

EducationCounsel Alert for April 7, 2025

This EducationCounsel Alert provides updates about a number of Trump Administration executive actions relevant to education. If helpful, you can click on items in this table of contents to jump directly to a particular update.

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Information about these and many other developments can be found in our ongoing [Executive Actions Chart](#), and you can access all of our related resources at <https://tinyurl.com/EdCounselResources>. For a more comprehensive update across all three branches of the federal government, check out our biweekly [E-Updates](#).

1) Supreme Court Issues Interim Ruling in Teacher Prep Grants Case

On 4/4/25, the Supreme Court (SCOTUS) [decided](#) that the U.S. Department of Education (USED) does *not* have to reinstate the teacher preparation grants USED suddenly terminated at the beginning of February while a lawsuit challenging the lawfulness of those terminations proceeds. (There are actually two lawsuits about the terminations of these SEED, TQP, and TSLIP grants. This decision was about the one brought in a Massachusetts federal court by eight states.) Although some initial media coverage suggested otherwise, SCOTUS did not weigh in on the legality of the grant terminations themselves—this was an interim decision about whether a temporary restraining order should or should not be put in place for now.

It was a 5-4 vote, with Chief Justice Roberts joining Justices Jackson, Kagan, and Sotomayor in dissenting, and Justice Jackson's dissent emphasizing the serious harm the cancellations are causing. The majority did suggest that the lawsuit should have been filed in a different court—the Court of Federal Claims, which typically handles monetary claims against the government. But the District Court that has the case will continue to move it forward at this stage. The primary immediate effect of the Supreme Court's decision will of course be on the grantees who can no longer access their projects' federal funding for however long the lawsuit takes to reach a resolution.

2) USED Requires New SEA/LEA Title VI Certification

On 4/3/25, USED [informed](#) all state education agencies (SEAs) that they and all of the local education agencies (LEAs) in the state are required to sign and return, within ten days, a new [certification](#) indicating that they are not violating Title VI of the Civil Rights Act of 1964 through "illegal DEI practices." USED also put SEA and LEA leaders on notice that their certifications would constitute a "material condition" for

the receipt of their federal funds, a violation of which can, among other things, subject the signatories to enforcement under the False Claims Act.

The accompanying [press release](#) makes clear that the certification is premised on the 2/14/25 Dear Colleague Letter (DCL) and the 3/1/25 [Frequently Asked Questions](#) (FAQs), which together articulated the Administration's intended approach to Title VI and to interpreting the Supreme Court's decision in *Students for Fair Admissions vs. Harvard (SFFA)*. We have previously explained the legal shortcomings of the DCL ([here](#)) and the FAQs ([here](#)), primarily that they send the false (and potentially chilling) message that all policies and programs that advance diversity, equity, or inclusion are unlawful. Both guidance documents are being challenged in two federal lawsuits.

At least one state ([New York](#)) has responded to USED to say they would not immediately respond to this new request, in part because they have already provided USED with standard Title VI assurances as recently as 1/8/25. There may be legal challenges to this certification requirement as well.

Later this week, we will publish a deeper analysis of USED's new certification requirement, and in particular the implications for states and districts of the False Claims Act provision.

3) USED Issues Dear Colleague Letter about FERPA and Students' Gender Identity Information

During the week of 3/24/25, USED advanced new enforcement of the Family Educational Rights Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) in the context of K-12 schools' policies and practices related to information about students' gender identity at school. USED's Student Privacy Policy Office (SPPO) [issued](#) a new [Dear Colleague Letter](#) (which also includes a cover letter from Secretary McMahon) to state chiefs and district superintendents. Secretary McMahon's cover letter restates the Administration's rejection of the concept of gender identity, framing it as "pervasive" "ideological indoctrination" in public schools and pointing to schools' approach to parent engagement on these issues as an illustration of educators treating parents as "enemies."

