

EducationCounsel Alert for October 1, 2026

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

- 1. Treasury Issues Regulations Governing the Federal Scholarship Tax Credit**
- 2. Court Rules that USED Illegally Terminated Teacher Preparation Grants**
- 3. Court Rules that USED and Other Agencies Unlawfully Changed Immigrants' Eligibility for Federal Public Benefits**
- 4. USED Rescinds Biden-Era Title IX Rule, Will Continue Enforcing Under Rule from Trump's First Term**
- 5. USED Announces "Defend the Spend" Requirements for All Grantees**
- 6. OMB Issues "Pocket Rescission" to Avoid Spending \$810 Million in FY26 Funds**
- 7. USED Awards Additional Funds to HBCUs and TCUs**
- 8. Department of Justice Takes Steps to End Longstanding Desegregation Cases**
- 9. Other Significant Updates**
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In addition to this week's Alert, please also see the following new resource:

- [EducationCounsel's Quarterly Federal Policy Update for September 2026](#) is intended to provide a deeper understanding of key early childhood, K-12, and higher education policies that have been advanced at the federal level by the Trump Administration and Congress over the past three months and how they could continue to play out in the coming months.

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. Treasury Issues Regulations Governing the Federal Scholarship Tax Credit

On 10/1/26, the U.S. Department of the Treasury [released](#) both [proposed regulations](#) and [temporary regulations](#) to begin implementing the Federal Scholarship Tax Credit (FSTC). (See this [overview](#) for background information on the FSTC.) Treasury states that the two sets of proposed regulations will govern implementation of the tax credit until Treasury issues final regulations. The public can submit comments on the proposed regulations for the next 60 days, after which Treasury will respond to those comments and issue final regulations that will then govern the program moving forward. Treasury also stated that it expects to issue separate guidance "as soon as possible" interpreting the statutory language that lists what qualifies as an eligible expense that FSTC scholarships can support. EducationCounsel is reviewing the regulations and will provide a more detailed analysis soon.

- For state-level leaders (in and out of government) in participating states, EducationCounsel recently published [Implementing the Federal Scholarship Tax Credit to Maximize Supports for Public School Students: Considerations for State-Level Leaders](#), which discusses practical considerations, decision points, and strategies to consider. The resource is designed to help states that opt into the FSTC implement the tax credit in ways that align with state goals, maximize supports for public school students, and minimize some of the risks the FSTC poses to public education. It will be updated shortly to reflect the new regulations that will govern implementation in the program's first year.

2. Court Rules that USED Illegally Terminated Teacher Preparation Grants

On 9/17/26, a federal district court judge in Massachusetts [granted summary judgment](#) to a group of eight states in their lawsuit against USED challenging the [termination](#) of Teacher Quality Partnership (TQP) and Supporting Effective Educator Development (SEED) grants in those states. These terminations were part of the [initial wave](#) of sudden grant terminations at the beginning of President Trump's second term that were carried out by agencies such as USED in partnership with the Department of Government Efficiency (DOGE) and often, as was the case here, in furtherance of President Trump's 1/21/25 and 2/3/25 [anti-DEI executive orders](#).

The court ruled that USED violated the Administrative Procedure Act (APA) in multiple ways by issuing an internal directive on 2/5/25 titled "Eliminating Discrimination and Fraud in Department Grant Awards" ("February 2025 Directive"), which mandated the termination of any grants advancing diversity, equity, or inclusion. Concluding that USED had both acted arbitrarily and capriciously and contrary to federal laws and regulations, the court vacated the February 2025 Directive and declared it to be unlawful, "ensuring that [USED] can no longer terminate TQP and SEED grants under its anti-DEI policies." Note that, because of the U.S. Supreme Court's ruling in a [different case](#), the court in this case could not review the legality of the individual grant terminations nor could it reinstate the states' TQP or SEED grants after finding that the underlying policy was unlawful.

