

EducationCounsel Alert for February 19, 2026

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

1. [Trump Administration Proposes New Certification Requirements for Recipients of Federal Funds](#)
2. [More States Developing ESSA Waiver Proposals](#)
3. [OPM Publishes Final Rule Limiting Civil Service Protections for Some Career Employees](#)
4. [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*.

- In addition to this week's Alert, please also see our most recent Deep Dive, [The First Year: Looking Back \(and Ahead\) at the Trump Administration's Education Priorities and Actions](#), which summarizes the last year in federal education policy and looks ahead to the second year.

1. Trump Administration Proposes New Certification Requirements for Recipients of Federal Funds

On 1/28/26, the General Services Administration (GSA) issued a [notice and request for comments](#) on a proposed [revision](#) to certifications that recipients of certain federal funding must submit to the federal government. According to the notice, the revisions are designed to "align with updated executive branch guidance," including President Trump's "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)" EO and DOJ's more recent [guidance](#) on applying federal antidiscrimination law to efforts to advance diversity, equity, and inclusion. (See our Deep Dive, "[Misguidance](#)," for our analysis of the DOJ guidance, including its misstatements and overreach.)

Among other things, current and potential funding recipients registering with GSA's System for Award Management (SAM or [SAM.gov](#)), would have to certify that they:

- "Will comply with the U.S. Constitution, all Federal laws, and relevant executive orders prohibiting unlawful **discrimination on the basis of race or color** in the administration of federally funded programs," including those "labeled as" DEIA programs;
 - The proposed certification requirements include an extensive list of practices, drawn from the DOJ guidance, that GSA states "may" violate antidiscrimination laws.
- "Will comply with the U.S. Constitution, all Federal laws, and relevant Executive branch guidance in promoting the **freedom of speech and religious liberty** in the administration of federally-funded programs";
- "Will not knowingly bring or attempt to bring to the United States, transport, conceal, harbor, shield, hire, or recruit for a fee an **illegal alien**; and will not induce an alien to enter or reside in the United States with reckless disregard of the fact that the alien is illegal"; and
- "Will not fund, subsidize, or facilitate **violence, terrorism, or other illegal activities** that threaten public safety or national security" (emphases added).

The proposed certification also requires an accuracy attestation and raises potential criminal enforcement and civil liability under the False Claims Act for providing “false, fictitious, or fraudulent information.”

[Comments](#) on the proposed revisions are due on 3/30/26. Before going into effect, GSA will have to publish a final rule, which will likely face legal challenges in court.

- As detailed in our [2/4/26 Alert](#) and in the Other Significant Updates below, the Administration has recently abandoned appeals in at least two lawsuits related to its anti-DEI guidance. It is worth noting that, if enacted, the GSA revisions would potentially allow the Administration to accomplish goals aligned with the anti-DEI policies rejected by those courts but on a government-wide scale—effectively requiring certain recipients of federal funding to adhere to the Administration’s interpretation of the law.

2. More States Developing ESSA Waiver Proposals

In addition to **Iowa** (ESSA waiver [approved](#)) and **Indiana** (waiver proposal [pending approval](#)), at least four states have circulated for public comment draft waiver proposals that seek additional flexibility under the Every Student Succeeds Act (ESSA). These draft plans by Alabama, Idaho, Kansas, and Louisiana follow two 2025 USED Dear Colleague Letters that invited states to submit comprehensive [ESSA waiver proposals](#) and/or [Educational Flexibility \(Ed-Flex\) Program applications](#). ESSA requires states seeking waivers to invite and report public comment on their proposals. The following are brief summaries of the proposed waivers, but we do not evaluate the proposals here, including whether specific requests likely fall within or beyond the Secretary’s authority.

Alabama issued a [notice of intent](#) on 2/10/26 to submit its [draft application](#) for Ed-Flex authority. The state seeks to provide its districts with flexibility in eight areas, including Title I carryover limits; eligibility thresholds for Title I status and for operating a Title I schoolwide program; paraprofessional requirements; Title I, Part D transition funds limits; Title IV, Part A percentage requirements; consolidation of some Title II, III, and IV state-level activities funds; and integrating a career readiness assessment into the state accountability system. Public comments for Alabama’s proposed request are [open](#) until 3/10/26.

