JULY 3, 2025

NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

NEA and Coalition Move for Preliminary Injunction Blocking the Dismantling of ED

On July 1st, NEA and a coalition of education, civil rights, and school employee groups filed a motion for a preliminary injunction to prevent the Trump Administration from continuing to dismantle the U.S. Department of Education (ED). Over a thousand pages of supporting declarations and exhibits from 61 individuals were filed, the vast majority of whom are current or former ED employees. Supporting declarants include former Secretaries Miguel Cardona and John King, former Assistant Secretary for Civil Rights Catherine Lhamon, former acting General Counsel Emma Leheny, and many more. We expect briefing in the case to conclude by the middle of August.

FEA Moves for Preliminary Injunction Blocking Anti-Union Executive Order

On July 2nd, NEA, on behalf of the Federal Education Association (FEA) and other unions representing educators employed by the federal government, filed a motion for a preliminary injunction to block a March EO that aims to strip collective bargaining rights for several federal unions, including for educators who work in schools on military bases operated by the Department of Defense Education Activity (DoDEA). 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 unions, as well as an abuse of authority. OGC represents the plaintiffs in the litigation. A California district judge issued a preliminary injunction last week blocking the EO in a separate lawsuit filed by six major federal employee unions.

State Coalition Sues ED Over School Mental Health Grant Termination

On June 30th, a coalition of 16 states filed a lawsuit against ED challenging its discontinuation of grant funding for school-based mental health services. The discontinued grants expanded access to mental health care in more than 200 school districts and supported the hiring of approximately 14,000 mental health professionals in schools across the country. The states allege that the Trump Administration's decision violates the Administrative Procedure Act, the separation of powers, and the Spending Clause. A New Mexico school district has also filed suit challenging the terminations, alleging that the Administration exceeded its statutory authority and violated the First and Fifth Amendments.

DOJ Sues Minnesota Over In-State Tuition Policy for Undocumented Students

On June 27th, the Department of Justice (DOJ) filed a lawsuit against Minnesota over its policy allowing undocumented students at public colleges and universities to pay in-state tuition. The lawsuit claims that Minnesota's policy violates a federal statute by granting benefits to undocumented students that are not available to out-of-state U.S. citizens. It also challenges the state's free college program, which allows in-state undocumented students to qualify. This marks the DOJ's third legal challenge to similar state tuition policies in recent weeks, following a June 17th suit in Kentucky and a settlement in Texas that resulted in a permanent injunction striking down that state's in-state tuition policy.

D.C. Circuit Dismisses Lawsuit Over Social Media Vetting for Student Visa Applicants

On June 27th, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit reversed a trial court order that found that the plaintiffs had standing to pursue their challenge to the Trump Administration's 2017 policy requiring increased social media screening for student visa seekers. The lawsuit claimed the State Department's policy infringed on First Amendment rights by compelling applicants to provide access to their social media accounts and denying visas to those it viewed as expressing "any indications of hostility" toward the United States. In 2023, the trial court found that the plaintiffs had organizational standing but dismissed their claims on the merits, holding that they failed to state a claim under the First Amendment or the Administrative Procedure Act. The appellate court reversed the district court's standing analysis, concluding that a court order would not remedy the plaintiffs' alleged First Amendment injuries, and vacated its ruling on the merits.

SCOTUS Rundown

SCOTUS Rules Parents Have Right to Opt-Out of Curriculum Conflicting with Religion

On June 27th, in *Mahmoud v. Taylor*, the U.S. Supreme Court held that parents have a right to advance notice and an opportunity to opt their children out of exposure to curricular materials that may substantially interfere with their religious views. The Court issued this ruling in a case brought by parents challenging the decision of the Montgomery County Public Schools in Maryland to make their elementary school curriculum more inclusive by adding storybooks that featured LGBTQ+ characters or storylines. The 6-3 decision held that the mere introduction of the storybooks into classrooms imposed a burden on the parents' rights to direct the religious upbringing of their children.

SCOTUS Limits the Scope of Injunctions that Courts May Enter

On June 27th, in *Trump v. CASA, Inc.*, the U.S. Supreme Court held that district courts generally lack the authority to issue "universal" or "nationwide" injunctions. Rather, injunctions must be tailored to provide relief only to plaintiffs with standing (meaning an injury caused by the challenged action which the court can redress) in the case and cannot extend further to provide relief to similarly situated non-parties. The Court remanded the injunction under review to the lower courts, which now have 30 days to determine whether the injunctions they had previously entered against President Trump's executive order claiming to end birthright citizenship should be modified. Notably, the Court did recognize that broader relief may be available to plaintiffs who bring claims under the Administrative Procedure Act, which allows courts to vacate unlawful federal agency action, or in class action lawsuits, in which lawyers identify and have a court certify a broad class of plaintiffs in a case. In response to the Court's rulings, both the ACLU and CASA immediately amended their pleadings to seek to proceed with class actions that could secure sweeping relief.

SCOTUS Rules FCC E-Rate Program is Constitutional

On June 27th, in *Federal Communications Commission v. Consumers Research*, the U.S. Supreme Court held that the E-Rate program, which is administered by the Federal Communications Commission (FCC) and provides financial support for schools and libraries to access the internet and other communication services, is constitutional. NEA joined an amicus brief in support of the program.

