



What can Betsy DeVos really do?

Experts on left and right assess possibilities for expanding school choice and limiting the work of the Office for Civil Rights

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A month into Betsy DeVos' tenure as the new Secretary of Education, there is still a big question on the minds of many Americans: How much can she really change the nation's schools?

Her nomination was controversial from the start, because DeVos and her husband have spent decades pushing to give families more of a say in where their children are educated. They have used their own wealth and a robust fundraising apparatus to push lawmakers to approve school choice proposals that even some proponents of choice question: namely, public charter schools run by for-profit companies, and the use of taxpayer funds to pay private school tuition through vouchers.

By appointing DeVos, President Donald Trump signaled that he was serious about his campaign promise to use \$20 billion in federal funds to significantly expand school choice programs.

But that's not all that worries DeVos' critics. There is also widespread concern about the fate of the Department of Education's Office for Civil Rights. Her detractors particularly fear that she might roll back protections for lesbian, gay, bisexual and transgender (LGBT) students and that the federal government may walk away from its recent regulations meant to stem sexual assaults on college campuses.

So far, DeVos has largely remained silent on her plans for any major policy shifts, but we asked a group of experts across the ideological spectrum to discuss what changes might be in store for federal school choice policy and for the Office for Civil Rights.

Neal McCluskey, director of the Cato Institute's Center for Educational Freedom, said that advocates on the left side of the political spectrum can thank themselves for any major school choice push that does come down the pike.

76,000: How many civil rights complaints the Department of Education's Office for Civil Rights handled from 2009 through 2016.

“Secretary DeVos is, in a sense, the left’s Frankenstein’s monster,” McCluskey wrote in an opinion piece for The Hechinger Report. “They pushed for more and more federal involvement — though certainly with help from some conservatives such as President George W. Bush — and now their creation may be poised to turn on them. They fear Washington might impose school choice everywhere.”

But McCluskey doesn’t see Trump’s vision for a massive federal expansion of choice becoming a reality: “DeVos cannot impose choice herself, and it is hardly a slam-dunk proposition that Congress will pass broad choice legislation.”

According to the National Conference of State Legislatures, 27 states and the District of Columbia already have programs that provide financial assistance — often vouchers — for students to attend private schools. Those programs take several different forms: Some directly use state money to pay private school tuition, while others provide tax credits to individuals and businesses that donate to nongovernmental programs that cover the cost of private schools. If a federal program is coming, many suspect that instead of redirecting federal funds, President Trump will propose a tax credit program. On March 3, Trump and DeVos visited a parochial school that participates in the Florida Tax Credit Scholarship Program. But many conservative thinkers who support school vouchers, like McCluskey, would prefer to continue to leave school choice up to the states.

Even if states remain in the driver’s seat, Abe Feuerstein, a professor of education at Bucknell University who opposes the expansion of vouchers, still sees room for DeVos to use her new position to push state lawmakers to adopt robust school-choice laws.

“Her visible position as the head of the Department of Education provides her with an important platform (aka bully pulpit) to advance her agenda of privatization, but even if she can convince Congress, she will still need to make her case with the states,” wrote Feuerstein in an op-ed for The Hechinger Report. “Because education is a state-level responsibility, Secretary DeVos would need to get state legislatures and governors to support the changes she wants to make. The fact that many states have Republican administrations and legislatures gives her an advantage, but the outcome is far from certain.”

It is far easier for DeVos to make big changes to the Department of Education’s Office for Civil Rights (OCR), which was particularly active during the Obama years. From 2009 through 2016, it handled 76,000 civil rights complaints and issued 34 policy documents to school districts and colleges. These documents addressed issues ranging from which bathrooms transgender students should use, to how to handle accusations of sexual assault on campus, to whether or not districts are violating black students’ rights when suspending them in higher numbers.

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DeVos and other conservatives have signaled a desire to rein in the office. Critics of the Obama administration, like R. Shep Melnick, a professor of American politics at Boston College, say that’s a good thing. In an opinion piece for The Hechinger Report, he accused the Obama

administration, in its zeal for civil rights enforcement, of using the office to run headlong into the “culture wars.”

Catherine E. Lhamon, who served as the head of OCR during President Obama’s second term, disputes that portrayal of her office’s work. Responding to a comment by DeVos that she couldn’t think of an ongoing civil rights issue that would warrant federal involvement, Lhamon, in an op-ed for The Hechinger Report, ran down the types of cases her office had worked on: a North Carolina University revoking a student’s acceptance after discovering he had cerebral palsy; a segregated Alabama school district offering advanced courses at its high schools that served primarily white students, but not at the high school that served virtually all of its black students; California district employees ignoring sexual assault cases because they considered them part of their Latino students’ “urban culture.”

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Melnick doesn’t see that kind of work changing much under the new administration; instead, he thinks the big change will involve the practice of issuing “Dear Colleague” letters, which lay out the OCR’s position on civil rights issues, to school districts and institutions of higher education. One of those letters, which said that transgender students should be allowed to use the bathrooms for the gender with which they identify, even made it into the presidential election campaign, with then-candidate Trump promising to rescind that guidance — a promise the new president fulfilled in February.

“No matter what one thinks of the agency’s recent ‘Dear Colleague’ letters, it is hard to argue that the agency should stop investigating these complaints and seeking redress for those that have merit,” wrote Melnick. “So the big questions for the yet-to-be-named assistant secretary for civil rights are these: Which ‘Dear Colleague’ letters should be targeted for revision? What procedures should the civil rights office use to do so? How radical should these changes be?”

Gail Heriot, a law professor at the University of San Diego and a member of the United States Commission on Civil Rights, is widely considered to be on the short list to replace Lhamon — a job that requires a Senate vote. Heriot has been one of OCR’s fiercest critics. In 2015, she co-wrote a letter with another commission member, Peter Kirsanow, coming out against a proposed 31 percent increase in OCR’s budget.

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Abe Feuerstein, professor of education, Bucknell University

“Though OCR may claim to be under-funded, its resources are stretched thin largely because it has so often chosen to address violations it has made up out of thin air,” the pair wrote, citing as prime examples efforts to curb bullying, to reduce differences in how white and nonwhite students are disciplined and to get colleges to step up sexual assault investigations. “Increasing OCR’s budget would in effect reward the agency for frequently over-stepping the law. It also

would provide OCR with additional resources to undertake more ill-considered initiatives for which it lacks authority.”

This has led some Democrats to worry that Trump’s proposed cuts to almost every federal agency will fall heavily on OCR. Shavar Jeffries, a civil rights attorney and the president of Democrats for Education Reform, says any such cuts are unthinkable.

“OCR’s Civil Rights Data Collection has uncovered that 1.6 million students go to a school where there is a sworn law enforcement officer but no school counselor; that in 22 states, physical consequences are still used as a tool for discipline; and that significant implicit bias exists in our schools where, for example, black students in preschool are 3.6 times as likely to be suspended as white students,” Jeffries wrote in an opinion piece for The Hechinger Report. “Without a strong federal role that guides states to report this information, we cannot address these critical disparities.”

One thing seems certain, a month into DeVos’ tenure: Any changes her administration does make to limit the work of the Office of Civil Rights or expand federal school choice programs will be closely followed and scrutinized by her allies and her detractors. But while DeVos and the president have been touting their school choice agenda, any changes to OCR will likely come without much fanfare.