

EducationCounsel Alert for August 20, 2026

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

- 1. HHS Proposes Major Revision to Head Start Program Performance Standards**
- 2. USED Issues Guidance on School Discipline and Opens Investigations into Two School Districts**
- 3. FCC Initiates Review of the E-Rate Program**
- 4. Federal Court Dismisses DOJ's Antisemitism Suit Against Harvard University**
- 5. USED Finalizes New Higher Education Accreditation Rules**
- 6. Administration Announces USED (not DOL) will Distribute Remaining FY26 ESSA Formula Funds**
- 7. White House Issues New Executive Orders Seeking to Limit Birthright Citizenship**
- 8. White House Issues Executive Orders on Childhood Vaccine Recommendations**
- 9. 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. HHS Proposes Major Revision to Head Start Program Performance Standards

On 8/7/26, the U.S. Department of Health and Human Services (HHS) [published](#) a Notice of Proposed Rulemaking (NPRM) that would rescind the current [Head Start Program Performance Standards](#) (HSPPS) in their entirety and replace them with a substantially shorter set of requirements. The NPRM, if finalized, would significantly change the Head Start program by eliminating most of the existing standards that prescribe how grantees must offer high-quality, comprehensive services to children and families across the nation. HHS's proposal removes or significantly weakens many of the current requirements related to effective teaching and learning, teacher qualifications, developmental screenings, health and dental care, mental health care, maternal health, and parent governance, as well as tailored services for children with disabilities, children experiencing homelessness, dual language learners, and children in foster care.

HHS argues that the proposed changes are necessary to reduce what it characterizes as burdensome requirements and to increase flexibility in the Head Start program. The Administration estimates that finalizing its proposal will result in up to 236,000 additional children served by reallocating an estimated \$2.2 billion. There are no additional funds for Head Start assumed in HHS's analysis of the impact of its proposal. Rather, these estimated savings would arise from the combination of a provision in the NPRM limiting administrative costs and from programs changing their delivery models to provide fewer services and supports given the removal of most federal standards. Chief among the projected cost-saving changes are fewer teachers in the classroom; larger group sizes; shorter program hours; reduced health, dental, and mental health care, home visits, and other services; and reduced administrative costs.

EducationCounsel's new Deep Dive, [Unpacking the Notice of Proposed Rulemaking to Overhaul the Head Start Program Performance Standards](#), provides background on the HSPPS, explains their legal foundation, summarizes the major changes proposed in the NPRM, and outlines next steps in the regulatory process. HHS is accepting public comments [here](#) through October 6, 2026, and the current HSPPS remain in effect unless and until a final rule is issued. In the meantime, Head Start programs should not change their program design or operating procedures in anticipation of regulatory changes

2. USED Issues Guidance on School Discipline and Opens Investigations into Two School Districts

On 8/18/26, USED's Office for Civil Rights (OCR) [released](#) a [Dear Colleague Letter](#) (DCL) that asserts that certain school discipline practices violate the Equal Protection Clause and Title VI of the Civil Rights Act of 1964—including race-neutral efforts by school systems and institutions to improve policies and practices in response to evidence of unjustified, unnecessary disparities in their discipline data based on race, color, or national origin. Building on USED's recent rescission of longstanding Title VI regulations that prohibited disparate impact discrimination on the basis of race, color, or national origin (see our [7/23/26 Alert](#) for more information), the new DCL states that consideration of racial impact in student discipline in any way constitutes impermissible race discrimination, except in exceedingly rare circumstances that pass the strict scrutiny legal test. This interpretation aligns with two of President Trump's 2025 Executive Orders: "[Restoring Equality of Opportunity and Meritocracy](#)," which called for eliminating any use by the federal government of the disparate impact standard, and "[Reinstating Common Sense School Discipline Policies](#)," which previewed the new DCL by claiming that efforts to reduce disparate impact in school discipline are themselves a form of illegal racial discrimination. (See our [4/24/25 Alert](#) for more information on these EOs.)

It is likely that the Trump Administration's recent actions and interpretations in this area will be subject to legal challenge and judicial decisions over time. For now, system and institutional leaders should review the DCL and their current discipline policies and practices and consult with legal counsel as needed, but the DCL does not itself change what is or is not lawful under Title VI or the Equal Protection Clause. In a concluding footnote, OCR reiterates this point, noting that "this guidance is an interpretive rule that does not determine anyone's rights or obligations or have direct legal consequences. This guidance merely advises the public of the Department's interpretation of the statutes and rules that it administers."

