JULY 31, 2025

NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Recent Executive Actions Impacting Education

Issuing a DOJ Memo Declaring DEI Practices Unlawful

On July 29th, the Department of Justice (DOJ) issued a guidance memo expressing DOJ's view that federal funding recipients who engage in DEI practices violate civil rights laws and can be penalized. Examples of the types of initiatives that DOJ now considers "unlawful" include scholarships available exclusively to underrepresented minority communities; facilities restricted to members of certain racial or ethnic groups; recruitment targeting specific geographic areas based on demography; training sessions that separate participants into groups based on racial or ethnic identity; the use of criteria like "cultural competence," "lived experience," or "cross-cultural skills" in hiring; and requirements that job applicants provide diversity statements. The memo encourages federal agencies to review their existing programs and funding recipients to ensure compliance with this understanding of the civil rights laws.

Legally Speaking

The memo does not affect the legality of DEI initiatives. Longstanding precedent establishes that well-designed and properly implemented initiatives to promote DEI are lawful as long as they do not give competitive preferences to individuals based on protected characteristics like race or sex. DOJ cannot change the statutes or the courts' interpretation of them. DOJ admits that the memo is "non-binding" and does not create "mandatory requirements" for agencies or funding recipients.

Ordering Virginia School Districts to Rescind Trans-Inclusive Policies

On July 25th, the Department of Education (ED) announced that it has found five Northern Virginia school districts in violation of Title IX for their policies allowing trans students to use facilities that align with their gender identity. School officials must rescind the policies, issue memoranda explaining that district policies should align with ED's view of Title IX, and adopt "biology-based definitions of the words 'male' and 'female.'" The five districts have until August 4th to comply or risk referral to DOJ for civil enforcement proceedings.

Legally Speaking...

As NEA explained in this guidance, under existing legal precedent, Title IX protections should be understood to extend to transgender students. ED cannot change Title IX or overrule court decisions interpreting it. The Supreme Court granted certiorari in two cases presenting the question of whether laws and policies excluding trans women and girls from participating in women's and girls' sports teams violate the Equal Protection Clause. A decision is expected by June 2026.

Releasing Billions in Withheld Education Funding

ED has reversed its June 30th withholding of $6.8 billion in congressionally appropriated grant funding under the Elementary and Secondary Education Act (ESEA) and other laws that are typically disbursed to states on July 1st. The agency first released $1.4 billion of the withheld funds for before- and after-school and summer programs, and then, on July 25th, announced that it would release an additional $5 billion appropriated for migrant students, professional development, English learners, and academic enrichment as well as $715 million for two adult education programs. ED still plans to withhold $52 million allocated for two higher education programs that support migrant students.

Legally Speaking...

The president must spend money appropriated by Congress to implement the federal programs and activities for which the funds are appropriated and distribute the funds in the manner directed by Congress. Three lawsuits (including one brought by NEA in coalition with other plaintiffs; a group of 24 states; and a coalition of school districts, educator unions, and nonprofits), challenged this illegal move under the Constitution, the Administrative Procedure Act, the ESEA, and other statutes and are still pending.

Reaching Resolution Agreements with Columbia and Brown Universities

On July 23rd, ED announced that it had reached a resolution agreement with Columbia University to unfreeze $400 million in federal research funds in exchange for various concessions. In addition to codifying changes that the University introduced in a March agreement, Columbia will pay $200 million to the federal government, eliminate DEI programs, end the use of "personal statements [and] diversity narratives" in admissions and hiring, provide the federal government with student visa-holders' disciplinary records, and "reduce its financial dependence" on international students. On July 30th, ED announced a similar agreement with Brown University that will restore $510 million in frozen federal research funds. Brown has agreed to pay $50 million to local workforce development organizations, adopt "biology-based" definitions of "male" and "female," prohibit trans women from using female athletic facilities, provide information about university complaints alleging national-origin discrimination to the federal government, and end DEI programs.

Legally Speaking...

Using the threat of withholding federal funding to coerce private entities into compliance with the Trump Administration's agenda raises serious First Amendment concerns. The First Amendment prohibits the government from punishing or chilling speech and expression that adopts a disfavored or dissenting viewpoint. Freezing research dollars to force universities to adopt certain policies and positions plainly violates this principle. Litigation on this issue is ongoing. A widely criticized decision by a federal judge in New York dismissed a challenge to the cancellation of Columbia's research funding brought by unions representing faculty and graduate students for lack of standing. The unions have appealed. A Massachusetts judge's ruling on Harvard University's similar claims, that the Administration unconstitutionally terminated its federal funding, is expected in the coming weeks.

