

EducationCounsel Alert for February 4, 2026

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

- 1. Congress Passes FY26 Labor, HHS, Education Appropriations Law**
- 2. Trump Administration Drops Appeal of Ruling Against DEI Guidance and Certification Requirement**
- 3. USED Asserts California's Gender Identity Policies Violate FERPA**
- 4. USED Initiates Accreditation Rulemaking Process**
- 5. Other Significant Updates**

You can also find summaries and brief analysis of these and many other developments in our ongoing [Executive Actions Chart](#), which we recently brought up to date.

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. Congress Passes FY26 Labor, HHS, Education Appropriations Law

On 2/3/26, the House of Representatives passed the same FY26 Labor, Health and Human Services, Education, and Related Agencies (Labor/HHS) Appropriations bill that the Senate passed last week, clearing the way for President Trump to sign the bill into law later that same day. This was done as part of a package of five full-year appropriations bills (including USED and HHS, among other agencies) and a short-term Continuing Resolution (CR) for the Department of Homeland Security (DHS), which will end the current partial government shutdown that began over the weekend.

- **The bill largely maintains funding for almost all education programs at their current levels**, rejecting President Trump's requests to cut USED's budget by 15%, consolidate 18 K-12 programs into a block grant, and eliminate the Preschool Development Grant Birth through Five program, among other things. See [our 1/21/26 Alert](#) for a detailed table of key FY26 funding levels for USED and for early learning programs funded by HHS.
- **Congress also included a number of provisions that emphasize statutory limits on the Administration's ability to transfer USED's funds and functions to other agencies**, as it has begun doing through a series of [interagency agreements](#). These include continuing provisions from previous appropriations bills. The bill's [explanatory statement](#) also includes an opening note that "[e]ach Department and agency...shall not reallocate resources or reorganize activities except as provided herein." More explicitly, Congress also included language in the statement regarding "Interagency Agreements and Program Transfers" that notes, among other things, "no authorities exist for [USED] to transfer its fundamental responsibilities...including through procuring services from other Federal agencies." The statement also directs USED to begin providing Congress with biweekly briefings on the implementation of the newly-formed IAAs.

Although the House originally passed the FY26 Labor/HHS bill on 1/22/26 as part of a package of six appropriations bills, it had to return to the House for a second vote after the Senate amended the package to instead provide a short-term CR for DHS, while maintaining language for the other five appropriations bills. In the end, the spending package, including the Labor/HHS bill, passed the Senate on a 71-29 vote and passed the House on a 217-214 vote, with 21 Democrats supporting and 21 Republicans opposing.

Following the vote to fund DHS under a CR, Congress will have ten days to negotiate potential policy changes to the Administration's immigration enforcement to garner sufficient votes for the DHS funding bill to pass. Among several policy changes that could be included in a revised DHS bill is a prohibition of ICE enforcement at sensitive locations, including schools, child care centers, hospitals and other sensitive locations that were protected from ICE enforcement under prior Administrations. If those negotiations do not produce a passable FY26 appropriations bill by 2/14/26, Congress will pass another CR for DHS, or DHS will be the only agency to be shut down again, because all other federal agencies have now been funded for FY26. That said, ICE will be able to continue operating even during an official shutdown because it would still be able to access funding provided under a different law, the One Big Beautiful Bill Act.

→ **New Lawsuit Challenges Immigration Enforcement Near Schools:** Earlier today (2/4/26), a coalition of a Minnesota educators' union and two school districts filed a [federal lawsuit](#) against DHS and ICE, aiming to halt immigration enforcement near public schools. The plaintiffs allege that increased ICE activity since late 2025, coupled with the rescission of "sensitive locations" guidance, has caused attendance to plummet and forced schools to close or shift to remote learning due to the widespread chilling effect on families. Among other forms of relief, the plaintiffs seek to enjoin DHS from carrying out immigration enforcement operations at or near (i.e., within 1,000 feet) school property or school bus stops absent a judicial warrant or genuinely exigent circumstances.

2. Trump Administration Drops Appeal of Ruling Against DEI Guidance and Certification Requirement

On 1/21/26, the Trump administration withdrew its appeal of a [federal court decision](#) that struck down OCR's anti-DEI guidance and certification process, which threatened to rescind federal funding for states and districts that did not certify that they would eliminate K-12 and higher education diversity, equity and inclusion (DEI) programs. A federal judge in Maryland ruled in *American Federation of Teachers v. U.S. Department of Education* that because the guidance and demand to certify compliance violated the First Amendment, Fifth Amendment, and federal procedural rules, they must be vacated in their entirety. (See our legal analyses of the initial [guidance](#), an accompanying [FAQ](#), and the [certification](#) requirement for more information.)

