 Immigrants 30, 71, 73, 182
 Impact Aid Program 189, 196, 197, 253

Improving America's Schools Act 26, 38
 Incarcerated students. *See* Juvenile correction
 Indian Education Act 26, 37
 Indian Education, Indian Education Program *See* Office of
 Indian Education 22, 26, 31, 37, 57, 65, 105, 106,
 107, 108, 109, 110, 111, 112, 113, 127, 132, 140, 182,
 186, 187, 196, 199, 203, 204, 207, 218, 221, 222, 224,
 230, 246, 253, 254, 256, 257, 259
 Indian Tribes 29, 105, 107, 108, 109, 113
 Individuals with Disabilities Education Act 25, 26, 38, 79,
 149, 150, 161, 170
 Innovation & Early Learning Programs 214
 Innovative Approaches to Literacy 121, 122, 216, 218
 Institute of Education Sciences 7, 22, 26, 32, 38, 67, 109, 128,
 190, 212, 231, 257
 Institutional Programs Development Division 225, 256
 Institutional Service 7, 23, 190, 219, 256
 International and Foreign Language Education 7, 23, 32,
 227, 257
 IPDD. *See* Institutional Programs Development Division

J

Jacob K. Javits Gifted and Talented Students Education
 Program 33, 211, 212, 216, 217, 231, 255, 257
 Justice Department 50, 56, 68, 139, 237, 238, 258
 Juvenile correction 117, 119, 120
 Juvenile detention 25, 32, 117, 119, 120

K

K12 Congressionally Funded Community Projects 24, 255

L

Language Instruction Educational Program 30
 LEA. *See* Local educational agency
 LGBT, LGBTQ, LGBTQ+, LGBTQI+ 29, 49, 154, 155
 Liberty 5, 42, 43, 51, 266
 LIEP. *See* Local educational agency
 Local educational agency 11
 Locker rooms 29, 50
 Loper Bright Enterprises v. Raimondo 28, 61

M

McKinney-Vento Homeless Assistance Act 26, 131
 Midwest & Plains Equity Assistance Center 154
 Migrant Education. *See* Office of Migrant Education
 Monitoring and State Improvement Planning Division.
See Office of Special Education Programs
 Multilingual, multilingual literacy, multilingualism 182, 252

N

NAEP. *See* National Assessment of Educational Progress
 NAM Program. *See* Native American & Alaska Native Chil-
 dren in School Program
 National Advisory Committee on Institutional Quality and
 Integrity. *See* Accreditation
 National Assessment Governing Board 31, 67, 246
 National Assessment of Educational Progress 38, 232
 National Center for Education Statistics 114, 147, 148, 150,
 165, 194, 232
 National Center on Safe Supportive Learning Environments
 154
 National interest 268
 National Professional Development Program 74, 182

National Science Foundation 32, 37, 219, 224, 231, 238, 246,
 257, 258, 259
 National Technical Institute for the Deaf 187, 189
 Native American 23, 29, 57, 71, 74, 105, 106, 107, 109, 113,
 182, 203, 221, 222, 230
 Native American & Alaska Native Children in School Pro-
 gram 74
 Native American Language 29, 105, 106, 203
 Native American Language Resource Center 29, 105, 106,
 203
 Native American Teacher Retention Initiative 29, 106
 Native Hawaiian Education 29, 127, 132, 199, 253
 Native Youth Community Projects 29, 106
 NGO. *See* Nongovernmental organizations
 Nita M. Lowey 21st Century Community Learning Centers.
See 21st Century Community Learning Centers
 No Child Left Behind Act 26, 38, 39, 115
 Nongovernmental organizations 40

O

OCE. *See* Office of the Chief Economist
 OCIO. *See* Office of the Chief Information Officer
 OCO. *See* Office of Communications and Outreach
 OCR. *See* Office for Civil Rights
 OCTAE. *See* Office of Career, Technical, and Adult Educa-
 tion
 ODGSS. *See* Office of Discretionary Grants & Support
 Services
 OELA. *See* Office of English Language Acquisition
 OESE. *See* Office of Elementary and Secondary Education
 Office for Civil Rights 7, 12, 23, 26, 29, 32, 41, 42, 43, 45, 47,
 48, 49, 50, 51, 53, 55, 56, 60, 67, 68, 133, 139, 152,
 153, 155, 158, 162, 164, 236, 258
 Office of Career, Technical, and Adult Education 7, 22, 32,
 67, 230, 257
 Office of Communications and Outreach 24, 67, 240, 258
 Office of Discretionary Grants & Support Services 7, 23,
 211, 255
 Office of Elementary and Secondary Education 21, 22, 66,
 67, 69, 89, 114, 130, 138, 168, 194, 228, 251, 253, 257
 Office of English Language Acquisition 22, 66, 67, 71, 72, 74,
 75, 139, 182, 201, 211, 252
 Office of Finance and Operations 24, 67, 69, 138, 242, 251,
 258
 Office of Formula Grants 23, 89, 196, 253
 Office of Historically Black Colleges and Universities
 (proposed) *See* Historically Black Colleges and
 Universities 219, 256
 Office of Indian Education 22, 31, 105, 106, 107, 113, 140,
 203, 254
 Office of Inspector General 24, 67, 244, 258
 Office of Legislation and Congressional Affairs 24, 67, 245,
 258
 Office of Migrant Education 22, 31, 201, 204, 254
 Office of National Security (proposed) 268
 Office of Planning, Evaluation, and Policy Development 23,
 67, 69, 132, 138, 238, 251, 258
 Office of Postsecondary Education 21, 23, 67, 208, 218, 256
 Office of Program and Grantee Support Services 153, 198,
 253
 Office of Safe and Supportive Schools 22, 89, 154, 200
 Office of School Choice, Charter Schools, and Gifted
 Education (proposed) 211, 212, 215, 217, 231, 255,
 256, 257
 Office of Special Education and Rehabilitative Services 22,
 23, 66, 67, 79, 80, 184, 188, 253
 Office of Special Education Programs 23, 79, 83, 84, 188
 Office of State and Grantee Relations and Evidence Based
 Practices 7, 210, 255
 Office of the Chief Economist 24, 243, 258

