

EducationCounsel Alert for August 12, 2025

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

1. [New Deep Dive on DOJ Civil Rights Guidance](#)
2. [Executive Order on Federal Grantmaking](#)
3. [Administration Actions on Higher Education Admissions Data](#)
4. [Other Significant Updates](#)
5. [What's Coming Next?](#)

You can also find summaries and brief analysis of many other developments in our ongoing [Executive Actions Chart](#), which is continuously updated. All of our summaries and analysis of the Administration's executive actions are available in one place by [clicking here](#). Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice.*

1. New Deep Dive on DOJ Civil Rights Guidance

Our latest Deep Dive, [Misguidance: An Analysis of the U.S. Department of Justice's July 29, 2025 Civil Rights Guidance](#) ([click here](#) for an executive summary), examines recent non-binding [guidance](#) from the U.S. Department of Justice (DOJ) on federal antidiscrimination laws, especially as the Administration will apply them to "DEI" programs across early, K-12, and higher education. While some portions of the DOJ guidance reflect current law, others misstate or overreach—creating a real risk of chilling lawful practices to ensure equal opportunity for all. Our analysis situates DOJ's guidance in the broader context of the Administration's focus on halting efforts to advance diversity, equity, and inclusion; outlines four cross-cutting legal flaws in DOJ's guidance; and highlights where DOJ's examples of "unlawful" and "best" practices do more to obscure the law than to clarify it. Giving due attention to the accurate propositions in the guidance without being driven by the many others that are plainly wrong or significantly misleading is a critical task for education leaders and lawyers who remain committed to providing diverse, equitable, and inclusive educational opportunities for all.

2. Executive Order on Federal Grantmaking

On 8/7/25, President Trump issued an Executive Order (EO) titled, "[Improving Oversight of Federal Grantmaking](#)." The EO increases not just political oversight but also political influence, reversing decades of efforts to insulate many federal grants from political influence. The EO's policy changes are designed to address issues that, according to the EO, are commonplace in federal grantmaking. These range from funding "far-left initiatives" to concerns about the efficacy and efficiency of government-funded research. The EO directs every federal agency to take a number of actions *within the next 30 days* that together will significantly change the federal grantmaking process and that, in some respects, seeks to codify approaches deployed by DOGE early in the Administration to terminate large numbers of federal discretionary grants.

The following are some of the changes called for in the EO's four substantive sections:

- Section 3 calls for a senior *political appointee* in each agency to assume a significant role in the agency's grantmaking, including among other things "to review discretionary grants to ensure they are consistent with agency priorities and the national interest." Until agencies are able to design and

implement the new review process, the EO prohibits agencies from announcing any new funding opportunities without approval of a political appointee.

- Section 4 calls for the appointees conducting grant reviews to “use their independent judgement” instead of “defer[ring] to the recommendations of others” including any peer review panels, which the EO insists must “remain advisory” and not be “routinely deferred to.” The EO also instructs the reviews to embrace President Trump’s 5/23/25 EO on “[Restoring Gold Standard Science](#).” Further, ties in scoring can be broken by preferring the applicant with lower indirect cost rates. Further, it asserts that federal discretionary awards may not be used to “fund, promote, encourage, subsidize, or facilitate...racial preferences...; “denial by the grant recipient of the sex binary in humans”; illegal immigration; or “promot[ing] anti-American values.”
- Section 5 calls for two potentially consequential revisions to the Office of Management and Budget’s “Uniform Guidance” that would: (i) “require all discretionary grants to permit termination for convenience, including when the award no longer advances agency priorities or the national interest,” and (ii) “appropriately limit” the indirect costs rate for supporting grantees’ facilities and administration. (Note that federal courts are [currently blocking](#) multiple agencies’ attempt to unilaterally institute a 15% cap on indirect rates for universities.)
- Section 6 initiates government-wide changes, within the next thirty days, to grant terms and conditions to align with the EO, with a particular focus on ensuring federal discretionary grant agreements allow for “immediate termination for convenience, or clarify that such termination is permitted, including if the award no longer advances agency priorities or the national interest.” The EO requires an audit of the degree to which agencies’ existing terms, applicable regulations, and current portfolio of awards align with the EO’s approach to grant terminations. Agencies are also ordered to revise the terms of existing grants wherever possible.

