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NEA LEGAL RUNDOWN

NATIONAL EDUCATION ASSOCIATION

From the Office of the General Counsel

Litigation Updates

SCOTUS Invalidates Colorado Ban on Conversion Talk Therapy for Minors

On April 2nd, the U.S. Supreme Court issued an 8-1 decision in *Chiles v. Salazar* that invalidated a Colorado law barring "conversion therapy" — a practice meant to alter a minor's gender identity or sexual orientation — through "talk therapy." The Court held that this application of the law violated the First Amendment by discriminating on the basis of viewpoint, prohibiting therapists' speech that endeavors to change their client's identity while permitting speech that affirms a client's identity. Although the decision will impact state laws that prohibit conversion therapy, it addresses only talk therapy, not medical interventions. Further, the decision's reasoning would also invalidate a state law that prohibits LGBTQ-affirming talk therapy and thus may protect LGBTQIA+ youth in hostile states.

SCOTUS Hears Birthright Citizenship Case

On April 1st, the U.S. Supreme Court heard oral arguments in *Trump v. Barbara*, one of several cases challenging President Trump's executive order (EO) purporting to eliminate birthright citizenship. The case reached the Supreme Court after a New Hampshire district court (like every other court to consider the EO) blocked the Administration from enforcing the order last July. After the argument, the Court is widely expected to invalidate the EO. NEA joined an amicus brief along with 18 other labor organizations in support of birthright citizenship.

District Judge Dismisses DOJ Challenge to MN In-State Tuition Policy

On March 27th, a Minnesota district judge dismissed a Department of Justice (DOJ) lawsuit that challenged the state's policy allowing undocumented students to pay in-state tuition at public colleges and universities. This is the first ruling against DOJ's campaign to end in-state tuition for undocumented students, with lawsuits still pending in California, Illinois, and Virginia. Texas, Oklahoma, and Kentucky agreed in consent judgments to end their policies.

District Judge Blocks ED's Demand for Admissions Data

On April 3rd, a Massachusetts district judge issued a preliminary injunction blocking enforcement of a new Department of Education (ED) requirement that colleges and universities collect and submit admissions data by race and sex. The requirement is purportedly to ensure compliance with the U.S. Supreme Court's decision in *Students for Fair Admission v. Harvard College*. The judge found that, while ED has "the basic authority" to collect and analyze admissions data, the new requirement violated the APA because of its "rushed and chaotic" adoption, its accelerated implementation timeline, and ED's failure to meaningfully address concerns raised in public comments. The injunction applies only to the public university systems in the 17 plaintiff states, not to public universities in the non-plaintiff states or to private colleges and universities.

State Coalition Sues USDA Over Funding Threats to School Meal Programs

On March 23rd, 21 states sued the Department of Agriculture (USDA), challenging new grant conditions that require recipients to certify that they will not use federal funds to "promote gender ideology" or provide "taxpayer-funded benefits" to undocumented individuals. Among other critical funding, the plaintiff states collectively risk losing at least $11.6 billion in funds to feed children through the Child Nutrition Program, which includes the National School Lunch and School Breakfast Programs.

Recent Executive Actions

Prohibiting Federal Contractors from DEI Practices

On March 26th, President Trump issued an EO requiring all federal contractors, including higher education institutions, to agree to "not engage in any racially discriminatory DEI activities" or else risk the cancellation of their contracts. Contractors must provide records to demonstrate compliance and report violations by subcontractors. The EO suggests that violations of these requirements would expose contractors to liability under the False Claims Act. Federal agencies must add this language to their contracts by April 25th and audit contractors' compliance by July 24th.

Legally Speaking...

The EO claims that the President may restrict contractors' supposedly "inefficient" DEI activities under a statute that authorizes the President to issue directives promoting economical and efficient federal contracting. While presidents have historically used this law to impose a broad range of contractor obligations (including nondiscrimination requirements), the courts of appeals are split on whether it allows the president to issue any directive that furthers the statutory goals of economy and efficiency or confers narrower authority. Regardless, the First Amendment prohibits the government from using the False Claims Act (or any other mechanism) to penalize disfavored viewpoints.

