

EducationCounsel Alert for May 29, 2026

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

- 1. Higher Education Accreditation Negotiated Rulemaking Committee Reaches Consensus**
- 2. USED Finalizes Workforce Pell Regulations**
- 3. USED and DOL Shift Minority-Serving Institution Funding to Race-Neutral Strengthening Institution Program**
- 4. USED Adds \$144M to IDEA Parts B and C and Issues Guidance Regarding Support for Expectant Parents**
- 5. Updates on ESSA Waivers and Related Guidance**
- 6. Other Significant Updates**

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. Higher Education Accreditation Negotiated Rulemaking Committee Reaches Consensus

On 5/21/26, the "Accreditation, Innovation, and Modernization" negotiated rulemaking committee (AIM) [reached consensus](#) (with two abstentions) on USED's proposal to overhaul regulations governing higher education accreditors. These proposed regulations, which would be a significant modification of the existing rules, are important because accreditation is a prerequisite for postsecondary institutions and their students to access federal student aid like Pell Grants and student loans. Over the course of two rulemaking sessions, USED proposed relatively minor modifications to its initial proposal such that the overall direction of the regulations and the goals did not change markedly from what was originally proposed.

This is not entirely unexpected given the composition of the rulemaking committee: USED chose not to include among the voting members of the committee any currently recognized programmatic accreditors, any formerly regional accreditors, or any representatives of legal aid or civil rights organizations, and the department made clear throughout the negotiations that it planned to move forward with its preferred approach to reforming the accreditation rules regardless of whether consensus was achieved or not.

The new proposed regulations include the following central components:

- Prospective accreditors would face a much lower bar to initial recognition, allowing new accreditors (and postsecondary institutions) to access taxpayer dollars, potentially without guardrails preventing fraud or poor student outcomes. Additionally, schools would more easily be able to switch accreditors to avoid sanction or scrutiny.
- Once recognized, accreditors would face several new federal requirements, including setting standards relating to student outcomes, credit transfer, intellectual diversity, and personnel costs, while opening the door to federal government review of diversity, equity, and inclusion initiatives. (The regulations do not mention such initiatives by name, but they prohibit violations of federal or state law, which would presumably allow an Administration that views such activities as unlawful to take action against accreditors who pursue or allow such activities by an accredited institution.)

- All accreditors (not just programmatic accreditors like the American Bar Association or the Accreditation Council for Pharmacy Education, as set out in the initial proposal) would be subject to new requirements designed to separate accreditation from professional associations. (This change is motivated by the theory that a programmatic accreditor that also has authority to establish licensing requirements in a profession faces a conflict of interest. It might, for example, create unnecessary licensing barriers to keep new practitioners out of the field, artificially inflate wages, and increase the educational costs and time to degree required to meet the occupation’s licensing requirements.)

Many of the changes in the proposed regulations appear to exceed the Higher Education Act’s (HEA) statutory limits on USED authority over accreditation and raise concerns regarding the First Amendment rights of accreditors, postsecondary institutions, faculty, and students. USED will publish the consensus regulatory language in a Notice of Proposed Rulemaking; if USED publishes the final regulations before 11/1/26, they will take effect on 7/1/27. However, given the limitations on Secretarial authority over accreditors in the HEA, it is likely those final regulations will be subject to litigation.

For more detail on these proposed regulations, please see EducationCounsel’s prior [overview of the proposed regulations](#) and an [analysis of the Trump Administration’s legal arguments governing diversity, equity, and inclusion in accreditation](#).

2. USED Finalizes Workforce Pell Regulations

On 5/18/26, USED [issued](#) the final rule for the new Workforce Pell Grant program, which allows federal Pell Grants to support short-term, job-focused training programs in high-demand fields. Authorized by the One Big Beautiful Bill Act, Workforce Pell expands Pell Grant eligibility to include short-term credentials lasting roughly 8–15 weeks. The final rule is largely consistent with the [proposed rule](#) that was introduced in March and reflected the negotiating committee’s consensus. USED retained the core eligibility structure, including Governor approval, Secretary approval, completion and placement requirements, the value-added earnings metric, and the general limitation that Workforce Pell students are eligible only for Pell and not other Title IV aid. USED declined to make some broad eligibility changes that public commenters requested, including creating a pathway for non-Title-IV training providers to participate directly, relying on State eligible training provider lists alone, delaying implementation, or otherwise loosening the statutory guardrails around eligible workforce programs.

