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Higher Education Litigation Summary: October 28, 2025

Thompson Coburn's Higher Education Litigation Summary is your resource for legal updates on key rulings and ongoing cases shaping the higher education sector. This installment covers updates related to Gainful Employment, the Bare Minimum Rule, BDR, Student Loan Forgiveness, Title IX, False Claims Act, Nonprofit Institution Status, Federal Funding Freeze, DEI Executive Orders, the Executive Order Directing the Closure of ED, Grant Terminations, Student and Exchange Visitor Program Litigation, and the Legality of Nationwide Injunctions.

This edition features key updates on This edition highlights important updates on This edition highlights important updates on **Gainful Employment**, **Borrower Defense to Repayment**, and **Student Loan Forgiveness**.

Gainful Employment

Overview

In October 2023, the U.S. Department of Education ("ED") under the Biden Administration published a new Gainful Employment Rule ("GE Rule"). The GE Rule sets forth metrics that ED uses to measure whether programs are preparing students for "gainful employment in a recognized profession" under the Higher Education Act of 1965, as amended ("HEA"). The GE Rule uses two measures of program value: a debt-to-earnings test that ensures graduates are not left with unmanageable loan payments, and an earnings premium test that compares graduates' incomes to state averages for high school graduates. Programs failing either measure twice within three years lose Title IV eligibility. After a first failure, schools must issue a warning to students disclosing their failure to meet the criteria.

Prior to the GE Rule's July 1, 2024 effective date, the cosmetology school community challenged the GE Rule in two separate lawsuits. *American Association of Cosmetology Schools v. U.S. Dep't of Ed.*, No. 23-cv-01267 (N.D. Tex.); *Ogle School Management v. U.S. Dep't of Ed.*, No. 24-cv-00259 (N.D. Tex.). Plaintiffs in both cases argued the GE Rule was unlawful because Congress's definition of "gainful employment" in the HEA did not contemplate ED using debt and earnings metrics. Plaintiffs argued the GE Rule was therefore in "excess of statutory authority" and was "arbitrary and capricious," in violation of the Administrative Procedure Act ("APA"). The court consolidated the two lawsuits in July 2024, and plaintiffs and ED filed competing motions for summary judgment.

Current Status of Litigation

In May 2025, in a surprising turn of events due to President Trump's inauguration, ED filed a reply in support of its motion for summary judgment that defended the Biden-era GE Rule—notwithstanding that ED stripped an Obama-era GE rule from the books in 2019 during the first Trump Administration. ED's reply specifically defended both the financial value transparency framework, which applies to all Title IV-participating programs at all Title IV-participating institutions of higher education, and the gainful employment framework, which applies solely to "gainful employment" programs (non-degree programs at private, non-profit and public institutions, and all programs at proprietary institutions). A detailed analysis of ED's filing is available here.

On October 2, 2025, the court granted ED's motion for summary judgment and upheld the GE Rule. The court concluded that the GE Rule was not in excess of statutory authority because "gainful employment" reasonably means profitable employment. The court also held that the GE Rule was not arbitrary and capricious because ED's reliance on IRS earnings data and chosen debt thresholds was justified, and because ED's cost-benefit analysis—including projected taxpayer savings of $14 billion—was rational. With respect to Constitutional claims asserted by the AACS plaintiffs, the court ruled that they had abandoned their equal protection claim, that the GE Rule did not

unconstitutionally burden or compel speech, and that plaintiffs had no property interest in potential Title IV funding.

Although plaintiffs may appeal the court's ruling to the Fifth Circuit, the GE Rule remains intact nationwide at this time. Institutions should begin preparing now to assess compliance under the debt-to-earnings and earnings premium metrics and to implement the required student warnings.

Bare Minimum Rule

Overview

In October 2023, as part of a broader final rulemaking, ED promulgated the so-called "Bare Minimum Rule" (BMR"). Effective July 1, 2024, the BMR restricted Title IV aid to GE programs that required the minimum hours a state mandates for licensure in a given field. If a program's length exceeded a state's minimum hours, students are ineligible for Title IV aid for that program. The BMR departed from ED's prior "150% Rule" which restricted Title IV aid to GE programs that did not exceed 150% of a state's minimum hours. Two lawsuits challenged the BMR under the APA: *360 Degrees Education, LLC v. U.S. Dep't of Ed.*, No. 24-cv-00508 (N.D. Tex.); *American Massage Therapy Association v. U.S. Dep't of Ed.*, No. 24-cv-01670 (D.D.C.).

Current Status of Litigation

In *360 Degrees Education*, the Northern District of Texas granted the plaintiffs' motion and entered a nationwide injunction in June 2024. The court held that the BMR was likely "arbitrary and capricious," emphasizing that it "represents a sea-change from thirty years of established practice." The next month, ED announced that it would revert to enforcing the 150% Rule while the injunction remained in place.

In December 2024, ED initiated an administrative proceeding to terminate one of the plaintiffs' Title IV eligibility. After President Trump assumed office, both the administrative proceeding and the lawsuit were stayed. Recently, however, ED dismissed the administrative proceeding.

Meanwhile, in *American Massage*, plaintiffs AMTA and ED filed cross motions for summary judgment in November 2024. However, the case has been stayed since February 2025, and remains stayed through January 21, 2026. In a July 2025 status report, ED explained that it intends to reconsider the BMR through a negotiated rulemaking process this year.

Following ED's stated plans to reconsider the BMR through negotiated rulemaking, the parties in *360 Degrees* in August 2025 jointly requested a continued stay of the case, pending resolution of the rulemaking.

For now, the BMR remains enjoined nationwide and will not be implemented in its current form. The fate of the BMR will likely involve one or more of the following actions:

- ED could reconsider the BMR through negotiated rulemaking, the outcome of which would likely revolve the ongoing litigation.
- ED could withdraw its defense of the BMR and rescind the BMR.
- Congressional legislation could formally nullify the BMR and reinstate the 150% Rule.

Borrower Defense to Repayment

2022 BDR Rule

Overview

In November 2022, ED published a final Borrower Defense to Repayment Rule ("2022 BDR Rule"). The 2022 BDR Rule, pursuant to the HEA, 20 U.S.C. § 1087e(h), created a new adjudication system that provided for ED's assessment of borrower defenses to repayment in administrative proceedings before the borrower's default, and further, provided for ED's assessment of similarly-situated borrowers' defenses on a group basis. The 2022 BDR Rule also established new closed-school loan discharge provisions.

