

AUGUST 14, 2025



NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Recent Executive Actions Impacting Education

Ordering Colleges and Universities to Provide Data on Race in Admissions

On August 7th, Trump issued a [memorandum](#) directing Secretary of Education Linda McMahon to require colleges and universities to submit data to the Department of Education (ED) verifying that they are not unlawfully considering race in admissions decisions. McMahon has [said](#) that to comply with the memorandum, ED will update the Integrated Postsecondary Education Data System (IPEDS) to collect this information and will “increase accuracy checks,” penalizing institutions for late, incomplete, or inaccurate submissions. Institutions [must now](#) report race- and sex-disaggregated data for undergraduate applicants, admitted students, and enrollees — as well as for certain graduate and professional programs — including test scores, GPAs, first-generation status, graduation rates, and financial aid. ED will audit institutions to ensure consistency and accuracy in reporting.



Legally Speaking

The Higher Education Act requires that colleges and universities complete IPEDS surveys as a condition of their participation in federal student financial aid programs, and allows the Secretary to decide what data to collect. To the extent ED uses data on consideration of race in admissions processes as the basis for claiming that institutions’ admissions policies violate Title VI, their interpretation of Title VI as prohibiting any consideration of race is contrary to longstanding precedent. While the Supreme Court has said that race-conscious admissions policies are impermissible, policies that use race-neutral means to advance racial diversity and related goals remain legal, and the Administration cannot change that rule through enforcement actions.

Giving Political Appointees Control Over All Federal Research Grants

On August 7th, Trump signed an [EO](#) granting political appointees power over the distribution of billions of dollars in federal research grants. The EO requires all federal agencies — including FEMA, the National Science Foundation (NSF), and the National Institutes of Health — to appoint officials to review funding opportunities so that they “are consistent with agency priorities and the national interest.” Agencies must allow grants to be terminated at any time, give preference to institutions with lower indirect cost rates (all else equal), and halt new funding announcements until the new protocols are implemented.



Legally Speaking...

The EO purports to require grant applicants to explain how their proposals advance the President’s policies and to prohibit the use of grant funds for activities that are related to DEI, acknowledge the existence of trans and nonbinary people, or promote “anti-American values,” among other things. These demands violate the First Amendment by compelling recipients’ speech and penalizing particular viewpoints; are unconstitutionally vague; and violate the Constitution’s Spending Clause, which prohibits the President from adding new conditions to existing grants and from creating new conditions for future grantees without an act of Congress. In addition, federal agencies can only terminate grants that are inconsistent with agency priorities if that provision is included in the grant terms and conditions grantees receive at the start of an award. The EO’s proposal, to make termination based on agency priorities available retrospectively, is unlawful.

Initiating Settlements with Higher Education Institutions

Two new higher education institutions have agreed to settle or initiated settlement discussions with the Trump Administration following investigations into alleged violations of federal civil rights law. On August 1st, ED reached a [resolution agreement](#) with Wagner College over alleged Title IX violations related to its trans-inclusive athletics policy. Wagner will reverse the policy, adopt “biology-based” definitions of “male” and “female,” and issue apologies to all cisgender athletes who have competed alongside transgender athletes. On August 7th, the University of California (UC) system [began negotiations](#) with the Administration after the Department of Justice (DOJ) issued a [notice](#) alleging that the University of California, Los Angeles (UCLA) violated Title VI due by failing to respond to alleged antisemitism. UC seeks to restore [\\$584 million](#) in suspended funding, while the Administration is seeking a [\\$1 billion settlement](#) and the creation of a [\\$172 million fund](#) for victims of civil rights violations.



Legally Speaking...

