

## EducationCounsel Alert for August 21, 2025

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

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You can also find summaries and brief analysis of many other developments in our ongoing [Executive Actions Chart](#), which is continuously updated. 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.*

### New Resources

#### 1. DEEP DIVE: The One Big Beautiful Bill Act & Early Care and Education

Our latest Deep Dive, "[The One Big Beautiful Bill Act & Early Care and Education | Likely Impact and Implementation Considerations for Field Leaders](#)," explores the sweeping changes to Medicaid, the Supplemental Nutrition Assistance Program (SNAP), taxes, and immigration that will impact the early care and education (ECE) sector in important ways. This Deep Dive is the first in a series that will analyze the significant impacts to education that became law in the One Big Beautiful Bill Act (OBBBA).

#### 2. EducationCounsel's Project 2025 Tracker

The Heritage Foundation's Project 2025, and particularly the Chapter on Education, was a key topic during President Trump's 2024 campaign. EducationCounsel's [Project 2025 Tracker](#) lists each recommendation in the chapter on education and describes relevant actions taken by the Trump Administration and Congress to advance them, organized in two ways: by topic (i.e. K-12, higher ed, etc.) and implementation status (from "no action" to "fully implemented").

### 3. Fiscal Year 2026 Budget Table

On 7/31/25, the [Senate Appropriations Committee approved](#), by a bipartisan vote of 26 to 3, the Fiscal Year (FY) 2026 Senate Labor, Health and Human Services, Education, and Related Agencies (Labor/HHS) Appropriations [bill](#) and [report](#), which includes funding for the U.S. Department of Education (USED) and U.S. Department of Health and Human Services (HHS). The FY2026 Senate Labor/HHS Appropriations bill proposes \$79 billion for USED, which is the same as the FY2025 level. We initially reported on key funding levels included in the FY2026 Senate Labor/HHS Appropriations bill, but we are sharing a more comprehensive [Fiscal Year 2026 Budget Table](#) comparing funding for certain education and early learning programs included in the FY2024 final bill/FY2025 Continuing Resolution (CR), the FY2026 President's budget request, and the FY2026 Senate Labor/HHS Appropriations bill.

## [Alert Updates](#)

### 1. Federal Court Strikes Down USED's Anti-DEI Directive and Certification (AFT et al v. USED)

On 8/14/25, a federal district court in Maryland [ruled](#) that the "Dear Colleague" [letter](#) (DCL) issued by USED's Office for Civil Rights on February 14, 2025, and a subsequent [certification requirement](#) that required states and school districts to affirm their compliance with USED's interpretation of Title VI were "unlawful." As a consequence, the court "vacated" both actions. In her 76-page opinion, Judge Stephanie Gallagher, appointed by President Trump in 2019, ruled that neither agency action followed the procedural requirements of the Administrative Procedures Act nor Fifth Amendment due process guarantees. She also ruled that the DCL violated First Amendment guarantees.

More specifically, the court ruled that the challenged anti-DEI actions:

- Threatened consequences for recipients of federal funds without clearly defining the ostensibly prohibited conduct so as to give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited," in violation of Fifth Amendment due process guarantees; and
- Unlawfully sought to exercise control of curriculum content, beyond the scope of USED's statutory authority and prohibitions of federal nondiscrimination law, more generally, concluding that "Title VI... ha[s]...never been interpreted to preclude teaching about concepts related to race."

In addition, the DCL demonstrated "textbook viewpoint discrimination" in violation of the First Amendment, unlawfully "targeting 'proponents' of diversity, equity, inclusion, and social justice." The Court affirmed that "the government is entitled to its viewpoint. But it may not...use its power over funding to coerce the suppression of speech it disfavors."

In sum, Judge Gallagher wrote, "the government did not [as it asserts] merely remind educators that discrimination is illegal: it initiated a sea change in how the Department of Education regulates educational practices and classroom conduct, causing millions of educators to reasonably fear that their lawful, and even beneficial, speech might cause them or their schools to be punished. The law does not countenance the government's hasty and summary treatment of these significant issues."