Idaho [issued](#) a [draft request](#) on 11/14/25 to waive some ESSA provisions and become an Ed-Flex state. First, Idaho plans to seek two ESSA waivers regarding the state’s annual assessments. The state would replace its current 3rd grade reading assessment and create a menu of 11th grade assessments from which students or districts could select. Second, Idaho is also proposing to apply for Ed-Flex authority to approve district requests for waivers related to “schoolwide eligibility, allowing additional carryover, program streamlining, and blending funding sources.” Public comment closed on 12/31/25 for Idaho’s draft request, and the outline noted that the state is aiming to submit a waiver “in early 2026, after public comment and contingent on State Board of Education approval.”

Kansas [issued](#) a [draft request](#) on 10/27/25 to waive three aspects of ESSA’s school improvement and support provisions. (According to the press release, Kansas already submitted the request, but there does not appear to be any confirmation of that from USED.) The state seeks to delay identifying a new cohort of schools until the 2028-29 school year, delay exiting currently identified schools until the 2027-28 school year, and allow the currently identified schools to continue accessing Section 1003(a) funds through the 2028-29 school year. The draft request notes that Kansas will use the additional time provided by these timeline waivers to complete a transition of its state assessment system and “fully integrate federal identification processes into the [state] accreditation framework, resulting in one unified, transparent system that provides clarity and predictability for schools and districts.”

Louisiana [issued](#) a [draft request](#) on 1/27/26 with two types of requests. At the local level, the state will seek Ed-Flex authority to provide local school districts with more flexibility regarding Title I carryover; Title I, Part D transition services; and Title IV, Part A minimum spending requirements. At the state level, Louisiana will seek an ESSA waiver to allow the state to consolidate its state-level administrative funds and also its state-level activities funds from eight federal programs: Title I, Parts B/C/D; Title II, Part A; Title III, Part A; Title IV, Parts A/B; Title V; and Title VII, Part B (McKinney-Vento). Public comments were due on 2/13/26.

Finally, **Indiana**, which already submitted its official ESSA waiver request, recently [announced](#) that, “[i]n order to work through some final details, we asked USED for a brief and temporary pause in their review” of the state’s already-submitted ESSA waiver request. The announcement acknowledges “a collaborative process between IDOE and [USED]” that has included “excellent, productive conversations.”

3. OPM Publishes Final Rule Limiting Civil Service Protections for Some Career Employees

On 2/5/26, the Office of Personnel Management (OPM) [published](#) a [final rule](#) creating “Schedule Policy/Career” as a new classification of federal career civil service positions, similar to the “Schedule F” classification proposed during the first Trump Administration. Positions in this schedule will have fewer employment protections, including being classified as “at-will” employees, allowing agencies to fire or demote them without going through adverse action procedures and eliminating the opportunity for employees to appeal such actions. The new rule codifies changes ordered in the “[Restoring Accountability to Policy-Influencing Positions within the Federal Workforce](#)” Executive Order (EO).

- The Schedule Policy/Career classification is intended to be used for “career positions of a confidential, policy-determining, policy-making, or policy-advocating character” (collectively, “policy-influencing”), though OPM declined to define these terms, instead deferring to the President to interpret. Prior guidance from OPM for identifying policy-influencing positions could, depending on interpretation, include a wide swatch of career civil servants, particularly at USED, including those who are accountable for the success of a program or project, participate in grantmaking, or supervise attorneys.
- OPM estimates approximately 50,000 positions will be converted to Schedule Policy/Career. Prior to the creation of this new schedule, the roughly 4,000 employees appointed by the president in any given administration (“political appointees”) were the only federal workers employed on an at-will basis.
- While the new rule will go into effect in early March, the final determinations about which positions will be converted to Schedule Policy/Career will be determined by the President and effectuated by a new EO.