Notably, the court's opinion includes the following account (in footnote 4) of the Administration's legal arguments regarding "DEI": "In their briefing, Defendants argue that the Directive applies only to *discriminatory* DEI activities, not *all* DEI activities. During oral argument, however, Defendants retreated from that view and clarified that their position is that the Directive applies to all DEI activities, but that is because all DEI activities are discriminatory." Multiple federal courts have affirmed that executive orders and Administration policies cannot simply declare that all DEI activities are illegal. Indeed, there are many lawful ways to advance diversity, equity, and inclusion.

3. Court Rules that USED and Other Agencies Unlawfully Changed Immigrants' Eligibility for Federal Public Benefits

On 9/21/26, a federal district court judge in Rhode Island [granted summary judgment](#) to a group of 20 states and the District of Columbia in their lawsuit challenging five federal agencies' reinterpretation of what counts as "federal public benefits" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, sometimes referred to as "the 1996 welfare law"). The court ruled that the defendant agencies—the U.S. Departments of Education (USED), Justice (DOJ), Health and Human Services (HHS), Labor (DOL), and Housing and Urban Development (HUD)—violated the Administrative Procedure Act (APA) by issuing their new policies without going through the appropriate rulemaking process.

The court had previously [issued](#) a preliminary injunction in the case, but that ruling halted enforcement of the agencies' reinterpretations only in the plaintiff states. The new summary judgment ruling, by contrast, vacates the reinterpretations entirely—meaning the agencies cannot enforce them anywhere. If the Administration wants to pursue this new approach to PRWORA, the court concluded, each agency must first engage in notice-and-comment rulemaking. (See our Deep Dive, [Who Benefits?](#), for more information on the Administration's PRWORA actions, and see our [9/3/26 Alert](#) for an example of a federal agency (Treasury) initiating a formal rulemaking process to reinterpret PRWORA.)

4. USED Rescinds Biden-Era Title IX Rule, Will Continue Enforcing Under Rule from Trump's First Term

On 9/28/26, USED [announced](#) that it formally rescinded the Title IX rule promulgated in 2024 by the Biden administration and restored the rule promulgated by the first Trump administration in 2020 with some changes to account for developments that postdate the rule's 2020 release. USED took this action via a final rule without first engaging in notice-and-comment rulemaking. In an accompanying [fact sheet](#), USED characterized the rescission as clerical in nature and stated that “[n]othing changes in practice for individual students, parents, and teachers.” This is because the Office for Civil Rights (OCR) has already been enforcing Title IX under the 2020 rule instead of the 2024 rule, which was blocked by multiple lawsuits and ultimately vacated by two federal courts in early 2025. OCR announced its reliance on the 2020 rule following those court orders, as well as a 1/20/25 [executive order](#) about Title IX and a 1/31/25 [Dear Colleague Letter](#) from OCR regarding this topic.

The [Biden-era rule](#), issued on 4/29/24 and made effective on 9/1/24, defined prohibited discrimination based on “sex” to include discrimination based on “sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity.” Among other things, the 2024 rule:

- Required schools to respond to sex-based harassment (and other sex discrimination) by taking “prompt and effective action,” providing supportive measures for survivors, and addressing sex-based harassment or assault occurring “under a recipient’s education program or activity in the United States,” including even if the conduct takes place in off-campus settings subject to the school’s disciplinary authority (such as in online forums, on field trips, or at a fraternity house); and
- Prohibited schools from requiring students who are pregnant or have a related condition to provide documentation from a healthcare provider to participate in school and, for the first time, established an affirmative right to “reasonable modifications.”

The 2024 rule did not address athletics, including the question of transgender athletes’ access to sports teams aligned with their gender identity. USED published a [proposed rule](#) on this topic on 4/13/23, but the agency [withdrew](#) it before the end of President Biden’s term.

The [rule](#) from the first Trump administration, issued on 5/19/20, made effective on 8/14/20, and officially re-codified via this new action on 9/28/26, does not define “sex,” noting that “the word ‘sex’ is undefined in the Title IX statute” and “the Department did not propose a definition of ‘sex’ in the NPRM and declines to do so in these final regulations.” In its new announcement rescinding the 2024 rule, however, USED outlined many of the steps that OCR has taken in the second Trump administration to require that schools adopt policies related to sex-separate spaces, facilities, and athletics teams that treat students based on their sex assigned at birth rather than their gender identity.

