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Higher Ed Litigation Summary: April 29, 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, and Grant Terminations.

In this edition, significant updates include litigation related to the government's "freeze" of $2.2 billion in federal funding for Harvard and further action surrounding the Dear Colleague Letter and lawsuits challenging grant terminations. We encourage those interested in learning more about the grant termination litigation to watch our recent webinar on the topic here.

Gainful Employment

Overview

In October 2023, the U.S. Department of Education ("ED") published a new Gainful Employment Rule ("GE Rule"). The GE Rule sets forth complex debt and earnings 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"). 20 U.S.C. §§ 1088(b)(1)(A)(i); 1002(b)(1)-(2), (c)(1)-(2). Programs failing the metrics risk losing Title IV eligibility.

Prior to its July 1, 2024, effective date, two lawsuits from the cosmetology school community challenged the GE Rule. *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. They argued the GE Rule was therefore in "excess" of ED's authority and was "arbitrary and capricious," in violation of the federal Administrative Procedure Act ("APA").

The *Ogle School* plaintiffs moved for a preliminary injunction to stop the GE Rule from becoming effective, but the Northern District of Texas denied the motion in June 2024. The court held that the GE Rule likely did not clearly violate the statutory definition of "gainful employment," and further, was not arbitrary and capricious. Significantly, the court ruled just days before the Supreme Court's landmark decision in *Loper Bright* overturning the *Chevron* deference doctrine. The *Ogle School* plaintiffs did not appeal the ruling denying its injunction motion. The two lawsuits were then consolidated in July 2024.

Current Status of Litigation

In September 2024, the parties filed cross motions for summary judgment. But in February 2025, after President Trump assumed office, ED asked the court for a 90-day stay of the litigation "to allow the new Administration to become familiar with and evaluate [its] position regarding the issues in this case." The court granted the motion and extended the remaining summary-judgment briefing deadlines through May 16, 2025 (or four days after the stay is terminated in the event the stay is modified). ED has also postponed GE reporting requirements until September 30, 2025.

If and when the stay is lifted, the court is likely to revisit its prior analysis of the GE Rule under the *Loper Bright* standard. Specifically, the court is expected to scrutinize the GE Rule to determine whether ED's interpretation of "gainful employment" in the HEA as permitting the use of debt and earnings metrics is the "best" under the statute's plain meaning, rather than whether it "so clearly contradicts" the statutory definition.

Bare Minimum Rule

Overview

In October 2023, as part of a broader final rulemaking, ED promulgated the so-called "Bare Minimum Rule." Effective July 1, 2024, the Bare Minimum Rule 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 the state's minimum hours, students are ineligible for Title IV aid for the additional hours. The Bare Minimum Rule departed from a prior "150% Rule" under which ED previously restricted Title IV aid to GE programs that did not exceed 150% of a state's minimum hours. Two lawsuits were filed challenging the Bare Minimum Rule 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 on June 21, 2024. The court held that the Bare Minimum Rule 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 its prior program hour length requirements (under the 150% Rule) while the injunction remained in place.

Later, in December 2024, ED initiated an administrative proceeding to terminate a plaintiff's Title IV eligibility. But after President Trump assumed office, in February 2025 ED filed a motion to stay the administrative proceeding. The administrative proceeding is currently stayed through May 15, 2025. The lawsuit has also been stayed pending the resolution of the administrative proceeding. The Bare Minimum Rule remains enjoined during the stay.

Meanwhile, in *American Massage Therapy*, plaintiff AMTA and defendant ED filed cross motions for summary judgment in November 2024. ED, however, also requested a stay of this case in early 2025. On February 27, 2025, the court stayed all deadlines through April 21, 2025. On April 23, 2025, the court extended the stay through May 21, 2025, and ordered the parties to file a joint status report on the same date with a "proposal for future proceedings."

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, among other things, includes provisions creating a new borrower defense to repayment adjudication system and closed-school loan discharge rules. The 2022 BDR Rule has been the subject of litigation for almost two years.

In February 2023, Career Colleges & Schools of Texas ("CCST") sued to challenge the 2022 BDR Rule's provisions, including its borrower defense 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 the Fifth Circuit's injunction. In January 2025, the Supreme Court granted the petition but only to consider the scope of ED's authority to implement the 2022 BDR Rule – not the propriety of the Fifth Circuit's nationwide injunction. 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 to hold briefing in abeyance on February 6, 2025.

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, after the change in administration, filed a consent motion to extend the deadline to file a response to the rehearing petition until April 2,

2025. The Ninth Circuit granted the consent motion. ED filed a second motion to extend the deadline to May 2, 2025, which the Ninth Circuit also granted.