This new classification could lead to more political pressure on civil servants and greater turnover among senior civil servants. Now that the rule is final, there may be new developments in pending lawsuits challenging the Administration’s actions that have been paused until a final rule was issued.

- Relatedly, OPM published two new draft rules this month proposing to shift from the independent Merit Systems Protection Board (MSPB) to OPM the responsibility for appeals related to [reduction in force](#) (RIF) actions and [suitability determinations](#). In both proposed rules, OPM’s decision would be final with employees having no further right of appeal.

4. Other Significant Updates

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

Plaintiffs Withdraw Lawsuits Challenging DEI Dear Colleague Letter Following Permanent Injunction: Plaintiffs in three cases challenging OCR’s anti-DEI guidance and certification have agreed to dismiss their lawsuits following the Trump Administration’s recent [abandoning](#) of its appeal in a related federal court decision that permanently struck down the guidance and certification. With that court’s permanent injunction in place, the plaintiffs in the similar cases agreed to end their separate lawsuits. On 2/3/26, the National Education Association (NEA) filed a joint [motion to dismiss](#); on 2/6/26, the [NAACP](#) and a [19-state coalition](#) did the same.

Trump Administration Drops Appeal of Ruling Against Freeze of UCLA’s Federal Funding: On 2/11/26, the Trump Administration withdrew its appeal of a preliminary injunction prohibiting federal agencies from freezing \$584 million in research funding to UCLA. A federal court in Northern California granted the [injunction](#) on 9/22/25, after the Administration initially suspended federal funding to UCLA over allegations the campus broke civil rights law, including by failing to adequately protect Jewish students from harassment (see our 9/30/25 [Alert](#) for more information). In a [revised order](#), the district court reiterated that agencies may not terminate or threaten funding to UCLA on the basis of alleged civil rights violations “until after full compliance with all of the required steps, consistent with all procedural and substantive requirements governing the termination of federal financial assistance” under Title VI and Title IX, and the Administrative Procedures Act.

Appeals Court Overturns Lower Court’s Preliminary Injunction Regarding Anti-DEI EOs: On 2/6/26, the U.S. Court of Appeals for the Fourth Circuit [vacated](#) a lower court’s preliminary injunction in *NADOHE v. Trump*, a lawsuit challenging the constitutionality of two of President Trump’s anti-DEI EOs. (One is the same EO at the heart of GSA’s proposed funding certifications described in the first item above.) The Fourth Circuit ruled, among other things, that the plaintiffs had not shown a strong likelihood of success in their “facial” challenge to the EOs under either the First or Fifth Amendments. (The court noted that such challenges have a high bar because they are “manifestly, strong medicine.”) The court did not decide—expressly leaving open—whether the plaintiffs might succeed in challenging the EOs “as applied” in the context of a future enforcement action against them based on the Administration’s interpretation of what is or is not lawful under federal antidiscrimination laws.

Preliminary Injunction Granted in Child Care Funding Freeze Lawsuit: On 2/6/26, a federal district court [granted a preliminary injunction](#) to block the Trump Administration’s recent [decision](#), based on allegations of fraud, to freeze federal child care and family assistance funding for California, Colorado, Illinois, Minnesota, and New York. As of today, the court had not yet published its opinion explaining the reasons for granting the injunction. According to the injunction, the Trump Administration cannot, for the duration of the lawsuit, implement its policy to “restrict or cut off” the five states’ Child Care Development Fund (CCDF), Temporary Assistance to Needy Families (TANF), and Social Services Block Grants (SSBG) funds. HHS is also prevented from requiring these states to submit additional spending justifications through its “[Defend the Spend](#)” process. The Administration has 60 days to appeal the order.