This ruling is the first final district-level decision by a federal court to address the Trump Administration's efforts to end "DEI" in schools. Notably, it affirms the vast majority of preliminary injunctive rulings issued by other federal courts in declaring the Administration's anti-DEI policy guidance and certification requirements to be unlawful. With appeals pending, there is a notable, near-universal agreement among federal judges

considering the substantive issues in challenges to the Administration's anti-"DEI" guidance and actions. Overall, in the context of preliminary injunctive relief sought in these cases (where the merits of the plaintiff's claims are initially evaluated), courts have repeatedly found the Administration's actions to be unlawful (see EdCounsel's recent deep dive, [Misguidance: An Analysis of the U.S. Department of Justice's July 29, 2025 Civil Rights Guidance](#), at n. 4). USED is expected to appeal the ruling to the 1st Circuit Court of Appeals.

## 2. The Administration for Children and Families (ACF) Revises Grant Rules

ACF has updated [its terms and conditions](#) applicable to its grant awards. Starting on October 1, the agency will be able to terminate grants when "for whatever reason continued funding would not be in the best interests of the Federal government (including when a grant no longer effectuates the program goals or agency priorities)." This is consistent with the recently issued [Executive order](#) on oversight of federal grantmaking, which instructed federal agencies to enhance the government's ability to terminate grant awards that do not meet the Administration's priorities. The new terms and conditions also includes a new "Antidiscrimination Laws and Requirements" term, which states that by accepting federal funds, grant recipients "certify compliance with all federal antidiscrimination laws and these requirements." This replaces [previous language](#) released in the Spring that indicated recipients of federal grants must certify that they do not run programs promoting DEI, DEIA, or "discriminatory equity ideology" in ways that violate federal anti-discrimination laws. For additional information, please review an EducationCounsel memo [here](#).

## 3. USED Proposes New Regulations for Public Service Loan Forgiveness

On 8/18/25, USED [announced proposed rules](#) for the Public Service Loan Forgiveness (PSLF) program in accordance with President Trump's [Executive Order](#) (EO) that directed USED to update the regulations to exclude from program eligibility any employer that engages in "activities that have a substantial illegal purpose." Following the EO, USED previously held two public hearings in May and negotiated rulemaking sessions in July regarding the regulations.

The proposed regulations are largely in alignment with the EO and the final proposal USED shared during the negotiated rulemaking. The proposed rules make a number of changes from current policy that would enable the Secretary to limit employer eligibility for PSLF: redefining "Qualifying employer" and "Substantial illegal purpose" to include the following as disqualifying employer activities: violations of federal immigration law, facilitating cartels, child trafficking, "engaging in a pattern of aiding and abetting illegal discrimination," and engaging in a pattern of public nuisance or vandalism. Additionally, the draft regulations reference the use of puberty blockers or sex hormones with individuals under age 19 as constituting "chemical castration of minors" (along with surgery referred to as "surgical castration or mutilation"), which would be included as a disqualifying employer activity. The proposed regulations contain two significant changes compared to the final proposal shared during negotiated rulemaking: (1) to lower the standard of proof the Secretary uses for determining employer ineligibility from "clear and convincing evidence" to "preponderance of the evidence" and (2) to bar ineligible employers from PSLF for 10 years, rather than 5.

The proposed rules are now open for [public comment](#), and comments must be submitted by September 17, 2025.

#### 4. USED Informs Five Northern Virginia School Districts of “High-Risk Status” Regarding Title IX Policies

On 8/19/25, USED [announced](#) that it placed five Northern Virginia school districts “on high-risk status with the condition that all federal funding flowing to these districts is done by reimbursement only.” USED’s Office for Civil Rights launched an investigation into the districts in February, and on 7/25/25, OCR [announced](#) it found them in violation of Title IX for allowing students to access bathrooms and other facilities that align with their gender identity. The decision to place the districts on high-risk status and limit their access to federal funds came after the districts rejected a proposed agreement with OCR on 8/15/25 that would have mandated new policies requiring students to use facilities based on their sex assigned at birth.

