

**EducationCounsel Alert for January 31, 2025**

*DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education unfold. The information provided below is a summary and initial analysis, it is not legal advice. Given the pace of federal action, it could be outdated quickly, so refer to the time and date, and other Alerts will follow. We hope this is helpful and invite any suggestions or feedback to [info@educationcounsel.com](mailto:info@educationcounsel.com). Updates on executive action below are current as of January 31, 2025, at 1:30 p.m. ET.*

On January 29, 2025, President Trump signed a trio of Executive Orders (EOs), which focus on (1) expanding use of federal funds for educational choice, including in private religious and independent schools; (2) seeking to eliminate “discriminatory equity ideology,” “gender ideology,” and “social transition” in schools; and (3) combating antisemitism. Each of these EOs open with a purpose statement (not summarized here) that provides a sense of the President’s goals as well as the framing and rhetoric that characterize the EO.

**Title: “[Expanding Educational Freedom and Opportunity for Families](#)”**

**Summary:**

- Directs the Secretary of Education within 60 days to issue guidance regarding how states can use federal formula funds (e.g., Title I) to support K-12 “educational choice initiatives.”
- Requires the Secretary of Education to include “education freedom” as a priority in discretionary grant programs, “as appropriate and consistent with applicable law.”
- Requires the Secretaries of Education and Labor within 90 days to each submit reports to the President that recommend ways to use relevant discretionary grant programs to “expand education freedom for America’s families and teachers.”
- Charges the Secretary of Health and Human Services (HHS) within 90 days to issue guidance regarding whether and how states receiving federal block grants for families and children, including the Child Care and Development Block Grant (CCDBG), can use them to expand educational choice and support families who choose educational alternatives to governmental entities (including private and faith-based options).
- Charges the Secretaries of Defense and Interior to each submit plans within 90 days describing how military-connected families and families of students eligible to attend Bureau of Indian Education (BIE) schools, respectively, may use federal funds – possibly as early as the 2025-26 school year – to attend schools of their choice (including private, faith-based, or public charter schools).

**Initial Analysis:**

- The EO tasks multiple agency secretaries to identify opportunities under existing law to expand educational choice, through both federal formula (e.g., Title I, CCDBG, etc.) and discretionary (also known as competitive) programs. The EO cannot modify or redirect the flow or allowable uses of federal formula funds that are set in statute. To the extent these statutes include opportunities to further encourage the use of federal funds for vouchers/school choice, which requires further analysis, impacts could be more significant in states that promote voucher policies. Most federal formula funds are spent at the discretion of states and districts within the *existing* parameters of the relevant grants as prescribed in statute, which are not expanded by the EO but are subject to appropriate interpretation of the agencies and ultimately the courts.

- Discretionary grant programs may provide more opportunities to direct federal funds to vouchers/school choice, such as through secretarial “supplemental priorities,” but these programs, too, have uses and recipients (often SEAs and LEAs) prescribed in law, and the authority to append priorities to them will require further analysis.
- CCDBG funds can already be used for private and faith-based child care. Efforts to preference certain types of providers would likely undermine a core purpose included in Congress’s most recent [reauthorization](#) of the law, which is to “promote parental choice to empower working parents to make their own decisions regarding the child care services that best suit their family’s needs.” Allowing parents to use CCDBG certificates for the purposes of seeking a private, or faith-based, K-12 education, on the other hand, is prohibited by law.
- The EO’s directives to the Secretary of HHS could also include examination of the Temporary Assistance to Needy Families (TANF) and Social Services Block Grants (SSBG) in addition to CCDBG since those are “block grants for families and children” and can be used to pay for child care.
- While this EO does not propose any new federal programs or funds to advance choice or vouchers, it could mislead or elevate the expectation among parents that they will receive vouchers, particularly among families served by the Department of Defense and BIE considering that both sets of families are served through systems directed by federal agencies. Further, President Trump’s FY 2026 budget request is likely to be released in March or April and to include proposals aligned with this EO. Finally, new federal support for school vouchers and/or Education Savings Accounts are also likely to be considered as part of budget reconciliation bills that will be advanced by congressional Republicans.

## Title: [“Ending Radical Indoctrination in K-12 Schooling”](#)

### Summary:

- Addresses three aspects of what the Administration describes as “radical indoctrination”: teaching about “discriminatory equity ideology” or “gender ideology”; supporting transgender students’ “social transition”; and undermining “patriotic education.” The EO provides definitions for each of these terms, portions of which are excerpted below.
- Requires the Secretaries of Education, Defense, and HHS, in consultation with the Attorney General, to provide an “Ending Indoctrination Strategy” to the President within 90 days of the EO that contains recommendations and a plan for (1) eliminating federal funding or support for “illegal and discriminatory treatment and indoctrination in K-12 schools,” including based on “gender ideology” and “discriminatory equity ideology,” and (2) “protecting parental rights.” Among other activities, the strategy is required to include:
  - A summary of “all federal funding sources and streams, including grants or contracts, that directly or indirectly support or subsidize the instruction, advancement, or promotion of gender ideology or discriminatory equity ideology,” including in both K-12 curriculum and instruction as well as teacher certification and training.
  - The process and enforcement mechanisms through which each agency could “prevent or rescind federal funds, to the maximum extent consistent with applicable law, from being used by an educational service agency (ESA), state educational agency (SEA), local educational agency (LEA), elementary school, or secondary school to directly or indirectly support or subsidize”:

- (1) “promotion of gender ideology or discriminatory equity ideology in K-12 curriculum and instruction and teacher certification, employment, and training”;
  - (2) the “social transition” of a minor student; and
  - (3) “any interference of (i) a parent’s federal statutory right to information under the Protection of Pupil Rights Amendment (PPRA)/Family Educational Rights and Privacy Act (FERPA)” or (ii) violation of anti-discrimination laws including Title VI or Title IX.
- Requires the Attorney General to “coordinate with State attorneys general and local district attorneys in their efforts to enforce the law and file appropriate actions against K-12 teachers and school officials who violate the law by sexually exploiting minors; unlawfully practicing medicine by offering diagnoses and treatment without the requisite license; or otherwise unlawfully facilitating the social transition of a minor student.”
  - Reestablishes the President’s Advisory 1776 Commission, which was established under the first Trump Administration to “promote patriotic education.” The 20-member Commission, which will be appointed by the President and supported by the Department of Education (USED), will promote private and civic activities nationwide to increase public knowledge of and support patriotic education surrounding the 250th anniversary of the United States, among other activities.
  - Orders all relevant agencies to promote patriotic education where possible, including through USED’s American History and Civics Academies and American History and Civics Education-National Activities programs, and DOD’s National Defense Education Program and Pilot Program on Enhanced Civics Education.
  - Includes several definitions of terms, including, but not limited to:
    - Incorporating by reference all definitions from the recent Executive Order “[Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.](#)”
    - Defining “discriminatory equity ideology” as an ideology that “treats individuals as members of preferred or disfavored groups, rather than individuals, and minimizes agency, merit, and capability in favor of immoral generalizations,” including based on race.
    - Defining “social transition” as “the process of adopting a ‘gender identity’ or ‘gender marker’ that differs from a person’s sex.”
    - Defining “patriotic education” as a history of America grounded in “an accurate, honest, unifying, inspiring, and ennobling characterization of America’s founding,” how America has “admirably grown closer to its noble purpose,” that “commitment to America’s aspirations is beneficial and justified,” and that “celebration of America’s greatness and history is proper.”

**Initial Analysis:**

- The use of the phrases “applicable law,” “illegal,” “unlawful,” “discriminatory” and other qualifiers throughout the EO is key since it is a reminder that EOs do not supersede existing laws and that calling something “illegal or “unlawful” via an EO does not in fact make it illegal or unlawful. Depending on how the Administration approaches implementation, these other federal laws may stand in their way.

- Multiple applicable federal statutes prohibit the federal government from interfering with state and local authority to make decisions about K-12 curriculum and instructional materials. More details can be found in this [blog post](#).
- In addition, many states have laws *requiring* curriculum related to diversity or student supports related to gender identity. Depending on how the Administration approaches implementation, these other federal laws may stand in their way.
- This EO is very likely to be challenged in court.
- The definitions included are likely to show up in agency efforts to advance the EO's goals as well as in bills introduced in Congress.

**Title: “[Additional Measures to Combat Anti-Semitism](#)”**

**Summary:**

- Reaffirms [Executive Order 13899](#), “Combating Anti-Semitism,” which was issued in President Trump’s first term, and charges all executive departments and agencies with combating antisemitism. Neither that EO nor this new one adopts a definition of “antisemitism,” although EO 13899 does direct federal agencies to “consider” the definition developed by the International Holocaust Remembrance Alliance (IHRA).
- Requires the heads of each executive department or agency within 60 days to submit a report identifying all civil and criminal authorities or actions within the jurisdiction of that agency that might be used to further “curb or combat antisemitism,” including an inventory and analysis of:
  - “all pending administrative complaints against or involving institutions of higher education alleging civil-rights violations related to or arising from post-October 7, 2023, campus anti-Semitism;”
  - (for DOJ) “all court cases against or involving institutions of higher education alleging civil-rights violations related to or arising from post-October 7, 2023, campus anti-Semitism” and “whether the Attorney General has or intends to take action” with respect to court cases involving institutions of higher education; and
  - (for USED) “all Title VI complaints and administrative actions, including in K-12 education, related to anti-Semitism — pending or resolved after October 7, 2023 — within the Department of Education’s Office for Civil Rights.”

The reports submitted by the Secretaries of State, Education, and Homeland Security must also include “recommendations for familiarizing institutions of higher education with the grounds for inadmissible aliens [(8 U.S.C. 1182(a)(3))], so that institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens.”

- Encourages the Attorney General to enforce civil rights laws to combat antisemitism and, in so doing, specifically references a *criminal* law, 18 U.S.C. 241, which makes it a felony to conspire against someone's rights.

**Initial Analysis:**

- This EO aims to drive widespread investigations and reporting of antisemitism as well as enforcement of existing legal prohibitions of antisemitism. The EO focuses particularly, but not solely, on college campuses.

- Although First Amendment protections apply to campus protests, the EO encourages institutions to "monitor" and "report" foreign students and staff who might be subject to deportation under 8 U.S.C. 1182(a)(3) if they are found to have expressed support for "terrorist organizations or activity."
- The EO's encouragement of the Attorney General to make use of civil and criminal statutes could have further chilling effect.
- The White House also issued a [fact sheet](#) to accompany the EO, which, among other things, makes clear the purpose of referencing 8 U.S.C. 1182(a)(3). In it, President Trump stated, "To all the resident aliens who joined in the pro-jihadist protests, we put you on notice: come 2025, we will find you, and we will deport you. I will also quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before."
- Given the breadth and vagueness of the EO's charges, and the protections of the First Amendment, this EO and/or future guidance or actions stemming from it are likely to be challenged in court.