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 allowed borrowers to be eligible for loan forgiveness if they made repayments for 10 years at substantially lower amounts compared to prior regulations. ED claimed that it had authority for the SAVE Rule under 20 U.S.C. § 1087e(d)(1). In early 2024, two groups of states challenged the SAVE Rule in court, arguing that its early forgiveness and lower payment provisions were not congressionally authorized, and that ED therefore 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 Eastern District of Missouri in June 2024 issued an order preliminarily enjoining the *loan forgiveness* provision, citing the lack of clear statutory authority under 20 U.S.C. § 1087e(d)(1). But the court did not enjoin the lower payment provision. Both the states and ED appealed the order to the Eighth Circuit. On August 9, 2024, the Eighth Circuit granted the states' motion for a temporary injunction prohibiting ED from implementing the *entirety* of the SAVE Rule pending the appeals. ED then asked the Supreme Court to vacate the injunction pending the appeals. In a brief, unsigned order, the Supreme Court denied ED's request in late August 2024.

The Eighth Circuit issued an opinion on February 18, 2025, dismissing ED's appeal of the district court's preliminary injunction. It held that 20 U.S.C. § 1087e(d)(1) "does not authorize loan forgiveness." The Court also held that the statute did not authorize the lower payment provision in the SAVE Rule. ED did not ask the Eighth Circuit to reconsider by the deadline to do so. On April 14, 2025, the district court ordered the parties to file a joint status report by May 5, 2025, including a proposed schedule for the remainder of the litigation.

In *State of Kansas*, the district court also issued a preliminary injunction order in June 2024. ED appealed the order to the Tenth Circuit, but the Tenth Circuit stayed the appeal while awaiting the Eighth Circuit's decision, since the two cases involved the same issue. After the Eighth Circuit's ruling, on February 20, 2025, the Tenth Circuit ordered the parties "to file supplemental briefs addressing how the Eighth Circuit's opinion affects these appeals." After the supplemental briefs were filed, on March 21, 2025, the Tenth Circuit continued the stay of the appeal. During the continued stay, the parties are required to file a joint status report every 45 days. Meanwhile, on April 24, 2025, the district court also stayed proceedings for 90 days and ordered a status report be filed within 90 days.

While the litigation remains ongoing, given the Trump administration's position regarding student loan forgiveness generally, it is unlikely ED will attempt to defend the SAVE Rule moving forward. This said, the administration also may work to extend the litigation to ensure that the SAVE Rule remains in place, such that congressional Republicans can claim the significant savings associated with canceling the program as part of their reconciliation strategy.

Proposed Rule Litigation

Overview

In April 2024, ED published a notice of proposed rulemaking ("Proposed Rule") that, like the SAVE Rule, also would 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 an entirely 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-00103 (S.D. Ga.), No. 24-cv-01316 (E.D. Mo.). As with the SAVE Rule challenges, they argued the Proposed Rule lacked clear statutory authorization. Ultimately, due to procedural issues regarding venue, the case has been in two federal district courts: first a court in Georgia and then a court in Missouri. Both courts, like the courts in the SAVE Rule cases, enjoined the Proposed Rule, once again citing the lack of statutory authority for loan forgiveness. This time, however, ED did not appeal the injunctions.

In December 2024, ED withdrew the Proposed Rule. The litigation technically remains active today because of an unresolved challenge to whether the Missouri court was a proper venue. On April 9, 2025, the Eastern District of Missouri ordered the parties to file a joint status update by May 9, 2025, and to "include the parties' positions on whether a live case or controversy remains in this action."

Given the Proposed Rule's withdrawal by ED under the Biden administration, and the Trump administration's stance on loan forgiveness, the Proposed Rule, like the SAVE Rule, is unlikely to be revived.

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).

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 as 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.

False Claims Act

Overview

The *qui tam*, or whistleblower, provision of the False Claims Act ("FCA") was challenged in a lawsuit, *United States ex rel. Zafirov v. Florida Medical Associates LLC*, No. 19-cv-01236 (M.D. Fla.), originally filed in 2019. In their February 2024 motion for judgment on the pleadings, the defendants challenged whether whistleblowers could represent the federal government in FCA actions without violating the Constitution's Appointments Clause.

Current Status of Litigation

In September 2024, the district court issued its decision declaring the *qui tam* provision of the FCA unconstitutional, raising significant questions about the future of whistleblower litigation. The opinion stated that in cases where the government does not intervene and private individuals proceed representing the government in FCA claims anyway, it is a violation of the Appointments Clause. The government appealed to the Eleventh Circuit (11th Cir. 24-13581, 24-13583).

