

OCTOBER 10, 2025

# NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

## Recent Executive Actions Impacting Education

### Suspending ED Operations and Legal Proceedings Amid Government Shutdown

On October 1st, the U.S. government shut down as Congress failed to appropriate funds for the new fiscal year. Consequently, thousands of federal workers have been furloughed, including [nearly 2,500 employees](#) at the Department of Education (ED) — or about 87% of ED's remaining workforce. While many core ED functions remain in operation (including the disbursement of student financial aid and Title I and IDEA funds), civil rights investigations and new grantmaking are on hold. Many of the [lawsuits](#) against ED have also been stayed pending appropriations, as most Department of Justice attorneys have been furloughed. Amid the shutdown, the Trump Administration has [threatened the mass firing](#) of federal workers and claims that furloughed employees [are not entitled to backpay](#).



#### Legally Speaking

A coalition of unions representing federal employees has filed a [lawsuit](#) arguing that the Administration's threats to fire and withhold backpay from furloughed workers violate the Anti-Deficiency Act, which prohibits agencies from laying off employees during a shutdown, and a 2019 statute requiring that all federal employees furloughed or forced to work without pay during a shutdown receive backpay, and the Administrative Procedure Act (APA). A hearing on the unions' motion for a temporary restraining order is scheduled for next week.

### Coercing Universities to Accept Education Compact or Risk Losing Federal Benefits

On October 1st, the Trump Administration sent [letters](#) to nine universities demanding that they enter into a "[Compact for Academic Excellence in Higher Education](#)" to, among other things, receive preferential treatment in federal grants and avoid losing access to federal student financial aid and tax-exempt status. The Compact requires institutions to ban race- or sex-based considerations in admissions and hiring; eliminate "buildings, spaces, scholarships, programming, and other university resources" restricted to members of certain racial or ethnic groups; cap international undergraduate enrollment at 15%; and adopt restrictive definitions of gender. It also demands that colleges restrict employee speech on societal and political events, change governance structures to prohibit anything that would "punish, belittle," or "spark violence against conservative ideas," and "commit to using lawful force . . . to prevent these violations and to swift, serious, and consistent sanctions for those who commit them." Today, MIT became the first university to [reject](#) the proposed Compact.



#### Legally Speaking...

The Compact raises significant First Amendment concerns, particularly around compelled speech and viewpoint discrimination. The government cannot reward or punish institutions based on their views, nor impose unconstitutional funding conditions. While the government has some authority to impose conditions on federal funding, the Constitution vests the power to create those conditions in Congress, and even Congress cannot condition funding in ways that violate the First Amendment. Courts have struck down [similar attempts](#) by the Administration to compel speech, and this Compact (which effectively asks universities to agree to academic receivership and forego procedural protections) appears to also be unlawful.

### Increasing Grant Funding for Civics Programs Promoting a "Patriotic Education"

On September 29th, ED awarded [\\$153 million](#) in new "American history and civics seminars" grants to 85 institutions — [more than triple](#) the previous cycle — by [shifting millions](#) in appropriated funds for teacher training grants that it terminated last February. The awards align with ED's [proposed priority](#) to preference projects that advance the "American political tradition" (which emphasizes "the influence of Western Civilization" and "the role of faith") via a "patriotic education" — or one that presents a "unifying, inspiring, and ennobling characterization of the American founding and foundational principles."



### Legally Speaking...

Courts have consistently held that agency grant policies imposing viewpoint-based restrictions violate the First Amendment and the APA. Agencies generally lack authority to disfavor applications based on viewpoint or to weigh factors beyond Congress's intent. ED's governing statutes explicitly bar it from exercising control over curriculum or instruction. As a New Hampshire district judge [recently affirmed this in granting NEA's injunction](#) against ED's efforts to restrict discussions and programs on DEI, finding that conditioning funding to promote certain views while discouraging others violates these protections. NEA has submitted a public comment opposing ED's proposed priority to advance "patriotic education" in forthcoming grant competitions.

## Removing Hotspots and School Bus Wi-Fi from E-Rate Eligibility

On September 30th, the Federal Communications Commission (FCC) [voted 2-1](#) to issue a declaratory ruling removing internet hotspots and school bus Wi-Fi from eligibility for the federal E-Rate program. This decision reverses a Biden-era expansion that allowed schools to receive E-Rate discounts on these services. The E-Rate program has provided billions of dollars in discounts to [more than 106,000 schools](#) since 2022, expanding access to broadband products and services for students nationwide.



### Legally Speaking...

The U.S. Supreme Court [affirmed](#) last June that the FCC has legal authority, delegated by Congress under the Telecommunications Act of 1996, to determine which services are eligible for the E-Rate program. But the APA requires that the FCC consider the factors listed in the Act to guide its universal service policies, as well as the reliance interests of stakeholders like school districts, students, and families, before reversing its prior position that hotspots and school bus Wi-Fi are E-rate eligible. If it failed to take these steps, the declaratory ruling may be invalid.

## Litigation Updates

### District Judge Affirms that First Amendment Protections Apply to Noncitizens

On September 30th, a Massachusetts district court judge [ruled](#) that the Trump Administration's efforts to detain and deport international students, who joined pro-Palestinian protests, violated their constitutional rights. The court affirmed that lawfully present noncitizens are unequivocally entitled to the same First Amendment protections as citizens. The court found that the Departments of State and Homeland Security violated the First Amendment by "deliberately and with purposeful aforethought" coordinating to "intentionally chill the rights to freedom of speech and peacefully to assemble" of the plaintiffs. The court also held that the Administration's reversal of the agencies' prior enforcement policy was arbitrary and capricious under the APA.

### Appeals Court Allows ED OCR Cuts to Proceed

On September 30th, the 1st U.S. Circuit Court of Appeals [permitted](#) ED to proceed with [firing](#) half of its Office for Civil Rights (OCR). The ruling came in response to a motion by the Trump Administration for an emergency stay pending appeal of a district court's preliminary injunction blocking ED from carrying out the RIF. The appeals court said it could not "conclude that this case differs enough" from *New York v. McMahon* (in which the U.S. Supreme Court [blocked](#) a preliminary injunction directing ED to restore all laid-off staff across the agency) to allow the district court's injunction to take effect.

### Federal Union Sues ED Over Partisan Out of Office Messages

On October 3rd, the American Federation of Government Employees [filed suit](#) against ED for altering furloughed employees' out-of-office email messages without their consent to include partisan language blaming "Democrats" and the "Radical Left" for the government shutdown. Plaintiffs allege that this violates the First Amendment's prohibition on government-compelled speech as well as the Hatch Act, which prohibits federal employees from engaging in partisan speech while on duty.

### Union Coalition Sues Trump Administration Over H-1B Fee

On October 3rd, a coalition of unions, higher education professionals, and religious organizations filed a [lawsuit](#) challenging Trump's [Presidential Proclamation](#) that requires a \$100,000 payment for any new H-1B employment visa. Plaintiffs allege the action exceeds executive authority under the Immigration and Nationality Act and violates the APA.

### States Sue HHS Over Removal of "Gender Ideology" from Sex Education Materials

On September 26th, 16 states and D.C. filed a [lawsuit](#) against the Department of Health and Human Services (HHS) for [demanding](#) that the states remove all references to "gender ideology" from applications for sex education grants, or else risk losing federal funding. Plaintiffs allege that HHS's actions violate statutory requirements that federally funded sexual health education be "medically accurate and complete," "culturally appropriate," and "provided in the appropriate 'cultural context.'" The complaint raises claims under the APA, the Spending Clause, and separation of powers principles.