It appears likely that OCR will continue to enforce Title IX in line with this interpretation of “sex” until the meaning of “sex” for purposes of Title IX is decided by federal litigation, a new USED regulation, or congressional action. Indeed, as discussed in our [7/9/26 Alert](#), USED’s most recent update to its regulatory agenda included an [entry](#) for issuing a Title IX rule that will “clarify[] that implementation of Title IX is to be based on sex, which shall refer exclusively to an individual’s immutable biological classification as either male or female.”

5. USED Announces “Defend the Spend” Requirements for All Grantees

On 9/28/26, USED sent [guidance](#) to all of its grant recipients outlining new requirements for submitting a written justification each time they request to access a portion of their federal grant funds. The requirements for written justifications, which the guidance refers to as “Defend the Spend,” will go into effect 11/1/26 and are part of the agency’s implementation of the [executive order](#) focused on cost efficiency. A similar requirement is included in OMB’s proposed regulations governing federal financial assistance (see this [OMB Overview & FAQ](#) for more information), which OMB is currently prohibited from finalizing by the terms of Congress’s Continuing Resolution that maintains federal funding through 12/11/26.

Although USED’s guidance claims the new requirements “should not change the timeline for processing a payment request,” it also encourages grantees to “plan accordingly and allow sufficient time for processing, in the instance where additional review or clarification may be required.” According to the guidance, grantees whose justifications “trigger procedural or internal control concerns” will be required to submit a clarification or may have their payment request rejected outright. It is unclear how this requirement complies with [existing grant regulations](#), which set specific requirements and processes for when prior approvals may be required (generally when a grantee has a history of non-compliance with the terms and conditions of federal awards) and which specifies that such requirements must be “promptly removed once the conditions that prompted them have been satisfied.”

The guidance to grantees also highlights that these Defend the Spend requirements have already been in place for grants co-administered by partner agencies through the interagency agreements (IAAs) USED has been entering into as part of the Administration’s efforts to dismantle the agency. (For additional context about the Administration’s use of IAAs, see EducationCounsel’s legal analysis, [Beyond “The Maximum Extent Permitted By Law”](#).) It is also worth noting that Defend the Spend protocols have been in effect at HHS, where USED’s Office of Special Education and Rehabilitative Services (OSERS) grants are expected to move via an IAA. A federal court has paused the justification requirements for some HHS grantees (see our [2/19/26 Alert](#) for more information).

6. OMB Issues “Pocket Rescission” to Avoid Spending \$810 Million in FY26 Funds

On 9/25/26, the White House Office of Management and Budget (OMB) [announced](#) the use of a so-called “[pocket rescission](#)” to cancel \$810 million in previously appropriated funding before fiscal year (FY) 2026 ends on 9/30/26. The affected funds primarily include U.S. Department of Health and Human Services (HHS) funding for programs serving undocumented immigrants and unaccompanied children, as well as those under the Office of Minority Health. Approximately \$95 million in U.S. Department of Education (USED) programs would also be canceled, including \$70 million for International and Foreign Language Education (of the \$85 million appropriated by Congress) and \$25 million (of \$52 million appropriated by Congress) from the Special Programs for Migrant Students programs, which include the High School Equivalency (HEP) and College Assistance Migrant (CAMP) programs.

Following this most recent announcement, the Government Accountability Office (GAO) [issued](#) a [letter](#) to congressional leaders reviewing OMB’s actions. GAO reiterated its prior finding that the Impoundment Control Act (ICA) “does not permit the withholding of funds past their expiration date,” and noting further the ICA “permits only the temporary withholding of budget authority and provides that unless Congress

rescinds the amounts at issue, they must be made available for obligation.” The issue of the Administration’s use of pocket rescissions moving forward is likely to be revisited as part of negotiations on FY2027 appropriations bills after the midterm elections, with Republican Senate Appropriations Committee Chair Susan Collins (R-ME) [saying](#) that lawmakers were “already looking at language” targeting pocket rescissions.

7. USED Awards Additional Funds to HBCUs and TCUs

On 9/22/26, USED [announced](#) additional funding of \$174 million for Historically Black Colleges and Universities (HBCUs) and \$61 million for Tribally Controlled Colleges and Universities (TCUs). The announcement did not detail the source of the additional funds.