In February 2023, Career Colleges & Schools of Texas ("CCST") challenged the 2022 BDR Rule's borrower defense adjudication and closed-school loan discharge provisions. *Career Coll. & Schs. of Texas v. U.S. Dep't of Ed.*, No. 23-cv-00433 (W.D. Tex.), No. 23-50491 (5th Cir.), No. 24-413 (U.S.). The district court denied CCST's motion for a preliminary injunction, but the Fifth Circuit reversed in April 2024 and enjoined the challenged provisions on a nationwide basis.

Current Status of Litigation

In October 2024, ED petitioned the Supreme Court to review two issues: (1) whether the Fifth Circuit erred in holding that the HEA does not permit ED's assessment of borrower defenses to repayment before default in

administrative proceedings and on a group basis; and (2) whether the Fifth Circuit erred in entering a nationwide injunction. In January 2025, the Supreme Court granted the petition on the first issue only.

On January 24, 2025, ED filed a motion to hold the briefing schedule in abeyance "to allow for the Department to reassess the basis for and soundness of the borrower defense regulations." The Supreme Court granted the motion on February 6, 2025. On May 29, 2025, ED moved to resume briefing, explaining that it intended to defend the 2022 BDR Rule and would argue that the Fifth Circuit erred on the first issue presented.

However, on August 8, 2025, the parties dismissed the case pursuant to Rule 46, in light of the passage of Section 85001 of the OBBB, stating that the borrower defense provisions of the rule at issue in this case "shall not be in effect" for loans that originate before July 1, 2035, and providing that borrower defense to repayment regulations that were in effect on July 1, 2020, are restored. On August 11, 2025, the Supreme Court affirmed dismissal pursuant to Rule 46.

2016 BDR Rule

Overview

In a separate case related to BDR, students sued ED for failing to process borrower defense claims under the 2016 BDR Rule. ***Sweet v. Cardona***, No. 19-cv-3674(N.D. Cal.), No. 23-15049 (9th Cir.). The 2016 BDR Rule, which set standards for student borrowers to assert claims based on institutional misconduct, faced delays after ED, under the first Trump administration, paused adjudication of claims. In June 2022, a settlement was reached between ED and a class of students, resulting in $6 billion in debt discharges for students who attended 151 schools that were identified as having likely engaged in substantial misconduct. Four schools opposed the settlement, but the court approved it, finding that ED had statutory authority to settle the students' claims under 20 U.S.C. § 1082(a).

Current Status of Litigation

Three of the four schools appealed the settlement approval order, but in November 2024, the Ninth Circuit dismissed their appeal, ruling the schools lacked prudential standing. In December 2024, one of the appealing schools, Everglades College, petitioned the Ninth Circuit for rehearing en banc**.** ED opposed the petition. On May 21, 2025, the Ninth Circuit denied the petition. On October 17, 2025, Everglades petitioned the U.S. Supreme Court for a writ of certiorari.

Student Loan Forgiveness

SAVE Plan

Overview

In July 2023, ED published a final rule creating a new plan to expand federal student loan borrowers' eligibility for loan forgiveness. Effective July 1, 2024, the "SAVE Rule" would have made borrowers eligible for forgiveness if they made repayments for 10 years, as opposed to 20 or 25 years under prior plans, and at substantially lower amounts compared to prior plans. ED claimed that it had authority for the SAVE Rule under 20 U.S.C. § 1087e(d)(1).

Two groups of states challenged the SAVE Rule, arguing that its early forgiveness and lower payment provisions were not Congressionally authorized under the HEA and violated the APA. ***State of Missouri et al.*** *v. Biden et al.*, No. 24-cv-00520 (E.D. Mo.), No. 24-2332 (8th Cir.); ***State of Kansas et al.*** *v. Biden et al.*, No. 24-cv-01057 (D. Kan.), No. 24-03089 (10th Cir.).

Current Status of Litigation

In *State of Missouri*, the district court in June 2024 preliminarily enjoined the *10-year loan forgiveness* provision, but did not enjoin the *lower payment* provision. Both the states and ED appealed; the states also moved for a temporary injunction against the *entirety* of the SAVE Rule pending appeal. On August 9, 2024, the Eighth Circuit granted the states' temporary injunction motion. ED immediately asked the Supreme Court to vacate the injunction but it was denied.

The Eighth Circuit on February 18, 2025, dismissed ED's appeal of the district court's preliminary injunction, holding that the HEA did not authorize either the SAVE Rule's 10-year loan forgiveness provision or the lower payment provision. ED did not challenge that ruling.

On remand, the district court ordered the parties to propose a schedule for briefing on the merits. However, the parties in May 2025 requested a stay of briefing while they "conferred about possible paths toward a negotiated resolution." The parties also noted that "a bill was introduced in Congress on April 28, 2025, which includes statutory changes that, if enacted, may affect the claims presented by Plaintiff States."

Indeed, on July 4, 2025, the One Big Beautiful Act ("OBBB") was signed into law. OBBB, among other things, phases out a number of federal student loan repayment plans, including the SAVE Plan. In an August 2025 joint status report, the parties stated that they "are currently evaluating that legislation, and discussing the effect (if any) that it may have on the remainder of this litigation," and accordingly, requested a continued stay of briefing. Following the

government shutdown and lapse of appropriations, the court in October 2025 continued the stay, and ordered a status report be filed within 10 days after appropriations are restored.

In *State of Kansas*, the district court also entered preliminary injunction in June 2024 against the SAVE Rule. ED appealed, but the Tenth Circuit has since stayed the appeal. In October 2025, following the government shutdown, the Tenth Circuit ordered the parties to file a joint status report by December 3, 2025. The district court likewise has stayed proceedings on the merits pending the shutdown.

As it stands, the SAVE Rule remains enjoined, and the SAVE Plan is ending. ED has announced that it is restarting interest accrual for borrowers who were under the SAVE Plan borrowers on August 1, 2025. These borrowers will likely be prompted to move to one of the two new repayment plans offered under OBBB, which will not be ready for another year.

Proposed Rule Litigation

Overview

In April 2024, ED published a notice of proposed rulemaking ("Proposed Rule") that, like the SAVE Rule, would also have forgiven loan balances for qualifying borrowers. Eligibility for forgiveness under this Proposed Rule mirrored the eligibility criteria under the SAVE Rule, but ED claimed authority to forgive loans under a different statute—20 U.S.C. § 1082(a)(6).

Current Status of Litigation

Several states filed a lawsuit and a motion for an injunction in September 2024, challenging the Proposed Rule. ***State of Missouri et al.*** *v. U.S. Dep't of Ed., et al.*, No. 24-cv-01316 (E.D. Mo.). As with the SAVE Rule challenges, they argued the Proposed Rule lacked clear statutory authorization. In fall 2024, like those in the SAVE Rule cases, the district court enjoined the Proposed Rule, again citing a lack of statutory authority for loan forgiveness.