By dropping its appeal, the Administration will let that ruling stand, effectively ending USED's ability to implement that specific OCR guidance document and the accompanying certification document. However, as long as USED does not rely on the now-vacated OCR documents, it can still use other means to pursue the Administration's anti-DEI agenda and its legal interpretation of what is lawful or not under Title VI. This likely includes, among other mechanisms, requiring certain assurances in grant agreements and initiating civil rights enforcement actions. Although federal courts might ultimately halt these other efforts as well, they would need to do so in response to separate legal challenges.

Finally, it is worth noting that other plaintiffs' federal lawsuits against the same OCR guidance and certification are still pending. There are slightly different but substantially overlapping preliminary injunctions in place in those cases as well.

3. USED Asserts California's Gender Identity Policies Violate FERPA

On 1/28/26, USED [announced](#) that its Student Privacy Policy Office (SPPO) found the California Department of Education (CDE) to be in violation of the Family Educational Rights and Privacy Act (FERPA). SPPO's investigation, which [launched in March](#), focused on whether CDE (and its school districts) are violating FERPA by adhering to a state law (AB 1955) that prohibits districts from requiring that school staff *affirmatively* disclose to parents information about a student's gender identity at school while still preserving parents' rights to access their children's school records. SPPO concluded that "certain CDE policies and practices create powerful state-directed pressure for schools to adopt policies that have led to FERPA noncompliance." In an October [communication](#) about the investigation, CDE said "there is no conflict" between the state law and FERPA, which CDE notes "both permit parental access to their student's education records upon request."

USED notes that "violations of FERPA risk loss of federal financial assistance." However, [under FERPA](#), USED can only withhold federal assistance if the Secretary "finds there has been a failure to comply" with the law and "has determined that compliance cannot be secured by voluntary means." USED [reportedly](#) has given CDE two weeks to respond to a proposed list of actions that would "voluntarily resolve its FERPA violations," including:

- Issuing a notice to all superintendents and administrators informing them that "gender support plans" or other related documentation directly related to a student are considered education records under FERPA and thus subject to parental inspection upon request;
- Publicizing that there is no "unofficial records" exception to FERPA and further notifying superintendents and administrators that AB 1955, as well as any other California laws, regulations, or policies, should not be interpreted to undermine or contradict federal law, and that violations of FERPA risk loss of federal financial assistance;
- Providing written assurance to SPPO that CDE will allow LEAs to enforce FERPA regarding "gender identity" and pro-parental notification approaches in a manner that aligns with the needs of the districts to ensure compliance;
- Requiring LEAs to certify to CDE that they understand and are in compliance with FERPA; and
- Adding FERPA training content that is approved by SPPO to the California Education Code (EC) Section 218.3(b)(1)'s LGBTQ cultural competency training for teachers and other certificated employees.

Issues related to students' gender identity information are the subject of multiple federal lawsuits. Litigants in [California](#) and [Washington](#) have recently sought review by the U.S. Supreme Court.

4. USED Initiates Accreditation Rulemaking Process

On 1/26/26, USED [announced](#) that it is launching a negotiated rulemaking process to develop new regulations for the higher education accreditation system. The "Accreditation, Innovation, and Modernization (AIM)" committee will focus on regulations that seek, according to USED, to "simplify the Secretary's recognition of emerging and existing accreditors; examine the extent to which accreditation contributes to rising higher education costs and credential inflation; safeguard against undue influence from related private trade associations; eliminate standards or policies that discriminate on the basis of immutable characteristics; and refocus quality assurance and improvement on data-driven student outcomes."

The most likely outcomes of this rulemaking are that ED will:

1. Eliminate or reduce the nonstatutory requirements to become a new accreditor, allowing new accreditors (and likely new institutions) to gain Secretarial recognition (and thus institutional access to Federal student aid) more quickly than the current two-year period and thus easier for institutions to switch to a new accreditor when facing consequences from their current accreditor, diminishing the ability of accreditors to conduct effective institutional oversight;
2. Push accreditors to examine student outcomes, although USED is statutorily limited in how specific these standards can be; and
3. Advance the Administration's ideological agenda through accreditation by, for example, attempting to prohibit accreditors or institutions from disaggregating student data on the basis of race or pushing them to promote viewpoint diversity.