Last year, USED [reprogrammed](#) FY25 funds from Minority-Serving Institutions (MSI) grant programs to HBCUs and TCUs. Those funds were taken from MSIs’ discretionary funding (or annual funding appropriated by Congress) because, according to USED, the MSI grant programs were unconstitutional. (See our [1/8/26](#) and [5/29/26](#) Alerts for more on this topic.) In response, Congress included in its FY26 appropriations law a new provision that prevents USED from reprogramming discretionary funding from MSIs to HBCUs. According to some [reporting](#), USED has instead provided the additional investments for HBCUs and TCUs by canceling *mandatory* funding for MSIs, which is provided outside of annual appropriations laws through a separate statute. Because [Title III-F of the Higher Education Act](#), which authorizes mandatory appropriations for HBCU and MSI programs, does not appear to allow this type of reprogramming of funds, it is possible the action may be challenged in court.

8. Department of Justice Takes Steps to End Longstanding Desegregation Cases

On 9/24/26, the U.S. Department of Justice (DOJ) [announced](#) “the dismissal of more than fifty desegregation cases” involving school districts that have remained under a federal court order to eliminate, to the extent practicable, any remaining vestiges or remnants of their prior segregated public school system and thus achieve “unitary status.” DOJ’s press release does not list the specific cases, so it is difficult to know exactly what it means by “dismissal.” Some cases may have proceeded in the typical fashion for desegregation cases, with a judge determining—often in response to a joint motion brought by DOJ and the school district—that the district has achieved unitary status. In those cases, the court terminates the court order and dismisses the case. (For example, see this 7/31/25 [joint motion](#) by DOJ and the Covich County School District in Mississippi seeking a declaration of unitary status.)

But DOJ may have also used a different approach to these cases, voluntarily dismissing cases without a judge first making the substantive unitary status finding. (For example, see this 7/23/25 [joint stipulation of a voluntary dismissal](#) by DOJ and the Board of Education of Hendry County in Florida that asserts the district has achieved unitary status.) This is particularly likely for cases in the states within the U.S. Court of Appeals for the Fifth Circuit (i.e., Louisiana, Mississippi, and Texas), which recently [held](#) that federal courts no longer have any authority over a case when all parties agree to dismiss it. The DOJ may take this approach with other existing desegregation cases, especially those that do not involve private plaintiffs (whether existing or newly proposed).

9. Other Significant Updates

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

Court Rules that Oklahoma Cannot Prohibit Religious Charter Schools: On 9/24/26, a federal district court judge in Oklahoma [issued](#) a preliminary injunction that prevents the Oklahoma Statewide Charter School Board from enforcing a state law that requires charter schools to be “nonsectarian.” The plaintiff in the lawsuit, the National Ben Gamla Jewish Charter School Foundation, will now likely be able to establish the nation’s first religious public school. If the decision is appealed, it may provide the U.S. Supreme Court with a second chance to decide if the First Amendment’s Free Exercise Clause requires that charter authorizers such as the one in Oklahoma must allow sectarian schools to apply for a charter on equal terms as nonsectarian schools. As discussed in our [6/2/25 Alert](#), the Supreme Court deadlocked 4-4 on this question in a prior case from Oklahoma involving a proposed Catholic charter school because Justice Amy Coney Barrett had to recuse herself from that particular case.

USED Grants Mississippi’s ESSA Waiver Request: On 9/24/26, USED [announced](#) that it has approved Mississippi’s Every Student Succeeds Act (ESSA) waiver request. Mississippi is the seventh state to receive a waiver, joining [Iowa](#), [Louisiana](#), [Indiana](#), [Vermont](#), [Arkansas](#), and [South Dakota](#). Mississippi’s waiver allows the state’s department of education to consolidate approximately \$14 million in state-level activities funds through 2029, including funds from Title II, Part A (Supporting Effective Instruction); Title III, Part A (English Language Acquisition); Title IV, Part A (Student Support and Academic Enrichment); and Title IV, Part B (21st Century Community Learning Centers).