The EO calls for other changes to the federal discretionary grantmaking process, which can be reviewed [here](#). The provisions increasing the role for political appointees (and decreasing the role of peer review panels) and making federal grants subject to termination for convenience—including because of a determination that the grants are not aligned with the Administration’s priorities—could dramatically undermine the quality and stability of research and development and the independence and academic freedom of research institutions.

3. Administration Actions on Higher Education Admissions Data

On 8/7/25, President Trump issued a Presidential Memorandum titled, “[Ensuring Transparency in Higher Education Admissions](#).” The memo raises “concerns” that institutions of higher education are using “‘diversity statements’ and other overt and hidden racial proxies” to consider applicants’ racial or ethnic status in making admissions decisions in defiance of the Supreme Court’s 2023 ruling in *Students for Fair Admissions v. Harvard*. The memo calls for several updates to USED’s [Integrated Postsecondary Education Data System](#) (IPEDS), most notably that the National Center for Education Statistics (NCES) begin requiring, collecting, and making public new data that can “provide adequate transparency into admissions,” beginning with the upcoming school year.

On the same day, USED Secretary Linda McMahon issued a [directive](#) to the National Center for Education Statistics (NCES) to require that the following data be collected and published to “capture information that could indicate whether institutions of higher education are using race-based preferencing in their admissions processes”:

- “data disaggregated by race and sex relating to the applicant pool, admitted cohort, and enrolled cohort at the undergraduate level, and for specific graduate and professional programs”;

- “quantitative measures of applicants and admitted students’ academic achievement such as standardized test scores, GPAs, first-generation-college-student status, and other applicant characteristics, for each race-and-sex pair; and
- “each race-and-sex pair’s graduation rates, final GPAs, financial aid offered, financial aid provided, and other relevant measures”

Although NCES has not yet announced how it will implement the new directive, changes to IPEDS are typically made through an IPEDS Technical Review Panel (TRP) that follows a notice-and-comment process before submitting proposed changes to the Office of Management and Budget (OMB).

It is worth noting some context for the Administration’s actions here:

- First, in the Administration’s recent resolution agreements with both [Columbia University](#) and [Brown University](#), those universities agreed to provide the Administration with similar admissions information including disaggregated data for GPAs and test scores. The new Presidential memo and IPEDS directive extend this data submission to all colleges and universities participating in the federal student financial aid programs.
- Second, the EO’s embrace of disaggregated data contradicts other Administration policy pronouncements that discourage the use of disaggregated data to root out hidden discrimination. Most recently, the DOJ guidance mentioned above includes a “best practice” that recommends “[f]ocusing solely on nondiscriminatory performance metrics, such as program participation rates or academic outcomes, *without reference to race, sex, or other protected traits*” (emphasis added). Similarly, a 4/23/25 [higher education accreditation EO](#) similarly called on USED to “mandate that accreditors require member institutions to use data on program-level student outcomes to improve such outcomes, *without reference to race, ethnicity, or sex*” (emphasis added), and another EO issued that same day made it the policy of the federal government to [reject the disparate impact standard](#) that uses disaggregated data to root out hidden discrimination.
- Third, NCES is charged with implementing these IPEDS changes, but that may be a challenge given that the Administration’s reduction in force and other personnel changes has reduced the NCES workforce from about 100 employees to just four.

4. Other Significant Updates

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

USED Secretary McMahon Announces 50-State Tour: On 8/8/25, USED [announced](#) Secretary McMahon will visit all 50 states during her “Returning Education to the States” Tour. The tour will focus on highlighting “education models that are accelerating learning outcomes,” and school choice options that provide families with “the freedom to choose the educational path that best fits their child’s needs.” The [tour website](#) includes an interactive map that will feature information about each stop.

