

# **The Federal Update for June 28, 2024**

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Re: Federal Update

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*Due to the July 4th holiday next week, the next issue of the Federal Update will publish on July 12th.*

## Legislation and Guidance

### House Appropriators Approve Significant Education Cuts

Yesterday the House Subcommittee on Labor, Health and Human Services, and Education appropriations advanced fiscal year 2025 spending legislation that would impose significant cuts on many education programs.

The legislation would cut funding for the U.S. Department of Education by 13 percent, with some programs receiving additional funding and others taking larger cuts. More than a dozen education programs which “do not fulfill the core mission, tasks, and functions of the Department” would be zeroed out in the bill, including Title II-A funding under the Elementary and Secondary Education Act (ESEA) (billed in a Committee summary as “teacher training programs that send teachers to expensive weekend workshops”), and some targeted funding for Historically Black Colleges and Universities and other Minority-Serving Institutions.

The bill would cut funding for Title I of ESEA by 25 percent or $4.7 billion. This is due, according to a summary, to “student test scores continuing to decline despite annual increases to Title I and a $190 billion investment in schools during the pandemic.”

By contrast, funding to the Individuals with Disabilities Education Act would increase by $30 million, the allocation for the charter school grant program would see a $10 million boost, and Impact Act funding would receive an extra $5 million. The bill also contains a new proposal for $135 million in grants for school safety, with $20 million for training to school resource officers. Pell Grant funding would be maintained at the current level.

The legislation must now go to the full Committee and then the House floor. It is unlikely that a final appropriations bill would incorporate such deep cuts which are out of step with the President’s spending proposal, as well as principles articulated by Senate appropriators, but smaller cuts remain possible. The new fiscal year begins on October 1; any funding changes would impact the allocations received by States starting July 1, 2025.

Author: JCM

### ED OCR Issues New Resources on Rights of Students with Disabilities

The U.S. Department of Education’s Office for Civil Rights (OCR) recently issued new resources outlining the rights of students with sickle cell disease, epilepsy, and cancer. The resources provide information for stakeholders and schools on the rights of students with those conditions under Section 504 of the Rehabilitation Act of 1973.

The resources describe the rights of students at the K-12 and higher education levels and explain the circumstances under which a student with one these conditions is considered a student with a disability for purposes of Section 504 protections. Further, each of the resources provides examples of the actions that schools may need to take to address students’ conditions and explains the rights of students should a school fail to provide the required accommodations.

The new resources follow similar documents issued by OCR earlier this year addressing required accommodations for students with asthma, gastroesophageal reflux disease, diabetes, and food allergies. The resource on [sickle cell disease is available here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-sickle-cell-202406.pdf); the [epilepsy resource here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-epilepsy-202406.pdf), and the [cancer resource is here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-cancer-202406.pdf).

Author: KSC

## News

### Supreme Court Overturns Policy of Deference to Agencies

In a 6-3 decision issued today, the Supreme Court overruled the 40-year precedent known as the “Chevron doctrine,” stating that agencies do not necessarily have the power to interpret statutes that are ambiguous. Under *Chevron*, where there was an ambiguity in the statute judges were instructed to defer to a federal implementing agency’s view because of the expectation that agencies – and their staff – are experts on these topics. In this decision, known as *Loper Bright v. Raimondo* and written by Chief Justice John Roberts, the Justices state that the Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. The decision argues that deferring to agencies “is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do.” Resolving ambiguity necessarily involves policy-making, the opinion says, which is not the purview of the administrative branch. It is unclear if Congress is prepared to write even more lengthy and specific legislative text, since lawmakers have long relied on the understanding that federal agencies will do the “heavy lifting” of program implementation.

However, the Court says that the prior Chevron-based decisions will remain in effect. Today’s decision “does not call into question prior cases that relied on the Chevron framework, and that “[t]he holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of Chevron itself—are still subject to statutory stare decisis despite our change in interpretive methodology.”

The dissent, authored by Justice Kagan, argues that judges are not necessarily experts in a field, and that Congress “knows that it does not—in fact cannot—write perfectly complete regulatory statutes.” Instead, “[i]t knows that those statutes will inevitably contain ambiguities that some other actor will have to resolve, and gaps that some other actor will have to fill. And it would usually prefer that actor to be the responsible agency, not a court.” Justice Kagan also predicts “large-scale disruption” resulting from this decision, and suggests the Court has “lost sight of its proper role.” “In one fell swoop,” she says, “the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law.”

While – at least under the current administration – this decision is unlikely to change the pace of federal rulemaking, it will almost certainly lead to more litigation against federal rules and more assertions of statutory ambiguity. Immediate targets of these challenges could include student loan relief, Medicare negotiations, regulation of power plant emissions, and the recent Title IX rules, among others. These decisions, in turn, will lead to more instability as regulations are overturned and new rules – or none – put in their place.