Agencies Announce New Civil Rights Investigations Under Title VI and Title IX: Civil rights offices at USED, HHS, and DOJ announced the opening of several new cases addressing alleged discrimination on the basis of race, color, or national origin (under Title VI) and sex (under Title IX). They include:

- On 2/13/26, USED OCR [announced](#) that it will investigate the **Louisiana Board of Regents** to determine whether its Master Plan for Higher Education violated Title VI by “authorizing racially-exclusionary practices and initiatives” to address graduation and matriculation gaps among some but not all racial or ethnic student groups.
- On 2/13/26, DOJ, in partnership with HHS OCR, [announced](#) that it will investigate **Lincoln Memorial University** to determine whether the university discriminated against Jewish students in violation of Title VI (which prohibits discrimination on the basis of national origin, including shared ancestry).
- On 2/13/26, USED OCR [announced](#) that it will investigate **Puyallup School District** (WA) to determine whether the district mishandled an allegation of sexual assault and whether its athletics and locker room policies, which permit students to participate based on their gender identity, violate Title IX.
- On 2/17/26, OCR [announced](#) that it will investigate **Portland Public Schools** (OR) to determine whether services and supports provided through the Center for Black Student Excellence violate Title VI by excluding non-Black students and families from its programs.

The Louisiana Board of Regents and Puyallup School District cases are directed investigations, meaning the cases were opened proactively as opposed to responding to complaints submitted to the office.

USED Investigates Potential Privacy Violations Regarding Use of Student Voting Data: On 2/5/26, USED [announced](#) both a new investigation into Tufts University and an accompanying [Dear Colleague Letter](#) (DCL) to presidents of institutions of higher education (IHEs) regarding whether the use of student data in the [National Study of Learning, Voting, and Engagement](#) (NSLVE) complies with the Family Educational Rights and Privacy Act (FERPA). The NSLVE study began in 2012 and is conducted in partnership with Tufts University’s Institute for Democracy and Higher Education (IDHE) and the National Student Clearinghouse (NSC) to increase civic engagement through analysis of student voting behavior. USED’s Student Privacy Policy Office is investigating NSLVE’s compliance with FERPA, and the DCL calls for IHEs not to use NSLVE data, noting that “any IHE that utilizes NSLVE data released in 2026 could be at risk of being found in violation of FERPA.” The DCL also rescinds relevant guidance and resources from the Biden Administration and names the withholding of federal funds as a potential enforcement action for any FERPA violations.

USED Issues Updated and Expanded Guidance on Religious Expression in Public Schools: On 2/5/26, USED released updated [guidance](#) about constitutionally protected prayer and religious expression in public schools. ESSA requires the Secretary of Education to issue guidance every other year on “constitutionally protected prayer,” and school districts must certify their compliance with it on an annual basis. In contrast to past versions, most recently updated in [2023](#), the new guidance expands its focus—and thus the scope of districts’ certifications—to address broader constitutional principles around religious expression, with illustrations related to the role of parents’ rights in directing their child’s public school education, student religious expression in assignments, speech in the classroom and at school-sponsored events, and more. Notably, the updated guidance emphasizes employees’ right to religious expression, including “the right, not only of students to pray, but also of public school teachers and officials to engage in individual acts of prayer—and to pray with students—during the conduct of their work” provided that it is private, non-coercive, and done outside an employee’s official duties (see the Supreme Court’s 2022 decision in [Kennedy v. Bremerton](#)).

USED Issues Dear Colleague Letter Encouraging Use of Title II for Strategic Staffing: On 2/9/26, USED issued a [Dear Colleague Letter](#) (DCL) highlighting opportunities for states and districts to use Title II, Part A funds to support strategic staffing models, which emphasize team-based approaches to school staffing. The DCL promotes use of evidence and provides several examples of how Title II funds can be used to support new staffing models, including providing induction and mentoring for new teachers and job-embedded coaching and professional learning for all educators; supporting educator pipeline programs such as apprenticeships, residencies, and grow your own programs; supporting school leader development and engagement; and providing educators opportunities to take on additional instructional roles and to be compensated for those additional responsibilities. The final bipartisan [FY26 appropriations law](#) maintained current funding (\$2.2 billion) for Title II, Part A, rejecting President Trump's [proposal](#) to consolidate Title II and 17 other programs and cut their collective funding by 70%.

