

MAY 8, 2025

# NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

## Trump's Recent Executive Actions Impacting Education

### Proposing Sweeping Budget Cuts to Federal Education Initiatives

On May 2nd, Trump released a [“skinny budget” proposal](#) for the 2026 fiscal year would reduce funding by nearly \$18 billion for the National Institutes of Health, \$12 billion for the Department of Education (ED), and \$5 billion for the National Science Foundation. It also proposes turning IDEA funding into a block grant, consolidating 18 ESSA programs into a single block grant, and eliminating funding for TRIO and Federal Work-Study (among other programs). A more detailed budget proposal is expected later in the month.



#### Legally Speaking...

The Constitution gives Congress sole authority over federal spending; the President's budget is merely a proposal with no legal force. While it reflects the administration's priorities, it rarely becomes law as written. Though some Trump officials claim the President can withhold already-appropriated federal funds, the Impoundment Control Act and constitutional law require the budget to be implemented as passed by Congress, except in very limited circumstances.

### Canceling \$1 Billion in Federal Mental Health Grants for K-12 Schools

On April 29th, ED notified schools that it will be discontinuing \$1 billion in [federal grants](#) dedicated to school-based mental health services, [claiming](#) that the grants violated “the letter or purpose of Federal civil rights law.” The grants were authorized as part of the [Bipartisan Safer Communities Act](#), which was passed in 2022 after the school shooting in Uvalde, Texas. Schools have used the grant money to hire mental health professionals, including counselors and social workers.



#### Legally Speaking...

Agency regulations give ED some discretion to discontinue multiyear grant awards. But the circumstances in which ED can discontinue already-awarded grants on policy grounds are limited, and the Administrative Procedure Act requires the agency to provide a reasoned explanation for its decisions and to provide individualized grounds for the discontinuation of ongoing grants.

### Fast-Tracking Accreditors Switches for Colleges and Universities

On May 1st, ED released a [Dear Colleague Letter](#) to make it easier for higher education institutions to switch accreditors. The Letter was issued in response to Trump's April 23rd [Accreditation EO](#), which directs ED to deny, monitor, suspend, or terminate recognition of accreditors who include DEI in their standards. According to the Letter, institutions are allowed to change accreditors to align with their religious values, comply with state laws, or avoid DEI requirements. ED now has 30 days to approve the change in accreditors; the request will also be approved even if ED does not formally act within those 30 days, so long as the institution submits materials showing “reasonable cause.”



#### Legally Speaking...

The Accreditation EO addresses only “unlawful” discrimination and cannot override existing laws, court decisions, or regulations on DEI or accreditor recognition. The First Amendment arguably prevents the government from penalizing accreditors for using DEI criteria, and the Department of Education Organization Act bars ED from exercising “direction, supervision, or control over... any accrediting agency.”

### Restricting In-State Tuition Access Based on Citizenship

On April 28th, Trump issued an EO ([“Protecting American Communities from Criminal Aliens”](#)) threatening to revoke federal funding from cities with sanctuary jurisdiction status and that have policies specifically benefiting undocumented immigrants. It directs the Attorney General to end the enforcement of policies that “favor aliens over American citizens,” including state laws offering in-state tuition to undocumented students but not out-of-state citizens. Currently, [24 states and the District of Columbia](#) allow in-state tuition for undocumented students.



### Legally Speaking...

States have the legal authority to set in-state tuition criteria and many allow undocumented students who graduate from state high schools to qualify. Federal law does not prohibit this, and [courts have upheld these programs](#). Plaintiffs who won a [preliminary injunction](#) blocking Trump's [January EO](#) (which directed DOJ to withhold funds from sanctuary cities) have asked the court to modify its injunction to block this recent EO as well. Moreover, the Ninth Circuit [struck down](#) a similar [EO](#) from Trump's first term as a separation of powers violation—albeit there are conflicting court rulings on whether immigration cooperation can effect a state's voluntary grant eligibility.

