

EducationCounsel Alert for September 16, 2026

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

- [1. DOJ Announces Final Challenges to In-State Tuition for Undocumented Students](#)
- [2. Federal Court Blocks DHS Rule to Limit International Student Visas](#)
- [3. Federal Courts Rule Against the Administration Regarding Adding New Conditions to Existing Grants](#)
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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*.

- Note that this week's Alert includes a new feature in the final item, a [table](#) listing a number of **proposed federal regulations affecting education that are currently open for public comment**. For each proposed rule, the table includes the link to the Notice of Proposed Rulemaking, any relevant EducationCounsel resources, and the deadline for submitting comments.

[1. DOJ Announces Final Challenges to In-State Tuition for Undocumented Students](#)

On 9/10/26, the U.S. Department of Justice (DOJ) [announced](#) that it has filed lawsuits against Hawaii, Washington, DC, Arkansas, and Utah challenging their laws providing in-state tuition and financial assistance to eligible undocumented students. DOJ continues to argue that these policies violate a federal law by providing educational benefits to undocumented students residing in the state that are not available to U.S. citizens residing out of the state. This brings the total number of such challenges to 25, and DOJ stated that it has filed suit against all of the states with laws it views as being preempted.

Relatedly, a federal judge [issued](#) a permanent injunction on 9/9/26 striking down Kansas's law. (Although the Kansas Attorney General declined to defend the state's law, the Kansas Governor and a nonprofit organization sought to intervene in the lawsuit; the court denied their motions to intervene as being futile given the court's ruling that federal law preempts the Kansas law.)

[2. Federal Court Blocks DHS Rule to Limit International Student Visas](#)

On 9/14/26, a federal judge [granted](#) a nationwide preliminary injunction blocking a DHS rule that would have limited international students' F-1 student visas and J-1 exchange visitor visas to no more than four years. Because many advanced degree programs (e.g., Ph.D. programs) require more time to complete, students would be required to seek a federal extension after four years to continue their studies. Prior to the rule, international students generally received visas for the duration of their course of study. (See our [7/23/26 Alert](#) for more information.) The vast majority of the roughly 22,000 public comments raised concerns about the rule, including the likely negative effect it would have on international student enrollment, especially in graduate programs.

The injunction postpones the rule's 9/15/26 effective date until the lawsuit is resolved. The court concluded that the plaintiffs are likely to succeed on the merits of their claims that DHS violated the Administrative Procedure Act by failing to adequately assess the rule's costs, consider alternatives, and meaningfully respond to public comments. According to the court, "the government's proffered rationales for the rule are exceptionally weak, and the connection between the rule and the problems it purports to address is exceptionally attenuated." The court also concluded that it has the authority to grant nationwide relief, rather than limit its injunction just to the plaintiffs who brought the case, as the Supreme Court ruled courts must do in other contexts.

3. Federal Courts Rule Against the Administration Regarding Adding New Conditions to Existing Grants

Two different federal courts recently concluded that the Administration could not add new conditions on existing federal grants. These are the latest legal developments arising from the Trump Administration's approach to terminating or discontinuing grants awarded by the Biden Administration and enforcing its preferred legal interpretations about the scope of federal civil rights laws.

- On 8/31/26, a federal district court [dismissed](#) the Administration's lawsuit challenging California's state policy permitting transgender girls to participate in girls' school sports. The Administration had argued that California's policy violated Title IX, threatening to withhold federal education funding to the state unless the California Department of Education and the California Interscholastic Federation adopted participation policies based on "biological sex." (See our [7/14/26 Alert](#) for more information about the lawsuit.) The court concluded that the federal government had not adequately notified California that its funding was conditioned on adopting the Administration's interpretation of Title IX and could not retroactively do so. (In so doing, the court acknowledged that the U.S. Supreme Court has only [decided](#) that states *may* adopt this interpretation—not that they *must*. The court thus also did not reach the question of whether the Administration's preferred interpretation of Title IX is correct or not.)
- On 8/25/26, the U.S. Court of Appeals for the Ninth Circuit issued a [decision](#) upholding most of a preliminary injunction blocking the U.S. Departments of Housing and Urban Development (HUD) and Transportation (DOT) from enforcing an array of new conditions the agencies imposed on previously awarded federal grants to more than 30 local governments and public agencies. The appeals court held that HUD and DOT had exceeded their statutory authority under the Administrative Procedures Act in imposing most of these conditions, emphasizing that the authority to attach conditions to federal funding rests principally with Congress and must be grounded in statutory authority. Note that although this case is not about education grants, the court's decision will likely inform similar challenges brought by grant recipients against any agency, including USED, that seeks to impose new conditions on existing grants.

