

EducationCounsel Alert for October 14, 2026

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

- 1. Updates on In-State Tuition for Undocumented Students**
- 2. Lawsuits Challenge “Pocket Rescission”**
- 3. U.S. Supreme Court to Hear Education Cases in Fall Term**
- 4. Other Significant Updates**
- 5. Table of Proposed Federal Rules**

In addition to this week’s Alert, please also see the following new resource:

- [Unpacking the Treasury’s Proposed Regulations for the Federal Scholarship Tax Credit](#) summarizes the most significant provisions in the proposed regulations issued recently by the U.S. Department of the Treasury that will govern the first year of implementation of the Federal Scholarship Tax Credit (FSTC). The proposed regulations are subject to a 60-day comment period, with comments due [here](#) on 12/1/26, and a [public hearing](#) on 12/15/26. This Deep Dive focuses on how the proposed regulations will affect uses of the FSTC to benefit public school students and flags several issues where the regulations are unclear or raise new important questions.

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. Updates on In-State Tuition for Undocumented Students

As highlighted in our [9/16/26 Alert](#), the U.S. Department of Justice (DOJ) announced it had filed lawsuits against all states with laws that provide undocumented students with in-state tuition rates. On 10/1/26, DOJ filed a new lawsuit against an individual university that provides undocumented students with in-state tuition rates, even though its state does not have a policy to that effect. DOJ’s [lawsuit](#) against the University of Delaware alleges that the university’s residency-based tuition policy conflicts with federal immigration law by allowing some undocumented students to receive reduced in-state tuition rates while denying the same benefit to out-of-state U.S. citizens.

Relatedly, on 10/5/26, a federal district court [dismissed](#) DOJ’s challenge to Virginia laws, concluding that they do not violate federal law. Virginia joins [Minnesota](#) as the two states to win against the DOJ on this issue thus far.

2. Lawsuits Challenge “Pocket Rescission”

Several lawsuits were filed challenging the 9/25/26 [announcement](#) by the Office of Management and Budget (OMB) that it was using a “[pocket rescission](#)” to cancel \$810 million in previously appropriated funding for fiscal year (FY) 2026 that expired on 9/30/26 before Congress could respond to the Administration’s action. (See our [10/1/26 Alert](#) for more information.) The suits affecting education include a [challenge](#) by seven states (CA, ME, MD, MI, NM, NV, OR) to the entire rescission package, and an action

[filed](#) by the National HEP-CAMP Association to object to the cancellation of \$25 million in education funding for the High School Equivalency (HEP) and College Assistance Migrant (CAMP) programs, which help students from migrant families access and succeed in postsecondary education.

3. U.S. Supreme Court to Hear Education Cases in Fall Term

During its fall term, the U.S. Supreme Court will consider the following education-related cases:

- On 11/3/2026, the Court will hear arguments in *St. Mary Catholic Parish v. Roy*, a case that raises the question of whether Colorado may require religious preschool providers participating in the state's universal preschool program to comply with the state's nondiscrimination requirements. Some providers sued, arguing that Colorado was violating their First Amendment rights by requiring them to abide by the state's prohibition on discrimination on the basis of sexual orientation and gender identity. (The appeals court ruled against the providers.)
- On 11/30/2026, the Court will hear arguments in *Thomas Crowther v. Board of Regents of the University System of Georgia*, a case that raises the question whether there is a private right of action for sex discrimination in employment under Title IX. (The appeals court ruled against the employees.)

As the year progresses, the Court might also agree to review other education-related cases and/or review lower courts' temporary rulings on the Court's "emergency" docket. Some of the issues raised by cases that the Court has been asked to review include state laws requiring that public schools post the Ten Commandments in each classroom and whether Title IX prohibits states from allowing transgender athletes to compete on sports teams that align with their gender identity.

4. Other Significant Updates

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

IES Obligates Nearly All Remaining FY2025 Funding: On 9/28/26, Institute of Education Sciences (IES) Acting Director Matt Soldner confirmed that 99.54% of IES's FY25 funds had been obligated before they were set to expire on 9/30/26, following the funds' two-year period of availability. IES provided the [update](#) as part of an ongoing lawsuit challenging the withholding of previously appropriated funding for education research, data collection, and program evaluation. On 9/17/26, the federal court [ruled](#) in the lawsuit that the Administration was required to release and obligate expiring IES funds before the deadline.