Using the threat of withholding federal funding to coerce private entities into compliance with the Trump Administration’s agenda raises serious First Amendment concerns. The First Amendment prohibits the government from punishing or chilling speech and expression that adopts a disfavored or dissenting viewpoint. Freezing research dollars to force universities to adopt certain policies violates this principle. Litigation on this issue is ongoing. A [widely criticized](#) decision by a federal judge in New York [dismissed](#) a challenge to the cancellation of Columbia’s research funding brought by unions representing faculty and graduate students for lack of standing. On August 12th, a California district judge [ordered](#) the NSF to restore over [\\$101 million](#) in suspended federal grants to UCLA, stating that it was in violation of a preliminary injunction on science grant terminations that the court handed down in June. And a Massachusetts judge’s ruling on Harvard University’s [similar claims](#) is expected in the coming weeks.

Failing to Resolve Thousands of Student Loan Complaints

In a July 21st [letter](#) to Senator Elizabeth Warren, ED disclosed that its Federal Student Aid (FSA) Ombudsman Office has a backlog of 27,000 complaints involving problems with student loan processing, repayments, and financial aid scams. A former FSA employee reported in a [court filing](#) that there were 16,000 complaints already pending when the Trump Administration began [widespread layoffs](#) at ED last March, cutting the office’s staff from [63 to 25](#). In May — the most recent month with available data — the office closed just over 1,100 complaints, leaving thousands more unresolved in an unprecedented backlog.



Legally Speaking...

FSA’s Ombudsman’s Office was created by statute and is required to “provide timely assistance to borrowers.” A [lawsuit](#) brought by NEA, NAACP, and other partners challenges the dismantling of ED on the grounds that the President cannot prevent ED from carrying out its mandatory statutory responsibilities (including timely resolution of borrower complaints) by eliminating the resources necessary for it to do so. Congress has also signaled its disapproval of the Administration’s gutting of ED: the Senate committee responsible for ED appropriations voted by an overwhelming bipartisan majority to advance a bill that would reject all of Trump’s proposed education budget cuts; require ED to [maintain staffing necessary](#) for executing tasks required by law; and prohibit ED from [offloading core functions to other agencies](#).

Waiving ESEA Requirements for Certain States

On July 29th, ED sent a [Dear Colleague Letter](#) to all chief state school officers encouraging them to seek waivers from Elementary and Secondary Education Act (ESEA) requirements. The letter argues that Secretary McMahon has the authority “to waive any statutory or regulatory requirement” under the ESEA, with a handful of exceptions. ED claims that “provid[ing] state leaders more discretion over federal programs” and removing “bureaucratic red tape” will empower states to improve their National Assessment of Educational Progress (NAEP) math and reading scores. Twelve states had [previously written](#) to McMahon urging ED to issue state waivers and allow block grants; Indiana, for instance, [plans](#) to seek exemptions from requirements related to state assessments, education of migrant children, prevention and intervention programs for at-risk youth, English Language Acquisition instruction, and academic enrichment programs in favor of literacy, STEM, and high school redesign initiatives.



Legally Speaking...

While the ESEA gives the Secretary relatively broad authority to waive statutory and regulatory requirements, the statute creates important legal limits on her ability to grant waiver requests. For example, the Secretary cannot change the allocation or distribution of federal formula grants to states, school districts, or other recipients; most statutory limits on permissible uses of federal formula funds; applicable civil rights requirements; or the provisions banning states and school districts from using ESEA awards to fund religious worship and instruction. States’ requests for waivers that would allow them to consolidate all ESEA funding into a single block grant without any transparency or accountability measures fall within these restrictions. A decision by the Secretary to grant these waivers would be unlawful.

Litigation Updates

NEA-NH and Coalition Sue New Hampshire Over Divisive Concepts Law

On August 7th, NEA-New Hampshire (along with a coalition of school districts and civil rights advocates) filed a [lawsuit](#) challenging a recently enacted New Hampshire law that bans “any DEI-related initiatives, programs, training, or policies” in any schools that receive public funding, as well as in any other “public entity,” which would include colleges, police departments, and libraries. According to the law, unlawful DEI is any program or policy that “classifies individuals based on race, sex, ethnicity, or other group characteristics for the purpose of achieving demographic outcomes, rather than treating individuals equally under the law.” The lawsuit alleges that the law violates the First Amendment rights of educators and students, is preempted by federal civil rights laws protecting students with disabilities, and is impermissibly vague under the Fourteenth Amendment.

