

MAY 15, 2025



NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Trump's Recent Executive Actions Impacting Education

Issuing Guidance on "Unsafe School Choice Options"

On May 7th, the Department of Education (ED) published a [letter](#) calling on states to more robustly enforce the Unsafe School Choice Option provision of ESEA. The provision, which has been used [very rarely](#) in recent years, requires that states allow students in "persistently dangerous schools" to transfer to the school of their choice (including a charter school). Each state is free to develop its own definition of "persistently dangerous," but ED recommends using indicators like poor academic performance, school discipline data, and a lack of a school resource officer. ED also encourages faster identification of "persistently dangerous" schools and expanding school choice options.



Legally Speaking...

ED's letter is nonbinding guidance with no legal effect. Since each state determines criteria for this designation, ED presumptively cannot require any specific factors to be considered and cannot itself designate schools as "persistently dangerous."

Ending School Desegregation Order in Louisiana

On April 29th, the Department of Justice (DOJ) [announced](#) that, at its request, a district court ended a [1966 consent decree](#) with a Louisiana school district that prohibited the district from discriminating on the basis of race or color (including by maintaining segregated schools) and provided for federal monitoring to ensure the district's compliance. The court had [found](#) in 1975 that the district was fully integrated but never ended the consent decree or dismissed the case. DOJ thus claims that it has "righted a historical wrong" by asking the court to end the decree. The AP has [reported](#) that the DOJ is considering ending other desegregation orders as well, which are now in place across the southern states.



Legally Speaking...

A court can end a consent decree when it finds (based on compliance reviews, audits, inspections, and other evidence collected through the federal monitoring process) that the entity under supervision has fully complied. Reports that DOJ may be looking to lift desegregation decrees across the south raise concerns as some school districts still face substantial challenges in providing desegregated schools.

Cutting Funding for Children's Educational Shows

On May 1st, Trump signed an [EO](#) directing the Corporation for Public Broadcasting ("CPB") and other federal agencies to stop funding NPR and PBS. Accordingly, ED [cancelled](#) the remaining \$23 million of CPB's \$112 million "Ready To Learn" grant, which funds children's educational shows on PBS such as "Sesame Street." PBS's educational shows have been found to [measurably improve](#) children's early literacy and numeracy skills and social emotional development.



Legally Speaking...

The EO's directive for CPB to withhold these funds is likely unlawful, as CPB's [statute](#) mandates that it operates [independently](#) from the federal government and gives it discretion over fund usage. Its funds are Congressionally appropriated and thus can only be rescinded by Congress. Similarly, while ED can terminate competitive grant awards in certain circumstances, it must follow statutory and regulatory procedures to do so (such as providing notice, a hearing, and a reasoned explanation of its decision). It does not appear that ED took any of those steps before pulling the "Ready to Learn" award.

Further Revoking Harvard University's Grant Funding

On May 13th, ED froze an additional [\\$450 million](#) in federal grants for Harvard University, following a [letter](#) it sent on May 5th accusing the University of engaging in a “systemic pattern of violating federal law” and making a “mockery of this country’s higher education system.” This marks the latest escalation in Trump’s feud with Harvard after it [refused to comply](#) with a series of [demands](#) responding to alleged antisemitism on campus.



Legally Speaking...

Harvard University filed a [lawsuit](#) on April 21st (which it has since [amended](#) to include this most recent round of cuts) challenging the termination of \$2.2 billion in grants, arguing that the First Amendment bars the government from using legal sanctions or other coercion to suppress speech it does not like. It also asserts that the Trump administration did not follow the mandatory statutory procedures for revoking federal funds for alleged Title VI violations.

Continuing to Cut Discretionary Federal Grants

On May 2nd, the Department of Transportation (DOT) [announced](#) that it has cut \$54 million in what it calls “woke university grants.” Additionally, [hundreds](#) of National Endowment for the Arts grantees were [notified](#) that their funding had been rescinded or ended. The agency, with a current budget of \$207 million, has awarded [\\$5.5 billion](#) in grants since its establishment by Congress in 1965.



Legally Speaking...

The termination of discretionary federal grants is sometimes permissible under the law, but agencies cannot do so in an “arbitrary and capricious” manner. DOT provided no definition of “woke,” no explanation for why certain grants were labeled as such, and no guidance on how to restore funding. The same is true for the administration’s cuts to arts funding. In addition, agencies generally must follow statutory and regulatory procedures before revoking grant awards.

Litigation Updates

Judge Issues Temporary Restraining Order on Federal Reorganization Efforts

On May 9th, a federal judge in the Northern District of California issued a 14-day [temporary restraining order \(TRO\)](#) halting the Trump administration’s efforts to reduce the federal workforce through RIF notices and reorganizations. The ruling finds the large-scale agency overhauls that Trump directed via his [February 11th EO](#) and subsequent guidance to be unconstitutional, as they were done without Congressional approval. The TRO affects 20 federal agencies, including the Office of Management and Budget, Department of Labor, National Labor Relations Board, and the Department of Government Efficiency. Even though TROs are typically not appealable, the administration has [appealed the ruling](#).

Federal Education Association Sues Over Trump’s Anti-Union Order

On May 5th, the Federal Education Association, with the support of NEA, filed a [lawsuit](#) challenging an [EO](#) issued by Trump in March that aims to strip collective bargaining rights for several federal unions. The lawsuit, filed in the U.S. District Court for the District of Columbia, challenges the EO as a violation of the First and Fifth Amendment rights of educators and their union under the U.S. Constitution, as well as an abuse of authority.

Judge Issues Preliminary Injunction on EO Eliminating Library Services Agency

On May 6th, a federal judge issued a [preliminary injunction](#) enjoining Trump’s [EO](#) that attempts to close the Institute of Museum and Library Services (IMLS), stating that the directive violates the Administrative Procedure Act. The lawsuit was brought forward by attorneys general from 21 states. The American Library Association and the American Federation of State, County, and Municipal Employees have also filed a [lawsuit](#) contesting the dismantling of IMLS.

Education Department Halting Enforcement of Feb. 14 Letter and Certification Demand

In response to the [NEA ACLU litigation](#), ED has now posted public [notices](#) that it will [not enforce](#) the February 14th Dear Colleague Letter or April Certification demand.