- The most notable substantive change from the NPRM is USED’s decision to exclude continuing students from the value-added earnings calculation. That means a student who completes a Workforce Pell program but is enrolled in another educational program during the relevant earnings year will not be counted in the earnings metric. This is a relatively narrow change that protects stackable pathways from being penalized when students keep studying and may have lower earnings in the short term, but it does not change the basic accountability framework or the job-placement requirements.
- USED also revised the small-program calculation by moving to a 30-completer threshold rather than the NPRM’s more complicated approach that initially looked for 50 completers before ultimately dropping to 30. That change is notable because it may signal USED’s preferred approach to small cohorts in the forthcoming “Do No Harm” and gainful employment final regulations.
- The other meaningful change is a targeted apprenticeship adjustment. The NPRM would generally have limited the portion of a Workforce Pell program offered through an ineligible third-party provider to 25%. The final rule keeps that general limit but allows a larger share, more than 25% but less than 50%—when the program is the related instruction component of a Registered Apprenticeship. That

could help community colleges and other eligible institutions partner with employers, unions, apprenticeship sponsors, or specialized training providers, but it is likely to have narrow practical applicability and is not a broad opening for third-party providers to receive Workforce Pell directly.

The final rule allows institutions to begin implementation as early as 7/1/26. Although many states appear ready to begin implementation, it remains to be seen how many programs will actually come online this summer, rather than in the fall or later, once states, institutions, accreditors, and ED work through program approvals.

3. USED and DOL Shift Minority-Serving Institution Funding to Race-Neutral Strengthening Institution Program

On 5/21/26, USED and the U.S. Department of Labor (DOL) [announced](#) that \$350 million in grant funds for Minority Serving Institutions (MSIs) like Hispanic Serving Institutions (HSIs) and Asian American, Native American, and Pacific Islander Serving Institutions (AANAPISIs), among others, would be shifted to the Strengthening Institutions Program (SIP). This latter program is similar in design to the MSI program—for example, eligible institutions in both programs must serve a minimum percentage of low-income students. However, to be eligible for an MSI grant, institutions must also meet a minimum threshold of enrolled students of a given race or ethnicity, a requirement that is absent from SIP. This action was expected given the Administration’s position that the MSI programs are unconstitutional and in light of USED previously shifting MSI FY25 funds to Historically Black Colleges and Universities (HBCUs) and Tribal Colleges and Universities (TCUs), which are authorized under a different statutory provision that does not require minimum racial/ethnic enrollment thresholds. (See our [4/1/26 prediction](#) about this likely shift in funding.)

While MSIs are likely still eligible to apply for SIP funds, they will now have to compete with a larger pool of eligible institutions, many of which are higher-resourced and have dedicated grants management teams. As a result, it is less likely that under-resourced MSIs will receive grants they have been awarded in the past.

4. USED Adds \$144M to IDEA Parts B and C and Issues Guidance Regarding Support for Expectant Parents

On 5/13/26, USED [announced](#) a new \$144 million investment to help states expand services and interventions for students with disabilities through the Individuals with Disabilities Education Act (IDEA). The funding will support any allowable uses for IDEA Part B programs for children and youth ages 3–21 and IDEA Part C early intervention services for infants and toddlers with disabilities and their families. The Administration did not identify the source of the additional funding but did note that it will be “distributed across IDEA Part B and Part C programs.”

In addition to the funding increase, USED issued new [guidance](#) to clarify that, because of new language in the FY26 appropriations law, states may use FY26 IDEA Part C funds to support not only infants and toddlers but also any “individual who is expected to become a parent of an infant with a disability.” The funds can be used to provide these expectant parents with information, tools, and connections to services during the pregnancy in FY26 and in any future year that the same language is included in the relevant appropriations law. Note that, per the new guidance, this is “a voluntary use of IDEA Part C and states may decide whether to utilize this flexibility” including with respect to a state’s share of the new \$144 million.

5. Updates on ESSA Waivers and Related Guidance

USED continues to encourage states to take advantage of flexibility under the Every Student Succeeds Act (ESSA), including through the approval of ESSA and Ed-Flex waivers, and the release of additional Dear Colleague Letters (DCL) providing the field with non-regulatory guidance. This update includes summaries of Louisiana’s newly approved ESSA waiver, Ohio’s draft ESSA waiver, Florida’s and Illinois’ approved Ed-Flex applications, and two new DCLs on transferability authority and alternative fund use authority.