The Dear Colleague Letter directs all SEAs by 4/30/25 to document compliance by the SEA and its LEAs with both FERPA and PPRA via "reports, information on policies and procedures, annual notifications, training materials or other information." The documentation should focus particularly on a set of five "priority" concerns including "[e]nsuring parental rights to inspect and review education records" (especially "gender plans" that the letter says are subject to FERPA) and "[e]nsuring parents receive annual notification of rights" under FERPA. Secretary McMahon's letter also "reminds" SEAs and LEAs that they are "obligated to abide by FERPA and PPRA if they expect federal funding to continue."

- Beyond the FERPA context, USED also took another step to prioritize issues related to gender identity. On 4/4/25, USED and the Department of Justice [announced](#) the formation of a joint "Title IX Special Investigations Team" that will "apply a rapid resolution investigation process to the increasing volume of Title IX cases and also enable ED and DOJ to work together to conduct investigations that are fully prepared for ultimate DOJ enforcement." The team will focus particularly on complaints related to transgender girls' and women's participation in sports and access to facilities (such as locker rooms and bathrooms) that align with their gender identity.

4) USED Cancels Earlier Approval for ESSER Late Liquidation Approval

On 3/28/25, USED [informed](#) SEAs that the Administration has canceled any prior approval for “late liquidation” of remaining funds from a variety of federal pandemic recovery funds, including American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER), Emergency Assistance to Non-Public Schools (EANS), and Homeless Children and Youth (HCY) funds. The letter also states that SEAs can reapply for an extension “on an individual project specific basis” by explaining “(1) how a particular project’s extension is necessary to mitigate the effects of COVID on American students’ education, and (2) why the Department should exercise its discretion to grant your request.”

This action by USED appears to raise several legal concerns, though the letter asserts that “[a]ny reliance on a discretionary extension [by USED] subject to reconsideration by the agency was unreasonable.” [Reporting](#) suggests that as many as 41 states and DC stand to lose [almost \\$3 billion](#) in funding that was already obligated (mostly via contracts for services) but not yet liquidated (or reimbursed) as the now-cancelled extensions had allowed final payments to be made through early 2026. Some states including [Mississippi](#) and [Kentucky](#) have responded by asking Secretary McMahon to reconsider her decision. Meanwhile, a new portal to process the new project-by-project requests has reportedly launched, and some states are beginning to request these new extensions. It is not clear at this point how USED will treat the requests or how quickly agency staff can process them in the wake of the recent 50% reduction in force.

5) USED Issues Guidance on Using Title I Funds to Expand Choice

On 3/31/25, USED [issued](#) a [Dear Colleague Letter](#) that follows up on the [Expanding Educational Freedom and Opportunity for Families](#) executive order (1/29/25). That EO directed USED to issue guidance on how states might use federal formula funds to support K-12 “educational choice initiatives.” The new letter points to two *existing* flexibilities within ESSA’s Title I formula funds that, according to USED, states and districts can use “to provide greater flexibility to support parents’ choices for their child’s education”:

- First, the letter highlights the optional state set-aside in Section 1003A of up to 3% of a state’s Title I allocation for “Direct Student Services” (DSS) such as “advanced courses, dual enrollment, academic tutoring, career and technical education, personalized learning, and out-of-school activities.” States could use these funds to provide families with a choice of which DSS services best met their children’s needs.
- Second, USED points out that Title I schoolwide and targeted assistance programs could similarly be designed by LEAs to provide families with some choice about which improvement activities in their school are the best fit for their child, such as “dual enrollment opportunities, academic tutoring programs, and career and technical education activities.”

Contrary to some [commentary](#) (even amplified by Secretary McMahon), the letter does *not* appear to open any new pathways for Title I funds to “follow families” as that concept is typically understood in debates about school choice and “portability” of federal funds. Rather, the letter reiterates options that could be offered by states or districts under existing law. It is worth noting that a state and LEA could allow some of the DSS options to be provided via non-public providers, but that choice would need to be made by the LEA and approved by the SEA in awarding the grant to the LEA. The letter also points out that tutoring services provided by private providers must be “secular, neutral, and non-ideological.”

