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NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

NEA Victory: Appeals Court Upholds Collective Bargaining Rights of Federal Workers

On September 25th, in a [2-to-1 decision](#), the D.C. Circuit Court of Appeals rejected the government's request for a stay pending its appeal of a district court's [preliminary injunction](#) which blocks the Trump Administration from enforcing a [March EO](#) stripping collective bargaining protections from most of the federal workforce, as applied to FEA-represented educators working in Department of Defense schools around the globe. The per curiam decision faulted the Trump Administration for its failure to make "a meaningful attempt" to show that the government would suffer any imminent irreparable harm if the injunction took effect while its appeal moves forward. The [lawsuit](#) was filed by NEA on behalf of the Federal Education Association and other federal educator unions.

District Courts Block Trump Immigration Status Policy for Federal Benefits Programs

On September 10th, a Rhode Island district judge issued a [preliminary injunction](#) halting the Trump Administration's effort to restrict federal benefits like Head Start, adult education, and career training to verified U.S. citizens and immigrants with legal status. The court criticized the "rushed" rollout, noting it would harm beneficiaries, the state plaintiffs, and eligibility verifiers. The order applies to 20 states and D.C., whose attorneys general sued the Administration. A Washington State district court [issued](#) a similar universal injunction against the policy the following day, blocking enforcement nationwide.

District Judge Allows Mass NSF Grant Terminations to Proceed

On September 10th, a D.C. district judge [declined to restore](#) over \$1 billion in federal grants awarded by the National Science Foundation (NSF) for programs aimed at increasing the participation of underrepresented groups in science and engineering, which were terminated because they were related to diversity, equity and inclusion policies disfavored by the Administration. The court ruled that it lacked jurisdiction to temporarily reinstate the funding and that the plaintiffs failed to demonstrate "irreparable harm" from NSF's new grant policies. The judge cited in part a [recent U.S. Supreme Court ruling](#) that universities and researchers facing mass federal funding cuts must pursue their claims to recover grant awards in the Court of Federal Claims, a separate federal court that handles monetary and contractual disputes with the U.S. government.

Appeals Court Lets Federal RIFs Continue

On September 19th, the 9th Circuit Court of Appeals [vacated](#) a California district court's [preliminary injunction](#) that prevented the Trump Administration from implementing sweeping, agency-wide reductions in force and reorganizations under a [February EO](#). The [lawsuit](#), filed by six federal employee unions (including the American Federation of Government Employees), nonprofit organizations, and local governments, was remanded for further proceedings in light of the U.S. Supreme Court's [stay order](#) and decision in *Trump v. Casa*, which limits the power of district courts to issue nationwide injunctions.

District Judge Strikes Down National Endowment for the Arts' "Gender Ideology" Policy

On September 19th, a Rhode Island district judge [partially enjoined](#) the National Endowment for the Arts from applying a viewpoint-based standard in reviewing grant applications which would disfavor applications deemed "to promote gender ideology." The standard was meant to align with Trump's [January "Gender Ideology" EO](#). The court found that the plaintiffs had proven their First Amendment and APA claims but rejected their Fifth Amendment vagueness challenge, noting the policy was adopted after the plaintiffs had submitted their grant applications and did not expand the agency's discretion to decide which grant applications to fund.

District Court Orders University of California Funding to be Restored

On September 22nd, a California district judge issued a second [preliminary injunction](#) requiring the National Institutes of Health, the Department of Transportation, and the Department of Defense to release more than \$500 million in terminated research grants awarded to researchers across the University of California system. The court found that the terminations violated the APA and noted that the Administration did not provide grant-specific rationales for the cancellations that considered the reliance interests of grantees and their institutions. The judge had [previously enjoined](#) the termination of grants awarded to UC researchers by the EPA, NSF, and National Endowment for the Humanities on the same grounds. A similar [lawsuit](#) filed on September 16th by a coalition of 19 education unions and faculty associations, arguing that the Administration's actions violate the First, Fifth, and Tenth Amendments, the Spending Clause, and the APA, has been designated as related.

