MAY 8, 2026

NEA LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

SCOTUS Agrees to Gut Core Provision of Voting Rights Act

On April 29th, the U.S. Supreme Court (SCOTUS) issued a 6-3 decision in *Louisiana v. Callais* that effectively neutered Section 2 of the Voting Rights Act of 1965, which bars racial discrimination in voting. The case — reargued this term after SCOTUS first heard it last year — raised the question of what plaintiffs must show to establish that a redistricted map was drawn based on impermissible considerations of race. Despite the 1982 amendments to the Voting Rights Act directing courts to focus on the effects of redistricting, SCOTUS instead insisted that proof of intent is necessary to strike down maps under Section 2. It further concluded that such intent can only be found when race is the sole explanation for the district lines. Consequently, the Court struck down a Louisiana map that had been drawn to remedy the effective disenfranchisement of Black voters, deeming it an impermissible racial gerrymander. The majority suggested that if a redistricting plan could be explained as a partisan gerrymander, it would largely be insulated from being challenged as a racial gerrymander. In dissent, Justice Elena Kagan wrote that this ruling leaves Section 2 "all but a dead letter." The Court issued an unsigned, one-paragraph order on May 4th putting its decision into immediate effect, prompting swift efforts in Louisiana and other states to implement new maps ahead of the 2026 elections.

DOJ Sues NJ Over In-State Tuition for Undocumented Students

On April 30th, the Department of Justice (DOJ) sued New Jersey over its law allowing undocumented college students to pay in-state tuition, which DOJ claims violates federal law by giving in-state undocumented students access to benefits not available to out-of-state U.S. citizens. DOJ has challenged similar policies in eight other states. Its case against Minnesota was dismissed in March and is on appeal. Litigation is ongoing in California, Illinois, and Virginia, while Texas, Oklahoma, and Kentucky entered consent decrees ending their policies. Nebraska's proposed consent decree is pending court approval.

District Judge Expands Block on ED's Demand for Admissions Data

On April 27th, a Massachusetts district judge expanded a preliminarily injunction blocking ED from enforcing a requirement that higher education institutions submit admissions data by race and sex. The order, which previously applied to public colleges in 17 plaintiff states, now also covers six private colleges and members of six higher education associations (about 170 additional public institutions). The judge held that the data reporting requirement likely violates the Administrative Procedure Act (APA) due to its "rushed and chaotic" rollout, accelerated implementation timeline, and ED's failure to meaningfully address concerns raised in public comments.

Recent Executive Actions

Withholding $2 Billion in Education Grants

As of May 6th, the Office of Management and Budget (OMB) is withholding over $2 billion appropriated in the FY 2026 appropriations act for 35 education programs that the Trump Administration had unsuccessfully proposed that Congress defund. The withheld funds includes $235 million for education research, $220 million for teacher preparation and training, $150 million for community schools initiatives, and $139 million for magnet schools.

Legally Speaking...

The Constitution and the Impoundment Control Act require the President to implement appropriations as enacted by Congress, except in very limited circumstances. The Administration therefore cannot refuse to release funds into agency accounts as directed by the FY 2026 appropriations act. Similarly, the Administration cannot reprogram funds from one program within an agency to another to effectively discontinue grant programs created and funded by Congress.

Proposing DEI Reporting Requirements for Federal Contractors

On May 6th, multiple agencies, including the General Services Administration, published a proposed information collection to implement President Trump's March 2026 executive order (EO) requiring all federal contractors (including higher education institutions) to agree to not engage in "racially discriminatory DEI activities." The proposal would necessitate that contractors provide information about their own compliance with the EO's anti-DEI requirements and report potential violations by their subcontractors. Contractors found to be in violation of the EO would risk cancellation of their contracts.

Legally Speaking...

Last month, a coalition of higher education groups and minority contractor associations filed a lawsuit arguing that the EO violates the First Amendment by penalizing protected speech and discriminating against disfavored viewpoints, imposes an unconstitutional condition on federal funding, and exceeds the President's authority to control contracting under the Procurement Act. If finalized, the proposed information collection would similarly infringe contractors' constitutional and statutory rights.

Finalizing New Federal Student Loan Caps

On May 1st, the Department of Education (ED) published its final Reimagining and Improving Student Education ("RISE") Rule, which ends the Grad PLUS loan program and implements the One Big Beautiful Bill Act's limits on the federal student loan aid available to graduate students. Starting in July 2026, new borrowers can take out only $20,500 per year in federal student loans for most graduate programs, but may borrow up to $50,000 per year for certain, very limited "professional degree" programs. The final rule classifies teaching, nursing, and social work degree programs, among others, as "graduate" programs subject to the lower cap. ED received 81,000 comments on its proposed version of this rule, including many raising concerns about the "professional degree" definition.

Legally Speaking...

The One Big Beautiful Bill Act established the loan caps and directed ED to determine which graduate degree programs fall under each limit. Some stakeholders argue the final rule's exclusion of advanced degrees in fields like teaching from the "professional degree" category is unlawful because it contradicts the loan-cap framework established in the Act. The final rule may also be invalid if ED failed to meaningfully address concerns raised in public comments or otherwise did not consider important consequences of the "professional degree" definition.