

Litigation Updates

District Judge Vacates Unlawful Conditions on Education Research Funding

On September 17th, in a [case](#) supported by NEA and brought by a coalition including the Massachusetts Teachers Association, a Massachusetts district judge [vacated](#) the Office of Management and Budget (OMB)'s attempt to require the Department of Education (ED) to comply with two anti-DEI executive orders ([EO 14151](#) and [EO 14332](#)) as a condition of receiving and spending funds appropriated to federal education research programs — mainly through ED's Institute of Education Sciences (IES). The court ruled that the requirements are arbitrary and capricious in violation of the Administrative Procedure Act (APA), and that OMB lacks statutory authority to impose them. The court also recognized that ED must obligate millions in appropriated IES and other education research funds before they expire on September 30, 2026, and ordered the government to report on its progress by September 28th.

District Judge Vacates ED Directive Terminating DEI Grant Funding

On September 17th, in a [case](#) brought by eight state attorneys generals, a Massachusetts district court granted [summary judgment](#) vacating an internal directive published by ED in February 2025 that instructed officials to terminate or discontinue any federal education grant awards that fund DEI initiatives. Under this directive, ED canceled hundreds of grants worth hundreds of millions of dollars, including ones funding the congressionally mandated Teacher Quality Partnership and Supporting Effective Educator Development programs. The judge held that the directive violates the APA, as it is arbitrary and capricious and not in accordance with law, including federal statutes and governing regulations.

SCOTUS Upholds Block on Trump Administration Mail-In Voting Restrictions

On September 14th, in a 7-2 [unsigned shadow docket order](#), the U.S. Supreme Court denied the Trump Administration's application to stay a [preliminary injunction](#) that partially bars the implementation of the U.S. Postal Service's (USPS) [final rule](#) restricting mail-in voting. The relevant parts of the rule would prohibit the delivery of absentee ballots to voters who are not on preapproved lists of eligible mail-in voters created by USPS. The Court found that the government was unlikely to succeed on the merits of its challenge to the preliminary injunction. The day before, in a separate set of three consolidated cases, a D.C. district judge issued a second [preliminary injunction](#) blocking the entire rule, holding that it exceeded USPS's statutory authority.

District Judge Blocks Rule Capping Duration of Student Visas

On September 14th, a Massachusetts district judge issued a [preliminary injunction](#) in a [lawsuit](#) brought by a coalition of higher-education associations and labor unions that blocks the Trump Administration's [final rule](#) limiting the duration of visas for nonimmigrants studying or working in the United States, including international students, short-term educators, and researchers. The judge found that the rule is arbitrary and capricious in violation of the APA, as the Administration failed to sufficiently address concerns raised in nearly 22,000 public comments, perform a cost-benefit analysis, consider alternatives, and demonstrate that the rule is rationally connected to the government's national security objectives.

District Judge Says Foreign Students Can't be Deported for Political Speech

On August 28th, a California district judge [declared unconstitutional](#) the Trump Administration's use of the Immigration and Nationality Act (INA) to revoke visas and initiate deportation proceedings against lawfully present noncitizens based solely on political speech. The judge, ruling in a [case](#) brought by a student newspaper at Stanford University and a non-citizen student, held two INA provisions to be impermissibly vague and violative of the First Amendment as applied to classify non-citizen students as eligible for deportation or visa revocation based on their protected speech.

DOJ Files 8 New Lawsuits Over In-State Tuition for Undocumented Students

Since the end of August, the Department of Justice (DOJ) has sued seven more states ([Arkansas](#), [Arizona](#), [Hawaii](#), [New Mexico](#), [Oregon](#), [Utah](#), and [Washington](#)) and [D.C.](#) over their laws allowing undocumented college students to pay in-state tuition rates and benefit from scholarships. DOJ has now filed a total of 25 lawsuits. In addition to the eight filed since the end of August, 11 remain pending ([California](#), [Colorado](#), [Connecticut](#), [Kansas](#), [Maryland](#), [Massachusetts](#), [New Jersey](#), [New York](#), [Rhode Island](#), [Vermont](#), and [Virginia](#)), and three are on appeal ([Kentucky](#), [Minnesota](#), and [Nebraska](#)). The remaining three have been resolved either through summary judgment ([Illinois](#)) or voluntary consent decrees ([Texas](#) and [Oklahoma](#)) that ended their policies. NEA filed amicus briefs in support of the state laws in the [Kentucky](#) and [Minnesota](#) cases on appeal.

Recent Executive Actions

Threatening Tax-Exempt Status for Private Schools with DEI Programs

On September 4th, the Internal Revenue Service (IRS) published a [proposed rule](#) that would allow the agency to deny or revoke federal tax-exempt status from any private schools with DEI programs or policies that, in the Administration's view, discriminate on the basis of race. Any private school that considers race in areas such as admissions, curricular offerings, school-sponsored extracurricular activities, scholarships, loans, athletics, and facilities would lose its status. If finalized, the rule would go into effect on May 31, 2027, and apply to over 18,000 private K-12 schools and higher education institutions. Public comment on the proposed rule is open until November 3, 2026.



Legally Speaking...

The First Amendment prohibits the federal government from penalizing disfavored viewpoints, compelling speech, or chilling protected expression through tax exemption criteria. The Fifth Amendment's Due Process Clause also requires that rules be sufficiently clear to give regulated parties notice of their terms and avoid arbitrary enforcement. The IRS's proposed rule violates these restrictions because it targets "DEI" policies without defining key terms like "discrimination" or explaining how the IRS will evaluate compliance. In addition, the APA requires that an agency changing a longstanding policy explain the departure and consider stakeholders' reliance interests. If the IRS's final rule does not take these steps, it may be invalid.