



K-12 Education Law 2025

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Federal
Executive
Actions



Judicial
Decisions 2024-
2025

“Protecting the American People Against Invasion” (January 20, 2025)

- ▶ National emergency declaration with directives to remove undocumented immigrants, block funding to sanctuary cities, rescind funding to organizations providing support to “illegal aliens,” ensure no public benefits for undocumented
- ▶ Accompanying memo from Sec’y of Homeland Security: rescinded of prior guidance relating to schools and churches
 - ▶ Agents are to use “common sense” to determine whether to carry out activities at formerly safeguarded locations such as schools
 - ▶ Challenged: *Denver Public Schs. v. Noem* (D. Colo., filed February 12, 2025)

Judicial vs. administrative warrants (search or seizure)

FERPA (limits on information; inform parents of subpoena)

“Defending Women from Gender Ideology Extremism ...” (January 20, 2025)

- ▶ “sex” is “individual’s immutable biological classification as either male or female”
 - ▶ US will recognize only two genders (male and female)
 - ▶ Does not include “gender identity”
- ▶ Directs agencies to
 - ▶ Issue documents showing sex at conception
 - ▶ Stop using gender identity or preferred pronouns
 - ▶ Maintain “women only” spaces in prisons and shelters
- ▶ AG is to write new policies regarding *Bostock*

“Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (January 21, 2025)

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- ▶ AG and Sec’y of Ed to “jointly issue guidance to all state and local education agencies that receive federal funds ... regarding the measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*”
- ▶ Requires recipients of federal money to certify compliance with “antidiscrimination laws” and not operating any programs promoting DEI that violate antidiscrimination laws
- ▶ February 14, 2025: DCL setting out interpretation of *Students/Harvard*
- ▶ February 27, 2025: USDOE launches “enddei.ed.gov” portal to report
- ▶ April 3, 2025: USDOE issued accompanying DCL requiring “certification” of compliance with antidiscrimination obligations in order to continue to receive federal funding
 - ▶ Per DCL: submitting claims for federal funding when not in compliance with Title VI due to “certain DEI practices” = potential liability under the False Claims Act

Aftermath (DEI/Title VI)

- ▶ February 21, 2025: enjoined requiring grant recipients to certify “no DEI” and requiring them to agree compliance with anti-discrimination laws is material representation under False Claims Act; also enjoined enforcement action targeting DEI programs
 - ▶ *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump* (D. Md.)
 - ▶ March 14, 2025: Fourth Circuit stayed injunction pending appeal
 - ▶ Pls granted April 24, 2025: *National Education Association v. U.S. Dep't of Educ.* (D.N.H.); *National Association for the Advancement of Colored People* (D.D.C.)
- ▶ April 4, 2025: SCOTUS (5-4) upheld USDOE's termination of \$65 million in grants relating to teacher shortages (because funding programs with DEI initiatives), while underlying litigation progressed
 - ▶ *California v. U.S. Dep't of Educ.* (8 states sued, in D. Mass., 1st Cir.)
- ▶ But some states are carrying on (OK to withhold federal funds if districts don't certify they are not using DEI programs)
- ▶ Other federal agency efforts to comply with EO also enjoined
 - ▶ *San Francisco Unified Sch. Dist. v. AmeriCorps* (9th Cir. March 31, 2025)

“Ending Radical Indoctrination in K-12 Schooling” (January 29, 2025)

- ▶ To eliminate federal support/funding for “illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology”
- ▶ To protect parental rights under FERPA and PPRA
- ▶ Sec’ies of Ed, Defense, HHS to work with AG to develop strategy
 - ▶ To eliminate funding if school has any curriculum, instruction or program that “directly or indirectly support[s] or subsidize[s] the instruction, advancement, or promotion of gender ideology or discriminatory equity ideology” or “directly or indirectly support[s] students’ gender transitions,” including using names or pronouns that differ from sex assigned at birth and not informing parents
 - ▶ Including funding that supports teacher education, certification, licensure, training
- ▶ AG to take legal action against K12 teachers and school officials who “unlawfully facilitate[e] the social transition of a minor student”

Aftermath
(“Indoctrination”)

*State of
California v.
Dep’t of Educ
(D. Mass.)*

*San Francisco
AIDS Foundation
v. Trump (N.D.
Cal.)*

“Expanding Educational Freedom and Opportunities for Families” (January 29, 2025)

