

NAIS LEGAL ADVISORY

The Trump Administration and Independent Schools

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January 2017

Much to the surprise of pollsters everywhere, and perhaps to [himself](#), President Donald Trump took office on January 20, 2017. The change from a Democratic to Republican administration will affect policy and all branches of the federal government, including the U.S. Supreme Court, Congressional priorities, and federal agencies.

President Trump and the Republican Party

It is difficult to say whether President Trump will behave like a traditional Republican president. While nominally a Republican, Trump's political history and public statements — including those on the campaign trail and during the transition — defy easy political categorization. He has been more centrist, more populist, or more nationalistic depending on the issue. He appears much less religious, more unscripted, and less likely to conform to the traditional norms of the party. Moreover, he is more likely to turn to nontraditional forms of communication, such as [Twitter](#) rather than conventional news media, to communicate to Washington, the world, and the U.S. public at large.

There are signs that Trump believes in some traditionally Republican ideas, such as tax cuts, school choice, defense spending, smaller central government, and controls on immigration. In terms of independent schools, Republican tax cuts tend to benefit the wealthy, including many independent school parents, and Trump's [potential policies](#) appear no different.¹ These leanings, combined with a Republican majority in both the House and the Senate, could result in serious movement on Republican legislative initiatives if the administration and Congress can work together successfully.

However, as we saw when some House Republicans and the president [clashed](#) recently over proposed changes to the powers of the House Committee on Ethics, there are signs that working together may take some time. Additionally, particulars surrounding how exactly to repeal/replace the Affordable Care Act, develop an infrastructure plan, negotiate trade deals, approach Medicare and Social Security's long-term viability, and many other issues may produce friction within the Republican conference itself, friction between the White House and Congressional Republicans, or even potential [bipartisan support](#), depending on the topic.

¹ For an overview of how the tax plan might apply, read this article from NPR.
<http://www.npr.org/2016/11/13/501739277/who-benefits-from-donald-trumps-tax-plan>

Over the past several weeks, the Trump administration has started its transition, which news media continue to cover. The transition involves not only the administration's internal team but also [hundreds](#) of agencies, commissions, and other bodies within the federal government. [Cabinet positions](#) tend to get the most news coverage. Nominees undergo confirmation hearings and, eventually, final votes on the Senate floor. Due to changes made by the Democrats during the Obama administration, these nominees will only need to clear a 50-vote threshold for confirmation, which is likely.

Below are some of the nominees for key positions announced by the Trump team. Confirmation hearings — and potentially some floor votes for key national security personnel — began prior to inauguration day and will continue into the early weeks and months of the administration.

- Attorney General: **Senator Jeff Sessions (R-Ala.)**
- Secretary of Labor: **Andrew Puzder (chief executive of CKE Restaurants)**
- Secretary of Education: **Betsy DeVos (Michigan philanthropist and education activist)**
- Secretary of Health and Human Services: **Rep. Tom Rice (R-Ga.)**
- Secretary of the Treasury: **Steven Mnuchin (former Goldman Sachs partner and senior manager and hedge fund investor)**
- Secretary of Commerce: **Wilbur Ross (investor and former banker)**
- Secretary of State: **Rex Tillerson (former chairman and CEO of ExxonMobil)**
- Secretary of Defense: **Retired General James Mattis (U.S. Marine Corps)**
- Secretary of Homeland Security: **Retired General John F. Kelly (U.S. Marine Corps)**

Potential Issues Affecting Independent Schools

The following descriptions provide a broad overview of the changes under the Trump administration likely to affect independent schools. Due to the nontraditional nature of Trump's campaign, however, it's difficult to predict with any certainty what lies ahead.

Education Policy

Trump's nomination of Betsy DeVos as secretary of education has landed her on the list of "most likely appointments to be contested by Democrats in Congress." Despite the ire of Congressional Democrats and [teachers' unions](#), DeVos needs only 50 votes to be confirmed — a threshold she is very likely to meet.

DeVos has a background in charter schools and vouchers, complementing Trump's sweeping statements on the campaign trail about huge increases in funding for vouchers. As these programs are administered at the state level, any voucher program will likely be a state or local grant. Thus, the impact on independent schools is likely to be local rather than national. Vouchers could also support charter schools. Legislators will need to identify a source of funding for a voucher initiative, which will take some budget wrangling. Vouchers will also compete with other education policy issues for priority.

Another topic on the education policy front to watch is Trump's approach to the Common Core. Despite his campaign trail rhetoric excoriating the Common Core, as a set of standards generated by states, for states, with limited federal involvement, it is unlikely that the administration will be able to act quickly on this front. The recently passed [Every Student Succeeds Act](#) also tempers the need for further action.

