EducationCounsel Alert for October 29, 2026

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

1. Commerce Proposes Changes to Census that Could Affect Education Data and Funding
2. Supreme Court Agrees to Take Up Race-Based Challenge to Magnet School Admissions Policy
3. Administration Drops Defense of Public Service Loan Forgiveness Restrictions
4. Court Rules FCC Lacked Authority to Establish E-Rate's Administrative Entity
5. University of North Carolina Settles with Trump Administration over Civil Rights Investigations
6. USED and DOJ Rescind Guidance on English Learner Students, LEP Parents & Race in School Discipline
7. Other Significant Updates
8. Table of Proposed Federal Rules

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. Commerce Proposes Changes to Census that Could Affect Education Data and Funding

On 9/10/26, the U.S. Department of Commerce's Census Bureau proposed a number of changes to the decennial census, several of which would affect the accuracy of data used in public education. If finalized, Commerce's proposal would exclude most noncitizens from the census, including undocumented children. Because the decennial census informs the population estimates that the federal government uses to distribute education funds via formula (such as Title I and IDEA), any inaccuracies in the count could lead to underfunding of some school districts. Another part of the proposed rule would bar questions about race, ethnicity, and sexual orientation from appearing on the census form. Undercounting certain populations of students in the census would also likely compromise other education surveys and research that rely on the decennial census for accurate data. Public comments can be submitted here through 11/2/26—almost 120,000 comments have already been submitted.

2. Supreme Court Agrees to Take Up Race-Based Challenge to Magnet School Admissions Policy

On 10/19/26, the Supreme Court agreed to hear a challenge to Montgomery County Board of Education's (MCPS) admissions process for a group of highly-selective public magnet schools in the Maryland school district. The Court indicated it will hear arguments specifically on the question of "whether a plaintiff challenging a facially neutral admissions policy as racially discriminatory must establish that the targeted racial group suffered an aggregate disparate impact relative to its share of the applicant pool." Two years ago, the Court declined to take up similar cases that upheld K-12 admissions policies in Fairfax County, Virginia and Boston. This case will be the Court's first opportunity to revisit the topic of race and admissions since its 2023 higher education decision involving Harvard University and the University of North Carolina.

Parents challenging the policy at issue in *Association for Education Fairness v. Montgomery County Board of Education* claim that MCPS violated the Equal Protection Clause of the 14th Amendment because it allegedly revised the admissions process with the intent to reduce the number of Asian-American students

attending those schools—despite the fact that the revised process is racially neutral on its face (i.e., MCPS does not treat applicants differently on the basis of their race). During the 2021-22 school year, MCPS revised its admissions policy to enter all fifth graders who met a series of threshold criteria (including grades, reading level, and standardized test scores) in a lottery for admission to the magnet programs. The district court dismissed the lawsuit, concluding that the plaintiffs had not shown that MCPS's policy had disparately impacted Asian-American students, who the judge noted "consistently have occupied a proportionally greater share of students admitted into the magnet program as compared to their representation in the applicant pool." The court also held that the plaintiffs failed to show that MCPS was motivated by discriminatory intent in changing its admissions policy. The Fourth Circuit upheld that decision on appeal before the plaintiffs sought review by the Supreme Court. Oral arguments on the disparate impact question will likely take place in early 2027, with a decision likely by June 2027.

3. Administration Drops Defense of Public Service Loan Forgiveness Restrictions

On 10/21/26, the U.S. Department of Justice (DOJ) asked two federal courts to dismiss the DOJ's own appeals of lower court rulings vacating the U.S. Department of Education's (USED) changes to the Public Service Loan Forgiveness (PSLF) program. One year ago, USED finalized a rule that would have allowed it to disqualify certain employers from PSLF if the agency determined that those employers engaged in activities with a "substantial illegal purpose," including activities related to immigration, gender-affirming care, diversity, equity and inclusion, and state law violations. (See our 11/13/25 Alert for full details on the final rule and our 3/11/26 Alert about President Trump's executive order about PSLF.) The rule faced immediate legal challenges from states, nonprofit organizations, and labor unions. On 6/30/26, federal courts in Massachusetts and the District of Columbia vacated the rule after concluding that it exceeded the Administration's authority and raised First Amendment concerns (see our 7/9/26 Alert). DOJ first appealed both decisions and has now abandoned those appeals.

This is not necessarily the end of the Administration's efforts to narrow employer eligibility for PSLF. The Administration has indicated its intention to promulgate regulations on additional higher education topics, and it is possible that it will choose to reregulate on this issue.

4. Court Rules FCC Lacked Authority to Establish E-Rate's Administrative Entity

On 10/15/26, the U.S. Court of Appeals for the Fifth Circuit ruled that the Federal Communications Commission (FCC) lacked the statutory authority to create the Universal Service Administrative Company (USAC), the quasi-independent entity that administers the Universal Service Fund (USF), which includes the E-Rate program subsidizing high-speed internet access for schools and libraries. Because the court concluded that the FCC lacked the authority to establish USAC, it also struck down the USF contribution rate from telecommunications providers for the fourth quarter of 2025 (which was based on USAC projections). The ruling does not invalidate the E-Rate program, nor does it direct USAC to stop processing applications or disbursing funding. However, because the decision calls into question USAC's underlying authority, it could have broader implications for the future administration and financing of E-Rate and other USF programs.

