

From the Office of the General Counsel

Recent Executive Actions

Failing to Investigate Thousands of Civil Rights Cases

On February 2nd, the Government Accountability Office released a [report](#) examining how the Office for Civil Rights (OCR) at the Department of Education (ED) has functioned following the [March 2025 RIF](#), which halved its workforce and cost more than \$28.5 million in salaries and benefits for laid-off staff. Although OCR resolved over 7,000 of the more than 9,000 new complaints it received between March and September 2025, it dismissed 90% of the resolved cases without investigation (compared to 49%-81% dismissal rates in prior years). Meanwhile, media reports indicate OCR's case backlog grew from [around 12,000](#) open investigations in January 2025 to [roughly 25,000](#) by January 2026. During that time, OCR disclosed just 177 resolution agreements (compared to 518 in 2024), [none of which](#) involved racial harassment. Likewise, [none](#) of the disclosed Title IX case resolutions involved sexual assault, sexual harassment, gender harassment, or pregnancy/parental status discrimination; instead, [one quarter](#) concerned policies permitting the inclusion of transgender students in athletics.



Legally Speaking...

OCR is required by statute to "effectuate" federal civil rights laws in ED-funded programs, and, under its regulations, must promptly investigate and resolve civil rights complaints. The few resolution agreements entered in 2025, the mounting backlog, and the high rate of dismissals without investigation show that OCR is unable to fulfill its statutory obligations in the wake of the March 2025 RIF. Multiple pending lawsuits, including a [challenge](#) by NEA and partner organizations to the dismantling of the Department of Education, contend that the Trump Administration's gutting of OCR was unlawful.

Signing \$79B Education Funding Bill Into Law

On February 3rd, President Trump signed the FY 2026 budget bill into law. The bill funds ED at \$79 billion, [rejecting](#) the deep cuts to federal education funding proposed by the Trump Administration. The law requires ED to distribute formula grant funding to states and districts on time and to maintain sufficient staffing to fulfill its statutory responsibilities. These mandates appear to be a rebuke of ED's [withholding](#) of billions in formula grant dollars for weeks last summer and [elimination](#) of about half of its career staff over the past year. The bill also continues a longstanding restriction prohibiting ED from transferring appropriated funds to other agencies.



Legally Speaking...

The Administration must comply with conditions Congress sets for its use of appropriated funds. As Congress's joint explanatory statement confirms, ED cannot transfer funds appropriated to carry out ED's statutory duties to other agencies without violating the budget bill's ban on interagency transfers of appropriated funds. ED's ongoing implementation of seven interagency agreements transfers funding for core programs to other agencies and is therefore unlawful.

Issuing Guidance Allowing Teacher Prayer in Public Schools

On February 5th, ED issued [guidance](#) claiming that public school employees may engage in religious expression — including “visible, personal prayer” with students — “during the conduct of their work.” ED interprets the U.S. Supreme Court’s 2022 [decision](#) in *Kennedy v. Bremerton School District* to mean that educators’ religious expression at school only violates the First Amendment if it is offered “on behalf of the school or in contexts that students cannot opt out of” or is otherwise coercive. In ED’s view, the simple fact of prayer being visible to students is not itself coercive. The move replaces ED’s [2023 guidance](#) on religious expression in public schools, which maintained that educators may engage in private prayer during the workday, but could not do so while carrying out official duties and could not encourage or discourage students’ participation in religious activities.



Legally Speaking...

As explained in NEA’s religious expression toolkits, the First Amendment guarantees [educators’](#) and [students’](#) rights to private religious practice at school while also prohibiting religious coercion. *Kennedy* held that educators may pray at work only when off duty and so long as they do not pressure students to participate. ED’s new guidance stretches that holding, claiming that educators may pray not just during off-duty time, but anytime they are not actively performing duties like teaching, coaching, or counseling, through which their speech could be attributed to the school district. By going beyond *Kennedy*, the guidance risks undermining students’ right to be free from religious coercion at school.

Litigation Updates

NEA Files Emergency Motion to Stop ICE Enforcement Near Schools

On February 12th, NEA filed an [emergency motion](#) for relief in a [lawsuit](#) challenging the Trump Administration’s [January 2025 rescission](#) of a longstanding policy limiting immigration enforcement at “sensitive locations,” such as schools, hospitals, courthouses, and churches. The motion, which argues that the policy change is arbitrary and capricious under the Administrative Procedure Act (APA) and irreparably harms educators around the country, is supported by [testimony](#) from 60 teachers and health care workers from 18 states. Earlier last week, Education Minnesota and two Minnesota school districts also filed a [lawsuit](#) seeking to restore the sensitive locations policy. The complaint similarly alleges that the rescission violated the APA and its implementation at or near Minnesota public schools has caused significant disruption, including school closures and declines in attendance.

Appeals Court Vacates Injunction Blocking Anti-DEI EO

On February 6th, the Fourth Circuit [vacated](#) a [preliminary injunction](#) that blocked implementation of two executive orders (EOs) targeting DEI practices in the federal government and private sectors, including higher education. While the plaintiffs lacked standing for some claims and were unlikely to succeed in showing other EO provisions were facially unconstitutional, the court left open the possibility that use of the EO in specific enforcement actions could be unlawful. The case has been remanded to the lower court.

Academic Labor Union Challenges Trump’s “Gold Card” EO

On February 3rd, the American Association of University Professors and several prospective visa applicants filed a [lawsuit](#) challenging Trump’s [“Gold Card” visa program](#), which fast tracks applicants who pay \$1 million under visa programs designed to admit highly talented individuals to the United States based on their merit and ability. Plaintiffs argue that the “Gold Card” program exceeds the President’s authority under the Immigration and Nationality Act by changing the statutory criteria for the impacted visa programs and violates the APA. They are seeking declaratory and injunctive relief.