

MAY 22, 2025



NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

SCOTUS Blocks Creation of Oklahoma Religious Charter School

On May 22nd, the U.S. Supreme Court issued a one-line [per curiam opinion](#) affirming (by a [4-4 split](#)) the Oklahoma Supreme Court's ruling that both the federal and state constitutions, along with Oklahoma's charter school law, prohibited the approval of a religious charter school. The deadlock came as a surprise, since arguments [suggested](#) that the Court might reverse the ruling. Justice Amy Coney Barrett, who had [recused herself](#) from the case, would have been the deciding vote. Because of the deadlock, the ruling sets no nationwide precedent on the contentious legal question of whether religious schools must be able to participate in taxpayer-funded state charter school programs.

District Court Blocks Trump Administration from Closing Department of Education

On May 22nd, a Massachusetts district court judge issued a [preliminary injunction](#) blocking the Trump Administration's [reduction in force \(RIF\) efforts](#) at the Department of Education (ED). The court found that the plaintiffs were "likely to succeed in showing that defendants are effectively disabling the Department from carrying out its statutory duties by firing half of its staff, transferring key programs out of the Department, and eliminating entire offices and programs." The court found these actions likely unconstitutional and unlawful and ordered the agency to reinstate employees who were fired in mass layoffs. The ruling came in the two consolidated lawsuits, a lead suit filed by 21 states ([NY v. McMahon](#)) and a second case ([Somerville Public Schools v. McMahon](#)). The Trump Administration has appealed the ruling.

District Court Denies Injunction in Challenge to Layoffs at ED's Office of Civil Rights

On May 21st, a D.C. district court judge [denied a request](#) for a preliminary injunction that would halt the Trump Administration's decimation of ED's Office for Civil Rights (OCR), including the layoffs of [nearly half of OCR staff](#) and closure of [seven of the twelve regional OCR offices](#). The plaintiffs (parents and students with pending OCR cases) had requested an injunction to ensure OCR's continuing ability to investigate and resolve civil rights complaints. The court rejected what it viewed as the plaintiffs' request to place the office in "receivership" for these operational decisions.

District Court Blocks Elimination of School District Desegregation Program

On May 22nd, a D.C. district court judge issued a [preliminary injunction](#) blocking ED from eliminating the Equity Assistance Center-South (EAC-South), one of four federally-funded EAC centers that allocates grants to school districts for desegregation plans in compliance with *Brown v. Board of Education*. The [lawsuit](#), brought by the Southern Education Foundation, alleges that the attempted closure violated the Administrative Procedure Act, the Fifth Amendment, Title V of the Civil Rights Act, and the First Amendment.

Appeals Court Stays Injunction on Trump EO Eliminating Federal Bargaining Rights

On May 16th, a federal appeals court [permitted](#) Trump's March [EO](#) terminating collective bargaining rights for federal employees at over a dozen federal agencies to take effect while the litigation challenging the EO proceeds. The D.C. District Court had [issued](#) a preliminary injunction on April 25th blocking the directive in response to a lawsuit brought by National Treasury Employees Union. Over [a million](#) federal employees have been stripped of their bargaining rights by the EO.

Recent Executive Actions Impacting Education

Forming Fraud Team to Investigate Civil Rights Violations

On May 19th, the Department of Justice (DOJ) [formed](#) a new team to investigate civil rights violations as fraud under the False Claims Act. According to the DOJ, “a university that accepts federal funds could violate the False Claims Act based on its assurances of compliance with civil rights law when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women’s bathrooms, or requires women to compete against men in athletic competitions.” Institutions found to be in violation of the Act will have their federal funding revoked, and could be subject to treble damages and statutory penalties. Using the False Claims Act, the DOJ has [opened an investigation](#) into Harvard University’s compliance with the U.S. Supreme Court’s ruling in *Students for Fair Admissions, Inc. v. Harvard College*.



Legally Speaking....