This rulemaking is a result of President Trump's [Reforming Accreditation to Strengthen Higher Education](#) EO, which signaled the Administration's intention to make significant changes to the accreditation system.

Nominations for the AIM committee negotiators are due by 2/26/26. USED noted that the committee will meet for two sessions (one the week of 4/13/26 and one the week of 5/18/26); more details are available [here](#).

5. Other Significant Updates

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

USED Proposes OBBBA Student Loan Regulations: On 1/29/26, USED [issued](#) a Notice of Proposed Rulemaking (NPRM) focused on the implementation of the federal student loan-related provisions of the One Big Beautiful Bill Act (OBBA). The [proposed regulations](#) reflect the points of [consensus](#) reached in November by the Reimagining and Improving Student Education (RISE) negotiated rulemaking committee, and therefore does not differ in substance from the proposed regulations agreed to in November. Comments on the NPRM are due by 3/2/26.

Most of the NPRM closely mirrors OBBBA's statutory provisions. Notable regulatory provisions include:

- 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);
- Defining what qualifies as a "professional" degree (see below for more information);
- Creating the Repayment Assistance Plan, a new income-driven student loan repayment plan, which prevents negative amortization, enables forgiveness of the remaining balance after 30 years, and provides a \$50 reduction in payment each month per dependent. It also allows for a narrower timeframe to be considered "on-time" when making payments and sets a minimum monthly payment of \$10, regardless of income;
- Creating a new, tiered, standard repayment plan, offering fixed terms—10, 15, 20, or 25 years—based on the loan balance;
- Reducing the aggregate limit for Parent PLUS loans to \$65,000 per dependent student (previously this amount was uncapped and only limited by the student's annual cost of attendance minus other aid received);
- Eliminating the unemployment and economic hardship deferments;
- Eliminating existing income-driven repayment plans;
- Eliminating the Grad PLUS program;

- Allowing borrowers to rehabilitate a defaulted loan twice;
- Allowing institutions to establish program-level student loan caps below the statutory limits; and
- Requiring institutions to adjust the annual loan limit for students who enroll on a less than full-time basis.

The most significant regulatory issue USED is still facing is how it will differentiate graduate degree programs from professional degree programs given the significant divergence in respective annual and aggregate loan limits under OBBBA. The proposed regulations require that, to be a professional degree, a program must provide a postbaccalaureate degree required for entrance into a specific profession with an accompanying licensure requirement.

- Ten types of doctoral degree programs would be considered professional: pharmacy, dentistry, veterinary medicine, chiropractic, law, medicine, osteopathic medicine, optometry, podiatry, clinical psychology.
- Two types of masters degree programs would qualify as professional as well—divinity and theology—notwithstanding the fact that these programs are not subject to state licensure because states do not license or supervise clergy.

Under this proposal, all other postbaccalaureate degree programs would be subject to the lower of the two graduate loan limits (i.e., graduate degree programs), which has elicited significant political pushback, particularly from the nursing field.

Administration Issues Joint Fact Sheet on Education Tax Credit Program: As part of National School Choice Week, USED and the Department of the Treasury (Treasury) released a [joint fact sheet](#) on 1/27/26 regarding the education tax credit program established under the One Big Beautiful Bill Act (OBBBA). The fact sheet provides an overview of the program, including topics such as how the program works, who is eligible to participate, and allowable uses of scholarships funds. The agencies did not provide new details about how the program may operate in practice nor shed new light on the many open questions under consideration by Treasury and IRS following their [request for comments](#) on the program. The [press release](#) notes 23 states have “opted in to” the program, but it is unclear if all of the states referenced have completed the IRS’s [Advanced Election](#) form. This form allows states to formally indicate their intent to participate in the tax credit program for 2027; however, completing the form alone is insufficient under OBBBA because the state must also submit its list of scholarship-granting organizations (SGOs), along with all required information and certifications. This part of the process cannot begin until the Treasury and IRS develop and release additional guidance, which many expect will happen this spring.