This ruling contradicts prior appellate court decisions, but it aligns with concerns raised by Justice Thomas in a 2023 opinion. The Supreme Court may ultimately agree to hear the case given the textualist leanings of the current justices. The Eleventh Circuit's briefing is currently underway.

If the ruling stands, it could significantly impact whistleblower litigation. If the Supreme Court declares the *qui tam* provision 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.

Nonprofit Institution Status

Overview

Grand Canyon University ("GCU") filed a lawsuit, *Grand Canyon University v. Miguel A. Cardona et al.*, No. 21-cv-00177 (D. Ariz.), over ED's denial of GCU's request to convert to a nonprofit institution under the HEA. Although GCU had received IRS recognition as a 501(c)(3) nonprofit, ED denied its request because GCU failed to meet the

HEA's nonprofit ownership and operational requirements. ED's denial was based on GCU's revenue-sharing agreement with its for-profit parent company, which ED argued meant the university did not meet the HEA's standards.

Current Status of Litigation

The district court's order sided with ED in GCU's challenge. GCU thereafter appealed and the Ninth Circuit reversed. The Ninth Circuit held that ED used incorrect standards for determining nonprofit status under the HEA and should have applied a less stringent test. The Ninth Circuit instructed ED to reconsider GCU's request using the correct standards.

ED did not seek rehearing in the Ninth Circuit. ED also did not file a petition for a writ of certiorari in the Supreme Court by its deadline to do so.

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 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. The government defendants' opening brief on the merits of its appeal is due May 13, 2025.

Executive Orders and Dear Colleague Letter Litigation

DEI Executive Orders

Overview

Shortly after taking office, President Trump issued two DEI Executive Orders: "*Ending Radical and Wasteful Government DEI Programs and Preferencing*," and "*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*."

On February 3, 2025, higher education officials, restaurant workers, and the City of Baltimore together filed a lawsuit challenging the DEI Executive Orders in *National Assoc. of Diversity Officers in Higher Educ. et al. v. Donald J. Trump, et al.*, No. 25-cv-00333 (D. Md.). Their complaint argues that the DEI Executive Orders violate constitutional protections, including the First and Fifth Amendments, and infringe on Congress's authority over federal funding. They seek a declaratory judgment that the DEI Executive Orders are unconstitutional and an injunction to prevent their enforcement.

Current Status of Litigation

The court granted a preliminary injunction, agreeing that plaintiffs are likely to succeed on their First and Fifth Amendment claims. The court found that provisions in the DEI Executive Orders, particularly those related to "equity-related" grants and certifications, were vague and created uncertainty for contractors and grantees about whether they could comply. The court also found these provisions could infringe on their free speech and due process rights, as they could result in retaliation or punishment for expressing certain viewpoints. As a result, the

injunction blocked enforcement of these provisions but does not address the separation of powers or spending clause issues raised.

The government appealed the preliminary injunction to the Fourth Circuit and asked for a stay of the injunction pending its appeal. The Fourth Circuit agreed to stay the preliminary injunction pending the appeal. Thus, currently, **the DEI Executive Orders are in force as of now as to the Department of Education.**

The plaintiffs, meanwhile, have filed a motion to vacate the preliminary injunction order with the district court. The district court held a hearing on April 10, 2025, on that motion and the court has not yet ruled.

A number of other cases also challenge the DEI Executive Orders, but no ruling on the merits has been made. Many of these cases also challenge Executive Order 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

In *National Urban League v. U.S. Dep't of Ed.*, No. 25-cv-471 (D.D.C.), the plaintiffs challenge the DEI Executive Orders, claiming, among other things, they violated First and Fifth Amendments protections. Their preliminary injunction motion is fully briefed. A hearing has been held, but no ruling has been made yet. The court is considering whether the judge should recuse himself due to his wife being the director of the DC Department of Transportation.

In *San Francisco Aids Foundation v. U.S. Dep't of Ed.*, No. 25-cv-01824 (N.D. Cal.), the plaintiffs are claiming, among other things, the DEI Executive Orders violated the First Amendment. The motion for preliminary injunction is currently being briefed, and a hearing is scheduled for May 22, 2025.

In *Chicago Women in Trades v. U.S. Dep't of Ed.*, No. 25-cv-2005 (N.D. Ill.), The court granted the TRO on March 27, 2025, but it is limited. For now, it only applies to the Department of Labor ("DOL"). Until there is a decision on the merits of the preliminary injunction motion, the TRO in place restrains the DOL from acting under the DEI Executive Order's "Termination Provision," which terminates "equity-related grants and contracts," and its "Certification Provision," which requires grantees/contractees to certify that they are not engaged in "illegal discrimination." The court granted plaintiff's motion for preliminary injunction in part on April 15, 2025. Again, such injunction applies only to the DOL and anyone "in active concert or participation with" it for now, and as for the Termination Provision, only to Plaintiff's grant.