However, the DCL's interpretation does put recipients of federal education funding—including early childhood, K–12, and postsecondary grantees—on notice that OCR's current view is that it is unlawful not only to intentionally consider a student's race in making discipline decisions. According to OCR, it is also often unlawful to take race-neutral efforts to improve school discipline practices in response to concerns about racial disparities. For example, among several statements about what violates Title VI in this context (see page 17 of the DCL in particular), OCR asserts that "a school's decision to change its discipline policies with the purpose of avoiding or reducing racial disparities in discipline constitutes race discrimination." OCR notes that "it is not race discrimination under Title VI for a school to design its discipline policies to ensure they are fair to all students regardless of race" while also asserting that the very same school would be acting illegally if it adopted those same fair policies if they do so after "evaluat[ing] the racial outcomes of their discipline policies and [making] decisions based on or because of those racial outcomes."

Indeed, OCR paired the DCL with the announcement that it has opened two investigations related to school discipline practices. In Arkansas, OCR will focus on whether the Fayetteville School District impermissibly used restorative justice initiatives to help address discipline disparities for students of color. In Wisconsin, OCR will investigate allegations that Milwaukee Public Schools staff, by discussing how some disciplinary practices "reflect[ed] systemic 'whiteness,'" were "seemingly encouraging school officials to consider race in disciplinary practices." It is worth noting that allegations contained in complaints submitted to OCR have by definition not yet been investigated or independently verified by those offices' investigators.

3. FCC Initiates Review of the E-Rate Program

On 8/14/26, the Federal Communications Commission (FCC) [published](#) in the Federal Register a notice of proposed rulemaking (NPRM) and further notice of proposed rulemaking (FNPRM) to undertake a comprehensive review of the federal E-Rate program. Rather than propose new legally binding rules, the FCC structured the NPRM around several questions it seeks responses to, including questions about (i) whether the FCC's progress in ensuring affordable access to high-speed broadband to and within schools and libraries justifies scaling back or repurposing the program and its dedicated funding, (ii) what measures the FCC can take through administrative and eligibility determination levers to better protect children and limit the use of screens in schools, and (iii) whether the FCC's current interpretation of the Children's Internet Protection Act is the best reading of the statute. The FNPRM proposes specific changes focused on strengthening the E-Rate program's integrity, such as by increasing oversight of external consultants working with eligible entities, and streamlining program administration through mechanisms such as amending competitive bidding requirements. Comments on both the NPRM and FNPRM are due on 10/13/26. Commenters will then have until 11/12/26 to post replies to others' comments.

4. Federal Court Dismisses DOJ's Antisemitism Suit Against Harvard University

On 8/13/26, a federal district court judge [dismissed](#) a case brought by DOJ against Harvard University, alleging that the university violated Title VI by failing to address a hostile learning environment for Jewish and Israeli students (see our [4/1/26 Alert](#) for more context). In his brief decision, Judge Stearns noted that nearly all of the incidents that DOJ raised in its complaint took place during the 2023–24 school year. After the government provided on 6/30/25 the statutorily-required notification that failure to comply with Title VI would jeopardize its federal funding, DOJ could not identify an ongoing violation before it filed the lawsuit toward the end of the 2025–26 school year. Rather than giving cause to withhold federal funding, this, wrote Judge Stearns, is an example of the Title VI enforcement process working as intended: “[T]he Government misconstrues, inadvertently or not, the purpose of an enforcement action under § 2000d-1. Congress’s intent was not to penalize a wayward funding recipient but instead to incentivize it to bring itself into compliance with Title VI.” For more on this ongoing and multi-faceted dispute, see EducationCounsel’s Deep Dive, [The Trump Administration vs. Harvard University](#).

5. USED Finalizes New Higher Education Accreditation Rules

On 8/19/26, USED [announced](#) the next step in its effort to overhaul regulations governing higher education accreditors by [issuing](#) a Notice of Proposed Rulemaking (NPRM) that “publish[es] the agreed-upon regulations” that emerged from the negotiated rulemaking process that took place earlier this year. In our [5/29/26 Alert](#), we provided a detailed summary and analysis of those consensus regulations. Among other significant changes, the proposed approach would mean that prospective accreditors would face a much lower bar to initial recognition, which means schools will more easily be able to switch accreditors to avoid sanction or scrutiny. Once recognized, accreditors would then face several new federal requirements under the NPRM, including ones that open the door to federal government review of diversity, equity, and inclusion initiatives. Comments on the NPRM can be submitted through 9/21/26. As we have previously noted, many of the changes in the proposed regulations appear to exceed the Higher Education Act’s statutory limits on USED authority over accreditation and raise concerns regarding the First Amendment rights of accreditors, postsecondary institutions, faculty, and students.