ED did not appeal. Instead, in December 2024, ED withdrew the Proposed Rule. The case was then stayed temporarily while the parties "conferred about possible paths toward a negotiated resolution of this litigation."

In September 2025, the district court ordered ED to file a motion to dismiss for lack of subject-matter jurisdiction by October 23, 2025. However, after the government shutdown, that deadline was paused temporarily. Thus, while the Proposed Rule has been enjoined *and* withdrawn, the case technically remains active today.

Title IX

Overview

On April 29, 2024, ED published a new Title IX rule ("2024 Title IX Rule"), which went into effect August 1, 2024. The 2024 Title IX Rule, among other things, expanded the definition of "discrimination on the basis of sex" to include discrimination on the basis of "sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity."

Current Status of Litigation

Twenty-six states and numerous private parties filed or joined lawsuits seeking to block the implementation and enforcement of the 2024 Title IX Rule. The litigation initially resulted in several preliminary injunctions issued by multiple federal courts, but none on a nationwide basis; the injunctions instead only applied to schools in the plaintiff states and to schools where a member of a plaintiff organization was a student. This resulted in a patchwork application of the 2024 Title IX Rule, with some schools following the prior 2020 Title IX Rule from the first Trump administration and others following the 2024 Title IX Rule.

However, on January 9, 2025, the Eastern District of Kentucky vacated the 2024 Title IX Rule on a nationwide basis. This decision was the first issued on the merits, meaning it is a final (not a preliminary) decision. The court's order noted several reasons for finding the 2024 Title IX Rule invalid, including that ED exceeded its statutory authority in expanding the definition of "sex," that the 2024 Title IX Rule was arbitrary and capricious, and that the 2024 Title IX Rule violated the First Amendment.

ED did not appeal the Eastern District of Kentucky's decision. But in late March 2025, two non-profit organizations moved to intervene in the case and filed notices of appeal to the Sixth Circuit. As for the other pending cases, after President Trump took office, ED withdrew their pending appeals in *Louisiana v. U.S. Dep't of Ed.*,No. 24-cv-00563 (W.D. La.) (5th Cir. No. 24-30399), *Kansas v. U.S. Dep't of Ed.*, No. 24-cv-04041 (D. Kan.) (10th Cir. No. 24-3097), *Oklahoma v. Cardona*, No. 24-cv-00461 (W.D. Oka.) (10th Cir. No. 24-6205), *Texas v. United States of America*, No. 24-cv-00086 (N.D. Tex.) (5th Cir. No. 24-10832), and *Arkansas v. U.S. Dep't of Ed.*, No. 24-cv-00636, (E.D. Miss.) (8th Cir. No. 24-2921).

An appeal remains pending in *Alabama v. Cardona*, No. 24-cv-00533 (N.D. Ala.) (11th Cir. 24-12444). On August 5, 2025, the Court requested briefing from the parties on whether the plaintiffs' appeal of the denial of their motion

for a preliminary injunction moot in light of the Eastern District of Kentucky's final judgment vacating the 2024 Title IX regulations. Both parties' briefs have been submitted and review by the Court is underway.

The effect President Trump's January 20, 2025, Executive Order 14168 will have on the pending 2024 Title IX Rule litigation is an open question. Because the Executive Order states that the current administration will define "sex" as male or female, based on biological sex assigned at birth, it seems likely that ED will have little appetite to defend the 2024 Title IX Rule, and may use the Executive Order's definition in its investigations going forward.

Upcoming Supreme Court Cases

The Supreme Court will hear two cases, ***Little v. Hecox*** and ***B.P.J. v. West Virginia***, which challenge state laws banning transgender athletes from girls' and women's sports teams. The court will decide if these state bans violate the 14th Amendment's Equal Protection Clause or Title IX, which prohibits sex-based discrimination in educational programs.

In *Little v. Hecox*, the respondent challenged Idaho's Fairness in Women's Sports Act, which was preliminarily enjoined by the district court. The Ninth Circuit affirmed the injunction in part and vacated in part (as applied to non-parties). The State of Idaho petitioned the Supreme Court to hear the appeal. After certiorari was granted, respondent filed a suggestion of mootness based on her attempt to voluntarily dismiss the lower court proceedings, which is being opposed by the State of Idaho. Briefing on the suggestion of mootness is underway.

In *B.P.J. v. West Virginia*, a middle school student was banned from participating in school sports under a West Virginia law, HB 3293. B.P.J. argues that the state's categorical ban violates Title IX and the Constitution's equal protection clause by targeting transgender people. The district court ruled against B.P.J., but on April 16, 2024, the U.S. Court of Appeals for the Fourth Circuit reversed the decision. The ruling directed the lower court to grant summary judgment to the plaintiff on the Title IX claim and remanded the case for further proceedings on the equal protection claim. The decision was appealed, and the Supreme Court has agreed to hear the case.

The cases could have significant implications for transgender students across the country and the interpretation of anti-discrimination laws.

False Claims Act

Overview

The constitutionality of the *qui tam*, or whistleblower, provision of the False Claims Act ("FCA") has been the subject of several recent challenges.

In ***United States ex rel. Zafirov*** *v. Florida Medical Associates LLC*, No. 19-cv-01236 (M.D. Fla.), originally filed in 2019, the defendants challenged whether whistleblowers could represent the federal government in FCA actions – where the government has not intervened in the case – without violating the Constitution's Appointments Clause. In September 2024, the district court agreed, issuing its **decision** declaring the *qui tam* provision of the FCA unconstitutional, raising significant questions about the future of whistleblower litigation. The government appealed to the Eleventh Circuit (11th Cir. 24-13581, 24-13583).

In *U.S. ex rel. Penelow et al. v. Janssen Products LP*, the whistleblowers alleged that defendants violated the FCA, the federal Anti-Kickback Statute, and various state False Claims Acts in connection with the sale of certain medications. In 2016, the government declined to intervene in the lawsuit. The case went to a jury, which found in favor of the whistleblowers. The award, including treble damages, totaled $1.64 billion. The defendants **appealed** to the Third Circuit arguing, among other things, that the *qui tam* provision of the FCA was unconstitutional.

In *U.S. ex rel. Phillips et al. v. Los Angeles Film School, LLC et al.*, two relators/whistleblowers, who were former management executives for Los Angeles Film School, LLC, allege that two institutions violated federal gainful employment requirements and incentive compensation bans, despite certifying compliance with those provisions. The government declined to intervene and the complaint was recently unsealed. Because the government has not intervened, the case presents the potential for the defendants to challenge the constitutionality of the False Claims Act's *qui tam* provisions should they face an unfavorable outcome.