Dear Colleague Letter Litigation

In response to ED's February 14, 2025, Dear Colleague Letter ("DCL") and follow-up "Frequently Asked Questions," a large teachers union sued ED to challenge the enforceability of the DCL on DEI issues. *Am. Federation of Teachers v. U.S. Dep't of Ed., et al.*, No. 25-cv-00628 (D. Md.). Plaintiffs argue the DCL goes beyond merely reiterating Title VI's requirements and instead "upends and re-writes otherwise well-established jurisprudence," misrepresenting the state of the law under Title VI and the Constitution. The plaintiffs contend that the DCL deviates from ED's previous interpretations of the law and seek to have the court declare it unlawful and unconstitutional. The motions for preliminary injunction seek to enjoin ED from enforcing or taking any steps to implement the DCL and seek to hold in abeyance the deadline for state and local education agencies to respond to the Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and *SFFA v. Harvard*, dated April 3, 2025 (the "Certification requirement"). The Court held a hearing on those motions on April 18, 2025. **On April 24, 2025, the court stayed the DCL pending final resolution by the court.** It did not stay the Frequently Asked Questions, the End DEI Portal, or the Certification requirement. The stay effectively precludes enforcement of the DCL nationally against any higher education entity.

Another lawsuit has been filed challenging the DCL. *National Education Assoc. v. U.S. Dep't of Ed.*, No. 25-cv-91 (D. N.H.). This lawsuit alleges, among other things, that the DCL threatens schools with a loss of federal funding if they continue DEI programs. One of the plaintiffs is the largest education union in the country. **The Court entered a preliminary injunction order on April 24, 2025, enjoining ED from enforcing and/or implementing the DCL, the Frequently Asked Questions, the End DEI Portal, and the April 3, 2025, certification requirement, against the plaintiffs, their members, and any entity that employs, contracts with, or works with one or more plaintiffs or one or more of plaintiffs' members.** If a higher education institution is an entity that employs, contracts with, or works with one of the plaintiffs or one of its members, then the DCL, the Frequently Asked Questions, the End DEI Portal, and the Certification requirement cannot be enforced as to it.

The DCL also has been recently challenged in a lawsuit filed on April 15, 2025, by the National Association for the Advancement of Colored People. *NAACP v. U.S. Dep't of Ed., et al.*, No. 25-cv-1120 (D.D.C.). On April 24, 2025, the court entered an order granting in part the plaintiff's motion for preliminary injunction, preliminary enjoining ED's enforcement of the Certification Provision. Effectively, enforcement of any penalties threatened by the DCL, the Frequently Asked Questions, the End DEI Portal, and the Certification requirement has been paused for now, giving institutions additional time to determine how to comply with the administration's legal requirements.

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.

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. The plaintiffs are seeking a preliminary injunction to prevent enforcement.

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. On April 1, 2025, plaintiffs filed a motion for a preliminary injunction.

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 violated the separation of powers and the APA. After Executive Order 14242 was issued, on March 24, 2025, plaintiffs moved for a preliminary injunction arguing that the Executive Order is arbitrary and capricious under the APA and violates the separation of powers.

Given the overlapping issues in the *Sommerville Public Schools* and *State of New York* cases, the government asked for permission to modify the briefing schedule in the cases so that it could file a consolidated, and identical, response brief in both cases. The court granted the government's request. The government filed its response briefs on April 11, 2025. Plaintiffs' reply brief in support of their motions for preliminary injunction are due on April 18, 2025. The court heard oral arguments on the motions for preliminary injunction in both cases on April 25, 2025. No ruling has been issued at this time.

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 of force and "decimation" of its Office of Civil Rights on the basis that it, among other things, violates the APA and Fifth Amendment protections. There have been no rulings on the motion for an injunction to date.

Current Status of Litigation

The motions for injunctive relief are not fully briefed and there have been no rulings to date in any of the above actions.

Grant Termination

Teacher Grant Termination

Overview

In February 2025, after the DEI Executive Orders, ED terminated over 100 Teacher Quality Partnership, Supporting Effective Educator Development, and Teacher School Leader Incentive grants. These grants are congressionally authorized. 20 U.S.C. § 1022; *id.* § 6672; *id.* § 6632. During the Biden administration, ED originally awarded these grants to institutions for recruiting and training students to later work as teachers. ED, however, terminated the grants because they allegedly promoted "illegal" DEI practices and were "inconsistent with, and no longer effectuated, Department priorities," according to ED's notices.