Notably, the policies at issue in those districts—Alexandria City Public Schools, Arlington Public Schools, Fairfax County Public Schools, Loudoun County Public Schools, and Prince William County Public Schools—are consistent with a current Fourth Circuit [decision](#) (binding authority in Virginia) that protects the right of transgender students to access bathrooms aligned with their gender identity under the Equal Protection Clause and Title IX. USED’s 7/25/25 press release cites the Supreme Court’s recent decision in [US v. Skrmetti](#), which addressed the constitutionality of state bans on gender-affirming care for minors, but pointedly did not consider Equal Protection Clause or Title IX issues related to access to restrooms.

#### 5. USED Investigations into Kansas School Districts Alleging Title IX and FERPA Violations

On 8/14/25, USED [announced](#) investigations by OCR and the Student Privacy Protection Office (SPPO) into four Kansas school districts regarding the districts’ policies around students’ gender identity and transgender status. The complaint alleges that Topeka Public Schools, Shawnee Public Schools, Olathe Public Schools, and Kansas City, Kansas Public Schools’ policies and practices run counter to Title IX by permitting students to participate in sports and access restrooms and locker rooms based on their gender identity. Additionally, SPPO will investigate whether the districts are violating the Family Educational Rights and Privacy Act (FERPA) by limiting parents’ access to information about their students’ transgender status. On 3/28/25, USED [issued](#) a Dear Colleague Letter stating that “schools must allow parents to review all education records of their student, including any document related to a student’s ‘gender identity’” in order to comply with FERPA.

#### 6. Fourth Circuit Affirms Students’ Right to Use Restroom Consistent with Gender Identity, Consistent with *Grimm*

On 8/13/25, the Fourth Circuit Court of Appeals issued a [preliminary injunction](#) pending appeal in *John Doe v. State of South Carolina*, preventing the state from requiring Doe to use restrooms and other facilities aligned with their sex assigned at birth instead of their gender identity. Doe, a 13-year-old transgender student, challenged South Carolina’s so-called “bathroom bill” in the District Court of South Carolina in November 2024 after being suspended for using the bathroom consistent with their gender identity. Judge G. Steven Agee explained the order’s consistency with the binding precedent of the Fourth Circuit’s 2020 decision in *Grimm v. Gloucester County School Board*, “which held that a public school board’s policy of requiring transgender students to use multi-stall ‘restrooms matching their ‘biological gender’” violated Title IX and the Equal Protection Clause.” The case will proceed at the district court level.

#### 7. Trump Administration Rescinds Guidance on Serving English Learner Students

On 8/20/24, USED rescinded joint [guidance](#) it had issued with the U.S. Department of Justice that has been in place since 2015 that described how state education agencies (SEAs) and local education agencies (LEAs) can

meet their obligations to serve English Learner Students under Title VI of the Civil Rights Act of 1964. The action follows President Trump's March Executive Order (EO) "[Designating English the Official Language of the United States](#)," as well as a July [Memorandum](#) from the Department of Justice that encouraged agencies to rescind guidance that conflicts with the EO. In a statement reported in the [Washington Post](#), USED spokesperson Madi Biedermann confirmed the guidance was rescinded because it "is not in line with Administration policy."

Rescinding this guidance may weaken federal enforcement of language access and equal educational opportunity protections that have been built for over half a century. Under [Lau v. Nichols](#), the Supreme Court held that failure to provide English Learners with meaningful access to instruction constitutes national-origin discrimination under Title VI of the Civil Rights Act. Congress codified that principle in the Equal Educational Opportunities Act of 1974, requiring states and districts to take "appropriate action" to overcome language barriers. By rescinding this guidance, the federal government may be signaling a retreat from enforcement of these obligations, leaving families with fewer clear assurances that their children will have equal access to educational opportunities that federal law requires. Further, in the absence of this guidance, some jurisdictions may see an opportunity to scale back supports for English Learners.

## 8. Court Allows DOGE Access to USED Data

On 8/12/25, the Fourth Circuit issued a [decision](#) allowing the Department of Government Efficiency (DOGE) to access data at USED, Treasury, and the Office of Personnel Management (OPM). A district court in Maryland had previously [issued](#) a preliminary injunction preventing DOGE from accessing the records during the pendency of the case, finding likely violations of the Privacy Act and the Administrative Procedure Act (APA). Among the data that will now be accessible to teams at DOGE is student loan information housed at USED.