Current Status of Litigation

In *Zafirov*, the government's appeal to the Eleventh Circuit is pending and oral argument is currently scheduled for December 8, 2025.

In *Penelow*, the parties have filed their briefs and the Court's review is underway. The DOJ filed an intervenor and amicus brief arguing that the qui tam provision is, in fact, constitutional.

In *U.S. ex rel. Phillips et al. v. Los Angeles Film School, LLC et al.*, on May 6, 2025, the United States declined to intervene "at this time," and the court partially unsealed the case. The relators filed an **amended complaint** on October 14, 2025.

If the Courts of Appeals agree that the *qui tam* provision is unconstitutional, it could either foreclose FCA whistleblower claims altogether (if a broader application), or substantially limit them to cases only where the government intervenes (a narrower application). The ruling could have broad implications, particularly in higher education, where FCA suits are prevalent. Depending on the outcome of the litigation, Congress could seek a legislative fix due to the substantial federal revenue generated by these suits.

DOJ'S Civil Rights Fraud Initiative

On May 19, 2025, United States Deputy Attorney General Todd Blanche circulated a memo to the Department of Justice announcing the launch of the Civil Rights Fraud Initiative, a new effort aimed at leveraging the FCA and its *qui tam* provisions to pursue entities that "defraud the United States by taking its money while knowingly violating civil rights laws." Co-led by the Fraud Section of the Civil Division and the Civil Rights Division, this initiative marks a shift in the government's traditional FCA enforcement and could expose corporations, universities, and nonprofits to civil *and* criminal investigations. The announcement encourages private citizens to file *qui tam* suits, which will likely be filed under seal as required, allowing the government time to investigate and decide whether to intervene.

Federal Funding Freeze Litigation

Overview

On January 27, 2025, the Office of Management and Budget ("OMB") issued a memorandum directing federal agencies to pause all activities related to federal financial assistance impacted by various executive orders, including funding for foreign aid, DEI programs, and the Green New Deal. This pause was set to begin on January 28, 2025.

On January 29, 2025, however, OMB issued a new memorandum (M-25-14) purportedly rescinding the original directive, though White House Press Secretary Karoline Leavitt announced from her official social media account that the new memorandum was "NOT a rescission of the federal funding freeze," and instead only rescinded M-25-13. Post by Karoline Leavitt, X (formerly Twitter) (Jan. 29, 2025).

Several nonprofit organizations filed a lawsuit, ***National Council of Nonprofits***, *et al. v. Office of Management and Budget*, No. 25-cv-00239 (D.D.C.), against OMB, claiming the pause violated the APA and the First Amendment.

Twenty-two states and the District of Columbia filed a separate lawsuit in Rhode Island, ***New York*** *v. Trump*, No. 25-cv-00039 (D.R.I.), against the President, several executive branch agencies, and the heads of those agencies. Both lawsuits were filed before OMB rescinded its original memorandum instituting the funding freeze.

Current Status of Litigation

On February 3, 2025, the D.C. court granted National Council of Nonprofits' motion for a temporary restraining order. It subsequently entered a preliminary injunction against OMB on February 25, 2025. The preliminary injunction enjoins OMB "from implementing, giving effect to, or reinstating under a different name the unilateral, non-individualized directives in [the OMB memorandum] with respect to the disbursement of Federal funds under all open awards." OMB appealed the district court's preliminary injunction order on April 24. The district court has since stayed the case pending the outcome of the appeal other than requiring OMB to produce the administrative record and allowing the nonprofit organizations to submit additional discovery requests, if needed. Briefing in the appeal is scheduled to be completed by December 10, 2025.

The Rhode Island court issued a TRO against the government defendants on January 31, 2025, prohibiting the freeze on funds. The court later extended the TRO on February 6, 2025, and entered a preliminary injunction against the government defendants on March 6, 2025. The government defendants appealed the court's preliminary injunction order four days later and simultaneously sought a stay of the litigation while the appeal proceeded. The appellate court denied the motion to stay on March 31, 2025. Briefing on the merits of the appeal is complete and oral argument is scheduled for November 12, 2025.

DEI Executive Orders Litigation, the Dear Colleague Letter Litigation, and DOJ's July 2025 Guidance on Unlawful Discrimination

DEI Executive Orders

Overview

In early 2025, President Trump issued two executive orders targeting diversity, equity, and inclusion (DEI) initiatives: Ending Radical and Wasteful Government DEI Programs and Preferencing; Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

These orders restrict "equity-related" grants and have sparked widespread litigation alleging violations of the First and Fifth Amendments, as well as improper executive overreach.

Current Status of Litigation

- *National Assoc. of Diversity Officers in Higher Educ. et al. v. Donald J. Trump, et al.*, No. 25-cv-00333 (D. Md.); 4th Circuit (No. 25-1189): Higher ed officials, workers, and the City of Baltimore challenged the DEI executive orders. The court issued a preliminary injunction, finding likely First and Fifth Amendment violations, but the Fourth Circuit stayed that injunction pending appeal. Oral arguments were held on September 11, 2025. A ruling is imminent.

- *National Urban League v. U.S. Dep't of Ed.*, No. 25-cv-471 (D.D.C.): Injunction denied; plaintiffs lacked standing or failed to show a likely constitutional violation. ED's motion to dismiss is pending.

- *San Francisco Aids Foundation v. U.S. Dep't of Ed.*, No. 25-cv-01824 (N.D. Cal.): Preliminary injunction granted but limited to plaintiffs' grants.

- *Chicago Women in Trades v. U.S. Dep't of Ed.*, No. 25-cv-2005 (N.D. Ill.): Injunction granted but limited to Department of Labor and specific grants. Seventh Circuit appeal pending (25-2144). The Seventh Circuit denied the government's request for a stay of briefing pending the shutdown.

As of now, the DEI Executive Orders remain in force for the Department of Education.

Dear Colleague Letter Litigation

The DCL and April 3, 2025, certification requirement have been vacated under the APA. The Frequently Asked Questions and End DEI portal remain stayed as set forth below.

Overview

In response to the Department of Education's Feb. 14, 2025 Dear Colleague Letter (DCL) and an April 3 certification requirement, multiple lawsuits were filed arguing the DCL rewrote Title VI legal standards and imposed unlawful requirements.

Current Status of Litigation

- *Am. Federation of Teachers v. U.S. Dep't of Ed., et al.*, No. 25-cv-00628 (D. Md.): Court vacated the DCL and certification requirement under the APA and Constitution. This vacatur applies nationwide, despite limitations on nationwide injunctions because it was set aside under the APA (5 U.S.C.§ 706). The Government has appealed (1st Cir. 25-2228).

