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EducationCounsel Alert for April 1, 2026

This EducationCounsel Alert shares updates about various recent actions by the federal government relevant to education, including:

1. USED and Treasury Announce Interagency Agreement to Transfer Federal Student Aid Functions
2. Relocation of Remaining USED Staff
3. Anti-DEI Executive Order on Federal Contractors
4. Court Dismisses DOJ Challenge to Minnesota's In-State Tuition for Undocumented Students
5. Other Significant Updates

In addition to this week's Alert, please also see two new EducationCounsel resources:

- ***Senator Cassidy Invites Public Feedback on Significant Proposed Changes to the Child Care and Development Fund (CCDF)*** summarizes a proposed discussion draft—open for public feedback until 4/8/26—of new legislation that would make significant changes to CCDF and how federal child care subsidy funds are implemented by states, tribes, and territories.
- ***Is the Trump Administration Replacing Minority-Serving Institution Grants with a Race-Neutral Competition?*** examines whether a new eligibility notice may preview a shift in USED's approach away from the Minority-Serving Institution grant programs to a broader, race-neutral competition.

All of our summaries and analysis of the Administration's executive actions are available in one place by clicking here. Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice*.

1. USED and Treasury Announce Interagency Agreement to Transfer Federal Student Aid Functions

As part of its ongoing efforts to dismantle USED, the Administration announced on 3/19/26 a tenth interagency agreement (IAA) designed to transfer significant functions and funds out of USED and into other federal agencies. The Federal Student Aid (FSA) office will effectively transfer to the U.S. Department of the Treasury (Treasury). The IAA establishes a phased transfer of FSA functions to Treasury, although there are no timelines for the three named phases. The first phase transfers responsibilities for defaulted federal student loan debts, including "operational responsibilities" for FSA's Default Resolution Group, the team that provides direct support for borrowers in default. The second phase would transfer responsibilities for administrative operations of all other student loans "to the extent practicable and permitted by law." In the third and final phase, Treasury would provide "operational support" for the remainder of FSA's functions, including the administration of the FAFSA and the programmatic and policy requirements governing the eligibility of students and institutions to participate in federal student loan programs. The accompanying fact sheet notes that USED will "maintain all statutory responsibilities including policy development."

USED will pay Treasury for these services in the form of lump sum payments (the amount is not specified in the IAA). The IAA notes that Treasury "may charge [USED] a fee for the costs it incurs when servicing or collecting" the agency's debts and notes that if USED does not charge borrowers for these costs, USED will be required to pay the fees out of the funds appropriated to the agency.

For additional context, see our legal analysis of the Administration's use of IAAs for the purpose of closing USED, *Beyond "The Maximum Extent Permitted By Law"*.

2. Relocation of Remaining USED Staff

The Administration announced on 3/26/26 that it will move USED from its long-time Washington, DC headquarters this August to a nearby, privately-owned building that previously housed the United States Agency for International Development (USAID). The Department of Energy will instead take over the Lyndon B. Johnson Building, which served as USED's headquarters since its creation in 1979 and for USED's predecessor agencies since the building's construction in 1961. Secretary McMahon described the move as "reducing the federal education footprint" in service of President Trump's 3/20/25 executive order to, "to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education." In a fact sheet accompanying the announcement, USED stated that no disruptions in its services and functions are expected as a result of the transition.

3. Anti-DEI Executive Order on Federal Contractors

On 3/26/26, President Trump issued a new anti-DEI executive order (EO), "Addressing DEI Discrimination by Federal Contractors." The new EO attempts to block efforts by federal contractors and their sub-contractors to advance diversity, equity, and inclusion.

First, the EO **defines "racially discriminatory DEI activities"** as "disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources."

- The term "**program participation**" that appears in that definition is also defined—with multiple references to educational contexts—as "membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor."

Second, the EO directs all federal agencies to, **within 30 days**, "to the extent permitted by law, ensure that contracts and contract-like instruments, including contractors' subcontracts and subcontractors' lower-tier subcontracts" **include a new contract clause** that would require that "[t]he contractor will not engage in any racially discriminatory DEI activities."

- Other provisions within the new contract clause would establish obligations for contractors to cooperate with their contracting agency's **compliance monitoring** and to monitor compliance by any relevant subcontractors.

- The new contract clause, along with a separate section in the EO dedicated to "Penalties," also identifies the **potential consequences** for any contractors found to have violated the anti-DEI clause. These include not only losing the relevant federal contract but also potentially being barred from future government contracting as well as possible financial penalties under the False Claims Act (FCA). The EO also directs the Attorney General to "consider" bringing FCA actions and "ensure prompt review" of privately-initiated FCA actions.