Kentucky Agrees to End In-State Tuition Policy for Undocumented Students

On September 22nd, Kentucky became the third state to [agree to end](#) its policy allowing undocumented students to pay in-state tuition at public colleges and universities, in response to a [suit](#) filed by the Department of Justice (DOJ) back in June. The suit claimed that Kentucky's policy violates a federal statutory provision by granting benefits to undocumented students that are not available to out-of-state U.S. citizens. [Texas](#) and [Oklahoma](#) both agreed to end their policies in consent judgments that quickly closed their cases, while cases in [Minnesota](#) and [Illinois](#) are still pending. Kentucky Students for Affordable Tuition has filed a [motion to intervene](#), but the court has yet to rule on that request.

AFT Sues ED Over Student Loan Forgiveness Delays

On September 9th, the American Federation of Teachers (AFT) filed a [class action lawsuit](#) arguing that ED has unlawfully denied student loan borrowers their rights to affordable repayment plans and loan forgiveness programs. AFT is [seeking an injunction](#) to cancel the debts of borrowers on income-driven repayment plans who have been in repayment for 20 or 25 years and force ED to process thousands of outstanding requests for the Public Service Loan Forgiveness "Buyback" program.

DOJ Challenges Rhode Island Loan Forgiveness Program for Educators of Color

On September 16th, DOJ filed a [lawsuit](#) against the Rhode Island Department of Education and the Providence Public School District over a program funded by a non-profit organization that provides up to \$25,000 in student loan forgiveness to new teachers of color in Providence. Arguing that the program violates Title VII because it excludes white teachers, DOJ seeks a permanent injunction stopping the program's implementation and an award of equal loan forgiveness to "non-minority new . . . teachers who were not eligible for the Program on the basis of race."

Recent Executive Actions Impacting Education

Rerouting Education Grants to Charter Schools, Civics Education, and HBCUs

On September 15th, the U.S. Department of Education (ED) [announced](#) its plans to redirect millions of federal dollars from grant programs it deems "ineffective and discriminatory." According to the [New York Times](#):

- ED will award an additional **\$60 million in grants to charter schools**, bringing the total to \$500 million. To fund the increase, the Administration terminated \$15 million in grants for magnet schools, \$9 million in grants for gifted and talented programs, and \$31 million awarded through the Ready to Learn program, which funded PBS shows for young children.
- ED will award an additional **\$137 million in grants to support American history and civics education**, bringing the total to \$160 million. To fund the increase, the Administration terminated nearly \$140 million in grants previously awarded through congressionally created and funded teacher training programs that, it claims, promoted "divisive ideology."
- ED will provide an additional, one-time grant of **\$435 million to Historically Black Colleges and Universities (HBCUs)** and **\$60 million to Tribally Controlled Colleges and Universities (TCCUs)**. To fund the increase, the Administration defunded programs that award grants to Minority Serving Institutions (MSIs), for which Congress had appropriated [\\$350 million](#).



Legally Speaking

ED claims it can terminate grants for programs it disfavors and redirect the funds toward ones it wants to expand through a process called "reprogramming," in which agency account funds are used for purposes not explicitly intended by Congress. While agencies have some discretion to reprogram funds, they cannot use reprogramming to achieve goals inconsistent with the statutes that create and fund grant programs — particularly not to unilaterally shut down congressionally mandated programs. Likewise, ED can only cancel or discontinue previously awarded grants through statutory and regulatory processes, and only for limited reasons that generally do not include policy or political disagreements with Congress's decision to create and fund the grant program. ED has not complied with these requirements, making the terminations that have freed up money for reprogramming unlawful.

Advancing a “Patriotic Education”

On September 17th, ED published a [proposed priority](#) for forthcoming grant competitions, which would require successful applicants for ED-funded grants to demonstrate their commitment to promoting “patriotic education” — or civics programs that present “an accurate, honest, unifying, inspiring, and ennobling characterization of the American founding and foundational principles.” That same day, ED [launched](#) the [America 250 Civics Coalition](#), a group of 40+ conservative organizations (including Turning Point USA, Moms for Liberty, and PragerU) tasked with “renewing patriotism” and “advancing a shared understanding of America’s founding principles” by developing educational programming consistent with the Administration’s understanding of American history. The move comes after ED [cut nearly 75%](#) of federal [American History and Civics grants](#) slated for renewal this year, seemingly targeting programs teaching topics such as Black, Mexican, and LGBTQ+ history on the grounds that these projects do not align with the Administration’s commitment to “merit, fairness, and excellence.”