USED Issues Dear Colleague Letter Encouraging Use of Title I Schoolwide Program: On 1/21/26, USED issued a [Dear Colleague Letter \(DCL\)](#) highlighting existing flexibilities in the Elementary and Secondary Education Act’s (ESEA) Title I, Part A (Title I) schoolwide program (Section 1114). The DCL specifically focuses on encouraging schools operating schoolwide programs to consider consolidating other federal funds (as well as state and local funds) to support a “comprehensive instructional framework, enabling systemic improvements.” The letter also notes that, when consolidating federal funding streams, “a school does not need to meet most of the statutory and regulatory requirements of the specific Federal programs included in the consolidation (e.g. program specific supplement not supplant requirements other than that of Title I), provided it meets the intent and purposes of those programs.” Additionally, the DCL highlights that state education agencies (SEAs) can under some circumstances grant waivers to allow a Title I school to operate a schoolwide program without meeting the 40% poverty threshold. (This DCL joins other efforts by USED to encourage the consolidation of federal funds, including via EdFlex authority and the invitation to states to apply for waivers, including for requirements related to uses of funds.)

USED Refers Minnesota to DOJ Over Trans-Inclusive Policies: On 1/26/26, USED [announced](#) that it has referred the Minnesota Department of Education (MDE) and the Minnesota State High School League (MSHSL) for potential enforcement action by the Department of Justice (DOJ). This step follows the 9/30/25 [announcement](#) of a joint finding by USED and HHS's Office for Civil Rights against MDE and MSHSL following a Title IX investigation into policies that allow transgender students in the state to play sports and access facilities consistent with their gender identity (see our 9/30/25 [Alert](#) for more information). USED had previously [elevated](#) the investigation to the Title IX Special Investigations Team, a partnership between USED and DOJ. Notably, the State of Minnesota on 4/22/25 filed a [preemptive suit](#) against the federal government to challenge President Trump's ability to "rewrite" Title IX through executive order. Minnesota argues 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.

USED Finds NY School District Violated Title VI with Native American Mascot Change: On 1/22/26, USED OCR [announced](#) that an investigation into Connetquot Central School District (Long Island, NY) concluded that the district violated Title VI when it changed its mascot from "Thunderbirds" to "T-Birds" because of the former's association with Native American symbolism. OCR offered a voluntary resolution if the district reverses the change.

This investigation builds on an ongoing dispute over a New York state regulation prohibiting Native American school mascots and logos, with USED asserting that the selective prohibition of Native American symbols and names—and not those of other racial or ethnic groups such as "Dutchmen"—constitutes race-based discrimination. The initial investigation began on 4/25/25 when USED [initiated](#) a Title VI investigation into the New York State Department of Education regarding alleged pressure on the Massapequa School District to eliminate a high school's use of a Native American mascot. And, on 6/17/25, USED [announced](#) a referral to DOJ. (See our 5/1/25 [Alert](#) and 6/23/25 [Alert](#) for more information.)

University of Minnesota Cuts Ties with the PhD Project after OCR Investigation: On 1/24/26, the Minnesota Star Tribune [reported](#) that the University of Minnesota severed ties with the PhD Project (a nonprofit that provides resources and scholarships to members of underrepresented groups) this fall after an OCR investigation found that the university participated in a "blatantly discriminatory program designed to benefit certain favored students based on their race or national origin." The university had not previously disclosed the agreement and OCR has not made it publicly available through its [online portal](#). This was one of 45 investigations that OCR [launched](#) on 3/14/25 into public and private universities, many on the basis of their association with the PhD Project.

USED OCR Finds San Jose State University Trans-Inclusive Policies Violate Title IX: On 1/28/26, OCR [announced](#) that an investigation into San Jose State University (SJSU) found that the school's gender-identity policies related to athletics and access to facilities violate Title IX. OCR initiated a directed investigation into SJSU in February 2025, meaning the office proactively began the investigation as opposed to acting in response to a complaint. The incidents OCR reviewed involved the participation of a transgender player on the women's volleyball team from 2021-24, which was *before* President Trump [issued an EO](#) on 2/25/25 seeking to exclude transgender players. OCR's proposed resolution agreement would require SJSU to adopt "biology-based definitions of 'male' and 'female,'" agree not to "delegate its obligation to comply with Title IX to any external association or entity and will not contract with any entity" that does not have a similar policy, send a "letter of apology" to cisgender female students who competed with transgender athletes, and more.

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 February 4, 2026 at 11:00 am ET.