Increasing Restrictions on Absentee Voting

On March 31st, President Trump issued an EO directing the Department of Homeland Security to provide state election officials with lists of eligible voters. Election officials who provide ballots to individuals not on those lists would be subject to prosecution. The order also requires the U.S. Postal Service to promulgate regulations mandating the creation of pre-approved lists of eligible mail-in voters and prohibits USPS from delivering mail-in or absentee ballots to voters not on those lists.

Legally Speaking...

The U.S. Constitution's Elections Clause gives the states primary authority to set the "Times, Places, and Manner" of federal elections, subject to congressional override. The President has no power to make rules relating to federal elections. Three lawsuits, including one brought by a coalition of 19 states, have been filed challenging the EO on the grounds that it violates Article I of the Constitution; the First, Fifth, and Tenth Amendments; the Voting Rights Act; the Privacy Act; and the Administrative Procedure Act (APA). What's more, Trump's claims of widespread mail-in voting fraud have been consistently disproven, accounting, by some estimates, for only 0.000043% of total mail ballots cast.

Rescinding Resolution Agreements that Support Trans Students

On April 6th, in an unprecedented move, ED announced that its Office for Civil Rights (OCR) is rescinding portions of six agreements with school districts and colleges to resolve complaints of gender-based discrimination against transgender students, in violation of Title IX.

Legally Speaking...

While ED can rescind a resolution agreement and cease enforcement, ending an agreement does not change a district or college's obligation to comply with federal civil rights laws. As NEA explained in this guidance, Title IX protections should be understood to extend to transgender students under existing legal precedent, and ED cannot change the statute or overrule court decisions interpreting it.

Proposing Federal Education FY 2027 Budget Cuts

On April 3rd, the Trump Administration released a "skinny budget" proposal for the 2027 fiscal year that would reduce education funding by a net $2.3 billion, or a 3% cut. This includes $8.5 billion in cuts to around 30 K-12 programs, including 17 ESEA programs and most IDEA programs other than Part B formula grants to states, which would be consolidated into two block grant programs. The proposal also requests that Congress appropriate funding for federal career and technical education programs — which are required by statute to be run through ED — to the Department of Labor (DOL), formalizing the Administration's transfer of these programs from ED to DOL through a May 2025 interagency agreement.

Legally Speaking...

The Constitution gives the power to appropriate and spend federal money exclusively to Congress; a President's budget proposal does not have any legal force and rarely becomes law as written. Under existing constitutional law and the Impoundment Control Act, the President is bound to implement the budget as enacted by Congress, except in very limited circumstances. Moreover, to permanently transfer programs assigned by statute to ED to DOL, Congress would have to amend the Department of Education Organization Act of 1979.

Transferring Student Loan Programs to the Treasury Department

On March 19th, ED announced a new interagency agreement (IAA) to transfer the Office of Federal Student Aid (FSA), which administers the $1.7 trillion federal student loan portfolio, to the Department of Treasury (Treasury). In the first phase of the IAA, Treasury will take over debt collection on defaulted student loans, and in subsequent phases, will "assume operational responsibility" over non-defaulted loans as well as FSA's administrative and oversight functions for federal student aid programs.

Legally Speaking...

The Higher Education Act creates FSA as a performance-based organization within ED and assigns to FSA and ED responsibility for the administration and oversight of federal student aid programs. While Treasury may have authority to collect on defaulted federal debt, ED cannot shift its administrative and oversight obligations to other agencies. Further, the FY 2026 appropriations act bans ED from transferring funds appropriated to carry out its statutory duties to other agencies. Transfers of ED funds to Treasury to implement the IAA would violate this restriction.