Beyond these issues, one wild card in the new administration is whether the Department of Education will continue to provide guidance on transgender issues and student-on-student sexual assault, and what role Title IX will play in both areas. Although Title IX only applies to independent schools when they take federal financial assistance, the guidance and policies issued by the Department of Education create baseline expectations in these areas and we may see a shift in the policy direction of Title IX guidance moving forward.

Immigration Policy

It would surprise no one to see a push for immigration enforcement under the new administration. Mandated use of E-Verify, further revisions to the I-9, and reconsidering the number of visas available are all on the table. Additionally, rhetoric from the Trump campaign related to immigration enforcement could impact some families attending independent schools, as well as some staff members. The number of international students matriculating at independent schools on F-1 visas may also decrease.

Labor Policy

Labor Policy under this administration is likely to be more employer friendly. Wage and hour regulations are already on [hold](#), and the Trump administration combined with a Republican-majority Congress will likely lead to some alteration of the new regulations that were set to take effect in December 2016. Eventually, we are likely to see a regulatory overhaul that increases the threshold for the salary level required to be exempt from overtime, but does not increase the level as much as the regulations finalized under the Obama administration did.

Additionally, many people anticipate a change in the make-up of the National Labor Relations Board. These changes could signal a shift toward rulings more favorable to employers than we've seen in the last few years. Such changes could affect how employers discipline employees who speak badly about them on social media and in other places. Unlikely to be changed any time soon are initiatives underway to ensure more equal pay, including the soon-to-be-implemented new EEO-1 form required of schools with 100 or more employees.

Tax Reform

Tax reform has been a topic of conversation for many years and change has become more likely — though still difficult — under a one-party government. In the current environment, it is possible that charitable giving initiatives will advance or grow. Republicans largely favor smaller, decentralized government. A central party belief is that nonprofits, including schools, churches, and hospitals, should be used to fill the void when citizens need help. This tenet is often borne out in tax deductions, which can result in greater charitable giving to nonprofits. Indeed, Speaker Ryan's [plan](#) in this area protects charitable giving, despite removing nearly every other currently available tax deduction. The Trump administration's plan is short on details regarding the status of the charitable giving deduction, but this plan could potentially **lower charitable giving by placing a [cap](#) on itemized deductions**. This may cause debate between Congressional Republicans and the White House.

Changes to traditional employee benefits may also arise during tax reform. Earlier Republican tax plans noted that Section 117 (d) tuition-remission tax-free benefits could be on the chopping block. While it is too early to tell, this is a topic that we will monitor carefully and engage on where needed.

Health Care

The Affordable Care Act (ACA) has been and continues to be one of the hottest political topics. This is among the first topics that Congress and the Trump administration has decided take on — and likely the thorniest. While Congress has taken the initial steps necessary to begin repeal of the ACA, it appears increasingly unlikely that the ACA will be completely repealed without something substantial to take its [place](#), potentially within the structures that have already been created.

Supreme Court

There is no doubt that the Republicans would all like to bring more conservative voices to the Supreme Court. With two liberal-tending justices (Ginsburg and Breyer) and one swing vote (Kennedy) all over the age of 75, there is the possibility of a huge ideological shift if further vacancies on the court arise. This is one area where Democrats are likely to truly dig in and where the social policies of the Trump administration, whatever those turn out to be, are most likely to be on display.

Conclusion

The election of Donald Trump to the presidency has taken the entire nation on a wild ride through political grandstanding, mudslinging, and unprecedented political and polling upheaval. Once he and his team move into the Oval Office they will invariably bring many more bumps and twists to the road. The NAIS Legal and Government Relations Team will continue to watch these developments carefully and update you on topics of particular interest to independent schools.

Resources

[Republican Party Platform](#)

[Democratic Party Platform](#)

[Speaker of the House Paul Ryan’s “A Better Way” Plan \(Outline of the House Republican Vision\)](#)

[House Ways and Means Committee Chairman Dave Camp’s 2014 Tax Reform Plan](#)

[Donald Trump Campaign Healthcare Reform Position Paper](#)

[Donald Trump Campaign Tax Plan](#)

[Donald Trump Campaign Education Plan](#)

[Trump Cabinet](#) and [Other Appointments](#)

Articles on Education Policy:

- [What Unified Government and Electoral Politics Might Mean for Education Policy](#)

Political News Sites:

- [Politico](#)
- [The Hill](#)
- [Roll Call](#)

- [Education Week](#)

Think Tanks:

- [Brookings Institution](#)
- [American Enterprise Institute](#)
- [Heritage Foundation](#)
- [Center for American Progress](#)
- [Kaiser Family Foundation](#)
- [Center on Budget and Policy Priorities](#)
- [Cato Institute](#)