Office of the Chief Information Officer 24, 67, 241, 258
 Office of the Deputy Secretary 21, 66, 67, 211, 212, 217, 255
 Office of the General Counsel 24, 67, 239, 258
 Office of the Under Secretary 21, 67
 OFO. See Office of Finance and Operations
 OGC. See Office of the General Counsel
 OIE. See Office of Indian Education
 OIG. See Office of Inspector General
 OLCA. See Office of Legislation and Congressional Affairs
 OME. See Office of Migrant Education
 ONS. See Office of National Security (proposed)
 OPA. See Other Programs and Activities
 OPEPD. See Office of Planning, Evaluation, and Policy Development
 OSCCSGE. See Office of School Choice, Charter Schools, and Gifted Education (proposed)
 OSEP. See Office of Special Education Programs
 OSERS. See Office of Special Education and Rehabilitative Services
 OSGREBP. See Office of State and Grantee Relations and Evidence Based Practices
 OSSS. See Office of Safe and Supportive Schools
 Other Programs and Activities 220, 226, 257

P

Parental rights 26, 32, 263
 Parent Training and Information Centers 80, 85, 86, 189
 Pell Grants 10, 11, 14, 22, 37, 61, 137, 138, 181, 218, 233, 235, 251, 257, 274
 Performance measures, performance metrics 30
 Perkins V. See Strengthening Career and Technical Education for the 21st Century
 Personnel Development to Improve Services and Results for Children with Disabilities, Personnel Preparation 79, 189
 PGSS. See Office of Program and Grantee Support Services
 Philadelphia 7, 8, 17, 145, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 177
 Plyler v. Doe 27, 73, 77, 78, 182, 205, 252, 254, 268
 Portable grants 14, 25
 Postsecondary institutions 11
 Postsecondary students 11, 12, 22, 273
 Preschool grants 188
 Program and Grantee Support. See Office of Program and Grantee Support Services
 Project Prevent 89, 91, 200
 Promise Neighborhoods 89, 90, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 215
 Proposition 209 42, 43
 Protection of Pupil Rights Amendment 26, 263

Q

Qualitative analysis 30
 Quantitative analysis 30
 Quota 41, 42, 43

R

Race discrimination 15, 23, 28, 29, 42, 60, 108, 154, 161, 186, 187, 198, 203, 215, 219, 220, 221, 223, 224, 236, 256
 Rape. See Sexual violence
 REAP. See Rural Education Achievement Program
 Regents of the University of California v. Bakke 27, 28, 44
 Regional Educational Laboratories 232
 Rehabilitation Act 27, 236
 Rehabilitation Services Administration 23, 31, 80, 87, 139, 185
 Religious freedom 12, 40, 48, 51, 53, 54

Religious organizations 32, 53
 Research to Practice Division. See Office of Special Education Programs
 Resource Comparability 30, 44, 45
 Riley, Richard 39, 42, 43, 45
 RINAP. See Rural, Insular & Native Achievement Programs
 RSA. See Rehabilitation Services Administration
 Rural Education Achievement Program 23, 127, 133, 161, 199, 253
 Rural, Insular & Native Achievement Programs 23, 29, 127, 133, 161, 199, 225, 253

