AUGUST 28, 2025

NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Recent Executive Actions Impacting Education

Restricting Federal Funding for Virginia Schools Districts Over Trans-Inclusive Policies

On August 19th, the Department of Education (ED) placed five large Northern Virginia school districts on high-risk status (limiting their federal funding to reimbursement only) and is pursuing administrative proceedings to suspend or terminate their federal funding altogether. ED announced last month that the five districts violated Title IX by allowing transgender students to use restrooms and locker rooms that align with their gender identity. Virginia's Republican governor and attorney general have sided with ED's position, while the districts have pointed out that they are legally obligated to provide such access under binding 4th Circuit law.

Legally Speaking

As NEA explained in this guidance, under existing legal precedent, Title IX protections should be understood to extend to trans students. ED cannot change Title IX or overrule court decisions interpreting it, including a 2015 decision by the U.S. Court of Appeals for the 4th Circuit that a Virginia school district violated Title IX by prohibiting a trans student from using the restroom that aligned with his gender identity. While ED generally has the authority to place grantees who have violated federal law on high-risk monitoring and to initiate termination proceedings, those remedies are not available without well-founded evidence of an actual violation.

Scaling Back Data Collection for Minoritized Populations

On August 22nd, ED published a notice in the Federal Register proposing to remove a requirement for states to track and report racial disparities in special education as part of their annual IDEA funding applications. ED also published a notice earlier this month that proposed dropping questions on transgender and nonbinary students from the Civil Rights Data Collection (CRDC), including whether they face harassment or whether districts have policies to prevent it. These changes would take effect in the 2025-26 and 2027-28 administrations of the CRDC, a mandatory survey of all public school districts that has been conducted for nearly 60 years.

Legally Speaking...

Changes to ED's data requirements on race and gender identity do not alter states' and districts' legal obligations toward students of color and trans or nonbinary students. IDEA requires states to collect data on racial "significant disproportionality" in special education and revise policies on identification, placement, and discipline to reduce it — regardless of whether this data is included in their IDEA application. Likewise, eliminating questions on trans and nonbinary students from the CRDC does not eliminate states' and districts' duty not to discriminate against these students under Title IX and other civil rights laws.

Demanding States Remove "Gender Ideology" from Sex Education Materials

On August 26th, the Department of Health and Human Services (HHS) demanded that 46 states and territories remove all references to "gender ideology" from their federally funded sex education materials within 60 days, or risk losing federal funding. The threat of withholding more than $81 million from states' sex education program funding comes after HHS terminated California's Personal Responsibility Education Program (PREP) grant on August 21st, since the state refused to comply with HHS's demand to alter its educational materials.

Legally Speaking...

HHS's demands attempt to retroactively introduce a new condition on states' receipt of sex education program funding. The Constitution's Spending Clause prohibits the President, and executive agencies, 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 on the grounds that grantees' use of them is inconsistent with agency priorities if that provision is included in the grant terms and conditions grantees receive at the start of an award. These threats of withholding, and the California termination, are unlawful.

Continued Funding Delays for Congressionally Mandated Programs

Throughout August, multiple programs supporting foreign and exchange students have reported delays or cancellations in the disbursement of their Congressionally appropriated funds. The Office of Management and Budget (OMB) has yet to distribute $60 million for National Resource Centers and Foreign Language and Area Studies fellowships, programs formerly under ED's now-dissolved International and Foreign Language Education Office. OMB also recently cut approximately $100 million in FY 2025 funding for at least 22 State Department exchange programs, including the Global Undergraduate Exchange Program, the IDEAS Program, and the J. Christopher Stevens Virtual Exchange Initiative.

Legally Speaking...

OMB is required by statute to distribute appropriated funds to agencies within 30 days of enactment. Since funding for these programs was appropriated in a March 15th continuing resolution, OMB should have apportioned it by April 14th. The President cannot refuse to spend appropriated funds as Congress intended. However, recent decisions by the U.S. Supreme Court and D.C. Circuit Court of Appeals have made it harder for private parties to challenge grant terminations, impoundments, and other withholdings of federal funds, although Congress and the Government Accountability Office could take steps to require the release of the money.

Limiting Employer Eligibility for Public Service Loan Forgiveness Program

On August 18th, ED issued a Notice of Proposed Rulemaking that would narrow employer eligibility for the Public Service Loan Forgiveness (PSLF) program. Employers could be disqualified if they engage in activities the Secretary of Education deems to have a "substantial illegal purpose," such as providing gender-affirming care, running DEI programs, supporting "terrorists," or assisting undocumented immigrants. Schools and universities are among the organizations most likely to have their eligibility jeopardized. Public comment is open until September 17th; if the rule is finalized, it would take effect July 1, 2026. PSLF credit earned before then would remain protected.

Legally Speaking...

The proposed rule suffers from two main legal flaws. First, its potential "illegal activities" are not in fact illegal but reflect viewpoints with which the Trump Administration disagrees. The First Amendment prohibits the government from discriminating against its political opponents or others expressing disfavored viewpoints by blocking them from participating in federal programs. Second, the proposed rule is contrary to the statutory provisions creating PSLF, which define a "qualifying employer" to include a host of federal, state, and local government entities and any certified 501(c)(3) nonprofit. ED does not have the authority to narrow or modify this statutory category. ED can still revise the rule before it is finalized, but as written, these changes would likely be challenged in court.