USED Finalizes Fourth, Broad Secretarial Priority for Competitive Grants: On 2/12/26, USED [published](#) the final version of a fourth Secretarial Supplemental Grant Priority, "Meaningful Learning Opportunities." Supplemental priorities have historically been incorporated in the design of select agency competitive grant programs. The newly-finalized priority identifies a long list of academic strategies and instructional practices that, according to USED, are designed to "prepare students for success in an increasingly complex, interconnected and technology-rich world and ensure all students are prepared for employment, enrollment, enlistment, or entrepreneurship." USED can select some or all of the listed strategies to feature in any particular grant competition. The announcement noted only minor changes from the proposed version of the priority. (See our continuously-updated [Deep Dive](#) for more information, including a list of the included strategies.)

HHS Makes Plans to Dismantle the Office Overseeing Early Childhood Research: The Administration for Children and Families (ACF) in the U.S. Department of Health and Human Services (HHS) is [developing plans](#) to significantly shrink its Office of Planning, Research, and Evaluation (OPRE), reduce research funding, and align any remaining research with the Administration's priorities. The plan includes moving research staff into program offices and reducing ACF's research funding to statutory minimums. This could significantly reduce funding for early childhood research because the statutes for Head Start and the Child Care and Development Fund set a ceiling (not a floor) for research investments. The potential changes could also impact early childhood research topics and grantees.

Department of Labor Releases AI Literacy Framework: On 2/13/26, the Department of Labor (DOL) [announced](#) the publication of a [framework for AI literacy \(graphic summary\)](#), providing nonbinding guidance to promote and expand AI literacy efforts across workforce and education systems. The framework outlines five "foundational content areas of AI literacy": Understand AI Principles, Explore AI Uses, Direct AI Effectively, Evaluate AI Outputs, and Use AI Responsibly. It also identifies seven "Effective Delivery Principles of AI Literacy": Enable Experiential Learning, Embed Learning in Context, Build Complementary Human Skills, Address Prerequisites to AI Literacy, Create Pathways for Continued Learning, Prepare Enabling Roles, and Design for Agility.

According to DOL, the framework reflects input from employers, training providers, state and local workforce and education agencies, and other stakeholders. The framework follows [guidance](#) in August 2025 on using Workforce Innovation and Opportunity Act funding to develop and promote AI skills, and a number of other related publications by the Trump Administration, including the [AI Action Plan](#) and [DOL Workforce Talent Strategy](#).

Department of Labor Announces New Grants for Community Colleges: On 2/17/26, DOL [announced](#) a \$65 million grant competition for the Strengthening Community College Training program, funded through the Workforce Innovation and Opportunity Act. This round of funding will focus specifically on “increas[ing] the availability of programs seeking eligibility for Workforce Pell Grants.” The One Big Beautiful Bill Act authorized a new Pell Grant program for short-term workforce programs, and DOL noted that grant applications must describe how programs will meet the hiring requirements of employers in in-demand industries.

Federal Agencies Hold Tribal Consultation on Planned Transfer of USED Functions: On 2/10/26, the U.S. Departments of Education, Interior (DOI), and Labor (DOL) held a [Tribal Consultation](#) on the [interagency agreements](#) (IAAs) that shift significant responsibilities from USED to DOI and DOL. According to [reporting](#), attendees expressed concern about increased bureaucracy should programs be spread across multiple federal agencies and the downstream impact on students, schools, and tribal colleges and universities. (For our legal analysis of the Administration’s use of IAAs, see [Beyond “The Maximum Extent Permitted By Law”](#).) Additionally, speakers called for more robust consultation aligned with USED’s [current policy](#), with tribal leaders urging the Departments to hold regional meetings to discuss changes before proceeding with further transfers. The public has the opportunity to submit comments through 3/12/26 to TribalConsultation@ed.gov.

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 our updates and analyses can change quickly. The information in this document is current as of February 19, 2026 at 10:00 am. If you have any suggestions or feedback, please send it to info@educationcounsel.com.