S

Safe and Drug-Free Schools and Communities Act 161
 Safe and Inclusive Classrooms 82
 Safe and Supportive Schools 22, 89, 154, 200, 254
 Safe Schools and Citizenship Education 22, 65, 89, 90, 91, 92, 93, 95, 103, 104
 School choice 211
 School Choice & Improvement Programs 32, 211, 212, 215
 School discipline 30, 42, 45, 46, 58, 59, 146, 152, 157, 167, 169, 170, 171, 260
 School District of Philadelphia 7, 145, 165, 168, 169, 170, 171, 172, 173, 174, 175
 School Improvement Programs 23, 65, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136
 School Infrastructure Programs 22, 206, 254
 School Safety National Activities 89, 91
 School Support & Accountability 182, 194, 201, 254
 SCIP. See School Choice & Improvement Programs
 SDP. See School District of Philadelphia
 SEA. See State Educational Agency
 Section 504. See Rehabilitation Act
 SEL. See Social-emotional learning
 Senate. See Congress
 Senators. See Congress
 Sex discrimination 15, 17, 23, 27, 29, 47, 49, 50, 51, 52, 53, 56, 161, 171, 274
 Sexual harassment. See Harassment
 Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties 27, 47
 Sexual orientation 12, 29, 47, 49, 50, 53, 54, 163, 261, 274
 Sexual violence 29, 51, 52, 55, 56, 261
 SFFA. See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College
 SID. See Strengthening Institutions Division
 Significant guidance 30
 SIP. See School Improvement Programs
 Social-emotional learning 28
 Social Services (Department of Health and Human Services) 31, 201, 204, 228, 254
 Special education. See Office of Special Education and Rehabilitative Services
 Special Olympics 87, 188
 Special Programs for Migrant Students 123
 SSA. See School Support & Accountability
 State Assessments 23, 31, 127, 130, 131, 202, 254
 State Educational Agency 200
 State Personnel Development, State Personnel Development Grants 79, 84, 189
 State Tribal Education Partnership Program 29, 106, 204
 Strengthening Career and Technical Education for the 21st Century 161
 Strengthening Historically Black Colleges and Universities Division. See Historically Black Colleges and Universities
 Strengthening Institutions Division 28, 221, 256
 Student Aid. See Federal Student Aid
 Student Financial Aid 67, 68

Student Loan Reform Act 26, 38
 Student loans. *See* Federal student loans
 Student Service 7, 23, 228, 230, 257
 Students for Fair Admissions, Inc. v. President and Fellows of
 Harvard College 28, 43, 60
 Students for Fair Admissions, Inc. v. University of North
 Carolina et. al. 28, 43, 60
 Student Support and Academic Enrichment Grants 128, 135
 Supplemental Education Grants 127, 133
 Supplemental Nutrition Assistance Program 148
 Supporting Effective Instruction State Grants 126, 128, 201

T

Targeted Grants 24, 38, 114, 125
 TAS. *See* Training and Advisory Services
 TCCU. *See* Tribally Controlled Colleges and Universities
 TEA. *See* Tribal education agency
 Teacher and School Leader Grant 161, 213
 Technical Assistance and Dissemination 79, 80, 85, 86, 189
 Technical Assistance on State Data Collection 79, 80, 188
 Title I-A, Title I-A grants 24, 114, 115, 121
 Title I-C, Title I-C grants 25, 114, 117
 Title I-D, Title I-D grants 25, 117, 119, 120, 121
 Title II-B, Title II-B grants 114
 Title III, Title III grants 25, 74, 76, 77, 78, 149, 150, 166, 182,
 201, 219, 220
 Title II, Title II grants 25, 27, 114, 129, 149, 150, 151, 166, 175,
 202, 236
 Title I, Title I grants 11, 14, 24, 25, 37, 38, 61, 77, 114, 115,
 117, 119, 120, 121, 122, 124, 125, 127, 132, 135, 138,
 145, 149, 150, 161, 166, 181, 194, 195, 196, 199, 200,
 201, 202, 204, 228, 229, 230, 233, 251, 253, 254,
 257, 266, 274
 Title IV-A, Title IV-A grants 25, 114, 195, 200
 Title IV, Title IV grants 25, 45, 89, 105, 114, 127, 149, 150,
 152, 153, 166, 195, 196, 200, 201, 229, 235, 258, 261,
 262, 266
 Title IX, Title IX law 12, 23, 26, 27, 29, 30, 38, 40, 41, 42, 43,
 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 61, 146,
 152, 153, 154, 156, 157, 158, 161, 164, 171, 236, 260,
 262
 Title VI, Title VI grants 25, 26, 43, 45, 46, 47, 57, 60, 132, 133,
 146, 158, 161, 173, 227, 236, 268
 Training and Advisory Services 127, 133, 154
 Transgender, transgenderism 50, 155, 156, 171, 172
 Tribal education agency 107
 Tribally Controlled Colleges and Universities 15, 29, 221,
 224
 TRIO Programs 23, 228, 229, 257
 TSL. *See* Teacher and School Leader Grant

U

Undergraduate students 5, 10, 228, 229, 257
 Unfunded mandates 25, 81, 82, 87, 140
 United States Department of Education. *See* Education
 Department
 University of California 27, 28, 42, 44, 266
 University of North Carolina, Chapel Hill 28, 43, 60
 University of Virginia 55, 56

V

Virginia Department of Education 158, 159, 161, 162

W

Well-Rounded Education Programs Office 32, 216, 217
 WEPO. *See* Well-Rounded Education Programs Office

William D. Ford Federal Direct Loan Program.
See Well-Rounded Education Programs Office
 Winchester 7, 17, 145, 158, 159, 160, 161, 162, 163, 164, 165,
 177
 Winchester Public Schools 7, 145, 158, 159, 160, 161, 162,
 163, 164
 WPS. *See* Winchester Public Schools

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