

The Partnership Pretext

Statutory vesting, the Administrative Procedure Act, and the relocation of special education and civil rights enforcement out of the Department of Education

On June 16, 2026, the administration announced it would move the special education office to Health and Human Services and the Office for Civil Rights to the Department of Justice, calling both "partnerships" and routine housekeeping. Congress placed these offices inside the Department by statute. The executive holds no power to move them, and the agreements concede as much, retaining leadership at the Department "because the law requires it." That concession is not the cure. It is the proof.

Two of the Department's largest responsibilities were announced out the door in a single release.

SPECIAL EDUCATION (OSERS)

The office that administers IDEA, to a **medical agency**, Health & Human Services.



OFFICE FOR CIVIL RIGHTS

The student-complaint office, to a **litigation-only department**, Justice.

Both were called "partnerships", statutory duties staying, operations outsourced. **The framing is doing a great deal of work, and it does not hold.**

The partnership label is not a defense to the illegality. It is the clearest evidence of it.

Congress commanded the placement, it did not merely permit it. The executive has no freestanding power to relocate a statutory function, and it did not seek the one thing that could authorize the move: **the consent of Congress.**

So it kept a nameplate at the Department and moved the work, retaining leadership "because the law requires it." **A party that admits the law forbids the move cannot call the two-step version lawful.**

The Architecture Congress Built

Four walls the executive cannot move on its own say-so



Congress fixed the location of each function. Only Congress can move it.

01 · §1402(a)

The special education office "shall be... within... the Department of Education." Not a default, a command.

02 · 1979 ACT

Congress placed the Office for Civil Rights inside the Department when it created the agency. A legislative choice.

03 · NO REORG POWER

Presidential reorganization authority lapsed in 1984, and even then barred transferring a department's functions.

04 · NO SUBDELEGATION

HHS and DOJ are not the Secretary's subordinates. Handing them the function is subdelegation no statute allows.

The APA Claim, Ripe Today

Excess of authority, pretext under Commerce v. New York, and the concession that ends the defense

"Stronger enforcement", sent to a department a former OCR head calls without interest or expertise.

Excess of authority • 706(2)(C)

Congress commanded the function's location. Moving it without consent or reorganization authority is action in excess of statutory authority, on its face.

Pretext • 706(2)(A) • Commerce

"Accepting contrived reasons would defeat the purpose of the enterprise." A stated purpose that does not survive contact with the destination chosen is the **Commerce** mismatch.

And under *Regents*, ignoring the decades of reliance families, schools, and states built around the Department's administration is **independently** arbitrary and capricious.

"The Department will continue to provide management and leadership... because the law requires that these responsibilities still be overseen by the Department of Education."

— the operative agreements, obtained by NPR

The sentence concedes the law fixes the responsibility at the Department, and that the administration knew it, which is why the clause exists. **The retained nameplate is not compliance. It is a draft-around a limit the drafter admits it cannot cross.**

Intent Preserved for the Case That Ripens on Injury

Arlington Heights, the blueprint and its author, and the plaintiff who can file today

The blueprint's author now sits inside the agency executing the blueprint.

BUNDLING

Both offices moved together, same release, same day.

ROUTING

To the destinations least suited to enforce, medical agency, litigation department.

LINEAGE

Project 2025's block-grant plan, executed by its own author from within.

The substantive theory needs no animus, *Choate* reaches "thoughtlessness and indifference" and bars methods of administration that defeat a program's objectives, but it ripens on an injured student. **Until then, the record fixes the purpose in time.**

There is a plaintiff who can file today, on a claim that is ripe today.

The States administer the programs and receive the funds whose conditions the move would alter. Under **Massachusetts v. EPA** they get "special solicitude," and a coalition of state attorneys general is the natural plaintiff for the structural claims.

The injury is present now: the unlawful relocation itself, and the uncertainty of administering through offices the executive is trying to bypass. **No child need be harmed first.**

Congress placed these offices inside the Department by statute; the executive holds no authority to move them; and the agreements concede it, retaining leadership "because the law requires it." The stated purposes do not survive contact with the destinations chosen. The structural claim is ripe, and the States can bring it now.

The label the administration chose is not a defense. It is the proof.

Table of Authorities · Cases, Statutes & Regulations

All authorities as cited in Gilly, T. (2026), The Partnership Pretext, Working draft, June 2026 (v0.3). Reproduced verbatim from the article's footnotes.

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- Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).
- West Virginia v. EPA, 597 U.S. 697 (2022).

STATUTES & REGULATIONS

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- 20 U.S.C. §3413(a); §3417.
- Department of Education Organization Act of 1979, Pub. L. No. 96-88, §203, 93 Stat. 668.
- 5 U.S.C. ch. 9 (§§901–912); §905(a)(1), (4), (b).
- 5 U.S.C. §706(2)(A), (C).
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