

SEPTEMBER 12, 2025



NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

NEA Joins Lawsuit to Restore Sensitive Locations Guidance

On September 10th, NEA and AFT joined a [lawsuit](#) seeking to reinstate longstanding Department of Homeland Security (DHS) guidance that restricted immigration arrests at certain “sensitive locations,” including schools, hospitals, courthouses, and churches. The lawsuit argues that DHS’s revocation of the guidance violates the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act.

District Judge Declares Harvard Funding Freeze Unlawful

On September 3rd, a Massachusetts district judge [ruled](#) that the Trump Administration’s termination of Harvard University’s federal funding, allegedly to remedy antisemitism, was a “targeted, ideologically-motivated assault on this country’s premier universities” and violated the First Amendment, Title VI procedural requirements, and the Administrative Procedure Act. The Administration plans to appeal, but [has begun to reinstate](#) some of Harvard’s unlawfully canceled grants.

SCOTUS Rules Race Can Be Factor in Stopping Suspected Undocumented Immigrants

On September 8th, the U.S. Supreme Court issued an unreasoned, unsigned [emergency stay order](#) that allows federal immigration officers to indiscriminately stop individuals who they believe may be undocumented based on factors like race, accent, location, or occupation. The 6-3 order lifts a district court’s [temporary restraining order](#) blocking such stops in the Los Angeles area. Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, warning that the order creates “a country where the Government can seize anyone who looks Latino, speaks Spanish, and appears to work a low wage job.” The order is not a final decision in the case, which continues to be litigated in the lower courts.

Appeals Court Allows Mass Firings of Probationary Workers to Proceed

On September 8th, the Fourth Circuit Court of Appeals [vacated](#) a preliminary injunction in a [lawsuit](#) brought by 19 states and D.C. that indefinitely barred the Trump Administration from terminating thousands of probationary federal employees. The court found that the plaintiff states’ monetary harms from the terminations were not sufficient to establish standing in the context of the “traditionally federal function” of managing the federal workforce and directed the district court to dismiss the case.

SCOTUS Blocks Enforcement of South Carolina Trans Bathroom Ban (For Now)

On September 10th, the U.S. Supreme Court issued a [brief, unsigned order](#) denying South Carolina’s request for an emergency stay of an [injunction](#) preventing the state from enforcing its transgender bathroom ban in schools pending appeal. The Court emphasized that it was not weighing in on the underlying merits but simply applying “the standards applicable for obtaining emergency relief,” such as whether the state would be permanently harmed if the lower court’s ruling were not put on hold.

District Judge Dismisses Virginia Schools’ Lawsuit Defending Trans-Inclusive Policy

On September 5th, a Virginia district judge [dismissed](#) a [lawsuit](#) challenging the Department of Education’s (ED) [decision](#) to put two Virginia public school districts on “high-risk status” (subjecting them to additional monitoring requirements and putting them at risk of losing their federal funding) because they allow transgender students to use facilities that correspond to their gender identity. Embracing an extremely broad view of recent decisions finding that the federal Tucker Act requires recipients of federal funding who challenge the termination of funding awards to bring suit in the Court of Federal Claims, the judge found that the district court “lacks subject matter jurisdiction” to require the government to restore or prevent it from freezing funds.

District Judge Blocks Trump Administration's Transgender Passport Restrictions

On September 9th a Maryland district judge granted a [preliminary injunction](#) to six transgender individuals who, under a Trump Administration policy, were denied passports matching their gender identity. The court ruled that the policy violates the Fifth Amendment's equal protection guarantee, as it did "not serve an important governmental interest that is exceedingly persuasive" and "the discriminatory means employed are not substantially related to the achievement of those objectives." The court declined to reach the other constitutional and statutory claims, finding that the equal protection claim was sufficient to grant the injunction. Five days earlier, the 1st U.S. Circuit Court of Appeals also [upheld](#) a Massachusetts district court [injunction](#) barring the Department of State from enforcing the policy.

DOJ Sues Illinois Over In-State Tuition for Undocumented Students

On September 2nd, the Department of Justice (DOJ) filed a [lawsuit](#) claiming that Illinois' policy allowing undocumented students to pay in-state tuition at public colleges and universities is unlawful. Illinois is the fifth state the DOJ has sued for having such a policy; [Texas](#) and [Oklahoma](#) both agreed to end their policies in consent judgments that quickly closed the cases, while cases in [Kentucky](#) and [Minnesota](#) are still pending.

Federal Union Sues Trump Administration Over Anti-Collective Bargaining EOs

On September 3rd, the National Treasury Employees Union filed a [lawsuit](#) that seeks to block [two EOs](#) purporting to strip federal employees in the U.S. Patent and Trademark Office of their collective bargaining rights. The Union argues that federal law expressly protects these rights, subject to a statutory national security exception that does not apply, and the EOs' reliance on the exception is a pretext for retaliation against the Union for First Amendment-protected speech.