NACIQI Recommends Suspending APA Accreditor and Defers on ABA Decision: At its September meeting, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) voted 7-4 to recommend that USED suspend the federal accreditation status of the American Psychological Association’s (APA) Commission on Accreditation. Concerns raised during the review process included allegations that APA failed to adequately address antisemitism within accredited programs. At the same meeting, NACIQI deadlocked on whether to continue or deny recognition of the American Bar Association’s (ABA) Council of the Section of Legal Education and Admissions to the Bar. (See our [9/3/26 Alert](#) for more information about the ABA’s accreditation status.) There were reviews of other accreditation agencies on the agenda, but the committee will take those up in a subsequent meeting.

Commission on Civil Rights Issues Report on the Federal Response to Antisemitism in Higher Education:

On 9/28/26, the bipartisan U.S. Commission on Civil Rights [issued](#) an extensive [report](#) on the federal government’s efforts to address antisemitism at American colleges and universities since the 10/7/23 Hamas attacks in Israel. Approved unanimously, the report found that campus antisemitism is a growing concern but institutions have responded inconsistently and struggle to “address discrimination and harassment based on Jewish shared ancestry while protecting political speech, peaceful protest activity, academic freedom, and other forms of expression covered by the First Amendment and central to effective higher education.” The report also notes that actions taken by the second Trump Administration to protect Jewish students—including sweeping funding cuts and institutional penalties, recent reductions in federal offices responsible for enforcing nondiscrimination protections, and departures from established and statutorily required investigative practices—may produce unintended harms to both Jewish and non-Jewish students.

GAO Report Raises Concerns about USED's Suspension of ESEA Monitoring: On 9/23/26, the Government Accountability Office (GAO) released a [report](#) about USED's discontinuation earlier this year of its comprehensive monitoring of states' compliance with ESSA programmatic and fiscal requirements. The report focused on the implications for chronic absenteeism but also noted the increased risk of undetected fraud, waste, or abuse. GAO's recommendations include that Congress clarify ESSA oversight requirements and that USED resume its comprehensive monitoring while also improving its methodology for calculating chronic absenteeism.

New Law Allows Early Childhood Educators to Deduct Classroom-Related Expenses: A newly enacted international sanction law includes a provision that amends the Internal Revenue Code to extend the existing educator expense deduction to eligible early childhood educators, allowing them to deduct up to \$350 of unreimbursed classroom expenses, such as books, classroom supplies, learning tools, and other materials they purchase for the children in their care. Prior to this new law, K-12 teachers could claim this deduction, but pre-K and early childhood educators could not.

10. 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.

Agency & Notice of Proposed Rulemaking (NPRM)	EducationCounsel Resources	Status & Deadline for Submitting Comments
USED: 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 rules emerging from negotiated rulemaking	WAITING FOR FINAL RULE 2,822 comments were submitted by the 9/21/26 deadline.
USED: Education Department General Administrative Regulations (EDGAR) (NPRM)	• Overview & FAQs of USED's Proposed Changes to EDGAR • Alert from 9/3/26	WAITING FOR FINAL RULE 5,510 comments were submitted by the 9/23/26 deadline.
HHS: Reducing Federal Burden for Head Start Programs (NPRM)	• Unpacking the NPRM to Overhaul the Head Start Program Performance Standards • Alert from 8/20/26	ACCEPTING PUBLIC COMMENTS Submit public comments here through 10/6/26 .
FCC: FCC To Review E-Rate Program To Ensure Congress's Vision (NPRM)	• Alert from 8/20/26	ACCEPTING PUBLIC COMMENTS Submit public comments here through 10/13/26 (replies will be due by 11/12/26).
Treasury: Racial Nondiscrimination in Private Schools (NPRM)	• Alert from 9/3/26	ACCEPTING PUBLIC COMMENTS Submit public comments here through 11/3/26 .
Treasury: Federal Scholarship Tax Credit (Unpublished NPRM)	• FSTC Primer • Considerations for State-Level Leaders	WILL ACCEPT PUBLIC COMMENTS Submit public comments here once the official version is published (likely on 10/2/26) for a 60-day period (likely ending on 12/2/26).

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 October 1, 2026 at 3:00 pm ET.