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NEA WEEKLY LEGAL RUNDOWN

From the Office of the General Counsel

Trump's Recent Executive Actions Undermining Education

Demanding K-12 Public Schools End DEI Initiatives or Risk Losing Funding

On April 3rd, the Department of Education (ED) sent a [letter](#) to State Commissioners overseeing K-12 State Education Agencies requiring them to certify their compliance with its February 14th Dear Colleague Letter. The Letter suggests that certain DEI initiatives discriminate on the basis of race and are in violation of Title VI. Schools will have until [April 24th](#) to certify that they have ended any such DEI programs or else risk losing federal funding. [Massachusetts](#), [New York](#), and [Washington](#) have already alerted federal officials that they will not provide the requested certification, and several other states have indicated that they plan to not provide the certification as well.



Is This Legal?

Last month, NEA [filed suit](#) to stop the enforcement of the Dear Colleague Letter, challenging it as impermissibly vague, contrary to longstanding Title VI precedent, and based on an overly broad reading of Supreme Court case law on the legality of affirmative action programs. NEA has now moved for a temporary restraining order against the certification requirement. The federal government has agreed to extend the deadline for certifications until April 24th in the hopes that the court can hear and resolve the pending preliminary injunction motion before that time.

Continuing to Freeze University Federal Funds Over Alleged Antisemitism

As of April 8th, the Trump administration has frozen a [combined total](#) of more than \$3 billion in federal funds across six universities: Brown, Columbia, Cornell, Northwestern, Penn, and Princeton. ED has also warned Harvard University that it will lose up to [\\$9 billion](#) unless it reforms antisemitism and admissions policies, bans masks for nonmedical purposes, reviews academic departments to “end ideological capture,” and provides “full cooperation” with the U.S. Department of Homeland Security. Harvard appears to be taking [steps to comply](#). Alleged failure to address antisemitism on campus is the justification for these freezes, but the remedies sought often go far beyond the alleged concerns. ED has launched [civil rights investigations](#) into all of these institutions, as directed by Trump's [EO](#).



Is This Legal?

As NEA explained in [this guidance](#), discrimination based on Israeli heritage or antisemitism is prohibited under Title VI. Before revoking federal funds for alleged Title VI violations, the federal government traditionally provides the institution with notice of the alleged violation, followed by an investigation and an opportunity to remedy the violation. However, none of these steps appear to be happening with the current round of investigations, as is alleged by AFT and AAUP [in their lawsuit](#) regarding Columbia University's funding freeze.

Launching Investigations into Schools Over Alleged Title IX Violations

In response to Trump's EOs on "[gender ideology](#)," and [transgender athlete bans](#), the Education and Justice Departments announced the creation of a [special investigations team](#) within ED's Office for Civil Rights (OCR) to more rapidly resolve investigations and ensure that cases are “fully prepared for ultimate DOJ enforcement.” The special investigations team will include OCR investigators and attorneys, along with attorneys from the Justice Department's civil right division and ED's general counsel's office. The investigative team announced on [April 4th](#) a directed investigation into the California Department of Education “for their alleged failure to protect women's sports.”



Is This Legal?

As NEA explained in this [guidance](#), EOs 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 these directives as violating the Equal Protection Clause and Title IX.

Removing Books and Eliminating DEI Initiatives at U.S. Military Academies

In response to orders from Defense Secretary Pete Hegseth, the U.S. Naval Academy has removed nearly [400 books](#) deemed to promote DEI from its library. The nation's five military academies were [told in February](#) to eliminate admissions "quotas" related to sex, ethnicity or race after Trump signed an [EO](#) to remove "any preference based on race or sex" from the military. West Point and the Air Force and Naval academies have also done curriculum reviews to remove materials that allegedly promote DEI. DODEA schools also have seen widespread efforts to censor school libraries and educational programming.



Is This Legal?

Unlike most public colleges and universities, which are governed by state agencies, military academies and DODEA schools are federally run, meaning that the federal government generally has authority over their operation. However, they are still subject to the First Amendment, which prohibits curriculum restrictions without a legitimate pedagogical basis and protects students' rights to receive information.

Soliciting Feedback to Deregulate Federal Financial Assistance Programs

On [April 3rd](#), ED announced [public hearings](#) as a first step in a negotiated rulemaking to "streamline" federal student aid programs, including the Public Service Loan Forgiveness Program (PSLF), the Pay As You Earn (PAYE) Repayment plan, and the Income-Contingent Repayment (ICR) plan. While the specific changes ED seeks to make remain [unclear](#), this process is in response to Trump's [EO](#) calling on ED to limit PSLF eligibility for organizations it believes violate federal immigration laws or subsidize other "illegal activities," including by supporting transgender children seeking gender-affirming care. The rulemaking process typically takes at least one year to complete.



Is This Legal?

ED is permitted by statute to engage in negotiated rulemaking to change the rules that govern PSLF, PAYE, and ICR, but the legality of a final rule will depend on whether the changes it claims to make to these programs violate the Higher Education Act and the Constitution, which would prohibit discriminating among groups based on their lawful advocacy.

Litigation Updates

SCOTUS Allows Trump to Cancel Millions of Dollars in Education Grants

On April 4th, the Supreme Court stayed, in a 5-4 decision, a Massachusetts federal court's temporary restraining order that directed ED to restore \$65 million in canceled teacher training grants while the court considered a challenge to the grants' cancellation. These grants were originally terminated by the Trump administration for funding programs it deemed to be DEI initiatives. The unsigned decision by the 5 Justices in the majority said the district court likely lacked jurisdiction under the Administrative Procedure Act to issue the order and that the plaintiffs had failed to show that ED could recover funds allocated under the order if the government ultimately prevailed in the case.

IHEP and AEFPP Sue Over McMahon's Cuts to Institute of Education Sciences

The Institute for Higher Education Policy and the Association for Education Finance and Policy filed a lawsuit on April 4th over cuts to the Institute of Education Sciences (IES). The Trump administration fired 80% of the agency's staff and terminated \$900 million in contracts, including many for congressionally mandated surveys, reports, and research studies. The lawsuit argues that these actions exceeded the administration's authority, violating the constitutional separation of power and interfering with the agency's statutory responsibilities to collect and disseminate data.

Massachusetts Judge Blocks Cap on NIH Funding

Colleges and universities that rely on the National Institute of Health (NIH) for research funding received a favorable decision when a federal district court in Massachusetts permanently barred NIH from capping or cutting funding. These changes, if put into effect, would have cost institutions of higher education billions of dollars each year. NIH has appealed the ruling to the United States Court of Appeals for the First Circuit.