- *National Education Assoc. v. U.S. Dep't of Ed.*, No. 25-cv-91 (D. N.H.): Preliminary injunction blocks DCL, FAQs, End DEI Portal, and certification for plaintiffs and their affiliates. Summary judgment briefing is ongoing.

- *NAACP v. U.S. Dep't of Ed., et al.*, No. 25-cv-1120 (D.D.C.): Partial injunction blocks certification requirement. Amended complaint and motion to dismiss are pending.

Disparate Impact Executive Order

On April 23, 2025, the White House issued an EO titled "Restoring Equality of Opportunity and Meritocracy", seeking to:

- Eliminate disparate impact liability—the theory that neutral policies can be unlawful if they disproportionately affect protected groups.
    - Current Supreme Court precedent accepts disparate impact liability in the employment context. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).
- Direct agencies to deprioritize enforcement, reevaluate ongoing cases, and repeal relevant regulations.

This EO may impact how DEI policies are implemented across federal programs, especially in education and grants.

July 29, 2025 DOJ Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination

The Department of Justice issued new non-binding guidance for federal funding recipients:

- Emphasizes broad restrictions on race- or sex-based programs.
- Highlights that many traditional DEI practices (e.g., affinity groups, race-targeted scholarships, "diverse slate" hiring) may violate federal law.
- Suggesting that *SFFA v. Harvard* applies beyond admissions, suggesting widespread scrutiny of DEI efforts.
- Some of the "unlawful" practices listed in the Guidance would seem to be protected by the disparate impact EO discussed above.

Summary

- **DEI Executive Orders:** In force but partially enjoined in multiple cases; major appellate rulings pending.
- **DCL and Certification:** Vacated nationwide
  - The Frequently Asked Questions and End DEI portal remain stayed.
- **Disparate Impact EO:** Legally in force
- **DOJ Guidance:** Clarifies administration's stance; not legally binding but influential

Executive Order 14242 Directing the Closure of ED

Overview

On March 20, 2025, President Trump issued Executive Order 14242, titled "Improving Education Outcomes by Empowering Parents, States, and Communities."

The Executive Order directed the Secretary of Education "to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education and return authority over education to the States and local communities." Several lawsuits immediately challenged the Executive Order.

The next day, President Trump announced that management of the federal student loan and special needs programs would be transferred to the Small Business Administration and Department of Health and Human Services respectively.

In *NAACP v. United States*, No. 25-cv-00965 (D. Md.), the NAACP, education advocacy groups, and three children sued challenging Executive Order 14242 on the basis that it violates the Constitution's take care and spending clauses, the separation of powers, and the APA.

In *Somerville Public Schools et al. v. Trump et al.*, No. 25-cv-10677 (D. Mass.), the plaintiffs, including two Massachusetts school districts and five teacher unions, filed a lawsuit challenging Executive Order 14242 as unlawful. They too allege it violates the separation of powers, the Constitution's take care clause, and the APA.

Following a March 11, 2025 "reduction in force" at ED, on March 13, 2025, plaintiffs, including nineteen states and the District of Columbia, filed *State of New York et al. v. McMahon et al.*, No. 25-cv-10601 (D. Mass.). Plaintiffs argued that the reduction in force (RIF) violated the separation of powers and the APA.

A separate case, *Victims Rights Law Center, et al. v. U.S. Dep't of Ed., et al.*, No. 25-cv-11042 (D. Mass), was filed challenging the RIF as it relates to employees in the Office of Civil Rights. Plaintiffs contend that the RIF, as it concerns OCR employees, violates the APA and mandates under civil rights laws.

Finally, filed one week before Executive Order 14242, plaintiffs in *Carter et al. v. U.S. Dep't of Ed.*, No. 25-cv-00744 (D.D.C.) filed a lawsuit seeking to enjoin ED's reduction in force and "decimation" of its Office of Civil Rights on the basis that it, among other things, violates the APA and Fifth Amendment protections. Plaintiffs are a group of parents and students who have civil rights complaints pending before OCR, and an organization, the Council of Parent Attorneys and Advocates, Inc. ("COPAA"), that is a "national not-for-profit membership organization whose membership comprises parents of children with disabilities, their attorneys, and their advocates."

Current Status of Litigation

The Maryland court denied Plaintiff's motion for a preliminary injunction on August 19, 2025. It also denied Defendant's motion to dismiss the claims asserted against it on the same day. The administration has since moved to dismiss the case in its entirety again.

The Massachusetts court consolidated the *Sommerville Public Schools* and *State of New York* cases and granted the plaintiffs' motions for preliminary injunction preventing ED from 1) carrying out the RIF; 2) implementing the March 20, 2025, executive order directing ED to take all legal steps necessary to facilitate ED's closure; and 3) carrying out President Trump's announcement regarding the transfer of management of the student loan and special education programs from ED to the Small Business Administration and Department of Health and Human Services. ED and President Trump appealed the preliminary injunction order almost immediately after it was entered and asked to stay enforcement of the preliminary injunction during the pendency of the appeal. The Supreme Court granted the administration's motion to stay the enforcement of the injunction on July 14, 2025. The district court has since vacated the preliminary injunction given what transpired in the appellate courts. In light of these events, the administration may continue implementing the RIF unless otherwise enjoined.

On June 18, 2025, the court in *Victims Rights Law Center* entered a preliminary injunction requiring that ED bring affected OCR back to active duty. ED has appealed, and like in the other RIF case, asked that the district court's preliminary injunction be stayed while the case works its way through the appellate process. ED also asked the district court to vacate the preliminary injunction given the Supreme Court's July 14 order in the lead RIF case, *State*

of New York. While the district denied the motion to vacate, the appellate granted the administration's request to stay the injunction during the pendency of the administration's appeal. The administration's opening briefing in the appeal is due on November 11, 2025.

The D.C. court denied the *Carter* plaintiff's motion for preliminary injunction on May 21, 2025. In denying the motion, the court determined that the plaintiffs were not likely to succeed on their claims because there was no evidence that OCR has failed to perform its duties and "broad programmatic attacks" are not viable claims under the Administrative Procedures Act. The court entered an order staying the case pending further order of the court and the parties have periodically submitted status reports.

Grant Termination

Several education grant programs administered by ED, the National Institutes of Health ("NIH"), and other agencies have been impacted since January 2025. Existing grants have been terminated or discontinued and applications for new grants have been denied, largely because of the Administration's anti-DEI policies. Countless lawsuits have been filed, and courts have issued dozens of opinions in recent months. We summarize below the most high-profile grant litigation.

Teacher Grant Termination

Overview

In the wake of the DEI Executive Orders, ED terminated over 100 grants that had been awarded to colleges to support teacher education and development. ED claimed that the grants promoted "illegal" DEI and were "inconsistent with, and no longer effectuated, Department priorities."