The FCC could ask the full Fifth Circuit or the Supreme Court to review the decision, and Congress could also step in to specifically authorize USAC within the Government Corporation Control Act of 1945. If the Fifth Circuit's recent decision takes effect, the FCC would likely need to quickly absorb USAC's administrative functions, raising questions about whether the Commission (as currently staffed and funded) has the

capacity to unilaterally collect billions of dollars in contributions from telecommunications providers and, in turn, administer all of the programs under USAC's purview, including E-Rate, with fidelity.

This ruling about USAC adds to a number of developments affecting E-Rate. On 6/27/25, the Supreme Court ruled in an earlier claim arising from this same lawsuit that the FCC's funding mechanism was lawful. The Court did not at that time rule on the legality of USAC itself; this is the issue the Fifth Circuit just addressed.

On the regulatory side, the FCC is currently accepting replies to initial public comment on (i) a proposed comprehensive review of the E-Rate program in particular (see our 8/20/26 Alert for more information) and (ii) a separate review of the USF and USAC in general.

5. University of North Carolina Settles with Trump Administration over Civil Rights Investigations

On 10/19/26, DOJ CRT and USED OCR jointly announced a resolution agreement with the University of North Carolina at Chapel Hill (UNC) to address allegations that UNC impermissibly used race or racial proxies in its admissions; failed to maintain "race-blind policies" regarding student benefits, scholarships, financial aid, and more; and failed to address a hostile learning environment for Jewish and Israeli students. While UNC did not admit to any wrongdoing, the agreement requires the university to make significant changes to its policies and programs as well as to hire or designate staff to implement those commitments. In many areas, the terms of the agreement impose conditions not reflected in past publicly reported DOJ resolution agreements addressing these issues. (See our 12/2/25 Alert for more information on those agreements.) Several elements also appear to be more restrictive than federal law requires, including establishing a "wholly race-blind" selection process; barring any examination of racial data as part of analyzing its admissions process; prohibiting any admissions policy actions undertaken for the purpose of changing the student body's racial makeup; and blanketly precluding the consideration of race in recruitment efforts.

6. USED and DOJ Rescind Guidance on English Learner Students, LEP Parents & Race in School Discipline

On 10/23/26, USED Office for Civil Rights (OCR) and DOJ Civil Rights Division (CRT) issued a notice "to clarify that seven guidance documents issued jointly by the Departments are not enforceable." Issued between 2015 and 2023, the seven documents all address nondiscrimination requirements in federally funded programs:

- *Dear Colleague Letter: English Learner Students and Limited Proficient Parents* (January 7, 2015)
- *Fact Sheet: Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs* (January 7, 2015)
- *Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them* (January 7, 2015)
- *Confronting COVID-19-Related Harassment in Schools* (May 10, 2021)
- *Resource on Confronting Racial Discrimination in Student Discipline* (May 26, 2023)
- *Dear Colleague Letter: Questions and Answers Regarding the Supreme Court's Decision in Students for Fair Admissions, Inc. v. Harvard College and University of North Carolina* (August 14, 2023)
- *Questions and Answers Regarding the Supreme Court's Decision in Students for Fair Admissions, Inc. v. Harvard College and University of North Carolina* (August 14, 2023)

Although guidance documents typically do not have the force of law, they are instructive for schools and universities seeking to meet their legal obligations under federal civil rights and provide consistent nationwide interpretation for enforcement staff. The new notice, however, states that OCR and CRT are "concerned about confusion over the nonenforceable nature of the guidance documents." No additional explanation for rescinding these specific documents is provided, but the agencies conclude by noting "the Departments plan to revisit the guidance documents listed in this notice in light of [the Supreme Court's decision in] *Loper Bright* to determine whether they are consistent with the 'single, best meaning' of the relevant federal civil rights laws enforced by the Departments." In the meantime, neither OCR or CRT will rely on the seven documents in their enforcement actions, and education leaders thus cannot rely on the now-rescinded guidance as a defense.

7. Other Significant Updates

All recent updates will appear in the Executive Actions Chart, but some of note include:

Fourth Circuit Resurrects Fairfax and Arlington Lawsuits Against USED over "High-Risk" Status: On 10/15/26, the U.S. Court of Appeals for the Fourth Circuit overturned lower court decisions dismissing lawsuits brought by two Virginia school districts—Fairfax County Public Schools and Arlington Public Schools—to challenge their placement by USED in "high-risk" status because of the districts' policies around gender identity. (See our 8/25/25 Alert for more information about USED's actions.) The appellate court held that Fairfax's and Arlington's claims should not have been dismissed because they are fundamentally statutory in nature rather than purely contractual claims that must instead be brought before the Court of Federal Claims (as the district court ruled). The core question raised by Fairfax and Arlington is whether USED can penalize them under Title IX for policies that the districts argue comply with the Fourth Circuit's precedent, which is binding on school districts in Virginia. This statutory argument, the appellate court noted, distinguishes the dispute from the Supreme Court's ruling in *NIH v. American Public Health Association* and other cases that were limited to disagreements about the disbursement of federal funds. The lawsuits will now proceed in the district court.