6. Administration Announces USED (not DOL) will Distribute Remaining FY26 ESSA Formula Funds

Despite the interagency agreement shifting most of the functions and funds of USED's Office for Elementary and Secondary Education to the U.S. Department of Labor (DOL), the Administration recently [confirmed](#) that the remaining FY26 formula funds under the Every Student Succeeds Act (ESSA) will be disbursed on 10/1/26 via USED's grant platform instead of through DOL's. This decision for DOL not to distribute the funds mirrors a [similar decision](#) for the first tranche of formula funds that went out on 7/1/26 via USED's system.

7. White House Issues New Executive Orders Seeking to Limit Birthright Citizenship

On 8/6/26, President Trump signed two executive orders (EOs) seeking to restrict access to birthright citizenship under the Fourteenth Amendment. The EOs come in the wake of the U.S. Supreme Court's ruling in *Trump v. Barbara* that President Trump's initial EO calling for the end of birthright citizenship was unconstitutional. The first of the new EOs, "[Continuing to Protect the Meaning and Value of American Citizenship](#)," directs federal agencies to exclude from birthright citizenship certain categories of children despite being born in the U.S. to noncitizen parents. Among other categories, these would include the children of foreign government employees, individuals associated with designated terrorist groups, and people the Administration identifies as having attempted to seek citizenship through birth tourism or fraud. The EO appears to apply not only to children in these categories who are born after the EO's issuance but also to children already born to non-citizen parents included in the EO's reach. Plaintiffs in one of the lawsuits that successfully challenged the initial EO have [asked](#) the court in that case to clarify that the Supreme Court's ruling also invalidates this new attempt to exempt certain categories of children from the Constitution's guarantee of birthright citizenship.

The second EO, "[Ending Birth Tourism](#)," directs the U.S. Departments of State and Homeland Security to prevent foreign nationals from entering or allowing them to remain in the U.S. for the purpose of giving birth to obtain citizenship for the child.

8. White House Issues Executive Orders on Childhood Vaccine Recommendations

On 8/10/26, President Trump signed an EO, "[Delivering Gold Standard Childhood Vaccine Recommendations for Americans](#)," to establish new federal childhood immunization recommendations. This order calls for reducing the number of routine universal vaccine recommendations from 18 to 11. It recommends dividing the other vaccines into one category only for children in high-risk populations and another to be administered through a shared decision-making process between parents and healthcare providers. The EO also directs federal agencies to promote the new recommendations and support parental choice in childhood vaccination decisions.

Regardless of the EO, states set and enforce school-entry immunization requirements. The EO encourages states to review and revise all laws and regulations governing vaccination requirements for school enrollment and attendance to align with these new federal *recommendations*, but there is no mechanism for enforcing the EO on states. In a [statement](#), the American Academy of Pediatrics continues to recommend vaccines to protect against all 18 diseases in its 2026 immunization schedule, not the modified approach recommended in this EO.

9. Other Significant Updates

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

DOJ Continues to Challenge State Laws Providing In-State Tuition for Undocumented Students: On 8/10/26, DOJ [announced](#) it has sued New York, Connecticut, and Vermont for providing in-state tuition and state financial aid to eligible undocumented students. This brings the total number of states whose laws are being challenged to 17.

DOJ Finds Duke Law School Admissions Practices Violate Title VI: Building on its [recent investigations](#) of admissions practices at medical schools, DOJ [announced](#) on 8/6/26 its first findings against a law school, Duke University's School of Law. According to DOJ, Duke Law intentionally discriminated based on race in violation of Title VI of the Civil Rights Act of 1964 and the U.S. Supreme Court's decision in *Students for Fair Admissions v. Harvard*. DOJ argues in its [findings letter](#) that, despite policies preventing admissions reviewers from seeing applicants' race, the reviewers used various methods to nevertheless identify and prefer applicants of color. These include reviewing essay responses that focus on diversity of perspectives and experiences as well as paying attention to "personal background variables commonly correlated with race (first-generation, Pell, etc.)." Like with its medical school findings letters, DOJ relies on disparities in disaggregated admissions data to conclude that Duke Law discriminated on the basis of race. DOJ will seek voluntary resolution with Duke Law but may pursue litigation if no agreement is reached.

DOJ Issues Legal Opinion Finding that Some NSF Programs are Unconstitutional: On 8/12/26, the Department of Justice's (DOJ) Office of Legal Counsel (OLC) issued a formal [memorandum opinion](#) in response to a request by the National Science Foundation (NSF) concluding that a number of grant programs authorized by Congress and implemented by NSF to support efforts to diversify STEM education are unconstitutional because of their race- or sex-based elements. OLC concluded that funds reserved for the affected programs could instead be used by NSF for other STEM education-related purposes.