6) USED Initiates Process for Higher Education Rulemaking

On 4/4/25, USED [published](#) in the Federal Register a Notice of Intent to negotiate new regulations on at least three higher education topics:

1. “Refining definitions of a qualifying employer for the purposes of determining eligibility for the Public Service Loan Forgiveness program.
2. Pay As You Earn (PAYE) and Income Contingent Repayment (ICR) repayment plans.
3. Potential topics that would streamline current federal student financial assistance program regulations while maintaining or improving program integrity and institutional quality.”

As part of the required process to issue regulations under the Higher Education Act, USED will host [two public hearings](#), an in-person session on 4/29/25 at USED headquarters in Washington, D.C., and a virtual session on 5/1/25. USED will also accept written comments until 5/5/25 and then solicit nominations for negotiators. Following those initial steps, USED will convene a rulemaking committee that will propose new regulations, which USED will then share with the public via a Notice of Proposed Rulemaking with request for comments. Any final regulation published by 11/1/25 will become effective on 7/1/26; any final regulation published after 11/1/25 will be effective on 7/1/27, though USED may be able to “early implement” any provisions that do not cover regulated parties.

- Related to the first item to be regulated, EducationCounsel’s Nathan Arnold is hosting a webinar next Tuesday (4/15/25) from 2:00-3:00 p.m. ET, regarding the implications of President Trump’s recent [Executive Order on Public Service Loan Forgiveness \(PSLF\)](#). The session will address questions about the order and how it may affect public service organizations and their employees. To attend this webinar, please fill out the [registration information here](#). Please feel free to share this invitation with interested organizations or listservs and be aware that the session will be off the record and not recorded.

7) HHS Reduction in Force Affects Early Childhood

Following up on a prior announcement (summarized in our last Alert), HHS issued layoff notices on 4/1/25 to approximately 10,000 employees as part of a major reorganization. Affected agencies include the FDA, CDC, and NIH. The overhaul consolidates HHS divisions from 28 to 15, aiming to save \$1.3 billion annually.

The actual implementation of the RIF appears to affect early childhood in significant ways. Most directly, five of the 10 regional offices are closing, with the Boston, NYC, Chicago, San Francisco, and Seattle offices shutting down. This impacts all staff in those offices working in the Administration for Children and Families (ACF), including the Office of Child Care (OCC) and the Office of Head Start (OHS). States affected include those in Regions 1, 2, 5, 9, and 10, covering New England, the Midwest, the West Coast, and U.S. territories.

As of this writing, there was no plan in place to transition Head Start and Child Care & Development Fund grantees to a different regional office. These grantees include states and tribal entities, in addition to school districts and nonprofits operating Head Start.

This reduction-in-force comes less than two months after the Administration terminated all probationary employees, which already led to a loss of 20% for OHS and 25% for OCC.

These staff help grantees comply with federal statutes and regulations, some of which are critical to children's health and safety. These federal offices also serve as key supports to grantees as they seek to respond quickly to changing contexts, but in a manner consistent with federal law. Crucially, these offices also work to ensure timely payment and processing for grantees. As Head Start agencies are funded on a rolling basis, these staff reductions may delay contract renewals and payments for Head Start agencies across the country.

On 4/1/25, Senate Health, Education, Labor & Pensions (HELP) Committee Chair Bill Cassidy (R-LA) and Ranking Member Bernie Sanders (I-VT) [invited HHS Secretary Kennedy](#) to testify before the Committee about the restructuring taking place. The hearing was set for 4/10/25, but we understand that it has been postponed without a new date being set.

DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to info@educationcounsel.com. Updates in this Alert are current as of April 7, 2025 at 11:00 am EDT.