- ▶ To make more federal funds available for school choice as the “most promising avenue for education reform”
- ▶ Sec’ies of Ed and Labor (and HHS, Defense, and Interior) to
 - ▶ Issue guidance re states’ use of federal formula funds to support education choice initiatives
 - ▶ Include education freedom as a priority in discretionary grant programs
 - ▶ Review discretionary grant programs to expand education freedom

“Keeping Men out of Women’s Sports” (February 5, 2025)

- ▶ Title IX requires equal opportunity to participate in sports
- ▶ Directs agencies to rescind all funds from athletic programs that deprive women and girls of fair athletic opportunities, which results in the endangerment, humiliation, and silencing of women and girls and deprives them of privacy
- ▶ Sec’y of Ed. and AG are to:
 - ▶ Follow D. Ky. vacatur of 2024 Title IX regulations
 - ▶ Bring regulations and policy guidance into line with Congress’ existing demand for “equal athletic opportunity for members of both sexes” by clearly specifying and clarifying that women’s sports are reserved for women
 - ▶ Prioritize TIX enforcement against institutions that deny equal opportunity by requiring female students to compete with or against or to appear unclothed before males
- ▶ All agencies are to review grants to educational programs and rescind funding to programs that fail to comply with policy in this EO

COVID vaccine & federal funding (February 14, 15, 2025)

- ▶ February 14, 2025: Bars federal funds from being used to support or subsidize LEAs (among others) that require students to have received a COVID-19 vaccination to attend in-person education programs.
 - ▶ Sec'ies' of HHS and Ed to issue guidelines to end coercive COVID-19 vaccine mandates, including reporting non-compliant entities and a process for preventing federal funds to those who impose mandates
- ▶ February 15, 2025: clarifies that discretionary federal funds also should not be used to directly or indirectly support or subsidize LEAs with such vaccine mandates
 - ▶ Sec'y of Ed to issue guidelines re legal obligations wrt parental authority, religious freedom, disability accommodations, EP re vaccines
 - ▶ Sec'y of Ed will provide a list of discretionary grants and contracts with LEAs that are noncompliant and process for preventing/rescinding funding
 - ▶ "to be implemented consistent with applicable law and subject to availability of appropriations"

“Improving Education Outcomes by Empowering Parents, States, and Communities (March 20, 2025)”

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- ▶ Close US Department of Education
- ▶ Return authority to states
- ▶ No interruption of services, programs, benefits on which Americans rely
- ▶ Review funding to ensure rigorous compliance with executive policy
 - ▶ Any program receiving money must “terminate illegal discrimination obscured under the label ‘diversity, equity, and inclusion’ or similar terms and programs promoting gender ideology”

Federal Agencies

US Department of Education

- ▶ OCR remains active
 - ▶ January 20 – May 19: 99 new OCR investigations (52 re college/university DEI)
 - ▶ 18 K-12 (12 transgender policies; 3 race)
 - ▶ Admission policy at Thomas Jefferson High School for Science and Technology (Title VI investigation referred by Virginia AG)
 - ▶ April 28: found UPenn violated TIX by permitting males to compete in female athletics and use locker rooms
- ▶ Layoffs/dismantling
 - ▶ Enjoined (and reinstatement ordered) *NY v. McMahon* (D. Mass. May 22, 2025)
 - ▶ Suit by educators, districts, unions
 - ▶ June 6, 2025: application to stay injunction with SCOTUS
 - ▶ ... or not *Carter v. U.S. Dep't of Educ.* (D.D.C. May 21, 2025)
 - ▶ suit by parents/students
 - ▶ Challenged
 - ▶ *NAACP v. U.S.A.* (D. Md filed March 24, 2025)
 - ▶ *Victim Rights Law Center v. U.S. Dep't of Educ.* (D. Mass. filed April 21, 2025)
- ▶ EO “Reinstating Common Sense School Discipline Policies” = guidance/model policies from USDOE
- ▶ NPC for priorities for discretionary grant funding
 - ▶ Promoting evidence based literacy
 - ▶ “Expanding education choice”
 - ▶ “returning education to the states”