Specifically, OLC asserts that three NSF programs—the Improving Undergraduate STEM Education: Hispanic-Serving Institutions program, the Alliances for Graduate Education and the Professoriate program, and the Louis Stokes Alliances for Minority Participation program—are "unconstitutional in their entirety." According to OLC, two other programs—Advanced Technological Education and the ADVANCE Program—contain unconstitutional criteria but can still be lawfully administered if NSF severs those criteria from the program's design. OLC also reviewed and found constitutional four other programs: Tribal Colleges and Universities Program, Graduate Research Fellowship Program, Advancing Informal STEM Learning, and Robert Noyce Teacher Scholarship Program.

Earlier this year, OLC issued a similar opinion regarding USED's Minority-Serving Institutions (MSI) programs. Citing OLC's conclusion, USED later announced it would shift MSI grant funds to a different program that does not require minimum racial/ethnic enrollment thresholds. NSF will likely take similar steps regarding the STEM education programs that OLC asserts are unconstitutional. (See our [1/8/26 Alert](#) for more information about OLC and its MSI letter; see our [5/29/26 Alert](#) for more on USED's shifting of MSI funds.)

Institute of Education Sciences Announces FY27 Grantmaking: On 8/6/26, the Institute of Education Sciences (IES) [announced](#) the launch of its FY27 research grant competitions for the National Center for Education Research (NCER) and National Center for Special Education Research (NCSE). IES is launching grant competitions in three tranches, and the grants are expected to total approximately \$250 million in funding. The first tranche of five grants opened on 8/6/26 and, like their predecessor competitions in prior years, focuses on “‘core infrastructure’ in [IES’s] efforts to support the development of the education sciences and the training of education scientists.” For the second and third tranches coming later this year, IES intends to limit competitions to the following research priorities: Literacy, STEM, Strengthening Systems for Evidence-Based Practice, the Special Education Workforce, Transitions from Secondary Education to the Workforce, and Low-Incidence Disabilities. IES announced that it intends for future grants to include, where possible, a research agenda with specific questions designed to “generate a cohesive body of knowledge.” The announcement did not indicate from which fiscal year appropriations IES is making these awards, or how IES intends to use any remaining funds appropriated by Congress before they expire. (See our [7/9/26 Alert](#) for more information on the federal lawsuit on underspending of federal education R&D funds.)

Challenge to DHS Final Rule Limiting International Student Visas: On 8/18/26, a group of higher education organizations and labor unions [filed](#) a lawsuit seeking to block a new DHS rule that, among other things, limits F-1 student visas and J-1 exchange visitor visas to a maximum of four years (see our [7/23/26 Alert](#) for a summary of the rule). The lawsuit argues that the rule should be vacated because it is arbitrary and capricious and violates part of the Immigration and Nationality Act. Further, the plaintiffs argue that DHS failed to adequately respond to public comments objecting to the rule and offering less burdensome alternative solutions to DHS’s concerns with the current system.

Court Dismisses Minnesota’s Preemptive Title IX Challenge: On 8/10/26, a federal district court [dismissed](#) on procedural grounds most of Minnesota’s challenge to the Administration’s legal position that Title IX prohibits states from allowing students to access facilities and participate in sports teams aligned with their gender identity. (Note that the recent Supreme Court decision in *West Virginia v. B.P.J.* did not reach this question, deciding only that states *could* prohibit such access if they chose to; see our [Deep Dive](#) on the case for more information.) In its lawsuit, Minnesota argued that the Administration’s actions conflict with Minnesota’s own antidiscrimination laws and that the Administration unlawfully threatened Minnesota’s federal funding over these issues. The court dismissed five out of Minnesota’s six claims, in part because it ruled that the federal government had not yet taken a final agency action against the state. The court is allowing Minnesota’s Spending Clause claim to proceed, which focuses on whether the Administration can withhold federal funding based on a new interpretation of Title IX that was not in effect when the state accepted the funds. Relatedly, there is still a separate Title IX lawsuit pending that the DOJ brought against the Minnesota Department of Education and the Minnesota State High School League (see our [4/1/26 Alert](#) for more information).

Unions Sue USED over New Graduate Loan Caps: On 8/11/26, a coalition of unions representing public service and healthcare workers, including the American Federation of Teachers, [filed a lawsuit](#) challenging USED’s recent decision to exclude graduate programs for teachers and other public service professionals from the definition of “professional degree” programs, which allow students to access higher amounts of federal student loans under new caps enacted by the One Big Beautiful Bill Act. This lawsuit follows a similar challenge by a coalition of states that led USED to issue guidance expanding the list of qualifying

professional degrees to some additional medically-related fields but that continued to exclude educators and others. (See our [7/9/26 Alert](#) for additional details on that suit and USED's guidance issued in response.)

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 August 20, 2026 at 9:00 am ET.