

LEGAL UPDATE FOR THE COLORADO LEAGUE OF CHARTER SCHOOLS

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Title: What Will Happen if the U.S. Department of Education Closes?

Earlier this week, the U.S. Department of Education laid off 1,315 employees. This accounts for slightly more than one-third of its workforce; it now has roughly 2,183 employees. Education Secretary Linda McMahon said that these layoffs were the first step towards ultimately closing the Department of Education. To actually shutter the Department will take an act of Congress – a fact that Ms. McMahon acknowledged in a recent interview.

How would the closure of the U.S. Department of Education affect Colorado charter schools? The short answer is: not much. The slightly longer answer is that closure of the USDE would almost certainly cause short-term delays and confusion as its portfolio of services is farmed out to other federal agencies, but the long-term effects seem negligible.

The USDE was created by Congress in 1979 upon request by then-President Jimmy Carter. Throughout its 46-year tenure, it has never had control over K-12 curriculum, reading lists, student discipline, or teacher employment. Colorado charter schools are responsible for all those things, and closure of the USDE would not change that. The Colorado Charter Schools Act explicitly stipulates that Colorado charter schools “shall be responsible for [their] own operation including, but not limited to, preparation of a budget, contracting for services, facilities, and personnel matters.” C.R.S. § 22-30.5-104(7)(a). Only the Colorado Legislature can amend the Charter Schools Act, not the USDE, the President, or Congress.

Next, federal funding for K-12 schools would continue even if the USDE were closed. Federal funding programs – which account for roughly 10% of K-12 funding in Colorado – were created by separate acts of Congress, e.g., the Elementary and Secondary Education Act (ESEA),

which authorizes Title I, Title II, Title III, and Title IV. Similarly, the Individuals with Disabilities Education Act (IDEA) provides limited federal funding to K-12 schools to assist with educating students with disabilities. If the USDE closed, all these federal funding programs would have to be administered by other federal agencies.

The Office for Civil Rights (OCR) that operates within the USDE enforces civil rights laws in K-12 schools. For instance, parents can file claims with the OCR if they believe their child is being discriminated against on the basis of disability, race, color, national origin, or sex. Similar to federal funding, if the USDE were shut down, the OCR's duties would have to be moved to a different federal agency, like the Department of Justice. During her Senate confirmation hearing, Secretary McMahon suggested that disability discrimination claims might be moved to the Department of Health and Human Services. It has been widely reported that OCR investigations were halted for about a month as a result of the recent turmoil with the USDE. The long-term effect of USDE changes on OCR investigations in Colorado K-12 schools remains to be seen.

Finally, the USDE also currently houses the Federal Student Aid (FSA) office, which administers federal financial aid programs for students attending college and for graduates paying off their student loans. For instance, it oversees the Free Application for Federal Student Aid (FAFSA) and Pell grants. Last year, the FSA employed roughly 1,400 people. Recently, Ms. McMahon and others have suggested that the FSA might be relocated to the Small Business Administration or the Treasury Department.

In the short term, the changes at the USDE will undoubtedly cause delays and confusion for all these programs, but over the longer term it is doubtful that the USDE's closure would have much impact on how Colorado charter schools operate day-to-day.