4. Other Significant Updates

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

USED Publishes a Learning Agenda Playbook for States: On 9/9/26, USED [announced](#) the release of the [Learning Agenda Playbook](#), a new set of resources developed by the Office of Elementary and Secondary Education and the Institute of Education Sciences, in collaboration with the National Comprehensive Center, to support state educational agencies (SEAs) in using evidence to inform decisions and strategic planning. USED describes a learning agenda as “a strategic, multi-year plan that guides SEAs to identify their most pressing challenges, ask the right questions, build the evidence to answer them, and invest state resources where they will have the greatest impact.” Eight SEAs helped develop and pilot the playbook: Arkansas, Georgia, Idaho, Kansas, New Hampshire, Tennessee, Utah, and Wisconsin.

HHS Awards \$225 Million to Improve Head Start Nutrition, Facilities, and Services: On 9/8/26, the U.S. Department of Health and Human Services (HHS), through its Administration for Children and Families (ACF), [announced](#) more than \$225 million in supplemental awards for Head Start programs to improve nutrition services, facilities, and one-time operational needs. The funding includes \$89 million for nutrition, over \$88 million for facility improvements and updating projects, and more than \$47 million to support needs such as transportation, technology, playgrounds, security, and staff training. This announcement comes amid a proposed overhaul to the Head Start Performance Standards, that would remove or reduce federal requirements related to comprehensive services, health and safety, staffing, transportation, and program operations (see our [8/20/26 Alert](#) and [Deep Dive](#) for more information and analysis of the proposal).

American Bar Association Eliminates its DEI Standard: On 9/8/26, the American Bar Association’s (ABA) accreditation council voted 10-6 to repeal its requirement that ABA-accredited law schools “demonstrate...a commitment to diversity and inclusion.” The ABA had previously suspended any enforcement of the standard, but its continued existence was one of the reasons cited in a recent USED staff [report](#) recommending that the agency should deny the ABA’s pending application to renew its accreditation recognition. (See our [9/3/26 Alert](#) for more information.)

Lawsuit Challenges “Public Charge” Rule: Two federal lawsuits were filed on 9/14/26, [one](#) by a coalition of states and [one](#) by a coalition of cities and counties, to challenge a new U.S. Department of Homeland Security (DHS) rule providing broader discretion for immigration officers to determine whether applicants for lawful permanent residence are likely to become dependent on certain government benefits in the future, which would make them a “public charge.” The lawsuits argue that the rule could create a chilling effect for immigrant families, including those with U.S. citizen children, from accessing services they may be eligible for—including early learning, health care, nutrition, and housing assistance—out of concern that doing so could jeopardize their immigration status. Absent any action on the lawsuits, the rule will go into effect on 9/18/26. (See our [7/23/26 Alert](#) for more information.)

5. Table of Proposed Federal Rules

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

Notice of Proposed Rulemaking (NPRM)	EducationCounsel Resources	Deadlines for Submitting Comments
Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies (NPRM)	• Alert from 8/20/26 about the NPRM • Alert from 5/29/26 about the consensus rules emerging from the negotiated rulemaking committee	USED is accepting public comments here through 9/21/26 .
Education Department General Administrative Regulations (EDGAR) (NPRM)	• Overview & FAQs of USED's Proposed Changes to EDGAR • Alert from 9/3/26	USED is accepting public comments here through 9/23/26 .
Application of PRWORA to the Refunded Portion of Certain Federal Refundable Tax Credits (NPRM)	• Alert from 9/3/26	Treasury is accepting public comments here through 10/5/26 .
Reducing Federal Burden for Head Start Programs (NPRM)	• Unpacking the NPRM to Overhaul the Head Start Program Performance Standards • Alert from 8/20/26	HHS is accepting public comments here through 10/6/26 .
FCC To Review E-Rate Program To Ensure Congress's Vision (NPRM)	• Alert from 8/20/26	FCC is accepting public comments here through 10/13/26 (reply comments will be due by 11/12/26).
Racial Nondiscrimination in Private Schools (NPRM)	• Alert from 9/3/26	Treasury is accepting public comments here through 11/3/26 .

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 September 16, 2026 at 10:00 am ET.