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NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Trump's April 23rd Executive Orders Impacting Education

Ordering Higher Education Accreditors to Eliminate DEI Standards

The EO "[Reforming Accreditation to Strengthen Higher Education](#)" directs the Department of Education (ED) to deny, monitor, suspend, or terminate recognition of accreditors that require schools to promote DEI initiatives. It also instructs ED to ensure accreditation standards promote "intellectual diversity." [Five of the seven](#) major accreditors currently require institutions to address DEI; however, some accreditors had [already softened](#) DEIA language in their standards before the EO was issued.



Legally Speaking...

The EO's attempt to penalize accreditors for using DEI-related standards is likely unconstitutional, as it chills protected speech and violates academic freedom. Based on similar concerns, three different judges in three different courts [ruled last week](#) that ED could not enforce its February 14th [Dear Colleague Letter](#) and/or the requirement that states and school districts [certify compliance](#) with that Letter. Federal law also limits ED's power over accreditors, which the EO potentially violates. Further legal action is expected on this issue.

Investigating Foreign Gifts and Contracts at Higher Education Institutions

The EO "[Transparency Regarding Foreign Influence at American Universities](#)" calls on ED to "robust[ly] enforce" Section 117 of the Higher Education Act of 1965 (which requires colleges report all foreign contracts and grants over \$250,000) by instructing universities to "more specifically disclose details about foreign funding" and launching audits and investigations to ensure compliance. Institutions found to be noncompliant may lose federal funding. Two days after the EO was issued, ED [announced](#) that it is investigating University of California, Berkeley, for an alleged violation. ED has launched a [similar investigation](#) into Harvard University.



Legally Speaking...

While it is generally legal for the President to issue guidance to an executive agency about how it should enforce a statute it administers, the administration cannot selectively enforce the statute in a way that discriminates against its political opponents or targets certain institutions based on their viewpoints or in retaliation for previous actions. To the extent that ED "robustly enforces" Section 117 only against institutions that have opposed the administration, it would likely violate the First Amendment's ban on viewpoint discrimination and the Equal Protection Clause by singling out a disfavored class for punishment.

Rolling Back Initiatives to Address Student Discipline Disparities

The EO "[Reinstating Common Sense School Discipline Policies](#)" criticizes school policies that attempt to address racial disparities in student discipline. The EO claims that schools' reliance on "behavior modification techniques" rather than suspension or expulsion undermines student safety, and that these schools are "weaponizing Title VI" to promote "discriminatory equity ideology." The EO directs ED to issue Title VI guidance for school discipline and take "appropriate action" against states and school districts that do not comply with its interpretation of Title VI. It also calls upon the Department of Defense (DOD) to issue a revised student discipline code for military schools in line with this guidance.



Legally Speaking...

The EO's directive for ED to issue non-binding guidance on how its view of Title VI applies to school discipline is not itself illegal, as it does not have any immediate legal effect on states, districts, or students. However, its interpretation of Title VI contradicts longstanding precedent, existing regulations, and best practices. As a result, any attempt by ED or DOD to enforce this view—such as threatening to withhold funding from noncompliant states or districts—would likely be unlawful.

Rescinding Protections Against Disparate Impact Discrimination

The EO "[Restoring Equality of Opportunity and Meritocracy](#)" seeks to roll back protections against policies that have a "disparate impact" based on race, sex, or other protected characteristics. Disparate impact discrimination occurs when a policy or practice that is facially neutral and applied without discriminatory intent nonetheless harms a protected class. While Title VI does not explicitly ban disparate impact discrimination, all federal agencies have adopted regulations under Title VI that do so. The EO instructs the Attorney General to repeal or amend these regulations and work with the EEOC to review all pending disparate impact cases to align them with the EO.



Legally Speaking...

The Department of Justice has traditionally maintained independence to determine the United States' litigation positions, but the administration may instruct the Attorney General to consider its policies in making those decisions and may establish enforcement priorities for executive agencies. The Attorney General does not, however, have authority to unilaterally repeal other agencies' Title VI regulations. Only agencies themselves can repeal their own rules via the formal notice-and-comment process.

Channeling Federal Funds to Advance AI in Education

The EO "[Advancing Artificial Intelligence Education for American Youth](#)" establishes a task force to improve "AI literacy and critical thinking skills" in K-12 schools by partnering with AI industry organizations. By July 22nd, ED must issue guidance on the use of formula and discretionary grants for AI-based instructional resources. The EO also directs ED to "prioritize the use of AI in discretionary grant programs for teacher training," instructs the National Science Foundation to "prioritize research on the use of AI in education," and calls on the Department of Labor to fund AI apprenticeship and certification programs.



Legally Speaking...

The administration has the authority through an EO to promote coordinated consideration of AI in education and call for agencies to issue non-binding guidance on developing AI resources via existing funding. Likewise, agencies may set priorities for discretionary grant programs and research awards to the extent consistent with the statute creating the programs. However, agencies typically must follow a notice-and-comment process to develop and announce new funding priorities. Attempts to prioritize AI-related projects in discretionary grant competitions for the upcoming fiscal year without taking these steps would be unlawful.