US Department of Justice

- ▶ April 2025: Sued Maine DOE for violating federal anti-discrimination law (TIX) by enforcing policies that “ require girls to compete against boys in athletic competitions designated exclusively for girls”
 - ▶ HHS also referred Maine to DOJ for alleged TIX violations
 - ▶ Companion action at USDOE to terminate federal funding
 - ▶ OCR CPM: If unable to negotiate resolution agreement, OCR *will either*
 - ▶ Initiate admin proceedings (re funding); or
 - ▶ Refer to DOJ for enforcement
- ▶ April 4, 2025: joint “Special Investigations Team” to protect students, especially female students, from the pernicious effects of gender ideology in school programs and activities

Student Privacy Policy Office

- ▶ March 28, 2025: DCL to address “priority concerns”
 - ▶ Parent right to inspect and review records concerning
 - ▶ their students’ gender identities at school (“Gender Plans”)
 - ▶ Safety (identification of other students who have made death threats against their children)
 - ▶ access to military recruiters
- ▶ Requiring VDOE to provide assurance it and local divisions are complying, specifically wrt the “priority concerns”
- ▶ Threatens loss of federal funding
- ▶ SPPO investigating California Dep’t of Ed, Maine Dep’t of Ed

Judicial

SCOTUS Term Cases

E-rate (*Wisconsin Bell, Inc. v. Heath*; *FCC v. Consumers' Research*)

Parents' right to curricular opt-out (*Mahmoud v. Taylor*)

Liability for disability discrimination (*AJT v. Osseo Area Schs.*)

Religious charter schools (*Oklahoma Charter Sch. Bd. v. Drummond*)

Gender identity: standard of review (*U.S. v. Skrametti*)

"universal" injunctions (*Trump v. Washington, v. New Jersey, v. CASA*)

- Birthright citizenship

Other Recent Judicial Activity (Constitution 1st A)

“let’s go Brandon”: vulgar or protected speech?

- *Conrad v. Madison Local Sch. Dist. Bd. of Educ.* (Ohio, May 12, 2025)

Islam studied in World Geography: endorsement or not?

- *Hilsenrath on behalf of C.H. v. Sch. Dist. of Chathams* (3d Cir. May 5, 2025)

Relative’s First Amendment activity: protected for employee?

- *DeFrancesco v. Robbins* (9th Cir. May 7, 2025)

AR-15 hat in elementary school: protected speech?

- *C.S. v. McCrumb* (6th Cir. May 2, 2025)

Protests aimed at specific transgender athlete: protected or not?

- *Fellers v. Kelley* (D.N.H. April 14, 2025)

“only two genders” t-shirt: protected or hate speech/bullying?

- *L.M. v. Town of Middleborough* (1st Cir. June 9, 2024); cert. denied May 27, 2025

Other Recent Judicial Activity (Constitution 14th A)

Discouraging disclosure of
transgender status to parents: 14th
A?

- *Lee v. Poudre Sch. Dist. R-1* (10th Cir. April 22, 2025) ?
- *Regino v. Staley* (9th Cir. April 4, 2025) ?
- *Littlejohn v. Sch. Bd. of Leon Co.* (11th Cir. March 12, 2025) NO
- *Foote v. Ludlow* (1st Cir. February 18, 2025) NO
- *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.* (7th Cir. 2024), cert. denied December 19, 2024

Extension of suspension: additional
PDP?

- *KJ v. Jackson* (9th Cir. February 11, 2025)

Other Recent Judicial Activity (employment)

“work from home”: reasonable accommodation or no?

- *Ray v. Columbia Brazoria Indep. Sch. Dist.* (5th Cir. April 28, 2025)

Supervising students: essential function?

- *Kakoolaki v. Galveston Ind. Sch. Dist.* (5th Cir. April 2, 2025)

Snooping co-workers: can they violate the 4th Amendment?

- *Lawson v. Creely* (6th Cir. March 26, 2025)

Retirement gift: protected speech?

- *Stirling v. North Slope Borough Sch. Dist.* (Alaska March 14, 2025)

Social media reactions to personnel decisions...