DOJ seems to be planning to use the “false certification” theory of False Claims Act liability to weaponize the statute against colleges and universities that certify their compliance with Title VI and Title IX as a condition of accepting federal funding while maintaining activities, policies, or practices that, in the view of Administration, violate federal antidiscrimination laws. However, the Administration’s view is contrary to longstanding precedent and raises the same vagueness concerns that have led courts to [strike down](#) similar efforts by the Administration to chill efforts to advance diversity, equity, and inclusion in K-12 schools and colleges (including in the [NEA and NEA-NH case](#)). Further, the First Amendment prohibits the government from using the False Claims Act to penalize institutions that express disfavored viewpoints.

Increasing Funding for Charter Schools

On May 16th, ED [announced](#) that it will be increasing the Charter Schools Program (CSP) funding by \$60 million for FY 2025, raising the program’s total budget to \$500 million. ED also announced a new charter school grant opportunity, the Model Development and Dissemination Grant Program, which “aims to showcase and share strategies that are helping innovative charter schools across the country succeed.” ED released Notices Inviting Applications for five additional 2025 competitions under the CSP as well.



Legally Speaking...

Under the terms of its appropriations act funding, ED cannot use funds that Congress appropriated to support one program, project, or activity to create a new program or reorganize its activities, especially if the result is to eliminate a program created and funded by Congress. It is not clear where in its budget ED found the new \$60 million in CSP funding. If the \$60 million was supporting another program or reflects savings from competitive grant awards the Administration terminated earlier this year, the increase may be unlawful.

Canceling CTE Grants for Native American and Hawaiian Students

On May 7th, ED [canceled](#) grant competitions for two Career and Technical Education (CTE) Programs meant to improve career opportunities for [Native American](#) and [Native Hawaiian](#) students, stating that these programs do not “align with the objectives established by the Trump Administration.” The grants provided an annual total of nearly \$21.6 million for these programs. ED will dedicate available funds to support current recipients of the grants.



Legally Speaking...

This move was seemingly motivated by the Administration’s push to close educational programs that they feel focus on diversity, equity, and inclusion (DEI) initiatives. While a new administration can shift the focus of certain competitive grants and awards and may terminate competitive grants in some circumstances through specific procedures, the President cannot cancel entire grant programs created and funded by Congress.

Freezing NSF Funding for Universities with DEIA Programs or Israel Boycotts

As of May 19th, the National Science Foundation (NSF) [will no longer award grants](#) to universities that promote “diversity, equity and inclusion... in violation of Federal anti-discrimination laws”—or that academically boycott Israel or boycott companies doing business with Israel. The National Institutes of Health implemented [similar grant restrictions](#) back in April.



Legally Speaking...

NSF's DEIA requirement is likely to be found impermissibly vague, contrary to longstanding precedent construing Title VI, and based on an overly broad reading of Supreme Court case law on the legality of affirmative action programs.

Defunding Teacher Apprenticeship Program

Despite Trump's [EO](#) instructing federal officials to "reach and surpass" a million new active apprenticeships, on May 2nd, the Department of Labor [canceled](#) a five-year contract for the Educator Registered Apprenticeship Intermediary (ERA). The \$13 million contract, which was in the middle of its second year, provided funding for a coalition of education research organizations to guide apprenticeship providers through the necessary steps to launch new programs. The termination came even after the ERA changed its contract to ensure it was in compliance with Trump's [EO](#) banning DEI in federal programs.



Legally Speaking...

The reasons for the termination of ERA's contract are not clear, but the Administration can only cancel contracts for reasons set forth in regulation and the terms of the agreement. If the termination did not meet these criteria, it may be unlawful.

Threatening OPT Visa Holders with Deportation

On May 15th, immigration officials [warned](#) international postgraduates on Optional Practical Training (OPT) visas that they risk losing legal status and deportation if they do not report employment within 15 days. OPT allows graduates to work short-term in fields related to their studies, with a 90-day unemployment limit per year. A recent ICE policy [broadens](#) the agency's power to revoke student status and initiate deportation.



Legally Speaking...

In 2020, the Trump Administration sent a [similar letter](#) to students that outlined the existing regulations about unemployment while on an OPT visa. However, previous practice, even during the first Trump Administration, was that student visa records were not automatically terminated. Because the letter lays out existing regulations and it is not yet clear if student visas will be revoked as a result, it is unclear whether there will be legal grounds to challenge the Administration's action. The OPT program was created via federal regulations and any efforts to curtail or end those programs would require new agency rulemaking.