NOVEMBER 13, 2026

NEA LEGAL RUNDOWN

From the Office of the General Counsel

Litigation Updates

SCOTUS Hears Arguments in *St. Mary's Parish*

On November 3rd, the U.S. Supreme Court heard oral arguments in *St. Mary Catholic Parish v. Roy*, 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. NEA filed an amicus brief in support of Colorado, arguing that the state's core objective of ensuring equal educational opportunity for all students could only be met by requiring providers to abide by the state's nondiscrimination laws and not exclude students or their families due to their sexual orientation or gender identity. At oral argument, the Court appeared inclined to find that Colorado's refusal to exempt Catholic preschools from the nondiscrimination provision violates the Free Exercise Clause of the First Amendment. A ruling to that effect would allow religious schools to reject LGBTQ+ children and families. A decision is expected by June 2027.

DOJ Sues Universities Over In-State Tuition for Undocumented Students

The Department of Justice (DOJ) continues its spate of cases seeking to end in-state tuition for undocumented students, recently suing individual higher education institutions (University of Delaware and Pennsylvania State University) that have policies allowing certain undocumented students to pay in-state tuition rates. These lawsuits are part of DOJ's larger push to declare such policies unlawful. DOJ has now sued every state that permits undocumented students to qualify for in-state tuition and benefit from scholarships. NEA filed amicus briefs in support of the state laws in the cases pending on appeal in Kentucky and Minnesota.

AFT Sues ED Over PSLF Delays

On October 30th, the American Federation of Teachers (AFT) and nine student loan borrowers filed a class action lawsuit challenging ED's delays in processing Public Service Loan Forgiveness (PSLF) "Buyback" requests and its removal of previously earned credit toward loan forgiveness. The complaint alleges that ED's actions violate the APA, as they constitute an unlawful withholding of an agency action, are arbitrary and capricious, and are contrary to constitutional right.

Recent Executive Actions

Overhauling Accreditation Standards

On October 30th, the Department of Education (ED) published a final rule making it easier for new higher education accreditors to gain federal recognition and for institutions to switch accreditors. Under the rule, accreditors must adopt standards on academic freedom, research misconduct, cost efficiency, and the promotion of "intellectual diversity and the free exchange of ideas amongst faculty." In addition, accreditors cannot adopt standards that "encourage, direct, or otherwise require" institutions to adopt DEI-related policies or programs that include racial preferences, such as race-based scholarships. The rule will go into effect on July 1, 2027.

Legally Speaking...

Because accredited status is a condition of eligibility for federal student financial aid, the new accreditation standards will impact higher education institutions. To the extent the new standards are applied by accreditors to penalize disfavored views, chill protected speech, and threaten academic freedom the rule raises First Amendment concerns. The rule also raises concerns under the Fifth Amendment's Due Process Clause due to the vagueness of the conduct that is prohibited, and may violate statutory limits on ED's power over accreditors. Despite receiving over 7,000 comments on the proposed rule (including from NEA), ED made "no substantive changes" to the final rule, potentially making it arbitrary and capricious in violation of the Administrative Procedure Act (APA). Tune in on December 7th for NEA's webinar on how local leaders can address the rule.

Eliminating Nondiscrimination Requirements for Federal Apprenticeships

On November 6th, the Department of Labor (DOL) published a final rule rescinding decades-old equal employment opportunity (EEO) obligations for federally registered apprenticeships, including teacher apprenticeships. The rule eliminates requirements that program sponsors provide anti-harassment training, appoint an EEO coordinator, post an EEO pledge, and track demographic data. It also removes an apprenticeship-specific prohibition on harassment, intimidation, and retaliation, and ends Registration Agencies' responsibility for investigating discrimination complaints, notifying apprentices of findings, and informing them of their right to file complaints. The rule takes effect on January 5, 2027, and states will have one year to align their apprenticeship policies with the new federal framework or risk losing federal recognition as a State Apprenticeship Agency. NEA submitted a public comment in August 2025 opposing the changes outlined in the rule.

Legally Speaking...

Although this rule rescinds the apprenticeship-specific nondiscrimination requirements, it does not prohibit sponsors from voluntarily continuing these practices, nor does the rule prohibit sponsors from continuing to promote lawful affirmative action programs. Sponsors must still abide by federal civil rights laws as well as state policies.