District Judge Slams DOJ's Mishandling of D.C. Prosecutions Under Trump

On September 4th, D.D.C. Magistrate Judge Zia Faruqi [sharply criticized](#) DOJ's handling of criminal cases during the federal takeover of Washington, D.C. At a hearing, he warned that the nation is "past the point of constitutional crisis," likening the Administration's actions to "playing cops and robbers, like children." Faruqi condemned DOJ's repeated "misfires" in its attempt to prosecute people in D.C., saying it operates under a "we'll arrest people... then see what happens" approach, resulting in multiple failed indictments.

Recent Executive Actions Impacting Education

Moving Adult Education Programs from ED to DOL

On September 8th, in its latest step towards dismantling ED, the Trump Administration [announced](#) the creation of a new integrated "state plan portal" that will allow the Department of Labor (DOL) and ED to jointly administer adult education programs created by the Workforce Innovation and Opportunity Act (WIOA). The funding and staffing for these programs will be transferred to DOL under an Interagency Agreement (IAA) signed by both Departments on May 21st. Experts in higher education and career and technical education have [warned](#) that shifting WIOA programs to DOL will reduce their quality, introduce confusion, and further diminish ED.



Legally Speaking...

WIOA directs the Secretary of Education to administer the adult education programs it creates and does not authorize the Secretary to transfer that responsibility to another federal agency. In addition, Congress annually funds the WIOA programs through appropriations to ED and does not authorize ED to transfer that money. The IAA, and steps like the portal to implement it, violate these statutes.

Proposing Four-Year Cap on International Student Visas

On August 28th, DHS published a [proposed rule](#) that would limit F-1 and J-visas held by international students, short-term educators, and researchers to four years and require F-1 and J-visa holders to seek extensions and undergo "regular assessments" by DHS to remain beyond the four-year cap. Currently, F-1 and J-visa holders can remain for the duration of their studies, a policy especially important for doctoral candidates whose programs often exceed four years. [Public comment](#) on the proposed rule is open until September 29th.



Legally Speaking...

This proposed rule dramatically increases government oversight of decisions typically left to school officials and would force international students to comply with burdensome reapplication and reporting requirements. Nonetheless, the Administration likely has some legal authority to define the length of nonimmigrants' stay in the U.S., if DHS complies with the procedural requirements to change its policy and provides a well-reasoned explanation for the change.

Continued Funding Delays and Cancellations of Federal Education Grants

With the new federal fiscal year starting on October 1st, the Trump Administration is blocking the distribution of more than [\\$410 billion](#) in Congressionally appropriated funding, including over \$2.3 billion in education funding. [Reports indicate](#) that ED has unlawfully withheld funds owed to recipients of grants under multiple programs, including programs to fund [magnet schools](#), [strengthen parent-school engagement](#), expand [parent and family education regarding rights under the IDEA](#), and train educators to support [English learners](#) and [students with visual and hearing impairments](#). ED has targeted for cancellation and withholding programs and grants alleged to promote disfavored “DEI activities” the Administration considers unlawful, including:

- [\\$350 million appropriated for seven distinct grant programs](#) or Minority Serving Institutions
- [At least two dozen multiyear TRIO grants, representing a combined \\$13 million](#)
- [25 grants totaling \\$14.8 million for special educator development and technical assistance](#)
- [More than a dozen Child Care Access Means Parents in Schools](#) grants
- [\\$20 million in overdue GEAR UP funding](#) that has yet to be paid to four states and D.C.

In addition, Congressional Democrats [report](#) that ED has frozen or cancelled over \$1.3 billion appropriated to fund grants and contracts that the Administration terminated earlier this year without announcing any plans to recompetete or otherwise use the money as intended by Congress.



Legally Speaking

The President and his subordinate agencies do not have authority under the Constitution or statute to refuse to spend (“impound”) congressionally appropriated funds. The Impoundment Control Act (ICA) gives the President a very limited power to ask Congress to cancel appropriations; these proposed “rescissions” become final only if Congress passes a new law approving them. Some officials have suggested that Trump can simply not spend appropriated funds before they expire on September 30, a so-called “pocket rescission.” But the ICA does not authorize “pocket rescissions.” Unless Congress passes a law approving a proposed rescission before September 30, ED must distribute the funds as directed by Congress. Yet to date, Trump has not asked Congress to rescind any education funding. In addition, ED has not initiated the required termination process, including notice, investigation, and a hearing, to cancel or discontinue individual grants. Recent decisions have narrowed potential legal challenges to impoundments and grant cancellations. A D.C. Circuit panel [held](#) that private litigants cannot enforce the ICA but may be able to challenge some withholdings under the Administrative Procedure Act. Decisions related to grant terminations, including a Supreme Court [shadow docket order](#), have called into question district courts’ jurisdiction to hear funding recipients’ claims for payment under existing awards. And just this week, Chief Justice Roberts, acting alone, [issued an emergency stay allowing the continued withholding of \\$4 billion in international aid](#) that a lower court found to be unlawfully impounded until the Supreme Court resolves the case.