Two lawsuits challenged the terminations under the APA and the Constitution. *American Association of Colleges for Teacher Education, et al. v. McMahon, et al.*, No. 25-cv-00702 (D. Md.), No. 25-1281 (4th Cir.) ("*AACTE*"); *California et al. v. U.S. Dep't of Ed.*, No. 25-cv-10548 (D. Mass.), No. 25-1244 (1st Cir.), No. 24A910 (U.S.) ("*California*").

Current Status of Litigation

The district court in both cases entered injunctions against ED and ordered the grants be reinstated, but ED appealed and moved to stay the injunctions pending appeal. After the First Circuit in *California* denied its motion to stay, ED sought emergency relief in the Supreme Court.

In April 2025, the Supreme Court granted ED's stay request and ordered the grants be re-terminated pending a decision on the merits. The Court held that the district court likely lacked jurisdiction because plaintiffs' APA claims sought money damages (i.e., grant funding) under a contract. Under the Tucker Act, the Court of Federal Claims has exclusive jurisdiction over claims against the United States seeking money damages owed under a contract.

Because the Supreme Court ruled only on ED's emergency stay request, it was not a "final" decision. The parties in *California* are now briefing the same issue but in the context of ED's motion to dismiss (ED brief; plaintiffs' brief). A ruling is expected soon.

Meanwhile, in *AACTE*, after the Supreme Court's ruling, the Fourth Circuit granted a stay of the injunction. The parties have since briefed ED's appeal of the injunction in the Fourth Circuit. ED filed its opening brief in June, plaintiffs' response was filed in July, and ED's reply was filed in early August. The Fourth Circuit, however, recently placed the appeal on hold pending its decision in two related appeals that are also before the Fourth Circuit.

NIH Grant Termination

Overview

NIH also has terminated hundreds of research grants on the basis that the grants promoted illegal DEI and therefore "no longer effectuated" NIH's "priorities." Several lawsuits have challenged the terminations under the APA and the Constitution, and sought injunctions to have the grants reinstated. *American Public Health Association, et al. v. National Institutes of Health, et al.*, No. 25-cv-10787 (D. Mass), No. 25-1611 (1st Cir.), No. 25A103 (U.S.) ("*APHA*"); *Commonwealth of Massachusetts, , et al. v. Kennedy, Jr., et al.*, No. 25-cv-10814 (D. Mass), No. 25-1611 (1st Cir.), No. 25A103 (U.S.) ("*Commonwealth*"); *President and Fellows of Harvard College v. U.S. Dep't of Ed., et al.*, No. 25-cv-11048 (D. Mass) ("*Harvard*"); *American Association of University Professors, et al. v. U.S. Dep't of Justice, et al.*, No. 25-cv-02429 (S.D.N.Y.), No. 25-1529 (2nd Cir.) ("AAUP"); *Thakur v. Trump*, No. 25-cv-04737 (N.D. Cal.).

Current Status of Litigation

In *APHA* and *Commonwealth* – which were consolidated – the district court ruled for the plaintiffs on NIH's Tucker Act argument that the court lacked jurisdiction (*Commonwealth*; *APHA*), and further, ruled that NIH's terminations violated the APA. After the court entered a partial final judgment for plaintiffs, NIH appealed and sought to stay the judgment pending appeal. After the district court and the First Circuit denied the NIH's stay request, NIH filed an emergency application to stay the judgment in the Supreme Court.

In August 2025, the Supreme Court granted in part and denied in part NIH's application. A five-justice majority held that plaintiffs' APA claims challenging the terminations were "contract" claims that sought to enforce an "obligation to pay money" and thus were within the jurisdiction of the Court of Federal Claims under the Tucker Act.

The parties are now briefing the same issue regarding the Tucker Act (and other issues) on appeal in the First Circuit. NIH filed its opening brief on October 10, 2025. Plaintiffs' brief is due November 12, 2025.

In *AAUP*, the plaintiffs filed a motion for preliminary injunction in April 2025. In June 2025, the district court both denied the plaintiffs' motion for a preliminary injunction and dismissed the plaintiffs' claims, after finding the plaintiffs lacked standing to sue because the terminated NIH grants had been awarded to Columbia, not to the plaintiff organizations or researchers. The court also found the organizational plaintiffs lacked standing to sue on their own behalf because they had not demonstrated injuries to themselves. Plaintiffs have appealed to the 2nd Circuit and file an opening brief on October 24, 2025. A ruling is not expected until 2026.

In *Harvard*, the university sued ED and other federal agencies over the government's "freeze" of $2.2 billion in funding (including NIH grants). The government paused Harvard's funding after finding it had violated Title VI. Harvard alleges that the freeze violates the APA, the First Amendment, and Title VI. In summer 2025, Harvard filed a motion for summary judgment. The defendants filed an opposition and a cross motion for summary judgment. Harvard filed an opposition to the cross motion and reply in support of its motion, and defendants filed a reply in support of their cross motion.

On September 3, 2025, the district court granted Harvard's motion for summary judgment on the majority of its claims. The court found that withholding Harvard's funding violated the APA, the First Amendment, and strict notice and hearing procedures under Title VI. The court also rejected the defendants' argument that Harvard's claims belonged in the Court of Federal Claims. The court entered a final judgment on October 17, 2025.

In *Thakur*, a federal district court in California recently granted a motion for preliminary injunction filed by researchers at institutions whose NIH grants were terminated for anti-DEI and other reasons, and ordered the grants be reinstated. The court found the Supreme Court's *APHA* ruling on the Tucker Act distinguishable because the researchers did not *themselves* have "contracts" with NIH. The court explained that "*APHA* did not consider or address the key issue here: that non-parties to the contracts cannot bring claims in the CFC, and thus are not within the Tucker Act."

Rate Cap Policy Litigation

Status: None of the Rate Cap Policies are in effect.

Member associations and several institutions of higher education filed several cases after federal agencies announced a new Rate Cap Policy of paying 15% across-the-board for reimbursement for facilities and administrative costs associated with grants. Reimbursement rates previously had been substantially higher. The Rate Cap Policies of NIH, HHS, DOE and NSF have all been enjoined nationally or self-paused. These cases include as plaintiffs the Association of American Universities, which is suing on behalf of its 71 member institutions, and the Association of Public and Land-Grant Universities, which is suing on behalf of its 222 member institutions. Those institutions effectively are parties to that litigation through associational standing. All of these member institutions will have the benefit of the injunctions entered in these cases because AAU and APLU are plaintiffs suing on behalf of those institutions. Note, however, that the Government has been challenging the constitutionality of associational standing and arguing that relief should only be given to association members who are named as parties in the complaint. *See, e.g.*, *Trump v. CASA*, 145 S. Ct. 2540, 2549 n. 2 (2025); *see also Food and Drug Admin. v. Alliance for Hippocratic Medicine, et al.*, 144 S.Ct. 1540, 1565 (2024) (J. Thomas, concurring) (asking court to examine the constitutionality of associational standing).