DHS Proposes New Fees for International Student Work Program: On 10/7/26, DHS [announced](#) a [proposed rule](#) that would require colleges and universities to pay a \$70,000 fee for each international student seeking an optional practical training (OPT) work authorization and a \$30,000 fee for any OPT extensions. This is a substantial increase from the current application fee of about \$500 typically paid by students. The proposal is part of the Administration's broader efforts to limit international student enrollment. Among other things, see our [9/16/26 Alert](#) for information about a federal court vacating a DHS rule to limit the duration of international student visas and our [6/2/25 Alert](#) for information about the State Department's attempt last year to pause approvals for new student visas. (The public can submit comments on the new rule by 11/9/26.)

Federal Court Temporarily Blocks Disclosure of Foreign University Donors: On 10/1/26, a federal district court in Washington, D.C., [issued](#) a temporary restraining order preventing USED from publicly releasing the identities of foreign donors to colleges and universities reported under Section 117 of the Higher Education Act. The Association of American Universities (AAU) brought this lawsuit to challenge USED's June 2026 decision to publish donor names after previously confirming to institutions that they would not be identifying donor information. The judge concluded that AAU was likely to succeed on claims that the policy change may violate the Administrative Procedure Act and that disclosure could cause irreparable harm to donors and institutions.

USED Releases First Look at 2023-2024 Civil Rights Data Collection: After several months' delay, USED recently [released](#) the raw data from school year 2023-24 Civil Rights Data Collection (CRDC) and later published the [First Look Report](#) that typically accompanies the data release and that highlights key trends for the public. USED suppressed data collected on nonbinary students, in line with its decision for the forthcoming school year 2025-26 collection not to remove questions about nonbinary students and references to gender identity. (See our [8/5/25 Alert](#) for more information on these changes.)

DOJ and USED Disavow Past Investigations of Parents' Conduct Against School Boards: On 10/5/26, DOJ's Weaponization Working Group issued a [report](#) examining a 10/4/21 [memorandum](#) and task force launched under the Biden Administration regarding "harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff." Although the original memo (since rescinded by the Trump Administration) distinguished between protected and unprotected speech, the Working Group's new report concluded that efforts undertaken by the Biden Administration impermissibly "chilled the exercise of parental and free speech rights."

In the wake of the Working Group's findings, DOJ [announced](#) that it will review investigations initiated under the original memo and offer formal apologies, award \$1.5 million to the National Association of School Resource Officers for training and technical assistance around parents' rights, and prioritize funding for resources for educators and staff on the same topic. Additionally, USED issued a [letter](#) to state Attorneys General urging them to implement the Department's interpretation of Family Educational Rights and Privacy Act (FERPA) as well as the Protection of Pupil Rights Amendment (PPRA). (See our [9/3/26 Alert](#) for analysis of the Student Privacy Policy Office's recent [Dear Colleague Letter](#) on this topic.)

5. Table of Proposed Federal Rules

The following table includes information about a number of significant pending proposed rules from various federal agencies. Background information and links for submitting public comments appear in each row.

Agency & Notice of Proposed Rulemaking (NPRM)	EducationCounsel Resources	Status & Deadline for Submitting Comments
Treasury: Racial Nondiscrimination in Private Schools (NPRM)	• Alert from 9/3/26	ACCEPTING PUBLIC COMMENTS Submit public comments here through 11/3/26 .
FCC: FCC To Review E-Rate Program To Ensure Congress's Vision (NPRM)	• Alert from 8/20/26	ACCEPTING REPLY COMMENTS Public comments were due by 10/13/26. Reply comments can be submitted through 11/12/26 .
Treasury: Federal Scholarship Tax Credit (NPRM)	• Unpacking Treasury's Proposed Regulations for the Federal Scholarship Tax Credit • FSTC Primer • Considerations for State-Level Leaders	ACCEPTING PUBLIC COMMENTS Submit public comments here for a 60-day period through 12/1/26 .
NPRMs No Longer Accepting Comments / Awaiting Final Rule		
USED: Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies (NPRM)	• Alert from 8/20/26 about the NPRM • Alert from 5/29/26 about the rules emerging from negotiated rulemaking	WAITING FOR FINAL RULE 2,822 comments were submitted by the 9/21/26 deadline.
USED: Education Department General Administrative Regulations (EDGAR) (NPRM)	• Overview & FAQs of USED's Proposed Changes to EDGAR • Alert from 9/3/26	WAITING FOR FINAL RULE 5,510 comments were submitted by the 9/23/26 deadline.
HHS: Reducing Federal Burden for Head Start Programs (NPRM)	• Unpacking the NPRM to Overhaul the Head Start Program Performance Standards • Alert from 8/20/26	WAITING FOR FINAL RULE 40,089 comments were submitted by the 10/6/26 deadline.

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 October 14, 2026 at 10:00 am ET.