Litigation Updates

NEA Win: District Judge Blocks Anti-Union Executive Order

On August 14th, a D.C. district judge issued a preliminary injunction blocking a March EO that aims to strip collective bargaining rights from most federal unions. The lawsuit, filed by NEA on behalf of the Federal Education Association and other federal educator unions, challenged the EO as applied to educators in Department of Defense (DoDEA) schools on the ground that it violated the First and Fifth Amendment rights of educators and their unions, as well as an abuse of authority. The court determined that the plaintiffs were likely to succeed on their claim that the order was an "overly broad interpretation" of Trump's authority to exclude agencies whose work relates primarily to national security from federal labor relations laws and found that the plaintiffs would suffer irreparable harm without the injunction.

SCOTUS Allows NIH Grant Cuts to Proceed

On August 21st, the U.S. Supreme Court issued a 4-1-4 shadow docket order allowing the National Institutes of Health (NIH) to terminate nearly $800 million in grants that allegedly mentioned DEI goals, gender identity, COVID-19, or other topics disfavored by the Trump Administration. The order paused in part a Massachusetts district court's June decision which found the grant terminations unlawful and ordered the Trump Administration to reinstate the awards. Justice Barrett, writing for herself, provided the controlling analysis: district courts "lack[] jurisdiction to hear challenges to [] grant terminations, which belong in the Court of Federal Claims," but may hear challenges to agency guidance and other documents setting grant priorities under the Administrative Procedure Act.

District Judge Allows Dismantling of ED to Continue

On August 19th, a Maryland district judge denied NEA's request for a preliminary injunction in its lawsuit over the dismantling of ED. The judge cited unresolved legal questions raised by the U.S. Supreme Court's shadow docket orders staying preliminary injunctions in *New York v. McMahon* and *California v. Department of Education*, which challenged the mass layoffs at ED and the mass termination of teacher preparation grants, respectively. Applying the 4th Circuit's new heightened standard for emergency relief, the judge found the plaintiffs had not shown a clear likelihood of success on each of the dispositive issues in the case. She did not evaluate the merits or the government's jurisdictional arguments directly, reasoning that the SCOTUS stays impeded such a showing. Consequently, the judge denied the plaintiffs' motion for a preliminary injunction and the government's motion to dismiss without prejudice. The government has 30 days to refile its motion to dismiss.

District Judge Orders ED to Reinstate OCR Staff

On August 13th, a Massachusetts district judge refused the Trump Administration's request to vacate a preliminary injunction that prohibits ED from laying off nearly half its Office for Civil Rights (OCR) staff. The order stemmed from an April lawsuit (brought by the Victim Rights Law Center) challenging only OCR terminations. The Administration sought to overturn the order after the U.S. Supreme Court blocked another, broader order in *New York v. McMahon* that directed ED to restore all laid-off staff across the agency. However, the judge concluded that the cases, and therefore their related rulings, are separate, since this case more specifically addresses the RIF at OCR and how it will prevent the office from carrying out its statutory mandate of protecting students from discrimination.

District Judge Blocks ED's Anti-DEI Orders

On August 14th, a Maryland district judge found that ED's February 14th Dear Colleague Letter and Certification Requirement, which attempted to ban initiatives to promote DEI at the state and district levels, were unlawful. In an opinion partially granting plaintiffs AFT and the American Sociological Association's motion for summary judgment, the court addresses the process through which the Trump Administration tried to ban DEI, rather than the legality of the attempt to ban DEI itself. The plaintiffs had won a preliminary injunction in April that blocked parts of Trump's anti-DEI policy. NEA also obtained a preliminary injunction barring implementation of the Letter and the Certification Requirement. Its motion for summary judgment in that case remains pending.

District Judge Orders ED to Restore Some Education Research Programs

On August 15th, a Maryland district judge ruled that the Trump Administration violated federal law and the Constitution's separation of powers by effectively shuttering ED's Comprehensive Centers and Regional Educational Laboratories programs. ED must restore the grants and contracts that fund these two sets of centers, which help state education departments and schools identify and implement evidence-based improvement strategies. The case was brought by two contractors involved in the programs, who sued over the abrupt cancellations of their contracts in February.

District Judge Allows Texas to End In-State Tuition for Undocumented Students

On August 16th, a Texas district judge denied two motions to intervene in a case brought by DOJ, claiming that Texas's policy allowing undocumented students to pay in-state tuition is unlawful. The two groups of intervenors (Students for Affordable Tuition and a coalition that includes a University of North Texas student, La Unión del Pueblo Entero, and Austin Community College) sought to defend the policy against the state's decision to agree with DOJ's position and request that the court find the policy unenforceable. The judge found that the intervenors filed their respective motions too late and lacked authority to defend the law, which he said rests exclusively with the Texas Attorney General's Office. Both groups have both appealed.

Appeals Court Upholds Block on University of California Federal Grant Terminations

On August 21st, the 9th Circuit denied the Trump Administration's request to stay a California district judge's preliminary injunction blocking the Administration from terminating the University of California's federal research grants across multiple agencies. The district court had issued an order on August 12th requiring the Administration to reinstate grants issued to UCLA researchers, ruling that the Administration's "suspension" of the grants was "termination by another name" and violated an earlier preliminary injunction against terminating such grants.

DOJ Abandons Defense of Hispanic-Serving Institution Program Criteria

The Department of Justice (DOJ) said it will not defend against a lawsuit claiming that the eligibility criteria for colleges and universities seeking funds through ED's Hispanic-Serving Institutions (HSI) grant program — which require that an institution's enrollment consist of at least 25% Hispanic undergraduates — is unconstitutional. The plaintiffs in the case, the state of Tennessee and Students for Fair Admission, seek to have this so-called "ethnic target" invalidated and to ban ED from using it to determine the eligibility of Tennessee's higher education institutions for HSI funding. The Hispanic Association of Colleges and Universities has filed a motion to intervene in the case.