Louisiana: On 5/20/26, USED [announced](#) that Secretary McMahon has [approved](#) the Louisiana Department of Education’s ESSA waiver request. Similar to the [previously approved](#) waiver request for the Iowa Department of Education, Louisiana’s waiver will allow it to consolidate state-level activities funds from its optional state set-asides of Title II, Part A; Title III, Part A; and Title IV, Parts A and B funds. For Louisiana, these set-asides total about \$18 million through 2029. The state is still obligated to “meet all programmatic requirements and responsibilities for each of the covered programs,” but it can now use its state set-aside activities funding for “any allowable use in each of the included programs.”

- The flexibility to consolidate funds is limited to state set-asides and does not impact the distribution or use of funds at the district level, which is the vast majority of funds.
- Note that ESSA already allows SEAs to consolidate state-level *administrative* funds and ESSA allows an SEA to transfer state-level activities funds between Title II, Part A and Title IV, Parts A and B (see new DCL on transfer authority below). Accordingly, under this part of Louisiana’s waiver, it can include its Title III state-level activities funds as well.

Ohio: The Ohio Department of Education and Workforce [issued](#) a [draft](#) request for USED to waive some ESSA provisions. Public comments (a required step in the ESSA waiver application process) were due 5/28/26. If granted, the waiver would allow Ohio to:

- *Limit districts’ use of direct student services (DSS) funds* to those the state identifies as most aligned to state and local needs, rather than allowing districts to deploy the funds for any of the allowable uses listed in ESSA.
 - Per the example included in Ohio’s application, the SEA might “require high schools that are identified for Comprehensive Support and Improvement (CSI) based on graduation rates to only use DSS funds to support career pathways aligned to graduation requirements.”
 - Additionally, the state seeks a waiver from the DSS requirement to compile and maintain an updated list of state-approved, high-quality academic tutoring providers. Instead, Ohio intends to identify “a more targeted set of providers that align with the state’s priorities and may be limited [to] state-approved uses.”
- *Consolidate state-level activities funds* from Title II, Part A; Title III, Part A, and Title IV, Parts A and B.
- *Waive the Title I, Part A school-level poverty threshold*, allowing an LEA to provide Title I services to any school attendance area that is up to 10% below the district poverty average.
- *Lift the Title I, Part A carryover limit*, which is currently capped at 15%.
- *Waive the required use of funds for Title III, Part A and Title IV, Part A*. The waiver would allow LEAs to use Title III funding across any, but not necessarily all, of the three allowable areas (academic supports, professional development, and parent engagement) and to use Title IV funding without regards to minimum percentage requirements.
- *Lift the Title I, Part D maximum reservation*, allowing LEAs to reserve more than the current 30% maximum on transition services for youth who are neglected, delinquent, or at-risk.

Florida & Illinois: [Florida](#) and [Illinois](#) join the growing list of states receiving flexibility through the 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.” Eighteen states now have active Ed-Flex authority, including 8 states whose application has either been approved or renewed during this administration.

- [Illinois’](#) application focused on “waiving the 15% carryover limitation for Title I, Part A funds, and providing increased flexibility in the use of Title IV, Part A funds by waiving the mandatory spending minimums for each of the statutorily required content areas.”
- Although most Ed-Flex waivers to date have been quite narrow, the breadth of [Florida’s](#) waiver—“waivers of [ESSA and Perkins] requirements, except those not subject to waiver by statute”—would essentially allow LEAs to potentially waive any requirements permissible under Ed-Flex, including requirements of Title I, Parts A, B, and C (other than section 1111); Title II, Part A; Title IV, Part A; and Perkins V.

Dear Colleague Letters on Existing Flexibilities: On 5/19/26, USED [issued](#) two new DCLs to state chiefs, encouraging states to make use of existing ESSA flexibilities focused on transferability authority and alternative fund use authority.

- [Transferability Authority:](#) This flexibility allows SEAs and LEAs to transfer formula funds from some Title II and IV programs to other programs under Titles I, II, III, IV, and V. While the SEA or LEA does not need approval from USED to make authorized transfers, there are consultation and notification requirements, including updates to state and local plans.
- [Alternative Fund Use Authority:](#) This flexibility allows certain rural LEAs (those that meet eligibility requirements for the Small, Rural School Achievement program) to use Title II, Part A or Title IV, Part A funds to support activities authorized under Title I, Part A; Title II, Part A; Title III; and Title IV, Parts A and B without transferring funds. LEAs are able to exercise this flexibility without approvals from USED or their SEA, but they must notify the SEA by an established deadline.