Legally Speaking...

Courts have consistently held that agency grant policies imposing viewpoint-based restrictions (such as penalizing applicants for expressing certain ideas) violate the First Amendment and are invalid under the APA. Agencies generally lack the authority to disfavor applications based on viewpoint or to weigh factors outside Congress’s intent in establishing a program. ED’s governing statutes explicitly bar the agency from exercising “any direction, supervision, or control” over “curriculum” or “program[s] of instruction.” As a New Hampshire district judge [found in granting NEA’s motion](#) to preliminarily enjoin ED’s attempts to restrict discussions and programs on DEI in educational institutions, efforts to use grant awards to coerce schools and universities into promoting certain concepts while chilling them from discussing others violate these constitutional and statutory provisions.

Imposing Greater Financial Oversight on Harvard University

On September 19th, ED’s Office of Federal Student Aid (FSA) placed Harvard on [heightened cash monitoring](#), a status typically reserved for financially unstable institutions, and demanded that the University provide a \$36 million bond or other acceptable collateral. These steps will require Harvard to use its own funds to provide federal student aid to students and then seek reimbursement from FSA. ED cited three “triggering events” for the drastic measures: a Department of Health and Human Services finding that Harvard continues to permit alleged antisemitism on campus in violation of Title VI; [claims](#) that the University has not cooperated with ED’s ongoing investigation through its Office for Civil Rights; and Harvard’s issuance of \$1 billion in bonds to offset its federal funding that was cut by the Administration.



Legally Speaking...

While ED has authority to place institutions on heightened cash monitoring, this step is typically reserved for colleges in dire financial straits, not institutions like Harvard with multi-billion-dollar endowments. Like the Administration’s decision to freeze Harvard’s federal funding (which a Massachusetts judge [found to be unlawful](#)), this latest action appears to be part of an escalating pressure campaign to force Harvard to capitulate to the Administration’s demands and fall in line with Trump’s anti-DEI agenda. Such retaliation against a private university for refusing to express the government’s preferred viewpoints likely violates the First Amendment.

Targeting Educators Over Criticism of Charlie Kirk

Since September 10th, the Trump Administration and its allies have used the assassination of right-wing political activist [Charlie Kirk](#) to call for [widespread repression of speech](#) that is alleged to be critical of Kirk and his viewpoints. Educators across the country have faced scrutiny and, in some cases, suspensions or firings — often for social media posts — because of this [political pressure](#). Calls by state officials for public employees to be reported for their off-duty speech have resulted in hundreds of complaints being filed in a handful of states. Far-right groups have fueled this effort with mass doxxing, including the now-removed site “[Expose Charlie’s Murderers](#),” which posted personal information on more than 50,000 individuals accused of criticizing Kirk. Secretary of State Marco Rubio has also threatened that foreign visitors (including international students and educators) who post content critical of Kirk on social media could have their visas revoked.



Legally Speaking...

Public employers like schools and universities have broad authority to limit their employees’ speech on the job. But off-duty speech by public employees, including educators, on matters of public concern should be protected by the First Amendment unless the speech creates disruption in the school or university community or the employer reasonably anticipates such disruption, or the speech constitutes an actual threat. Firing, suspending, or disciplining educators for their off-duty speech may be unlawful, depending on the nature and context of the educator’s speech and its effects on the school or university. Some educators who have been penalized for their online, off-duty speech [have filed lawsuits](#), and a South Dakota federal court this week temporarily enjoined the University of South Dakota from taking any further adverse employment action against a professor who briefly posted about Charlie Kirk on his personal Facebook page, since the post was made while the professor was off-duty and the employer did not show any disruption to campus operations and activities. Beyond the First Amendment, educators may be protected from discipline based on their off-duty speech by state tenure laws, district policies, or their collective bargaining agreement. As to non-citizens, litigation about the Administration’s efforts to deport immigrants and foreign students based on their speech in support of Palestine remains pending, but to date, no court has found that the President can punish non-citizens’ speech by revoking green cards or visas.