Pausing Student Loan Income-Based Repayment Plan

The Washington Post reports that ED has paused the Income-Based Repayment (IBR) Plan, which forgives borrowers' federal student loans after 20 or 25 years of payments depending on their monthly earnings and family size. IBR is the only one of four income-driven federal student loan repayment plans not enjoined as part of the legal challenges to the SAVE repayment program. ED claims the pause is necessary to bring its income-driven repayment systems into compliance with the court order, but has not said when the pause began or when it will end.

Legally Speaking...

IBR is the only income-driven repayment plan mandated by the Higher Education Act (HEA), the statute that governs federal student financial aid. Under the law, ED must operate IBR, but the HEA does not specifically permit or prohibit ED from pausing IBR for administrative reasons. A lengthy pause that effectively prevents qualified borrowers from obtaining forgiveness would likely violate the HEA and the Administrative Procedure Act.

Litigation Updates

Massachusetts Judge Dismisses Class Action Suit Over Educator Strike

On July 18th, a Massachusetts Superior Court judge dismissed a multi-million-dollar class action stemming from the Newton Teachers Association (NTA)'s 2024 strike. The case was brought by local parents against NTA, the Massachusetts Teachers Association, NEA, and the United Auto Workers. The judge dismissed their claims in full, finding that the state public-sector bargaining law does not create a private right of action for third parties to enforce its strike ban and impliedly preempted the parents' other tort, contract, and statutory claims. The opinion is the latest in a string of rulings rejecting similar claims brought by parents in Kentucky, Illinois, and Oregon.

Religious Coalition Sue DHS Over End of Sensitive Locations Policy

On July 28th, a coalition of religious organizations filed a lawsuit challenging the Department of Homeland Security (DHS)'s rescission of prior guidelines that restricted immigration enforcement at "sensitive locations," including schools and churches. The plaintiffs allege the new policy violates the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

State Coalition Sues Trump Administration Over Restrictions to Federal Programs

On July 21st, 20 states and the District of Columbia filed a lawsuit challenging decisions by ED, HHS, DOJ, and DOL to reclassify more than a dozen federally funded programs as "federal public benefits" unavailable to undocumented immigrants under federal law. The policies prevent undocumented individuals from accessing Head Start, workforce development grants, dual enrollment for high school students, and other programs. The agencies agreed to pause enforcement in the plaintiff states and District of Columbia until September 4th, while the court considers the states' motion for a preliminary injunction.

District Judge Rules DOD Indirect Reimbursement Rate Policy Unlawful

On July 18th, a Massachusetts district court judge preliminarily enjoined the Department of Defense (DOD) from implementing a 15% cap on indirect cost reimbursements for higher education institutions. Noting this was the "fourth time" the Administration has attempted "to announce a policy that has consistently been deemed unlawful" by courts blocking indirect cost caps at other agencies, the court ordered DOD not to reject or treat adversely grants negotiated at a rate above 15%.

District Judge Dismisses Lawsuit Over Terminated School Mental Health Grants

On July 18th, a New Mexico district court judge dismissed a school district's lawsuit to restore a $6 million grant awarded by ED to support school-based mental health services. ED announced in April that it would discontinue more than 200 such grants, effective December 31, 2025. In dismissing the case and denying the district's request for a preliminary injunction, the court found the grant program "is a worthwhile expenditure of taxpayer funds" and "seems to be consistent with the statutory text" authorizing and funding it. But the judge determined that, under recent Supreme Court orders staying preliminary relief in cases raising similar grant termination claims, the district court lacked jurisdiction to hear the claims, which had to be brought in the Court of Federal Claims.

District Judge Rules NEH Grant Terminations Unlawful

On July 25th, a New York district court judge granted a partial preliminary injunction blocking the National Endowment for the Humanities (NEH)'s cancellation of more than 1,000 grants, totaling over $175 million allegedly related to DEI, gender ideology, or "environmental justice." The court ruled that the agency violated the First Amendment by cancelling the grants "based on the recipients' perceived viewpoint, in an effort to drive such views out of the marketplace of ideas."