OCTOBER 30, 2026

# NEA LEGAL RUNDOWN

*From the Office of the General Counsel*

# Litigation Updates

## NEA Victory: Federal Government Drops Appeal in PSLF Case

On October 22nd, the federal government dropped its appeal of a Massachusetts district court's order granting summary judgment for a coalition of plaintiffs (including NEA) in a challenge to the Department of Education's (ED) final rule narrowing employer eligibility for the Public Service Loan Forgiveness (PSLF) program. The district court vacated the rule, which would have allowed the Secretary of Education to disqualify employers for a broad range of activities deemed to have a "substantial illegal purpose" in June 2026. With the government withdrawing its appeal, the district court's ruling is now final, ensuring that these changes to PSLF will not take effect.

## SCOTUS to Review Standard for Facially Neutral Admissions Policy Suits

On October 19th, the U.S. Supreme Court agreed to hear *Association for Education Fairness v. Montgomery County Board of Education*. The case — brought by an organization of Asian American parents whose students are enrolled in Montgomery County Public Schools — challenges the district's changes to its admissions process for highly competitive middle school magnet programs, including the removal of an entrance exam and the adoption of a lottery system in response to COVID-19. The Court will consider whether a challenge to a facially neutral admissions policy under the 14th Amendment requires proof that the policy had a disparate impact on the affected racial group (i.e. by reducing the group's percentage share of admissions relative to its share of applicants).

## District Judge Allows Federal Contractor EO to Stand

On October 14th, a Maryland district court denied plaintiffs' request for a preliminary injunction to block a March 2026 executive order (EO) requiring federal contractors to certify that they do not engage in DEI activities disfavored by the Trump Administration or risk losing their contracts. The court found that the plaintiffs were unlikely to succeed on their constitutional claims because the EO applies only to conduct already prohibited under federal law, not DEI activities permitted under current law. The judge noted, however, that any attempts by the government to enforce the EO more broadly could be challenged in the future.

# Recent Executive Actions

## Planning to Offload ED's Office of Federal Student Aid

On October 15th, it was reported that the Trump Administration is planning to spin ED's Office of Federal Student Aid (FSA) into a new standalone agency responsible for FSA's core functions: administering the $1.7 trillion federal student loan portfolio and auditing higher education institutions. The reporting, which ED denies, follows a March 2026 interagency agreement (IAA) that outlined a phased transfer plan to move FSA to the Department of Treasury.

**Legally Speaking...**

Under the Constitution, only Congress can form and delegate authority to federal agencies. The President cannot create a freestanding FSA entity without an act of Congress. The Higher Education Act also establishes FSA as a performance-based organization within ED, assigning it responsibility for administration and oversight of federal student aid programs. ED cannot shift these obligations to any other agency.

## Preparing to Implement the First Federal Voucher Program

On October 2nd, the Internal Revenue Service (IRS) issued temporary and proposed rules to implement the new Federal Scholarship Tax Credit, a federal voucher program that creates a dollar-for-dollar tax credit for contributions to scholarship-granting organizations (SGOs) that distribute school vouchers to students. Under the rules, states that opt into the federal voucher program must certify SGOs that pay private school tuition; cannot require SGOs to prioritize low-income or high-need students; cannot impose restrictions on SGOs to prevent discrimination or waste, fraud, and abuse; and are prohibited from setting SGO operating or certification standards beyond the minimal federal requirements. Public comments on the proposed rule are due December 1, 2026, the same day the temporary rule (which establishes procedures for states to opt into the program and approve SGOs) takes effect. More than 30 states have already opted into the program ahead of its launch on January 1, 2027.



**Legally Speaking...**

Before the IRS finalizes its proposed rule, the Administrative Procedure Act (APA) requires that the agency consider certain statutory factors, weigh stakeholders' interests, and address concerns raised in public comments. If the final rule does not address the concerns raised in the comments, it may be arbitrary and capricious, in violation of the APA.

## Formally Rescinding Biden-Era Title IX Protections

On September 29th, ED's Office of Civil Rights (OCR) published a direct final rule formally rescinding the Biden Administration's 2024 Title IX regulations, which had made explicit that Title IX prohibits sexual orientation and gender identity discrimination, strengthened protections for pregnancy and related conditions, and established requirements for schools to prevent and respond to all types of sex discrimination and sex-based harassment complaints. The rule officially reinstates the Trump Administration's 2020 regulations, which have been in effect since January 2025, when a federal district court vacated the 2024 rule.



**Legally Speaking...**

While this rescission codifies the court's invalidation of the 2024 Title IX rule, it does not require schools to eliminate LGBTQ+-inclusive policies, prohibitions on sexual orientation or gender identity discrimination, or other protections against sex discrimination (provided they do not conflict with the 2020 Title IX regulations).

## Imposing Fees for International Student Optional Practical Training Program

On October 8th, the Department of Homeland Security (DHS) published a proposed rule that would require colleges and universities to pay up to $100,000 in fees for each international student seeking to participate in the Optional Practical Training (OPT) program, which allows international students to work in the U.S. for up to three years after graduation. Under the proposal, colleges and universities would have to pay an initial $70,000 fee for each international student they recommend for work authorization through OPT, as well as an additional $30,000 for each student seeking an OPT extension. Public comments on the proposed rule are due November 9th.



**Legally Speaking...**

DHS has already received over 4,000 comments in response to this proposed rule. If the final rule does not address the concerns raised in the comments or the reliance interests of students and higher education institutions in maintaining the prior, substantially lower OPT fee, it may be arbitrary and capricious, in violation of the APA. Additionally, federal courts have struck down a similar immigration fee (the $100,000 H-1B visa fee) that was imposed via presidential proclamation, with one court holding that the fee was an unlawful tax. It is likely that any final rule imposing the $100,000 fee would be challenged on a similar basis.