



Prohibitions on Federal Interference with Curriculum

Since the Department of Education was first created, there have been legal prohibitions on federal interference in local curricular decisions. Although these prohibitions would not allow for the creation of a hostile learning environment in violation of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, or Section 504 of the Rehabilitation Act of 1973 (the civil rights laws prohibiting discrimination based on race, color, national origin, sex, or disability)¹, Congress has been clear that decisions about what and how to teach remain the exclusive purview of states, districts, schools, and classroom teachers. See below for a non-exhaustive list of those specific requirements in law that prevent the federal government from requiring or disallowing any curricular content.² Any change to these prohibitions could only be accomplished through an act of Congress and could not be achieved through executive order, regulation, guidance, or other executive action.

Department of Education Organization Act (20 U.S.C. 3403)

Sec. 103(b) No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7906a and 7907)

Sec. 7906a. (a) No officer or employee of the Federal Government shall, through grants, contracts, or other cooperative agreements, mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic standards and assessments, curricula, or program of instruction developed and implemented to meet the requirements of this chapter (including any requirement, direction, or mandate to adopt the Common Core State Standards developed under the Common Core State Standards Initiative, any other academic standards common to a significant number of States, or any assessment, instructional content, or curriculum aligned to such standards), nor shall anything in this chapter be construed to authorize such officer or employee to do so.

Sec. 7907 (a) Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government, including through a grant, contract, or cooperative agreement, to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter.

Sec. 7907(b) Notwithstanding any other provision of Federal law, no funds provided to the Department under this chapter may be used by the Department, whether through a grant, contract, or cooperative agreement, to endorse, approve, develop, require, or sanction any curriculum, including any curriculum aligned to the Common Core State Standards developed under the Common Core State Standards Initiative or any other academic standards common to a significant number of States, designed to be used in an elementary school or secondary school.

Sec. 7907(c)(1) Nothing in this section shall be construed to authorize an officer or employee of the Federal Government, whether through a grant, contract, or cooperative agreement to mandate, direct, review, or control a State, local educational agency, or school's instructional content, curriculum, and related activities.

Sec. 7907(d)(2) Nothing in this chapter shall be construed to prohibit a State, local educational agency, or school from using funds provided under this chapter for the development or implementation of any instructional content, academic standards, academic assessments, curriculum, or program of instruction that a State, local educational agency, or school chooses, as permitted under State and local law, as long as the use of such funds is consistent with the terms of the grant, contract, or cooperative agreement providing such funds.

¹ The existence of a hostile environment based on race, color, national origin, or disability that is created, encouraged, accepted, tolerated, or left uncorrected by a school can constitute discrimination in violation of these statutes. Harassment creates a hostile environment if school staff, a student, or another person engages in unwelcome conduct based on race, color, national origin, or disability 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 education program or activity. The Department of Education's Office for Civil Rights (OCR), which enforces these civil rights statutes in schools, could find a violation of civil rights law in its enforcement work if: (1) a hostile environment based on race, color, national origin, sex, or disability existed; (2) the school had actual or constructive notice (in other words, the school knew or should have known) of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring. From "Resource: Resolving a Hostile Environment Under Title VI: Discrimination Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics." US Department of Education Office for Civil Rights. January 2025. Accessed at <https://www.ed.gov/media/document/resolving-hostile-environment-under-title-vi> on January 30, 2025. There is a separate standard used by OCR with respect to harassment based on sex which can be found in 34 CFR Part 106 available here: <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

² In these excerpts, the reference to "Secretary" means the Secretary of Education, "Department" means U.S. Department of Education, and "local educational agency" means school district.