Ass'n of Am. Univ., et al. v. Dep't of Health and Human Services, Nat'l Inst. of Heath, et al, No. 1:25-cv-10346 (D. Mass.), First Circuit, (No. 25-1345). The district court entered a judgment and permanent injunction in this case as to the Rate Cap Policies of HHS and NIH, using 5 U.S.C. § 706(2) of the Administrative Procedure Act to vacate in its entirety the notice setting the rate cap. It is currently on appeal to the First Circuit where briefing is finished. Oral argument has been set for November 5, 2025.

Ass'n of Am. Univ., et al.. v. Dep't of Energy, et al., No. 1:25-cv-10912 (D. Mass.). On May 15, 2025, the district court entered a nationwide preliminary injunction prohibiting the DOE from giving effect to its Rate Cap Policy with respect to any institution of higher learning until further order, and used 5 U.S.C. § 706(2) of the Administrative Procedure Act to vacate in its entirety the notice setting the rate cap. The government has appealed to the First Circuit (No. 25-1727), briefing is underway. On October 17th, the parties filed a joint motion to stay briefing pending the shutdown.

Ass'n of Am. Univ., et al. v. Nat'l Science Found., No. 1:25-cv-11231 (D. Mass.). The Court granted Plaintiffs summary judgment on June 20, 2025, and vacated the 15% rate cap policy. The government appealed First Circuit (No. 25-1794), but on September 26, 2025, without giving a reason, the NSF filed an unopposed motion to dismiss the case. The Court did so on September 30, 2025, making the NSF Rate Cap Policy vacated for good.

Ass'n of Am. Univ., et al. v. Dep't of Defense, No. 1:25-cv-11740 (D. Mass). Plaintiffs challenged the DOD's proposed 15% rate cap policy. On June 17, 2025, the Court entered a nationwide TRO. On July 18, 2025, the district court

granted Plaintiffs' motion for preliminary relief, enjoining the rate cap policy as to Plaintiffs and their member institutions. On October 10, 2025, the district court granted the Plaintiffs' motion for summary judgment. The district court held the Rate Cap Policy was arbitrary and capricious and contrary to law, and vacated the DOD Rate Cap Policy in its entirety under the APA.

Student and Exchange Visitor Program Litigation

On May 22, 2025, the Department of Homeland Security (DHS) announced that it would be revoking Harvard University's certification in the Student and Exchange Visitor Program (SEVP), which gives them the ability to sponsor F and J visas for international students. DHS's announcement claimed Harvard had failed to comply with an April 16 demand for records on international students, including disciplinary, legal, and academic information.

On May 23, 2025, Harvard filed a lawsuit against DHS and several other executive branch agencies and moved for a temporary restraining order to enjoin the revocation of Harvard's certification under the SEVP. *See President and Fellows of Harvard College v. United States Department of Homeland Security, et al.*, No. 1:25-cv-11472 (D. Mass.).The complaint alleges that DHS's action violates the First Amendment, the Due Process Clause, and the APA, among other things. The same day, the court granted Harvard's motion for a TRO, allowing Harvard to continue enrolling international students and scholars as the case proceeds. The government filed a motion to dismiss the case on August 8, 2025. Harvard opposed the motion to dismiss on September 5, 2025.

On June 4, 2025, President Trump issued a Proclamation titled "Enhancing National Security by Addressing Risks at Harvard University," which suspends entry to the United States for any international student studying at Harvard University on an F or J visa. The next day, Harvard amended its Complaint and moved for a TRO as to the June 4 Proclamation. On June 5, the court granted Harvard's motion for a TRO, holding that both the TRO related to SEVP certification and the Proclamation were necessary to preserve the status quo until a hearing could be held. Both TROs were in effect until June 20, 2025 "or such earlier time as a preliminary injunction order can be issued."

Harvard then moved for a preliminary injunction on June 12. Following expedited briefing and a hearing on June 16, the district court granted the motion June 20. The preliminary injunction enjoins defendants from implementing or otherwise enforcing the May 22 revocation of Harvard's SEVP certification and requires the defendants to restore every Harvard international student on an F or J visa, and such international student applicants to the position they would have been in but for the May 22 revocation notice.

On August 6, 2025, Defendants stipulated that the May 22 letter will not be used to revoke Harvard's SEVP certification or Exchange Visitor Program designation. Defendants are currently following the procedures under 8 C.F.R. §§ 214.3, 214.4 and 22 C.F.R. Part 62.

The government's brief is due August 25, 2025, Harvard's response will be due September 24, 2025, and then the reply will be due on October 15, 2025.

Legality of Nationwide Injunctions

"Universal" or "nationwide" injunctions are orders that broadly enjoin the enforcement of presidential executive orders on constitutional grounds. Although this form of broad relief did not exist until the early 1960s, in recent years, federal district courts have increasingly used nationwide injunctions to enjoin enforcement of executive orders that typically involve controversial political topics such as immigration, climate change, DEI programs, and healthcare. Courts issued an average of 1.5 nationwide injunctions per year against the Reagan, Clinton, and George W. Bush administrations, and 2.5 per year against the Obama administration. During President Trump's first administration, however, courts issued approximately 55 nationwide injunctions, and during President Biden's administration, courts issued approximately 28 nationwide injunctions. Nationwide injunctions are particularly controversial because they permit a single district court judge to grant broad relief to parties that are not before the court.

In *Trump v. CASA*, 606 U.S. 831 (2025), the U.S. Supreme Court held that universal or nationwide injunctions exceed lower courts' authority and are unlawful. *Trump v. CASA* involved a challenge to President Trump's Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship" that sought to redefine birthright citizenship for children of non-U.S. citizens. The Supreme Court clarified that federal courts may only enter injunctions that prevent the government from enforcing a challenged statute or Executive Order against the specific plaintiffs in the case (and those with standing who the plaintiffs sue on behalf of) and cannot order relief that accrues to parties not before the court. As a result, individuals adversely affected by an unlawful statute or Executive Order must file their own lawsuits to obtain injunctive relief.

Because *Trump v. CASA* involved a constitutional challenge to an executive order rather than a challenge to an administrative agency's action under the *Administrative Procedure Act* ("APA"), the Court's decision specifically excluded APA-based claims from its holding. The Court noted that it was not addressing whether the APA permits courts to issue preliminary injunctions or "vacate federal agency actions:"

Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. *See* 5 U.S.C. § 706(2) (authorizing courts to "hold unlawful and set aside agency action").