Other Recent Trump Administration Actions

Ordering UPenn to Revoke Awards from Transgender Student Athletes

On April 28th, ED [announced](#) that it believes the University of Pennsylvania (UPenn) violated Title IX due to its former trans-inclusive athletics policies. This announcement follows ED's decision back in March to freeze [\\$175 million](#) in UPenn's federal funds over the alleged violations, which resulted in UPenn [backtracking](#) to no longer allow transgender women to compete in women's sports. ED is now demanding further action—such as issuing a statement affirming the ban, revoking honors from trans athletes in Division I Swimming, and reassigning those distinctions to cisgender athletes. The focus specifically on Division I Swimming reflects the role of anti-trans activist and former Division I swimmer Riley Gaines, who once [tied with a UPenn transgender student athlete for fifth place](#) in a swimming competition three years ago.



Legally Speaking...

As NEA explained in this [guidance](#), existing legal precedent affirms that Title IX's protections extend to transgender students. Executive orders cannot change federal civil rights laws or overrule court decisions interpreting those laws. What's more, the government must follow mandatory statutory processes to withhold federal funding under Title IX. GLAD and ACLU-NH [have expanded an existing lawsuit](#) to challenge the administration's other actions regarding transgender athletes as violating the Equal Protection Clause and Title IX.

Launching Title VI Investigation Over New York School Mascot Controversy

On April 25th, ED [opened an investigation](#) into New York's Education Department for threatening to withhold funds from a school district over its refusal to retire its Native American mascot. In 2023, the state formally banned Native American mascots, logos, and team names, requiring districts to phase them out by June 2025. The Massapequa School District, whose "Chief" mascot includes a Native American headdress, resisted the mandate and [sought help](#) from the Trump administration. Although Massapequa [agreed](#) to retire its mascot by the 2024-2025 school year, it, along with several other districts, sued to challenge the state's policy. A federal judge [dismissed the case](#) in March, finding the districts lacked standing to assert First Amendment claims and failed to present sufficient evidence.



Legally Speaking...

The administration has discretion to open investigations into conduct by federal funding recipients that it believes violates the civil rights laws. But Title VI precedent does not support the conclusion that it is unlawful to prohibit the use of images and names that reflect racial stereotypes linked to histories of race-based discrimination and oppression.

Launching Title VI Investigation into Harvard University and Harvard Law Review

On April 25th, ED and Department of Health and Human Services (HHS) [launched a joint investigation](#) into Harvard University and the Harvard Law Review for alleged "race-based discrimination" in violation of Title VI. The investigation is based on the Law Review's selection process for articles and editors, which allegedly permits consideration of "DEI factors" including race.



Legally Speaking...

ED's theory that the Harvard Law Review violated Title VI is likely unfounded, as a federal court dismissed a [similar challenge](#) in 2019. The court found that the Law Review was a legally distinct entity from Harvard Law School and did not receive federal funding, meaning that Title VI and Title IX did not apply to its activities. The court also found no evidence of unlawful discrimination, since the Law Review's "holistic" selection process treated all applicants equally, regardless of race or gender.

Litigation Updates

State Coalition Sues Department of Education Over Anti-DEI Certification

On April 25th, a coalition of 19 Democratic-led states filed a [lawsuit](#) against ED challenging its directive that states must [certify](#) that they do not operate any DEIA initiatives in their K-12 public schools (or else lose federal funding). The lawsuit, filed in the U.S. District Court in Massachusetts, requests that the court invalidate the certification requirement and rule that states are not obligated to enforce or verify school district compliance. As noted above, the lawsuit was filed the day after [three different judges](#) blocked the [Dear Colleague Letter](#) and/or the certification requirement.

Education Research Groups Sue Department of Education Over IES Cuts

On April 16th, the American Educational Research Association and the Society for Research on Educational Effectiveness filed a [lawsuit](#) alleging that the Trump administration's gutting of ED's Institute of Education Sciences (IES) is unlawful. Since January 20th, ED has terminated \$900 million in IES contracts and fired more than 80% of IES's employees. The complaint seeks an order directing ED to reinstate or promptly rebid all canceled contracts, ensure all data collected by previous contractors is preserved, and reinstate laid-off employees in roles "necessary to carry out IES functions." Earlier in the month, the Institute for Higher Education Policy and the Association for Education Finance and Policy filed a similar [lawsuit](#) contesting IES' dismantling.

Minnesota Sues Trump Administration Over Anti-Trans EOs

On April 22nd, Minnesota Attorney General Keith Ellison filed a [lawsuit](#) challenging two Trump administration EOs (the "[Gender Ideology Order](#)" and the "[Sports Ban Order](#)") and related DOJ letters threatening to cut federal funding to Minnesota schools if the state does not comply with the directives. The lawsuit argues that the EOs exceed presidential authority, violate Title IX protections for transgender students, infringe on state sovereignty under the Tenth Amendment, and violate the Administrative Procedure Act. Ellison asks the court to declare the orders and DOJ letters unconstitutional, unlawful, and unenforceable.