

## Litigation Updates

### SCOTUS to Weigh Religious Exemptions to Preschool Nondiscrimination

On April 20th, the U.S. Supreme Court agreed to hear [St. Mary Parish v. Roy](#) next term, which asks whether private religious schools that receive public funds from Colorado’s universal preschool program are entitled to exemptions from the program’s nondiscrimination requirements. To receive funding, schools must provide children with an equal opportunity to enroll, regardless of race, religious affiliation, sexual orientation, gender identity, and other factors. The plaintiffs claim that Colorado’s refusal to exempt Catholic preschools from the nondiscrimination provision — so that they are free to reject LGBTQ+ children and families — violates the Free Exercise Clause of the First Amendment. Both the District Court and the Tenth Circuit ruled in favor of Colorado because the nondiscrimination provisions were neutral and generally applicable and therefore permissible under long established Supreme Court precedent.

### Appeals Court Upholds Texas Ten Commandments Law

On April 21st, the Fifth Circuit issued a 9-8 en banc [decision](#) upholding a Texas law that requires public schools to display the Ten Commandments in classrooms. The court relied on the Supreme Court’s 2022 decision in *Kennedy v. Bremerton*, concluding the law does not violate the Establishment Clause because a poster displaying the Commandments would not have offended the founders’ understanding of the prohibited establishment of religion, nor is it coercive or oppressive in violation of the Free Exercise Clause (even if it inspires disagreement). The plaintiffs, who are a multifaith group of Texas families, [anticipate](#) seeking review in the Supreme Court. NEA and the Arkansas Education Association filed an [amicus brief](#) in the Eighth Circuit in a similar case challenging Arkansas’ Ten Commandments law.

### Higher Education Associations Challenge Anti-DEI Federal Contracting EO

On April 20th, a coalition of higher education groups and minority contractor associations filed a [lawsuit](#) challenging President Trump’s March 2026 [executive order](#) (EO) that requires all federal contractors to agree to not engage in “racially discriminatory DEI activities,” or else risk the cancellation of their contracts. The EO also directs the amendment of the Federal Acquisition Regulations to require these conditions in all federal procurements, solicitations, and contracts. The plaintiffs argue that the EO violates their First Amendment rights and exceeds the President’s authority.

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

On April 21st, the Department of Justice (DOJ) [sued](#) Nebraska over its law allowing undocumented college students to pay in-state tuition rates and benefit from scholarships, claiming that it is preempted by federal immigration laws. The same day, DOJ and Nebraska officials filed a [proposed joint consent decree](#), asking the court to permanently enjoin the law. The court has not yet ruled. [Texas](#), [Oklahoma](#), and [Kentucky](#) have already agreed to end their similar policies through separate consent decrees, while DOJ’s lawsuit against [Minnesota](#) was [dismissed](#) in March. Challenges are still pending in [California](#), [Illinois](#), and [Virginia](#).

## District Court Vacates Magnet School Grant Discontinuation

On April 8th, a New York district judge [ruled](#) that ED unlawfully discontinued five Magnet School Assistance Program grants for New York City Public Schools over their trans-inclusive policies. The court found that ED failed to follow required Title IX procedures when it ended the grants (including findings and an opportunity for voluntary compliance) and ordered the funding restored within 10 days of the order.

## Recent Executive Actions

### Closing ED Office for English Language Acquisition

On February 13th, in a [letter](#) only made public [this week](#), the Department of Education (ED) notified Congress of plans to formally dissolve its Office of English Language Acquisition (OELA), after dismissing nearly all its staff in 2025. OELA administers \$890 million in Title III grants for English language learners and \$60 million in teacher professional development grants, both of which will move to other ED offices. Although the letter says that OELA's Native American and Alaska Native Children in School Program will also be transferred internally, ED previously entered into an interagency agreement shifting program administration to the [Department of the Interior](#). The letter provides Congress with 90 days' notice, which means that ED can initiate these actions starting May 14th.



#### Legally Speaking...

While ED's governing statute allows the Secretary of Education to "establish, consolidate, alter, or discontinue" a handful of offices, including OELA, ED cannot shift its administrative and oversight obligations to other agencies. Further, should ED look to transfer funds for congressionally appropriated OELA programs to other agencies, it could violate restrictions set forth in the FY 2026 appropriations act.

### Claiming School "Forced Outing" Prevention Policies Violate FERPA

On April 17th, ED [found](#) four Kansas school districts violated the Family Educational Rights and Privacy Act (FERPA) by having policies that protect against the unwanted disclosure of a student's gender identity or sexual orientation to parents (known as "forced outing"). ED uses its [March 2025 Dear Colleague Letter](#) as a basis for claiming that such student privacy policies may violate parents' rights under FERPA to access their students' education records. ED is demanding that districts make documents related to "gender transition" readily accessible to parents and rescind any trans-inclusive policies, or else risk losing federal funding.



#### Legally Speaking...

FERPA does not require schools to affirmatively notify parents of gender support plans in student records. ED's findings were based on complaints by the Defense of Freedom Institute, not on a parent's record request. Only parents, legal guardians, and adult students have the right to access education records upon request. [Litigation](#) on this issue is currently pending in California, where ED has been [temporarily blocked](#) from withholding funds over similar claims. ED also lacks a clear legal basis to withhold funding over the school's trans-inclusive policies and has not followed the required Title IX procedures for rescinding federal funding.

## Proposing New College Accountability Metrics

On April 17th, ED [proposed](#) a new accountability rule requiring programs at over 4,000 higher education institutions to show that graduates earn more than comparable degree holders (high school for undergraduate programs, bachelor's for graduate programs). Programs that fail twice within three years could lose access to federal loans and, in some cases, Pell Grants. This could reduce financial aid access for educator preparation programs, where earnings are typically lower. Public comment is open until May 20th, and the rule is slated to take effect on July 1st.



### Legally Speaking...

ED has authority to promulgate regulations to ensure that institutions receiving federal financial aid meet the Higher Education Act's requirement that their programs lead to gainful employment. However, ED still must follow notice-and-comment procedures to finalize the rule. After publishing the proposal and accepting comments, ED next must consider significant comments and address them in its final rule. Failure to do so could invalidate the regulation.