DECEMBER 12, 2025

NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Recent Executive Actions Impacting Education

Rescinding Title VI Disparate Impact Regulations

On December 10th, the Department of Justice (DOJ) published a final rule that eliminates regulations providing for disparate-impact liability under Title VI. This move ends longstanding civil-rights protections that prohibit DOJ funding recipients from maintaining policies that disproportionately harm people of color. DOJ claims its new policy is consistent with Trump's April executive order (EO) directing the Attorney General to repeal disparate-impact regulations and the U.S. Supreme Court's decision in *Students for Fair Admissions v. President & Fellows of Harvard College* ("*SFFA*"). The rule takes immediate effect and was issued without prior notice or opportunity for public comment. While the rescission formally applies only to DOJ programs, DOJ's role in coordinating Title VI enforcement across the federal government means that other agencies are likely to follow.

Legally Speaking...

The "serious concerns" that DOJ has asserted regarding the legality of disparate impact are baseless. The Supreme Court has repeatedly upheld the constitutionality of disparate-impact liability (as recently as 2015) and did not consider it in *SFFA*, which addressed only race-conscious college admissions under the Equal Protection Clause. Additionally, the Administrative Procedure Act (APA) requires DOJ to provide prior notice and an opportunity for public comment before issuing a final rule. While the APA excuses agencies from these procedural requirements in certain circumstances, those exceptions do not apply here. DOJ's final rule also upends decades of civil rights practice by making it easier for federal funding recipients to unlawfully discriminate. The APA demands that when a rule has a profound effect on civil rights and issues of public concern, the public must be given an opportunity to weigh in.

Directing RIF'd OCR Employees to Return to Work Amidst Complaint Backlog

On December 5th, the Department of Education (ED) ordered approximately 250 Office for Civil Rights (OCR) employees currently on administrative leave to return to work to help tackle a backlog of over 25,000 discrimination complaints. ED laid off the impacted workers in March and subsequently reinstated them pursuant to a court order. After an appellate court stayed that order, on October 14th, ED issued new reduction-in-force (RIF) notices to the employees, which are subject to renewed legal challenges. ED did not specify how many of the 250 workers will return to duty starting December 15th, but indicated that it still intends to proceed with the RIFs moving forward.

Legally Speaking...

The October 14th OCR re-RIF notices are part of a pending lawsuit in California challenging the legality of the Administration's mass RIFs during the government shutdown. Last week, the judge issued a temporary restraining order blocking the firings of State Department employees, citing Congress's November continuing resolution which bars the Administration from initiating or implementing RIFs announced during the shutdown until January 31, 2026. The plaintiffs claim that implementation of the OCR re-RIFs, which ED initiated during the shutdown, would similarly violate the continuing resolution. A preliminary injunction hearing is scheduled for December 17th.

Proposing New Federal Student Loans Caps

On November 6th, ED announced a proposed rule that would implement changes to Federal Student Aid as required by the "One Big Beautiful Bill Act," including a new Repayment Assistance Plan that would lower the federal student loan cap for most graduate students. The law subjects new borrowers to annual federal lending limits of $20,500 for graduate programs starting in July 2026 and requires ED to identify "professional degree" programs eligible for a higher federal loan cap of $50,000 per year. ED's proposed rule would comply with this requirement by classifying teaching, nursing, and social work degree programs, among others, as "non-professional" degree programs and therefore ineligible for the higher borrowing limits. The proposed rule will be published in the Federal Register and open for public comment in early 2026.

Legally Speaking...

The proposed rule reflects consensus reached by the negotiated rulemaking committee pursuant to the Higher Education Act, but still must go through the standard APA notice and comment procedure before it is final. A failure by ED to complete this process or to address significant comments received could invalidate the final rule.

Litigation Updates

SCOTUS Will Hear Birthright Citizenship Challenge

On December 5th, the U.S. Supreme Court granted certiorari in *Trump v. Barbara*, one of several cases challenging Trump's EO purporting to eliminate birthright citizenship. A New Hampshire district court partially enjoined the EO in July, barring the Administration from enforcing the EO against children born on or after February 20, 2025.

Courts Weigh Trump's Authority to Fire Independent Agency Leaders

On December 5th, the D.C. Circuit held in a 2-1 decision that the President can remove members of the National Labor Relations Board and Merit Systems Protection Board at will. The majority reasoned that these independent agencies exercise executive rather than quasi-legislative or quasi-judicial authority, and Congress therefore cannot restrict the President's power to fire their members. On December 8th, the U.S. Supreme Court heard oral argument in a third removal case, *Trump v. Slaughter*, which challenges Trump's firing of a Federal Trade Commissioner. The decision in *Slaughter* will likely be issued by June 2026 and is expected to overturn decades-old precedent holding that the President can remove independent agency officials only for cause, and instead hold that the President has unlimited power to remove independent and quasi-independent agency officials.

SCOTUS Orders Appeals Court to Reconsider Exemptions to School Vaccine Policies

On December 8th, the U.S. Supreme Court directed the Second Circuit to rehear *Miller v. McDonald* — a case upholding New York's 2019 decision to eliminate religious exemptions from school vaccine mandates following a severe measles outbreak — in light of *Mahmoud v. Taylor*, which held that schools must allow parents to opt their children out of curricular activities and materials that conflict with their religious beliefs. The instruction suggests that the Court may be disposed to find that the First Amendment requires states to permit religious exemptions from otherwise-universal vaccine mandates.

Appeals Court Upholds Block on ED's Termination of School Mental Health Grants

On December 4th, the Ninth Circuit denied ED's motion to stay a preliminary injunction that blocks the agency from discontinuing 49 school-based mental health grants in 15 states pending the government's appeal on the merits of the order. A Washington state district court enjoined the discontinuations in October, finding them to be arbitrary and capricious in violation of the APA and likely to inflict concrete, irreparable harm on the plaintiff states, students, parents, and educators.

DOJ Sues California Over In-State Tuition for Undocumented Students

On November 20th, DOJ sued the state of California, claiming that its policy allowing undocumented students to pay in-state tuition at public colleges and universities is preempted by federal immigration laws. This is DOJ's sixth such challenge: Texas and Oklahoma agreed in consent judgments to end their policies, while cases in Minnesota, Illinois, and Kentucky (where a third-party intervenor is defending the state's policy) are still pending.