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NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Trump's Recent Executive Actions Undermining Education

Opening Investigations into 50+ Universities for DEI Practices

The Department of Education (ED) is investigating more than 50 higher education institutions over DEI practices based on its February 14th [Dear Colleague Letter](#), which contends that DEI initiatives discriminate on the basis of race. 45 of these universities are under investigation for having partnered with the Ph.D. Project, a nonprofit with programs limited to participants of color. Seven others face allegations of “impermissible race-based scholarships and race-based segregation.”



Is This Legal?

NEA has [filed suit](#) challenging the Letter as impermissibly vague, contrary to longstanding precedent construing Title VI, and based on an overly broad reading of Supreme Court case law on the legality of affirmative action programs. ED cannot apply its erroneous interpretation of Title VI to penalize educational institutions for lawful DEI initiatives and partnerships.

Imposing University Funding Freezes Over Antisemitism Concerns

ED has warned Columbia University that it will permanently lose federal funding unless it places its Middle Eastern, South Asian, and African Studies Department under receivership, bans identity-concealing masks, and reforms its policies on antisemitism, student discipline, and admissions. These demands follow the Trump administration's freeze of \$400 million in federal funding to the University, citing its alleged failure to curb antisemitism on campus. Despite the University making several of these concessions, ED has not lifted the freeze. Similarly, nearly \$9 billion in federal contracts and grants are also currently under review at Harvard University on the basis of similar concerns.



Is This Legal?

As NEA explained in [this guidance](#), discrimination based on Israeli heritage or antisemitism is prohibited under Title VI. However, Title VI requires the government to follow specific procedures (such as investigation, voluntary compliance efforts, and a hearing) before revoking federal funds in response to alleged discrimination. ED did not take any of these steps before freezing Columbia's federal funds, as AFT and AAUP assert in [their lawsuit](#). In addition, ED's demands for receivership, student protest restrictions, and other speech regulations raise serious First Amendment questions.

Threatening Funding Cuts to Enforce Transgender Athlete Bans

The Trump administration has threatened to suspend millions of dollars in federal funding at the University of Pennsylvania and the University of Maine for alleged violations of Trump's [EO](#) banning transgender student athletes from competing on female sports teams. While the University of Maine has since complied, Maine's Department of Education has refused and now faces potential federal enforcement actions, as ED alleges that Maine has violated Title IX.



Is This Legal?

As NEA explained in [this guidance](#), an EO cannot change federal civil rights laws or overrule court decisions interpreting those laws. Existing legal precedent affirms that Title IX's protections extend to transgender students; schools that impose blanket bans on transgender athletes or revoke gender-affirming accommodations may still face legal challenges under existing laws. GLAD and ACLU-NH [have expanded an existing lawsuit](#) to challenge the EO as violating the Equal Protection Clause and Title IX.

Canceling Final COVID Relief Aid Payouts

Education Secretary Linda McMahon announced that ED will halt the final payouts of federal pandemic relief funds to state governments and school districts, reversing a Biden era initiative that granted deadline extensions so that schools could spend the funds on pre-approved projects through early next year. McMahon has noted that state governments can reapply for extensions on individual projects if they can justify ongoing pandemic-related needs for American students.



Is This Legal?

The Administrative Procedure Act requires that an agency provide a reasoned explanation, consider reliance interests, and offer basic due process before reversing a previous decision. ED did not evaluate each extension request individually or give the states any opportunity to be heard before revoking the extensions, nor did it weigh the financial consequences for states that obligated millions of dollars in reliance on the promise of pandemic relief funds.

Targeting Green Card and Student Visa Holders for Deportation

Multiple foreign students and faculty who engaged in pro-Palestinian demonstrations last year have been taken into custody by ICE and threatened with deportation, despite being green card holders. This began on March 8th with the detention of Columbia graduate Mahmoud Khalil, the lead negotiator for Columbia University's pro-Palestinian encampments. The Trump administration has also revoked [at least 300](#) student visas, which are an easier target for the federal government as they do not require a judge's approval to revoke.



Is This Legal?

While the President has some latitude to revoke green cards and visas, he cannot do so in a way that violates the Constitution or federal immigration laws. The First Amendment prohibits viewpoint discrimination, meaning that the government cannot punish individuals because of their opinions or expression on a particular topic. Furthermore, green card holders are entitled by statute to a hearing and a ruling by an immigration judge before they lose their legal status or are deported. AAUP and other faculty groups [filed a lawsuit](#), arguing that the Administration's policy has chilled the expression of pro-Palestine political viewpoints on their campuses, in violation of the First Amendment.

Framing Title I Funds as a Tool for School Choice

As a follow-up to Trump's [EO](#) on school choice, on March 31st, ED issued [guidance](#) that highlights two provisions in Title I that it argues gives states "discretion to provide greater flexibility to support parents' choices for their child's education." According to the guidance, under these provisions, states may use Title I funds for direct student services like advanced coursework, dual enrollment, and tutoring outside of a public-school setting. However, the guidance stops short of expanding private school vouchers and does not introduce new policies.



Is This Legal?

Title I, as amended in ESSA, lets states use a small percentage of their federal funds to extend educational opportunities to students that are not otherwise offered by their school. The March 31st guidance simply restates these existing options; it does not expand them. It is best understood as an attempt to encourage more states to use the flexibilities ESSA authorizes, in alignment with the [EO](#).

Litigation Updates

Maryland Judge Orders Department of Education to Restart Teacher Prep Grants

On March 19th, a federal district court judge in Maryland ruled that the Trump Administration's termination of \$600 million in teacher training grants over DEI efforts was unconstitutional. The judge has ordered ED to restore funding for certain programs within five business days, following an order made the previous week by a federal judge in Massachusetts, directing ED to reinstate canceled grants in eight states. The Trump administration has since appealed the order in the Massachusetts case to the U.S. Supreme Court, seeking to vacate the ruling, and has asked the Fourth Circuit Court of Appeals to stay the Maryland order until the Supreme Court issues a decision.

Appeals Court Rules Trump Can Fire Independent Federal Board Members

On March 28th, a federal appeals court ruled that Trump can dismiss members of independent federal boards overseeing labor disputes and federal employee grievances. This decision temporarily pauses a lower court's order that reinstated the dismissed members of the National Labor Relations and Merit Systems Protection boards. While federal law restricts a president's ability to remove board members who oversee independent regulatory agencies, the Trump administration has argued that these limitations are unconstitutional. It is expected that the Supreme Court will eventually weigh in on this issue.