6. Other Significant Updates

All recent updates will appear in the [Executive Actions Chart](#), but some of note include:

DOJ Finds Yale Medical School Admissions Practices Violate Title VI: On 5/14/26, the U.S. Department of Justice (DOJ) [completed](#) an investigation into the policies and practices of Yale School of Medicine (Yale Med) during the 2023, 2024, and 2025 school years, [concluding](#) that Yale Med failed to comply with Title VI following the U.S. Supreme Court’s 2023 decision in *SFFA v. Harvard*. This is the second such determination in recent weeks, following DOJ’s [announcement](#) that UCLA’s medical school also violated Title VI. (See our [5/14/26 Alert](#) for more information, including how the UCLA and Yale investigations may preview the Administration’s future use of new higher education admissions data currently being collected.)

As in its letter to UCLA Med, DOJ’s letter to Yale Med reflects a limited, often incomplete analysis:

- DOJ states that it reached its findings by reviewing “documents and data” but did not cite any interviews with Yale Med admissions officials or staff, a standard step for federal civil rights investigations. For instance, DOJ apparently concluded that admissions personnel were “given verbal

instructions during a presentation encouraging the use of race/ethnicity in admissions” based only on a single PowerPoint slide bearing the words “Admissions post-SCOTUS.”

- The letter challenges the integrity of a “holistic review practice” in admissions—including drawing into question the legality of conducting applicant interviews—even though such practices have been standard among selective institutions for decades and have been affirmed by many court rulings. (Nothing in the Supreme Court’s *SFFA* ruling prohibits schools from undertaking holistic review practices when making admission decisions.)
- DOJ’s core finding relies in significant part on comparative data about the incoming 2023, 2024, and 2025 classes. (Note: the 2023 class would have been selected by the admissions office prior to the *SFFA* ruling.) Without any underlying examination of relevant evidence related to student admission patterns over time, DOJ concludes that Yale Med’s relatively consistent admission rates for Black and Hispanic students before and after the *SFFA* ruling is in itself evidence of unlawful practices.

The next step is for the parties to explore prospects for a voluntary settlement, and if that fails, DOJ can pursue enforcement options, such as seeking to rescind Yale Med’s federal funding.

DOJ Files Second Antisemitism Suit Against UCLA: On 5/26/26, DOJ filed a [lawsuit](#) against the University of California Board of Regents, alleging that UCLA violated Title VI by failing to address a hostile learning environment for Jewish and Israeli students. This follows a protracted dispute between the Trump Administration and the University of California system, beginning in Spring 2025 with the suspension of over \$584 million in research funding to UCLA over allegations the campus broke civil rights law, including by failing to adequately protect Jewish students from harassment. Months later, DOJ’s investigation into UCLA [found](#) on 7/29/25 that the university violated the Equal Protection Clause of the 14th Amendment and Title VI’s prohibition against discrimination on the basis of race, color, and national origin (interpreted to include shared ancestry or ethnic characteristics, including Jewish ancestry). On 9/22/25, a federal court in Northern California granted UCLA a [preliminary injunction](#) preventing the government from impeding the disbursement of previously awarded funds to the university. (The Administration filed but later dropped its appeal, and those grants have been restored by judicial [order](#). See our [2/19/26 Alert](#) for more information.) Earlier this year, on 2/24/26, DOJ separately filed [suit](#) against UCLA under Title VII, a different part of the Civil Rights Act of 1964, to allege that UCLA failed to address a hostile work environment for Jewish and Israeli employees.

24 States Sue USED over New Graduate Loan Caps: On 5/19/26, 24 states and the District of Columbia filed a [lawsuit](#) against USED, challenging a new rule limiting access to federal student loans for graduate students in a number of healthcare related fields. The [final rule](#), issued on 5/1/26, implements the federal student loan-related provisions of the One Big Beautiful Bill Act (OBBBA) by limiting graduate student loans to \$20,500 per year (with a \$100,000 aggregate limit) and “professional student loans” to \$50,000 per year (with a \$200,000 aggregate limit), among other significant changes. The states assert that USED unlawfully narrowed the pre-existing federal regulatory definition of a professional degree. Among those excluded under the new definition are nursing, nurse anesthesiology, and physical therapy. (See our [5/14/26 Alert](#) for a deeper analysis of the new loan limits at issue in this suit.)

DOL Approves New National Guidelines Standards for Principal Apprenticeships: DOL has [approved](#) new National Guideline Standards (NGS) for Principal Apprenticeship Programs. The standards create a national framework for states and districts to design registered principal apprenticeship pathways that leverage on-the-job learning with related instruction. Building on a prior [teacher apprenticeship](#) model, these guidelines aim to strengthen school leadership pipelines and support the development of a strong and sustainable principal workforce. The NGS, which were developed by a coalition of leading education organizations, include

models for programs both with and without collective bargaining agreements. See the full NGS approved by DOL [here](#).