- *Suniaga v. Downingtown Area Sch. Dist.* (E.D. Penn. February 5, 2025)

Transfer of employee (and many other acts short of termination) can be adverse employment action

- *Muldrow v. City of St. Louis* (SCOTUS April 17, 2024)

Other Recent Judicial Activity (Official Social Media; Meetings)

- ▶ Activity on “official” social media can violate First Amendment, if the account/poster (a) had actual authority to speak on behalf of the state on particular matter and (b) purported to exercise that authority in the relevant action
 - ▶ *Lindke v. Freed* (SCOTUS, March 15, 2024)
- ▶ Public comments policies that bar “abusive, obscene or personally directed comments” violate First Amendment (overbroad; inconsistent enforcement)
 - ▶ *Moms for Liberty – Brevard County v. Brevard Public Schools* (11th Cir. 2024)
 - ▶ *Ison v. Madison Local Sch. Dist. Bd. of Educ.* (6th Cir. 2021)

Other Recent Judicial Activity (Miscellaneous)

Title IX notice: subordinate employees sufficient? Possession of video?

- *Demarcus v. Univ. of South Ala.* (11th Cir. April 10, 2025)
- *Doe v. Ferguson* (5th Cir. February 13, 2025)

Bathroom access

- *Roe v. Crutchfield* (9th Cir. March 20, 2025)

Due Process liability following school shooting

- *Franz x. Oxford Comm. Sch. Dist.* (6th Cir. March 20, 2025)

Board member censure: retaliation?

- *Sorcan v. Rock Ridge Sch. Dist.* (8th Cir. March 13, 2025)

Parent facebook group: administrative action retaliatory?

- *Tachias v. Sanders* (10th Cir. March 10, 2025)

Parent charge after alleged assault: defamation to inform parent employer?

- *Hartzell v. Maran Unified Sch. Dist.* (9th Cir. March 5, 2025)

"near daily" messages and meetings on topics of sex: qualified immunity?

- *Wadsworth v. Nguyen* (1st Cir. February 19, 2025)

Fourth Circuit

- ▶ No “property interest” in public education under the “Takings Clause” of the Fifth Amendment
 - ▶ *Chollet v. Braband*, May 19, 2025
- ▶ Arrest of meeting attendee who refused to cooperate constitutional
 - ▶ *Somers v. Devine*, March 24, 2025
 - ▶ “we do not ask parents and taxpayers to lounge back and accept all the policies that a SB chooses to promulgate. Like any institution, SBs are not exempt from a vocally engaged environment. But embracing productive, even adversarial, discourse does not mean leaving SBs unguarded from the disruptive behavior which threatens their very mission. The First Amendment does not guarantee the right to communicate one's views and all times and places or in any manner that may be desired. SBs have a right to discharge their solemn duties with some modicum of order and peace.”
- ▶ Transition of gender: covered by TVII? TVII religious exemptions? RFRA defense?
 - ▶ *Zinski v. Liberty Univ., Inc.*, February 21, 2025
- ▶ School name changes: 1st A compelled speech? 14th
- ▶ A EP? Title VI discrimination?
 - ▶ *Virginia State Conference NAACP v. Cnty. Sch. Bd. of Shenandoah Cnty* (W.D. Va. January 22, 2025)
- ▶ Employee required to use preferred pronouns/names: Free Exercise? Speech?
 - ▶ *Polk v. Montgomery County Public Schs.* (D. Md. January 2025)
 - ▶ But see *Vlaming v. West Point Sch. Bd.* (2023)
- ▶ Student participation on sports teams based on gender identity

Virginia Courts: Sovereign Immunity

▶ *Drasovean v. Walts* (Nov. 6, 2024 panel opinion COA)

- ▶ Confused the status of SBs vis-à-vis sovereign immunity: held SB is “municipal corporation” rather than “arm of state”
- ▶ Effect: SB would not have absolute SI; SI only for “governmental functions,” not for “proprietary”

▶ *ZM v. Newport News Sch. Bd.* (May 8, 2025)

- ▶ SBs have absolute immunity
- ▶ Employees have qualified SI

Trends

- ▶ > employment matters relating to mental health
- ▶ > attention to environmental/facilities issues
 - ▶ RADON (records of testing § 22.1-138(B))
 - ▶ LEAD (records of testing § 22.1-135.1)
 - ▶ MOLD (plan submitted to VDH § 22.1-138(D))
 - ▶ ASBESTOS (AHERA plan, training per 40 C.F.R. 763)
- ▶ FOIA
- ▶ Title IX

Questions?

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