Two lawsuits challenged the grant terminations as violating 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.); *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.). The plaintiffs sought injunctive relief to restore their grants.

Current Status of Litigation

In March 2025, both district courts granted injunctive relief and ordered the grants be reinstated. ED appealed and also moved to stay the injunctions pending the appeals. After the First Circuit in *California* rejected the stay request, ED filed an emergency application to stay the injunction in the U.S. Supreme Court.

On April 4, 2025, the Supreme Court granted ED's request in *California* and ordered the affected grants be re-terminated, pending a future decision on the merits. The Supreme Court's order noted that the district court likely lacked jurisdiction to hear the plaintiffs' APA claims and that the case should instead proceed in the Court of Federal Claims. ED then voluntarily dismissed its appeal of the injunction in the First Circuit.

On April 15, 2025, the plaintiffs in *California* asked the district court to order ED to produce an administrative record on an expedited basis; the plaintiffs argued that an administrative record was necessary in order for the district court to fully consider ED's anticipated motion to dismiss the complaint based on the district court's lack of jurisdiction. While the Supreme Court in *California* indicated that the district court likely lacked jurisdiction, its opinion was not a final ruling on the issue. ED, however, responded that the district court should resolve its anticipated motion to dismiss without review of an administrative record. On April 16, 2025, the district court ruled that, upon its review of ED's forthcoming motion to dismiss, it would decide whether ED has to produce the record.

Meanwhile, on April 10, 2025, after the Supreme Court's ruling in *California*, the Fourth Circuit in *AACTE* also granted a stay of the district court's injunction, ordering the affected grants be re-terminated as well.

On April 22, 2025, the plaintiffs in *AACTE* requested a status conference with the district court in order to address a schedule for ED to produce an administrative record. Then, on April 27, the plaintiffs filed a motion to dissolve the district court's preliminary injunction so that the case "can proceed in the ordinary course" in the district court – meaning the parties would address the jurisdictional arguments and the merits. The plaintiffs also asked the district court to set an expedited briefing schedule on its motion to dissolve.

Thus, both cases are returning to the district courts where the parties are expected to argue over threshold questions relating to the district courts' jurisdiction and other issues.

NIH Grant Termination

Overview

Beginning in February 2025, the National Institutes of Health ("NIH") terminated hundreds of research grants that the agency originally awarded to researchers at dozens of universities and to other research organizations. NIH's termination notices stated that the grants were terminated because they promoted illegal DEI practices and therefore "no longer effectuated" NIH's "priorities."

Several lawsuits have been filed challenging the NIH grant terminations as having violated the APA and the Constitution, and seeking injunctive relief to have their grants reinstated. *American Public Health Association, et al. v. National Institutes of Health, et al.*, No. 25-cv-10787 (D. Mass); *Commonwealth of Massachusetts, et al. v. Kennedy, Jr., et al.*, No. 25-cv-10814 (D. Mass); *American Association of University Professors, et al. v. U.S. Dep't of Justice, et al.*, No. 25-cv-02429 (S.D.N.Y.).

Current Status of Litigation

The plaintiffs filed a motion for preliminary injunction on April 25, 2025, in *American Public Health Association*.

The plaintiffs filed a motion for preliminary injunction on April 14, 2025, in *Commonwealth of Massachusetts*. The district court has scheduled a May 9, 2025, hearing on the motion.

The plaintiffs filed a motion for preliminary injunction on April 3, 2025, in *American Association of University Professors*. The court has ordered the parties to complete briefing on the plaintiffs' motion by May 1, 2025. No hearing has been set.

Harvard Funding Freeze

President and Fellows of Harvard College v. U.S. Dep't of Ed., et al., No. 25-cv-11048 (D. Mass).

Overview

On April 21, 2025, Harvard College sued ED and numerous other federal agencies over the government's "freeze" of $2.2 billion in federal funding (including primarily multi-year NIH grants) to the university. The government had paused Harvard's funding April 14 after determining that Harvard had failed to protect its students from anti-Semitic violence and harassment and therefore was not compliant with Title VI's prohibition on discrimination based on race, color, or national origin (which covers discrimination rooted in anti-Semitism). Harvard alleges that the government's funding freeze violates the First Amendment, the APA, and Title VI.

Current Status of Litigation

Notably, Harvard has not moved for a preliminary injunction – it instead has told the district court that it "intends to seek a final judgment on an expedited basis" and therefore asked the court to set an expedited schedule for the government to produce an administrative record and for the parties to file motions for summary judgment. A status conference with the district court was scheduled for April 28, 2025.

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