OCR Announces Title IX Investigation into Loudoun County Public Schools: On 5/20/26, USED's Office for Civil Rights (OCR) [announced](#) a new directed investigation into Loudoun County Public Schools (LCPS) regarding reports of a high school student taking pictures of classmates in school restrooms over a period of three years. (Local news media initially reported these allegations and the Loudoun County Sheriff has since [filed](#) criminal charges against the student.) OCR will investigate whether the alleged activities constitute sexual harassment prohibited under Title IX and whether the Virginia district responded appropriately in addressing the behavior. Notably, this is at least the third investigation of LCPS launched under the Trump Administration, including OCR reviews of the district's policies permitting students to access restrooms and other facilities aligned with their gender identity and the handling of a separate incident in a high school locker room. LCPS remains in active litigation with the Administration over its districtwide policies. (See our [7/28/25](#), [8/21/25](#), and [3/5/26](#) alerts for more information.)

National Assessment Governing Board Expands NAEP Testing Schedule: On 5/15/26, the National Assessment Governing Board [agreed](#) to offer testing that would provide state-level results in 12th grade math and reading, 8th and 12th grade civics, and 8th grade science to an [updated testing schedule](#) for the National Assessment of Educational Progress (NAEP). States must choose to opt into these new assessments. These expansions of the NAEP testing schedule come after reductions were made to it a year ago, as discussed in our [4/25/25 Alert](#).

USED Finalizes Secretarial Priority on Promoting Patriotic Education and Uses it in a New Grant Competition: On 5/22/26, USED [finalized](#) a supplemental "Secretarial Priority" on "Promoting Patriotic Education," which can now be applied to future discretionary grant competitions. (See our [Deep Dive](#) for more information on the Secretary's priorities in general and the proposed version of this priority in particular; the Deep Dive will be updated shortly to reflect the final version.) According to USED, the "Promoting Patriotic Education" priority can be used in future discretionary grant competitions to support projects that promote civics and history education focused on the U.S. Constitution, the Declaration of Independence, the nation's founding principles, and the development of American political traditions. The final definitions also reference the influence of ancient Greece and Rome, Western European thought, Judeo-Christian traditions, and the religious beliefs of some of the founders as part of the historical background of American democracy. USED stated the goal is to promote "accurate and honest" instruction grounded in primary sources and civic literacy ahead of the country's 250th anniversary celebrations.

Compared to the initial draft priority, the final priority kept the core focus as described above, but USED softened and clarified several elements in response to public comments. Most notably, the final version replaced broader "unifying" and "ennobling" language about patriotism with a definition centered on "accurate and honest" history grounded in primary-source analysis, added repeated assurances that programs may include multiple perspectives and critical discussion of difficult historical issues, and emphasized inquiry, debate, and constitutional study over overtly nationalistic framing.

- Following this announcement, USED and DOL [announced](#) on 5/26/26 a new FY26 grant competition for the American History and Civics – National Activities (AHC-NA) Program. Nearly \$20 million is available for up to ten grants. Applications are due on 7/13/26 and can be found [here](#).

New Head Start Rule Under Review: A new Head Start rule is currently [undergoing interagency review](#) before being posted for public comment. Titled “Modernize the Head Start Program by Reducing Requirements and Enhancing Alignment with State and Local Systems,” the rule is expected to be consistent with the budget justification submitted to Congress along with the President’s FY27 budget request, where the Administration for Children and Families [indicated](#) forthcoming reforms to Head Start standards, including “licensing and monitoring standards, health and safety requirements, child-to-staff ratios, and definitions of quality.” Further analysis will be forthcoming upon public release of the rule. The timing of the rule is not yet known.

Supreme Court Agrees to Hear a Title IX Employment Case: On 5/18/26, the U.S. Supreme Court agreed to hear an appeal in [Crowther v. Board of Regents of the University System of Georgia](#), reviewing the Eleventh Circuit Court of Appeals’ decision that Title IX does not provide a private right of action for sex discrimination in employment. The Circuit court reasoned that it was unlikely that Congress intended for Title IX to provide relief in employment matters when it had amended Title VII—an employment discrimination law with a complex remedial scheme—to apply to educational institutions only three months before passing Title IX. This decision widened a long-standing split among several federal appeals courts on the relationship between employment discrimination claims under Title VII and Title IX. In its [amicus brief](#) to the Supreme Court regarding the *Crowther* case, the United States argued that Title IX does not provide a private right of action in employment discrimination cases, despite having previously taken the opposite position under a prior administration.

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 May 29, 2026 at 10:00 am ET.