

# NEA BIWEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

## Litigation Updates

### NEA Victory: Court Halts Trump Administration Effort to Close FMCS

On December 30th, a New York district judge granted [summary judgment](#) vacating a new Federal Mediation and Conciliation Service (FMCS) policy limiting the kinds of labor disputes eligible for mediation. FMCS enacted the policy in response to a [March Executive Order](#) that directed Trump Administration officials to shutter the Federal Mediation and Conciliation Service (FMCS). The court ruled that the policy, which bars smaller bargaining units from pursuing mediation in labor disputes, and the resultant mass layoffs of FMCS employees, were arbitrary and capricious under the Administrative Procedure Act (APA). As a result, FMCS was ordered to reverse the reductions-in-force (RIFs). The lawsuit was brought by a coalition of unions, including NEA and the Ohio Education Association.

### District Judge Rules School-Based Mental Health Grant Cancelations Unlawful

On December 19th, a Washington state district judge granted [summary judgement](#) vacating ED's discontinuations of school-based mental health grants in 16 states based on grantees' alleged "DEI activities." The court found that the discontinuations violated the APA because ED did not comply with regulatory procedures, provide individualized explanations for the decisions, or account for reliance interests. ED must now make new continuation decisions for each of 138 grants in the plaintiff states. The ruling builds on an October [preliminary injunction](#) that blocked many of the discontinuations, and came one week after ED [awarded](#) \$208 million in new school-based mental health grants, with the [condition](#) that grantees may not use funds to promote "gender ideology" or DEI.

### District Judge Blocks Federal RIFs From October 1st - January 30th

On December 17th, a California district judge issued a [preliminary injunction](#) barring the Trump Administration from implementing RIFs at ED and other agencies between October 1st and January 30th and directing the Administration to rescind all RIF notices issued to employees at those agencies during last fall's government shutdown. The order forces the Administration to comply with a provision in the November 2025 [Continuing Resolution](#) that prohibits any further federal RIFs through January 30th. The Administration [appealed the order](#) in late December, but [withdrew its appeal](#) without explanation on January 2nd.

### District Judge Upholds Trump H-1B Visa Fee Proclamation

On December 23rd, a D.C. district judge [upheld as lawful](#) President Trump's [September 19th proclamation](#) requiring employers to pay an additional \$100,000 fee before new H-1B visa applications may be processed. On December 12th, a coalition of 20 states filed a separate [lawsuit](#) in Massachusetts challenging the proclamation. An [NEA analysis](#) shows that in fiscal year 2025, over 2,300 H-1B visa holders were employed across more than 500 K-12 public school districts nationwide.

## DOJ Sues Virginia Over In-State Tuition for Undocumented Students

On December 29th, the Department of Justice (DOJ) [sued](#) the state of Virginia, claiming that its policy allowing undocumented students to pay in-state tuition at public colleges and universities is preempted by federal immigration laws. Virginia officials filed a [joint motion](#) siding with the federal government, a first step toward a consent judgment to end the policy. The Legal Aid Justice Center and the ACLU of Virginia filed an [emergency motion to intervene](#) on behalf of the Dream Project. This is DOJ's seventh such challenge. Cases in [California](#), [Minnesota](#), [Illinois](#), and [Kentucky](#) (where a [third-party intervenor](#) is defending the state's policy) are pending; [Texas](#) and [Oklahoma](#) agreed in consent judgments to end their policies.

## Texas AFT Sues State Over Alleged Retaliation for Educators' Speech

On January 6th, the Texas American Federation of Teachers (Texas AFT) filed a [lawsuit](#) against the Texas Education Agency, challenging its policy directing school districts to report off-duty educator speech perceived as critical of right-wing activist Charlie Kirk following his [assassination](#). The complaint contends that the policy violates the First Amendment by retaliating against public-school employees for views expressed in their social media posts and has resulted in the firing, suspension, and discipline of AFT members. Texas AFT alleges that the directive is unconstitutionally vague and overbroad, thereby enabling arbitrary enforcement, and seeks a preliminary injunction.

# Recent Executive Actions Impacting Education

## Terminating \$168 Million in Community Schools Grants

On December 12th, ED abruptly canceled \$168 million across 19 grants in 11 states and D.C. under the [Full-Service Community Schools program](#) (FSCS). The grants, which supported school-based wraparound services for students, families, and communities, were discontinued just two weeks before the grantees expected to receive their 2026 funding, on January 1st. ED [claims](#) that the canceled awards promoted disfavored "DEI activities" that the Trump Administration considers unlawful.



### Legally Speaking...

[Three lawsuits](#) have been filed challenging the discontinuations. 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 grantees' planned activities. ED has not complied with these requirements, making the discontinuations unlawful. Further, as several courts have already found, Title VI precedent does not support the Administration's claim that programs and policies promoting DEI are unlawful.

## Waiving ESEA Requirements for Iowa

On January 7th, ED [approved](#) the state of Iowa's request for a waiver of statutory restrictions on its use of certain federal funds under the Elementary and Secondary Education Act (ESEA). ED's decision allows Iowa to consolidate a small portion of its state-activities funds from four separate ESEA formula grants into a single state-level block grant instead of managing them separately. Iowa requested the waiver, which marks the first time ED has allowed a state to consolidate ESEA funds, after ED encouraged states to apply for permission to bypass statutory limits on ESEA funds in a July [Dear Colleague Letter](#).



### Legally Speaking...

The Secretary of Education has relatively broad authority under the ESEA to waive statutory and regulatory requirements, subject to important limits set forth in the law. For example, the Secretary cannot change the allocation or distribution of federal formula grants to states, school districts, or other recipients and cannot allow states to skirt the ESEA's accountability requirements. The Iowa waiver, which applies only to ESEA funds allocated for state-level activities, appears to comply with these restrictions. In contrast, a decision by ED to grant Indiana's [pending request](#) to convert all of its ESEA funds into a single, unrestricted block grant would likely be unlawful.