Oklahoma Seeks ESSA Testing Waiver: On 8/8/25, the Oklahoma State Department of Education (OSDE) [announced](#) it would pursue a waiver regarding the annual assessment requirements of the Every Student Succeeds Act (ESSA). OSDE’s [waiver proposal](#) would allow Oklahoma school districts to choose to replace statewide testing with “approved benchmark assessments.” The draft waiver is open for public comment through 9/8/25. (Oklahoma is the second state to publish its waiver request; a [summary of both USED’s invitation for state waivers and Indiana’s waiver request](#) appeared in our 8/6/25 Alert.)

Military Academies Agree to End Consideration of Race in Admissions: Reporting on 8/11/25 [indicates](#) that the Trump Administration has settled a lawsuit brought by Students for Fair Admissions (SFFA) challenging the admissions policies at West Point and the Air Force Academy, which operate under the authority of the Department of Defense. Rather than contest the lawsuit, the Administration decided these two academies will join the [Naval Academy](#) in no longer considering race in their admissions decisions, despite the Supreme Court explicitly carving military academies out of its 2023 *SFFA v. Harvard* decision.

CRDC changes: On 8/7/25, USED [released](#) for public comment proposed changes to the Civil Rights Data Collection (CRDC) to more closely align with [Executive Order 14168](#), defining “sex” as “an individual’s immutable biological classification as either male or female.” The proposal would end the collection of data from elementary and secondary schools nationwide related to “gender identity” generally and nonbinary identities specifically, including with respect to reporting of incidents of bullying, harassment, and sexual assault. These changes, if adopted, would apply to the 2025-26 and 2027-28 CRDCs. Public comment is due by 9/8/25.

5. What’s Coming Next?

Our [Executive Actions Tracker](#), which is different from our [Executive Actions Chart](#), includes a comprehensive list of specific actions called for in President Trump’s various EOs affecting education. The table below highlights a few particularly significant *upcoming deadlines*. Consult the Tracker for a full list of the EOs’ requirements and deadlines.

Date	Executive Order	Action Expected
8/18	“Restoring Accountability to Policy-Influencing Positions within the Federal Workforce” EO	The heads of federal agencies must conduct a full review of all positions and determine which positions should be reclassified under a new classification of federal employees for “policy-influencing positions” that are not subject to typical civil service protections.
8/21	“Reinstating Common Sense School Discipline Policies” EO	USED, DOJ, HHS, and DHS, will submit a report regarding the “status of discriminatory-equity-ideology-based school discipline and behavior modification techniques in public education.”
8/21	“Advancing Artificial Intelligence Education for American Youth” EO	The Secretary of Labor shall, in consultation with the Secretary of Education and the Director of the NSF, support the creation of opportunities for high school students to take AI courses and certification programs by giving priority consideration in awarding grants to providers that commit to use funds to develop or expand AI courses and certification programs. The Secretary of Labor and the Secretary of Education shall encourage recipients to build partnerships with states and local school districts to encourage those entities to consider offering high school students dual enrollment opportunities to take courses to earn postsecondary credentials and industry-recognized AI credentials concurrent with high school education.
		All agencies that provide educational grants will consider AI as a priority area within existing Federal fellowship and scholarship for service programs.
		The Director of the NSF shall take steps to prioritize research on the use of AI in education. The Director of the NSF shall also utilize existing programs to create teacher training opportunities that help educators effectively integrate AI-based

		tools and modalities in classrooms.
		The Secretary of Agriculture shall take steps to prioritize research, extension, and education on the use of AI in formal and non-formal education through 4-H and the Cooperative Extension System. The Secretary of Agriculture shall also utilize existing programs to create teacher and educator training opportunities that help effectively integrate AI-based tools and modalities into classrooms and curriculum.
		The Secretary of Labor shall seek to increase participation in AI-related Registered Apprenticeships.
		The Secretary of Labor shall encourage states and grantees to use funding provided under the Workforce Innovation and Opportunity Act (WIOA), as amended, to develop AI skills and support work-based learning opportunities within occupations utilizing AI.
		The Secretary of Labor, through the Assistant Secretary of Labor for Employment and Training, and in collaboration with the Director of the NSF, shall engage with relevant state and local workforce development boards, industry organizations, education and training providers, and employers to identify and promote high-quality AI skills education coursework and certifications across the country.

DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to info@educationcounsel.com. Updates in this Alert are current as of August 12, 2025 at 5:00 pm ET.