

NOVEMBER 21, 2025

NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Recent Executive Actions Impacting Education

Offloading Core ED Responsibilities to Other Federal Agencies

On November 18th, the Department of Education (ED) [announced](#) six agreements to transfer core statutory responsibilities — and billions of dollars in congressional appropriations — to four other federal agencies. Although only disclosed this week, the agreements were signed and took effect on September 30th. Two of the agreements shift [roughly \\$31 billion](#) in programs to the Employment and Training Administration unit of the Department of Labor, including nearly all Elementary and Secondary Education Act programs (such as Title I-A aid) and many Higher Education Act programs (including HBCU, MSI, and TRIO grants). The other agreements transfer programs from ED's Office of Indian Education (including ESEA Title VI and impact aid programs) to the Department of the Interior; move childcare access grants and foreign medical school accreditation to the Department of Health and Human Services; and shift postsecondary foreign language programs to the Department of State. For now, no functions have been transferred from the Office for Civil Rights, Federal Student Aid, or the Office of Special Education and Rehabilitation Services.



Legally Speaking...

Federal agencies may use interagency agreements to exchange goods and services, but only Congress can create and fund education programs and determine which agency administers them. The statutes governing the programs ED seeks to transfer — including the ESEA and Higher Education Act — explicitly assign their administration to ED and do not authorize ED to shift that responsibility elsewhere. Moreover, the recent [continuing resolution](#) funds ED through January 2026 on the condition that it may not transfer appropriated funds to another agency without explicit congressional approval, which it has not received. The new agreements violate that restriction.

Signing Bill to End Government Shutdown

On November 12th, Trump signed into law the [continuing resolution](#) passed by the House and Senate to end the longest government shutdown in U.S. history. The temporary spending plan — which keeps the government open through January 30, 2026 — funds federal education programs at FY 2025 levels. It also rescinds the Administration's mass RIFs of federal workers (including ED employees) during the shutdown, prohibits further RIFs through the end of January, and affirms the Administration's obligation under a [2019 law](#) to provide back pay to all federal employees. However, it [remains unclear](#) whether all ED employees RIF'd in October have received recall notices, and there are [concerns](#) that recalled employees may be placed on administrative leave and not returned to active duty.



Legally Speaking...

The Administration's attempt to terminate federal workers en masse during the shutdown was the subject of ongoing litigation, with a California district judge finding that the RIFs were likely unlawful and issuing a [preliminary injunction](#) blocking the layoffs. That order remains in effect. As a result, a refusal by the Administration to fully reinstate all employees at ED and other agencies who were affected by the shutdown RIFs would violate both the court's order and the continuing resolution.

Redirecting Higher Education Grant Funds to Trump Priorities

On November 10th, ED [announced](#) a series of new “Special Projects” grants under the [Fund for the Improvement of Postsecondary Education](#) (FIPSE) that will align with Administration priorities around promoting artificial intelligence, “foster[ing] respectful deliberation and debate” on campuses, encouraging colleges and universities to launch new accrediting agencies, and building short-term postsecondary programs. To fund this competition, ED is reallocating nearly all of the \$170 million Congress appropriated to fund grants that further the statutory priorities for grantmaking under FIPSE. The decision discontinues seven such grant programs, including a scholarship program for veterans mandated by statute and grants aimed at reducing food and housing insecurity among college students.



Legally Speaking...

The Higher Education Act authorizes FIPSE grants for congressionally designated priorities and separately permits ED to fund special projects in areas of national need. While ED may set priorities for special project grants, it cannot expand them by defunding congressionally mandated priorities and redirecting the money — a tactic known as “reprogramming.” While agencies have some discretion to reprogram funds, they may not use it to discontinue grant programs created by Congress.

Litigation Updates

District Court Finds Partisan Out of Office Emails Unlawful

On November 7th, a D.C. district judge granted [summary judgment](#) for the American Federation of Government Employees in a [case](#) challenging ED’s addition of language to furloughed employees’ out-of-office messages blaming “Democrats” and the “Radical Left” for the government shutdown. The court found that the altered out-of-office messages violated the First Amendment, and entered a permanent injunction requiring the Trump Administration to remove “all partisan political language” from employees’ messages and prohibiting them from including such speech in any future messages.

District Court Blocks Trump’s Threats to Fine and Defund U. California System

On November 14th, a California district judge issued a [preliminary injunction](#) blocking the Trump Administration from cutting grant funding or imposing fines against the University of California system over the Administration’s allegations of antisemitism and other discrimination. The unions representing UC employees brought the case after the Administration suspended research funding at UCLA and conditioned its restoration on the University agreeing to review its DEI programs, limit student anonymity during protests, and restrict transgender students’ access to bathrooms and sports teams, among other demands. The judge found that the Administration’s actions violated the First and Tenth Amendments, Title VI and Title IX, and the Administrative Procedure Act.

District Court to Decide Whether Teacher Prep Grant Terminations Were Unlawful

On November 13th, a Massachusetts district judge [allowed](#) a [lawsuit](#) brought by eight states challenging ED’s termination of \$65 million in teacher preparation grants to move forward. An April [shadow docket decision](#) by the U.S. Supreme Court stayed a temporary restraining order blocking the terminations, finding that the district court likely lacked jurisdiction to direct ED to make payments under the grants. Relying on a more [recent shadow docket order](#) which held that district courts can hear claims challenging agency guidance that results in grant terminations but not challenges to the terminations themselves, the judge determined that the states’ claims regarding ED’s directives and actions leading to the terminations can proceed, but dismissed their claims seeking to recover under the awards.