USED Imposes Restrictions on Cosmetology Accreditor: On 10/21/26, Under Secretary of Education Nicholas Kent (serving in the capacity of Senior Department Official) issued a decision letter to the National Accrediting Commission of Career Arts and Sciences (NACCAS), a major accreditor of cosmetology and career arts institutions. USED did not deny NACCAS federal recognition as the National Advisory Committee on Institutional Quality (NACIQI) recently recommended (see our 7/23/26 Alert for more information). Instead, USED prohibited NACCAS from adding new members and indicated the accreditor could face more severe penalties if it did not address a number of concerns over the next year. USED also imposed similar restrictions on the Council on Occupational Education, although in that case the decision letter went further than NACIQI had recommended.

DOJ and USED Take Enforcement Actions on Parents' Rights to Review Surveys, Curricula, and Gender Support Plans: The Administration, including USED's Student Privacy Policy Office (SPPO), which enforces the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA), continues to lean into investigations related to parental consent and access to information. (See our 9/3/26 Alert for analysis of SPPO's recent Dear Colleague Letter on the scope of these laws.)

First, on 10/26/26, USED announced that SPPO has opened investigations into three California school districts to determine whether students were asked to share personal information about themselves as part of the state's Ethnic Studies program without prior parental notice and approval, as SPPO claims is required by PPRA in this context. In public statements, district leaders have disputed the allegations in USED's press release and noted that students are not required to participate in "privilege surveys" or other exercises. These investigations are notable as they focus on "DEIA" curriculum rather than the Administration's primary focus on school policies related to religious opt-outs or gender support plans.

Second, on 10/27/26, DOJ CRT announced it has filed a lawsuit against the Anne Arundel County Public Schools (AACPS) alleging that the Maryland district's policies and practices regarding parents' access to information about their children's gender identity at school violate FERPA and PPRA. DOJ asserts that the school district has violated PPRA by implementing a policy that in certain circumstances—when the principal determines "there is a genuine safety concern for the student's physical, emotional, or mental health safety"—limits involvement of a student's parents in the "plan to accommodate and support the student and their gender identity." DOJ argues that such a policy requires school staff to solicit protected information from that student that would otherwise be covered by the PPRA and thus would require parental notice and approval. DOJ proceeded with the lawsuit despite AACPS updating the policies under investigation.

HHS Seeks Public Comments on Proposed State Child Care Plan Template: Every three years, each state and territory submits a Child Care and Development Fund (CCDF) Plan describing how it runs its child care assistance program. The Office of Child Care within the U.S. Department of Health and Human Services (HHS) has released a draft CCDF state plan template for use starting in FY28. HHS indicates that the revisions will streamline questions, reduce data entry and administrative burden, and strengthen program integrity. Public comments can be submitted here through 12/22/26.

HHS has proposed adding questions on fraud prevention, internal controls, and payment accuracy. For instance, states would be required to explain how they confirm a family's eligibility, using electronic data to verify information. The agency also proposes that states provide their own definitions of fraud and describe how they investigate it and recover funds. The template removes questions tied to CCDF requirements rescinded in May 2026, including the 7% co-payment cap, paying providers in advance, paying based on enrollment, and using grants or contracts. States may keep these policies in place but are no longer required to do so by the federal government. Sections requiring information on compliance with the statute's obligations relating to health and safety, background checks, and 12-month eligibility remain largely unchanged.

8. 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**
Commerce: Decennial **Census** of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (NPRM)	• Alert from 10/29/26	*ACCEPTING PUBLIC COMMENTS* Submit public comments here through **11/2/26**.
Treasury: Racial Nondiscrimination in **Private Schools** (NPRM)	• Alert from 9/3/26	*ACCEPTING PUBLIC COMMENTS* Submit public comments here through **11/3/26**.
FCC: FCC To Review **E-Rate** Program To Ensure Congress's Vision (NPRM)	• Alert from 8/20/26	*ACCEPTING REPLY COMMENTS* Public comments were due by 10/13/26. Reply comments can be submitted through **11/12/26**.
Treasury: **Federal Scholarship Tax Credit** (NPRM)	• Unpacking Treasury's Proposed Regulations for the Federal Scholarship Tax Credit • FSTC Primer • Considerations for State-Level Leaders	*WILL ACCEPT PUBLIC COMMENTS* Submit public comments here for a 60-day period through **12/1/26**.
NPRMs No Longer Accepting Comments / Awaiting Final Rule		
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	*WAITING FOR FINAL RULE* 40,089 comments were submitted by the 10/6/26 deadline.

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 29, 2026 at 10:00 am ET.