## Strengthening ICE's Power to Deport Foreign Students

On April 29th, the Trump administration unveiled a new policy that will expand ICE's power to terminate the legal status of foreign students. The policy—presented by U.S. attorneys as [evidence](#) in a district court filing—broadens the list of criteria that can be used to revoke legal status. Notably, this includes “evidence of a failure to comply with the terms of nonimmigrant status” and “U.S. Department of State visa revocation,” [which can be issued without evidence of a violation and is not subject to court challenges](#). Although the Trump administration began [restoring](#) thousands of students' legal statuses last week after a series of [court decisions](#), this new policy potentially places these students in jeopardy once again.



### Legally Speaking...

Under the Administrative Procedure Act, significant agency policy changes require notice and comment and cannot be arbitrary or capricious, grounds on which this new policy is likely to be challenged. [Multiple lawsuits](#) also argue that the previous visa revocations violated [due process](#). NEA has created a [model open letter](#) for members and affiliates to urge universities to defend free speech and support immigrant students and staff.

## Recent Department of Education Investigations

Since last week, ED has launched several investigations into schools over alleged violations of federal laws like Title VI and Title IX:

- On April 29th, ED launched a Title VI investigation into [Chicago Public Schools \(CPS\)](#) over its [2025-2029 Black Students Success Plan](#), which outlines goals such as hiring more Black teachers and lowering suspension rates for Black students. The plan was created in response to a [2023 Illinois law](#) directing the Chicago Board of Education to close academic gaps between Black students and their peers.
- On April 30th, ED began investigating the [Washington State Superintendent's Office](#), claiming that Washington State potentially violated federal laws (Title IX, FERPA, and PPRA) by requiring schools to adopt trans-inclusive athletics policies, not notifying parents if a student socially transitions, and training employees to address gender bias in instructional materials.
- On May 1st, ED opened a Title VI investigation into [Evanston-Skokie School District 65](#) in Illinois for practices such as sponsoring affinity groups for students and teachers of color, hosting racial literacy trainings for staff, and creating K-5 lesson plans that allegedly teach students to “disrupt the Western nuclear family dynamics” and “understand that our country has a racist history and is grounded in white privilege.”
- On May 6th, ED launched a Title IX investigation into [Saratoga Springs City School District](#) in New York for its policy allowing students to “use facilities and participate in activities and sports consistent with their gender identity.”
- On May 6th, ED, Health and Human Services, and the U.S. General Services Administration opened a review of alleged antisemitic violence at the University of Washington after dozens of pro-Palestinian student protestors were arrested [the night before](#).



### Legally Speaking...

The administration can investigate federal funding recipients for civil rights violations, but Title VI precedent does not support the claim that programs and policies promoting DEI are unlawful. ED is [enjoined](#) from enforcing its [Dear Colleague Letter](#) reflecting that view against schools and colleges where NEA members work. Legal precedent also affirms that Title IX's protections extend to transgender students. EOs and agency guidance cannot change federal civil rights laws or overrule court decisions interpreting those laws.

## Litigation Updates

### Judge Directs Department of Education to Restore COVID-19 Relief Funds

On May 6th, a New York district judge issued a [preliminary injunction](#) halting ED's revocation of pandemic relief fund extensions for K-12 schools. The pause temporarily reverses ED's determination that states would forfeit any pandemic relief funds not liquidated by March 28, 2025 (a year before the extended deadline of March 2026 ED previously approved) and allows the [16 states and the District of Columbia](#) to continue spending what remains of over \$1 billion in funding they previously received.

### University Coalition Sues NSF Over Indirect Research Cost Policy

On May 5th, the American Council on Education, the Association of American Universities, the Association of Public and Land-Grant Universities, and 13 universities filed a [lawsuit](#) challenging the National Science Foundation's [plan](#) to cap higher education institutions' indirect research cost reimbursement rates at 15%. The lawsuit argues that the cap is “arbitrary and capricious” and violates the Administrative Procedure Act. Similar plans brought forward by the National Institutes of Health and the Department of Energy to cap indirect research costs [have already been blocked](#) in federal court.