Accordingly, *Trump v. CASA* does not affect the use of "universal vacaturs" under the APA, which in practice may have a similar effect as a nationwide injunction by granting relief to parties not before the court.

Since the Supreme Court decided *Trump v. CASA*, several district courts have considered whether to certify a nationwide class to grant relief similar to that of a universal or nationwide injunction. On the same day the Supreme Court decided *Trump v. CASA*, the CASA plaintiffs moved in the District of Maryland to certify a class and requested immediate injunctive relief. After the Fourth Circuit dismissed and remanded the case, the district court certified a class of plaintiffs and granted the plaintiffs' motion for a class-wide preliminary injunction. On October 7, the Administration filed a notice of appeal in the Fourth Circuit. *See* 25-2188 (4th Cir.).

In *Washington v. Trump*, the Western District of Washington declined the individual plaintiffs' emergency motion to lift the stay that it previously entered pending appeal to rule on the plaintiffs' attempt to seek class certification, stating that the Ninth Circuit had already began to determine the scope of the previously entered preliminary injunction. Subsequently, the Ninth Circuit upheld the scope of the universal, nationwide injunction as necessary to grant the state plaintiffs complete relief. On September 29, the Administration petitioned for a writ of certiorari in the Supreme Court seeking a review on the merits of whether Executive Order No. 14160 complies with the Citizenship Clause and its enacting statute. *See* 25-364 (U.S.).

In *Barbara v. Trump*, 1:25-cv-244 (D.N.H.), the District of New Hampshire certified a nationwide class and granted preliminary injunctive relief to enjoin the same executive order regarding birthright citizenship that was at issue in *Trump v. CASA*. On September 10, 2025, the DOJ appealed the preliminary injunction to the First Circuit. The government's brief is due November 5, 2025. On September 26, the Administration petitioned for a writ of certiorari before judgment in the Supreme Court also seeking review of whether Executive Order No. 14160 complies with the Citizenship Clause and its enacting statute. *See* 25-365 (U.S.).

As an example of post *Trump v. CASA* activity in a matter unrelated to birthright citizenship, in *Chicago Women in Trades v. Trump*, 1:25-cv-02005 (N.D. Ill.) the government defendants filed a motion seeking to narrow the previously entered nationwide injunction to apply only to the plaintiffs involved in the case. The district court has yet to rule on the motion.

Program Participation Agreement Signatory Litigation

To be eligible for Title IV funding, an institution must first execute a Program Participation Agreement ("PPA") with ED where signatories certify compliance with federal law. These signatories and certifications are particularly important because the federal government and whistleblowers often use them to assert liability under the False Claims Act.

In October 2023, ED amended 34 C.F.R. § 668.14(a) with respect to proprietary or private nonprofit institutions to require "an authorized representative of an entity with direct or indirect ownership of the institution" to sign the PPA "if that entity has the power to exercise control over the institution." *See* 88 Fed. Reg. 74,568, 74,695 (Oct. 31, 2023). This new rule became effective July 1, 2024, and ED recently determined that 34 C.F.R. § 668.14(a)(3) required religious groups that are affiliated with schools and that have the ability to select trustees to sign the affiliated school's PPA.

Hannibal-LaGrange University ("Hannibal-LaGrange"), a Christian school affiliated with the Missouri Baptist Convention ("MBC"), is challenging ED's application of 34 C.F.R. § 668.14(a) that seeks to require MBC to cosign Hannibal-LaGrange's PPA. *See Hannibal-LaGrange University v. Linda McMahon*, 2:25-cv-00042-HEA (E.D. Mo.). ED froze Hannibal-LaGrange's Pell Grant funding for a new program and refused to process Hannibal-LaGrange's PPA update without MBC's signature. The school contends in part that nonprofit institutions do not have owners, and without an ownership interest, ED cannot require that party to sign the PPA. Hannibal-LaGrange additionally argues the rule is unconstitutional and violates religious freedom by forcing the MBC into unwanted legal and financial involvement with the federal government. ED has requested additional time to file its response to Hannibal-LaGrange's motion for preliminary injunction.

Other Higher Ed-Related Cases of Interest

In *Spectrum WT, et al. v. Wendler, et al.*, No. 23-10994 (5th Cir.), the Fifth Circuit reversed a district court's denial of a motion to preliminarily enjoin West Texas A&M University officials from canceling the LGBT+ student organization's on-campus drag show on First Amendment grounds. The show was described as rated "PG-13." The school's President Wendler canceled the show, stating that the drag show did not "preserve a single thread of human dignity" which comes from being "created in the image of God." He further stated that drag shows "stereotype women in cartoon-like extremes for the amusement of others and discriminate against womanhood." The Fifth Circuit, traditionally viewed as one of the most conservative circuits in the country, held that the student group had demonstrated a substantial likelihood that the University officials had violated the First Amendment in canceling the show, as (1) the drag show implicated the First Amendment because it conveys a message of support for LGBT+ rights, (2) the university's Legacy Hall was a designated public forum because it is open to students and nonstudents for a wide variety of events, and (3) even though the university had a legitimate interest in prohibiting some expression to protect the institutional and educational mission, the cancellation could not survive strict scrutiny because it was a "concern about content," and not a concern about "the neutrality of time, place, and circumstances." The Fifth Circuit concluded that a preliminary injunction was warranted because the

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"loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," and because "injunctions protecting First Amendment freedoms are always in the public interest."

In *Hansen v. Northwestern Univ., et al.*, No. 24-cv-09667 (N.D. Ill.), a federal court in Illinois recently dismissed a **class-action antitrust lawsuit** filed in 2024 that alleged 40 universities conspired to depress the amount of institutional aid they awarded to certain applicants for admission, in violation of federal antitrust laws. The complaint centered around the universities' practice of requiring applicants to supply information about the income and assets of noncustodial parents, which the universities allegedly accounted for when making institutional aid awards. According to the complaint, the universities agreed to this practice through their membership in the College Board, a national organization that develops standardized methodologies for the college admissions process. "Absent this agreement," according to the complaint, the universities "would have competed in offering financial aid" to applicant students.

The College Board and the universities moved to dismiss, and on September 24, 2025, the U.S. District Court for the Northern District of Illinois **granted their motion**. The court found that each university had "discretion" to make a "final decision" whether or not to use noncustodial parent financial information in making financial aid decisions, and that while the complaint had alleged "parallel conduct" among the universities, it still did not sufficiently allege that they conspired with each other and agreed to implement the practice.

While the court dismissed the claims, it did so without prejudice, such that plaintiffs may seek to file an amended complaint.

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