The EO covers much of the same ground as the Administration's earlier anti-DEI EOs, especially the "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" EO issued on 1/21/25. **And like all EOs, this new order cannot change existing law regarding what is or is not legal when making efforts to advance diversity, equity, inclusion, and accessibility.**

A distinctive feature of the Administration's prior EOs and policy guidance has been a failure to define key concepts, especially "DEI." Instead, the Administration has typically sought to prohibit "illegal DEI" without explaining what that is or even clarifying if the theory is that *all* efforts to advance diversity, equity, and inclusion are illegal or if the Administration is focused only on a subset of those efforts that violate the law. The new EO takes a different approach by defining its key term: "racially discriminatory DEI activities." Although there are aspects of the definition that may be misleading (see Notes 4-5 below), the EO's definition broadly aligns with the law by focusing on whether the contractor is intentionally conferring or withholding material benefits to any person based on their racial or ethnic status.

Nonetheless, the forthcoming changes to federal contracts provide the Administration with another leverage point to continue trying to end efforts to advance diversity, equity, and inclusion—whether through voluntary pre-emptive compliance by contractors or via enforcement actions (which may then be subject to legal challenge).

Notes:

- The EO is not clear whether agencies should seek to amend *existing* federal contracts, but the inclusion of a legal caveat ("to the extent permitted by law") may signal restrictions on the Administration's ability to implement the new anti-DEI clause retroactively.
- The EO is not clear whether agencies should implement the EO in ways that affect only contractors or also insert it into agreements with other recipients of federal financial assistance such as grantees.
- The new anti-DEI clause explicitly limits its reach only to a contractor's federally-funded work rather than reaching all of the contractor's activities ("In connection with the performance of work under this contract…").
- Contractors should keep in mind that federal law governing claims of racial discrimination generally permits targeted recruitment and outreach to help build an inclusive candidate pool, so long as it does not include conferring any individual material benefits based on a person's racial or ethnic status.
- Contrary to the EO's definition, there are some circumstances in which federal law—specifically Title VII of the Civil Rights Act of 1964—allows for certain race-conscious employment decisions by a federal contractor to help remedy discrimination and "manifest imbalances" in its workforce. The EO's definition ignores this foundational aspect of federal civil rights law.

4. Court Dismisses DOJ Challenge to Minnesota's In-State Tuition for Undocumented Students

On 3/27/26, a federal court dismissed a lawsuit filed by DOJ against Minnesota to challenge the state's laws permitting some undocumented students to qualify for in-state tuition and financial aid at public universities. This is one of seven such suits filed by DOJ since June 2025, including tuition eligibility challenges in Virginia, Texas, Kentucky, Illinois, Oklahoma, and California, and the first to receive a final ruling of any kind.

In its decision, the court distinguished Minnesota's statutes from the federal law that DOJ relies upon, which excludes undocumented students from eligibility for postsecondary benefits "on the basis of residence within a State…unless a citizen or national of the United States is eligible for such a benefit." Actual residence within Minnesota, the court noted, is *not* the deciding factor under the specific state laws at issue in this case. Under those laws, nonresident citizens may also qualify for in-state tuition if they are from neighboring states or Canada and attended at least three years of high school in Minnesota, attended a boarding school in Minnesota, or attended and graduated from a Minnesota high school but then moved out of state.

State laws on this issue vary across the nation, but the court's analysis of Minnesota's approach, with its focus on attendance in a Minnesota high school, may be relevant to legal challenges in states with similar state laws and/or to policy makers and advocates in states with different statutory approaches.

5. Other Significant Updates

All recent updates will appear in the Executive Actions Chart, but some of note include:

Court Pauses Admissions Data Collection for Some Universities: A federal court in Massachusetts has made multiple updates to its temporary restraining order (TRO) in a lawsuit challenging the Administration's expanded higher education admissions data collection. (Click here for background on the Admissions and Consumer Transparency Supplement or ACTS.) The TRO extends the deadline for institutions of higher education (IHEs) to submit the required ACTS, but, notably, it only applies to IHEs represented by the plaintiffs. Originally, that included only public IHEs located in the seventeen states that filed the original lawsuit; on 3/24/26 the court extended the deadline for those institutions to 4/6/26. Subsequently, the Association of American Universities and the Association of Independent Colleges and Universities in Massachusetts moved to intervene in the case to lodge similar challenges as the states; on 3/31/26, the court extended the deadline for those associations' members to 4/14/26. These TRO-driven extensions are designed to provide the court and the parties time to fully consider motions before the court, including likely requests for a preliminary injunction that would remain in place for the duration of the litigation.

For IHEs that are neither public institutions in the plaintiff states nor members of the two associations, the ACTS deadline was 3/31/26 unless they individually secured an extension to 4/8/26 from USED, which has reportedly offered the possibility of individual extensions.

Administration Expands Enforcement of Title VI Against Harvard: DOJ and USED took additional actions to expand the federal government's enforcement campaign against Harvard University. For more on this ongoing and multi-faceted dispute, see EducationCounsel's Deep Dive, *The Trump Administration vs. Harvard University*.

On 3/20/26, DOJ filed a new lawsuit against Harvard, alleging the university violated Title VI by failing to address a hostile learning environment against Jewish and Israeli students. DOJ asserted that Harvard violated the terms of grants from HHS that require compliance with federal nondiscrimination law. The lawsuit is seeking reimbursement for federal funds disbursed during the period of the alleged violation (October 2023 through the present).

