

Litigation Updates

Challenges to Mail Voting Rule Continue After SCOTUS Lifts Injunction

On August 24th, in a 6-3 [unsigned shadow docket order](#), the U.S. Supreme Court lifted a lower court injunction that blocked parts of a March 2026 [executive order](#) (EO) restricting mail voting. Among other provisions, the EO directed the U.S. Postal Service (USPS) to issue regulations requiring the agency to create preapproved lists of eligible mail-in voters and prohibit the delivery of absentee ballots to voters not on those lists. The Court found that the plaintiff states' claims were not ripe for decision because USPS had not finalized the rule when they first filed suit. The order, however, does not clear the path for the EO to proceed. After USPS issued its [final implementing rule](#) on August 21st, the same group of plaintiff states filed a [new lawsuit](#) challenging the rule, while plaintiffs in a [second case](#) amended their complaint to add new claims. Both sets of plaintiffs have moved for temporary restraining orders; rulings on those motions are expected in the coming days and could prevent the rule from taking effect.

District Judge Ends Illinois In-State Tuition for Undocumented Students

On July 24th, an Illinois district judge issued [summary judgment](#) permanently ending Illinois laws that allowed undocumented students to qualify for in-state tuition rates and state scholarships. The judge held that such programs are preempted by a federal law that prohibits states from granting benefits to non-citizens that are not offered to all U.S. citizens. Similar lawsuits, all brought by the Department of Justice, are still pending in [California](#), [Illinois](#), [Kansas](#), [Maryland](#), [Massachusetts](#), [New Jersey](#), [Rhode Island](#), and [Virginia](#), as are appeals in challenges to the [Minnesota](#) and [Nebraska](#) programs.

Recent Executive Actions

Attempting to Expand ED's Ability to Cancel Grants

On August 24th, the Department of Education (ED) published a [proposed rule](#) that would significantly reshape the regulations governing federal education grantmaking. Among other changes, the new rule would effectively allow ED to cancel competitive grants at any point during the grant period for any reason. ED would be able to cancel awards that do not align with administration priorities, even if those priorities did not exist when the grants were awarded; require recipients to comply with anti-DEI and other executive orders as a condition of continued funding; and prioritize applicants who commit to lower overhead cost rates. Public comment on the proposed rule is open until September 23, 2026.



Legally Speaking...

If finalized, the proposed rule would empower the executive branch to weaponize federal funding and penalize disfavored viewpoints. Courts have consistently held that viewpoint- and speaker-based restrictions on federal funding violate the First Amendment and are invalid under the Administrative Procedure Act (APA), and several have found that Title VI precedent does not support the Administration's claim that programs and policies promoting DEI are unlawful.

Seeking to Scale Back Federal E-Rate Program

On August 14th, the Federal Communications Commission (FCC) published a [notice of proposed rulemaking](#) that seeks comment on whether the E-Rate program should be narrowed or eliminated in light of child safety concerns related to screen time in schools. These comments will inform the FCC's development of a future proposed rule implementing changes to E-Rate, a decades-old program established by Congress that provides financial support for schools and libraries to access the internet and other communication services. Public comment is due by October 13, 2026.



Legally Speaking...

Before the FCC issues a final rule changing the E-Rate program, the APA requires the agency to consider certain statutory factors, weigh stakeholders' reliance on the current program, and address concerns raised in public comments. To the extent the FCC fails to take these steps, any final rule may be arbitrary and capricious in violation of the APA. Any changes to the E-Rate program would also need to comport with the statutes creating E-Rate.

Overhauling Accreditation Standards

On August 20th, ED published a [proposed rule](#) that would make it easier for new higher education accrediting agencies to gain federal recognition and for institutions to switch accreditors. The rule would also require accreditors to adopt standards on research misconduct, cost efficiency, and the promotion of "intellectual diversity and the free exchange of ideas amongst faculty." In addition, it would prohibit standards that "encourage, direct, or otherwise require" institutions to adopt DEI-related policies or programs that include racial preferences, such as race-based scholarships. Public comment on the proposed rule is open until September 21, 2026.



Legally Speaking...

By requiring accreditors to adopt prescribed academic freedom, viewpoint diversity, and anti-DEI standards, the proposed rule imposes broad restrictions on the speech and conduct of institutions seeking accreditation as a condition of eligibility for federal student financial aid and their students and faculty. This is likely unconstitutional, as the standards would penalize accreditors and institutions for expressing disfavored views, chill protected speech, and threaten academic freedom. The proposal may also violate statutory limits on ED's power over accreditors.

Discouraging Student Discipline Policies Meant to Reduce Racial Disparities

On August 18th, ED published a [Dear Colleague Letter](#) claiming that student discipline policies aimed at reducing unintentional racial disparities violate Title VI and the Constitution, except in "rare and exceedingly narrow" cases. While the Letter stops short of directing school districts to end policies that account for racial disparities, it makes clear that ED will find such policies unlawful and may initiate enforcement proceedings against districts that maintain them. The Letter follows ED's July 2026 [rescission](#) of a longstanding rule that prohibited disparate-impact discrimination under Title VI.



Legally Speaking...

ED's Dear Colleague Letter is non-binding guidance without any immediate legal effect on school districts. Further, its interpretation of Title VI contradicts the statutory text and precedent. Title VI does not explicitly mention (much less ban) disparate impact discrimination, and the U.S. Supreme Court has recognized disparate impact theories under several civil rights laws without ruling on their constitutionality. As a result, any attempt by ED to enforce this view — such as threatening to withhold funding from noncompliant states or districts — would likely face legal challenges.

Denying Residency and Visa Applications for Public Benefit Usage

On July 20th, the Department of Homeland Security (DHS) published a [final rule](#) allowing officials to reject applicants for permanent residency or visa extensions who use public benefits like school meals, Medicaid, and SNAP. This rule significantly broadens the types of social service use that DHS agents can cite to justify green card or visa extension denials. DHS predicts the rule will reduce federal and state spending on public benefit programs by roughly \$13 billion per year, as it will dissuade eligible families from accessing these programs out of concern that it may jeopardize their immigration status.



Legally Speaking...

DHS received nearly 9,000 comments in response to its proposal to adopt this rule. To the extent that the final rule does not address the concerns raised in the comments or the reliance interests of green card and visa extension applicants, it may be arbitrary and capricious, in violation of the APA.