DOJ Wins Case Blocking Oklahoma In-State Tuition Policy for Undocumented Students

On August 5th, the DOJ filed a [lawsuit](#) against Oklahoma challenging a state policy that allows undocumented students to pay in-state tuition at public colleges and universities. Oklahoma officials [filed a joint motion](#) siding with the federal government, and on August 7th, an Oklahoma district judge [granted](#) the joint motion for a consent judgment striking down the policy. Oklahoma is the fourth state the DOJ has sued for having such a policy; like Oklahoma, Texas agreed to a consent judgment that [quickly ended](#) its policy back in June, while cases in [Kentucky](#) and [Minnesota](#) are still pending.

District Judge Allows NSF Grant Cuts to Proceed

On August 1st, a New York district judge [refused to grant](#) a preliminary injunction that would block two directives issued by NSF (one which ends efforts to promote minority inclusion in STEM education and one which caps indirect cost reimbursement rates for research grants). While the [lawsuit](#), which was brought by 16 states, argues that these directives violate the Administrative Procedure Act (APA) and are arbitrary and capricious, the judge decided that the court likely lacks subject matter jurisdiction.

DC Circuit Court Rules that Private Parties Cannot Challenge Impoundments

On August 13th, in a 2-1 decision, the U.S. Court of Appeals for the D.C. Circuit [overruled](#) a lower court's [preliminary injunction](#) that blocked the Trump Administration from cutting USAID grants for which Congress appropriated funds last year. The court did not rule on the constitutionality of the grant terminations; rather, the ruling declares that only the Comptroller General of the U.S. Government Accountability Office (not private parties like the plaintiff nonprofits) has a cause of action to challenge the withholding of funds.

Students File Lawsuit Over Attempted Deportation of Student Visa Holders

On August 6th, the Foundation for Individual Rights and Expression filed a [lawsuit](#) against the Trump Administration alleging that its attempts to deport student visa holders alleged to have engaged in “anti-American or anti-Israel” speech violates the First and Fifth Amendments. The lawsuit was filed on behalf of Stanford University’s student newspaper and two unnamed plaintiffs on student visas. The lawsuit asks the court to block the State Department from making the plaintiffs eligible for deportation and the Department of Homeland Security from initiating deportation proceedings based on the students’ speech.

State Coalition Files Lawsuit Over EO Banning Gender Affirming Care for Minors

On August 1st, a coalition of 16 states and the District of Columbia filed a [lawsuit](#) against the Trump Administration over its [January EO](#) that attempts to eliminate the provision of gender-affirming care to individuals under the age of 19. The lawsuit argues that the Administration’s actions violate the Tenth Amendment and the Administrative Procedure Act, and seeks to vacate and enjoin the EO and DOJ’s subsequent memoranda implementing it.

Appeals Court Reinstates Trump EO Terminating Federal Collective Bargaining Rights

On August 1st, the U.S. Court of Appeals for the Ninth Circuit [unanimously stayed](#) a lower court's [preliminary injunction](#) that had blocked the March [EO](#) eliminating collective bargaining rights for several federal unions. The court found the Trump Administration likely to prevail on plaintiffs’ claim of retaliation, noting that the order is not retaliatory on its face and that “the president would have taken the same action” regardless of any retaliatory motive to target the plaintiffs. Even if some retaliatory intent existed, the court said the Administration likely justified the EO on national security grounds. A ruling granting a preliminary injunction in NEA’s [lawsuit](#) challenging the EO (which was filed on behalf of the Federal Education Association and other unions representing educators employed by the federal government) is expected on August 14th.