## 9. USED Dear Colleague Letter Halts Use of Federal Work Study Funds for Voter Registration

On 8/19/25, USED [issued](#) a [Dear Colleague Letter](#) (DCL) rescinding Biden-era guidance that allowed Federal Work Study (FWS) funds to be used for voter registration efforts, asserting that the program was "pay[ing] students to engage in certain partisan and nonpartisan political activities." The DCL cites FWS regulations which prohibit the use of funds "to employ students whose work 'involves any partisan or nonpartisan political activity,'" and "updates [the Administration's] interpretation" to state that "Jobs involving partisan or nonpartisan voter registration, voter assistance at a polling place or through a voter hotline, or serving as a poll worker—whether this takes place on or off campus—involve political activity because these activities support the process of voting which is a quintessential political activity whereby voters formally support partisan or nonpartisan political candidates by casting ballots." The DCL rescinds two Biden-era [guidance documents](#) that provided information on using FWS funds for voter registration efforts, calling them an "erroneous interpret[ation]" of regulations.

## 10. Other Significant Updates

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

**NCES Proposes Admissions Data Collection:** After last week's Alert covered the [Administration's moves](#) to begin collecting disaggregated college admissions data, including GPAs and test scores, the National Center for Education Statistics (NCES) [published](#) on 8/15/25 its proposal for the new data collection. Public comments are

due by 10/14/25. Under the published proposal, NCES would create a new survey component of the Integrated Postsecondary Education Data System (IPEDS) titled, Admissions and Consumer Transparency Supplement (ACTS), which is “designed to provide adequate transparency in admissions.” The notice explains that although data “alone is not determinative ...[of] unlawful discrimination,” the data collected “could indicate whether institutions of higher education are using race-based preferencing in their admissions process.” The new component will only be required for *selective institutions* because they have an “elevated risk of noncompliance with the civil rights laws.” ACTS will “collect data separately for undergraduate and graduate students” regarding both admission and financial aid awards. NCES will require data from the upcoming 2025-2026 admissions cycle as well as “from the five prior academic years.”

The purpose of collecting the historical data, according to the Administration, is “to establish a baseline of admissions practices from before the Supreme Court decision in *SFFA v. Harvard*” and, among other things, to “create good incentives for voluntary compliance.” Despite the Administration’s disdain for or [rejection](#) of the importance of racially disaggregated data as evidence relevant to identifying potential discrimination in other contexts, NCES notes that the Department may use this data “to develop risk-based enforcement practices.” That intention, grounded in the Department’s “concerns that unlawful practices may persist because DEI has been used as a pretext to advance overt and insidious racial discrimination,” reinforces concerns about Administration efforts to impose limits on inherently academic judgments that shape definitions of student potential and merit in the college and university selection and aid processes. Most notably, the effort to equate test scores and grades with merit is evident in this data collection initiative, as it is in earlier USED guidance asserting that “to eliminate standardized testing” when associated with diversity aims would be “unlawful.” (USED OCR’s Dear Colleague Letter, ruled unlawful last week, see Alert No. 1, above).

**NSF Ordered to Restore Grants to UCLA:** On 8/13/25, a District Court judge [ordered](#) the National Science Foundation (NSF) to release federal funds to the University of California Los Angeles (UCLA), “[suspended](#)” on 7/30/25 in violation of a preexisting preliminary injunction. In June, UC researchers [filed](#) a class action lawsuit challenging federal grant terminations systemwide, receiving an injunction on 6/23/25 requiring the funding to continue flowing while the case is ongoing. In her 8/13 order, Judge Rita F. Lin wrote that the new freezes violated the court’s preliminary injunction, writing that the suspensions “differ from a termination in name only.” The ruling restores federal funding from the NSF, while National Institutes of Health and Department of Energy grants remain suspended. The ongoing dispute over grant funding is taking place amid pressure from the Trump Administration against UCLA to pay \$1 billion to resolve various civil rights investigations.

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*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](mailto:info@educationcounsel.com). Updates in this Alert are current as of August 20, 2025 at 5:00 pm ET.*