- On 3/24/26, USED OCR announced a related investigation focused on the university's alleged failure to address antisemitism leading to a hostile environment. This investigation will likely cover much of the same ground as the investigation led by HHS Office for Civil Rights (OCR) discussed above and an existing resolution agreement signed on 1/17/25 that remains under federal monitoring.

On 3/24/26, USED OCR issued a Notice of Impending Enforcement Action for Harvard's alleged failure to provide access to documents as part of a compliance review of the university's *undergraduate* admissions program launched in March 2025. On 9/19/25, OCR sent a Notice of Denial of Access after Harvard declined to provide admissions data based on race as part of the review. Should the university refuse to comply with the 3/24 notice within 20 days, OCR may refer the case to DOJ for further enforcement.

- On 3/24/26, USED OCR also announced a new investigation focused on alleged impermissible consideration of race in the university's admissions program. The press release does not explain how

this differs from the investigation discussed above, but it may be an investigation into graduate admissions as well, rather than just the existing look into undergraduate admissions.

Meanwhile, the government's appeal of a lower court decision finding that the Administration violated the law by freezing $2.6 billion in Harvard's federal research funding remains pending before the U.S. Court of Appeals for the First Circuit (see our 9/4/25 Alert for further analysis of the lower court decision).

More States Seeking Ed-Flex Authority: Montana and Tennessee join the growing list of states seeking or receiving flexibility through the Educational Flexibility (Ed-Flex) authority, which allows USED to delegate to state educational agencies the authority to grant district- or school-level waivers of certain statutory or regulatory requirements "in exchange for enhanced accountability of the performance of students."

- On 3/23/26, USED approved Montana's application for Ed-Flex authority. The approval allows the Montana Office of Public Instruction to grant waivers to districts related to certain provisions of Title I, Part A and Part C, Title II, Part A, and Title IV, Part A, including schoolwide program eligibility and carry over requirements under Title I, Part A and category percentage requirements under Title IV, Part A. USED granted Montana the waiver authority through the 2029-2030 school year.
- On 3/16/26, Tennessee published for public feedback a draft application for Ed-Flex authority. The application would allow the Tennessee Department of Education to provide its districts with flexibility regarding Title IV, Part A percentage requirements. ESSA requires states seeking waivers to invite and report public comment on their proposals. Tennessee's application is open for comment through 4/16/26.

DOJ Files Lawsuit Against Minnesota Over Trans-Inclusive Policies: On 3/30/26, DOJ sued the Minnesota Department of Education (MDE) and the Minnesota State High School League (MSHSL) under Title IX. The announcement follows a referral for enforcement by USED, after a joint investigation by USED and HHS concluded that MDE and MSHSL policies allowing transgender students in the state to play sports and access facilities consistent with their gender identity run counter to federal law (see our 9/30/25 Alert for more information). Notably, the State of Minnesota already filed a preemptive suit on 4/22/25 challenging President Trump's ability to "rewrite" Title IX through executive order. Minnesota argues in its lawsuit that its state Human Rights Act, amended to include sexual orientation and gender identity, does not violate Title IX as written. The Administration has filed a motion to dismiss the lawsuit, but the court has not yet ruled on it.

OCR Issues Notice of Impending Enforcement Against San José State University: On 3/24/26, USED OCR moved its investigation of San José State University (SJSU) into a new stage, issuing a Notice of Impending Enforcement Action for failure to comply with Title IX. OCR informed SJSU that it has 10 calendar days to align its policies and take other actions consistent with the Administration's interpretation of Title IX regarding sports participation and facility access for transgender students, or risk referral to DOJ and possible termination of federal funding. As discussed in our 3/19/26 Alert, the Board of Trustees of the California State University, of which SJSU is a part, has already sued USED to challenge OCR's finding of a violation against SJSU.

USED Replaces Member of Accreditation Advisory Committee: On 3/27/26, Secretary McMahon replaced Joshua Figueira with Siri Terjesen for one of the Administration's slots on the National Advisory Committee on Institutional Quality and Integrity (NACIQI). McMahon had appointed Figueira to the committee on 11/25/25, but reports suggest he was replaced after voting against the Administration's choice for the committee chair role during the December NACIQI meeting.

Religious Liberty Commission Explores Exemptions to Vaccine Requirements: On 3/16/26, the sixth meeting of the Administration's Religious Liberty Commission focused on healthcare. While much of the session addressed religious accommodations in the provision of medical care and social services, parents and students testified against vaccine requirements in public education. One New York family said that their student was "barred from school for almost seven years because of the vaccine mandate." On 12/8/25, the Supreme Court overturned a Second Circuit Court of Appeals decision upholding a New York State law ending religious exemptions to vaccine requirements and directed the lower court to reconsider the case in light of *Mahmoud v. Taylor*.

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 1, 2026 at 11:00 am ET.