SCOTUS Declines to Hear Cases on Student/Teacher Political Speech

On June 30th, the U.S. Supreme Court declined to hear two cases dealing with contentious political expression in public school settings. One case involved a teacher fired over social media posts the school district found offensive and disruptive; the other concerned a student who alleged harassment by peers and educators after wearing a "Make America Great Again" hat. In the teacher's case, Justice Clarence Thomas agreed with the decision to deny review on procedural grounds, but suggested that in a future case, the court should clarify that school districts and other public employers may not target "employees who express disfavored political views."

Recent Executive Actions Impacting Education

Withholding Nearly $7 Billion in Federal Education Funds

On June 30th, the Trump Administration notified states that it will be withholding roughly $6.8 billion in Congressionally appropriated federal education grants, including grants mandated by the Elementary and Secondary Education Act. The announcement came a day before the July 1st deadline when those funds have traditionally been disbursed. The largest grant program being withheld consists of roughly $2.2 billion for professional development for educators. Other withheld funding supports a wide range of programs for schools, including migrant education, before- and after-school programs, and services for English language learners.

Legally Speaking

The Constitution provides that only Congress has the "power of the purse" to determine the objects, amounts, and timing of federal spending. This is a constitutionally mandated check on Executive power, and federal courts have previously held that a President has no authority to withhold funds appropriated by Congress for a specific purpose. These funds were appropriated by Congress to particular grant programs created by statutes that direct the Executive Branch must release them to eligible states in amounts determined under a mandatory statutory formula. The President does not have any discretion over whether, to whom, or in what amount to award these grant funds. In addition to withholding funds for the 2025-2026 academic year, the Trump Administration has proposed permanently eliminating all of these programs in the 2026 budget. NEA has challenged the withholding in court, seeking a preliminary injunction against the withholding and against the other actions the Administration has taken to shut down the U.S. Department of Education.

Finding Harvard University in Violation of Title VI

On June 30th, the Department of Health and Human Services (HHS) announced that they found Harvard University violated Title VI by "acting with deliberate indifference towards harassment of Jewish and Israeli students by other students and faculty." HHS issued a similar announcement in May alleging that Columbia University violated Title VI, despite its compliance with most of the Trump Administration's demands to address alleged antisemitism.

Legally Speaking...

Title VI requires federal agencies to follow a process that includes meaningful investigation, two notices to the entity under investigation, and an opportunity for the entity to respond, among other requirements, before finding a violation. HHS's 57-page notice of violation points to three areas of "repeated ineffectual action and inaction," alleging Harvard failed to establish clear procedures to report and remediate antisemitic harassment, uniformly implement disciplinary measures and "allowed protesters to flout time, place and manner restrictions..." Harvard argues in its pending lawsuit that the Administration did not comply with the procedural requirements and cannot rely on the belated notice of violation to justify its previous withholding of funds.

Entering a Resolution Agreement with UPenn Over Alleged Title IX Violations

On July 1st, the Department of Education (ED) entered a resolution agreement with the University of Pennsylvania (UPenn) in response to its April investigation that found UPenn's policy of allowing transgender athletes to compete on teams that align with the gender to violate Title IX. ED had previously frozen $175 million in UPenn's federal funds over the alleged violation, which resulted in UPenn prohibiting transgender women from competing on female sports teams. UPenn has agreed to issue a statement affirming the trans athlete ban, adopt biology-based definitions for the words "male" and "female," revoke awards won by trans athletes in Division I Swimming, and send apology letters reassigning these awards to cisgender athletes.

Legally Speaking...

As NEA explained in this guidance, existing legal precedent affirms that Title IX's protections extend to transgender students. The Trump Administration's interpretation of Title IX (as outlined via executive order) cannot change federal civil rights laws or overrule court decisions interpreting those laws.

Limiting Eligibility for Public Service Loan Forgiveness Program

On July 2nd, ED concluded its negotiated rulemaking session to amend the Public Service Loan Forgiveness (PSLF) regulations and voted to refine the definitions of a qualifying employer for the purposes of determining eligibility under PSLF. According to a draft proposal, any employers who engage in "activities that have a substantial illegal purpose" could be disqualified from the program, and any payments that borrowers make while working for them would not count after their employers are no longer eligible. Disqualifying activities could include "supporting terrorism," helping children access gender-affirming care, organizing activities that ED identifies as "disorderly conduct," and "aiding or abetting" what ED interprets as violations of Title VI, Title IX, or federal immigration laws. Any new regulations could take effect July 1, 2026; ED has not indicated whether it would retroactively disqualify payments.

Legally Speaking...

PSLF was created by Congressional statute and can only be substantially changed via Congressional statute. The establishing statute leaves very little latitude for the Department to engage in any kind of rulemaking about PSLF, aside from granting the Secretary of Education the power to "request reasonable additional documentation pertaining to the borrower's employer or employment before providing a determination" on their PSLF eligibility. However, this power is granted only insofar as it pertains to the application process. It is not clear that the Department or Secretary McMahon have the legal power to engage in rulemaking to change the definitions of terms within PSLF's enacting statute. If left unchecked, these new rules will allow Secretary McMahon to block individuals from being eligible for PSLF if their public service employer engages in work that the Secretary finds conflict with her extreme, right-wing views on immigration, civil rights, or free speech.