Author: JCM

### Oklahoma Supreme Court Blocks Religious Charter School

The Oklahoma Supreme Court has ruled that a publicly funded religious charter school would be unconstitutional under both State and federal law. In an opinion issued Tuesday, a majority of the State’s nine justices agreed with the plaintiffs that the contract creating St. Isidore of Seville Public Charter School must be rescinded, preventing the school from opening in the fall as planned.

At issue is an assertion from the school that it would teach Catholic doctrine and require students to attend Catholic services, though it would be open to students of all beliefs. The school, a virtual statewide charter school, was approved by the Governor and the State’s charter school board despite requirements in State law that charter schools not teach doctrine. Because of the school’s religious character, the justices stated that it would violate both the State and federal constitutional prohibitions against government-established religion. In a dissenting opinion, one justice wrote that she believed the majority would be overruled by the U.S. Supreme Court. “Contracting with a private entity that has religious affiliations, by itself, does not establish a [S]tate religion, nor does it favor one religion over another,” she wrote.

School leaders say they have more than 200 students applying to enroll, and that they will pursue “all legal options” to move forward. Governor Kevin Stitt has said he hopes the U.S. Supreme Court will review the case and overturn the State’s ruling. “I’m concerned we’ve sent a troubling message that religious groups are second-class participants in our education system,” Stitt said in a statement. “Charter schools are incredibly popular in Oklahoma—and all we’re saying is: we can’t choose who gets [S]tate dollars based on a private entity’s religious status.”

If the concept of a religious charter school is upheld by the U.S. Supreme Court, school districts could see a significant shift from religious schools being served through equitable services to those schools being considered equal partners—and equal beneficiaries of State and federal funds. Prior Supreme Court cases have suggested that States should prioritize parents’ religious freedom to send a child to a religious school—including using public funds—over the State’s concerns about endorsing or supporting religion.

The school is also the subject of a separate lawsuit pending in an Oklahoma district court. Plaintiffs in this case allege the school would unlawfully discriminate against LGBTQIA+ students and employees, fail to adequately serve children with disabilities and indoctrinate into a religion. A hearing in that complaint is scheduled for late July.

Resources:
Nuria Martinez-Keel, “Oklahoma Supreme Court finds Catholic charter school unconstitutional,” *Oklahoma Voice*, June 25, 2024.
Sean Murphy, “Public funds for religious charter school would be unconstitutional, Oklahoma high court says,” *Associated Press*, June 25, 2024.
Author: JCM

### ED to Appeal Title IX Injunction

The U.S. Department of Education (ED) filed a notice of appeal this week following a decision from the 5th Circuit Court of Appeals which halts implementation of the recent final Title IX rule in Louisiana, Mississippi, Montana, and Idaho while the States’ legal challenge against it proceeds.

The final Title IX rule was published in April and was followed by several lawsuits from conservative States, challenging the content of the rule, as well as ED’s authority to have issued it. The 5th Circuit decision was the first injunction issued against the rule, with a second injunction issued days later that temporarily halts implementation in Tennessee, Kentucky, Ohio, Indiana, Virginia, and West Virginia. ED has not indicated whether it will appeal the second injunction. In addition, other conservative States have announced that they will not comply with the final rule, which is set to go into effect on August 1.

Several more lawsuits are currently pending, which could result in additional injunctions across the country.

Resources:

Naaz Moden, “Education Department to appeal Title IX injunction to 5th Circuit,” *K-12 Dive,* June 25, 2024.
Author: KSC

### Administration Set to Appeal SAVE Plan Court Challenges

This week, two federal district courts blocked portions of the U.S. Department of Education’s Saving on a Valuable Education (SAVE) plan, a student loan repayment program that offers lower monthly payments. The SAVE plan was rolled out by ED in part last year, however, other aspects were to go into effect on July 1. Eight million student loan borrowers are already enrolled in the plan.

The United States District Court for the District of Kansas instituted a preliminary injunction on aspects that were set to take effect on July 1st, including reducing payments from 10 percent of a borrower’s income to 5 percent. The ruling in the Eastern District of Missouri will block only the loan forgiveness portion, which offered forgiveness for those who have been paying for 10 years and initially borrowed less than $12,000.

In a statement on ED’s website, Secretary Miguel Cardona said that he disagreed with the decisions and that the administration would “vigorously defend” the plan. He also noted that parts of the plan were upheld by federal courts and the program continues to offer low rates to borrowers.

White House Press Secretary Karine Jean-Pierre also wrote on social media that the administration would be appealing both decisions and “will never stop fighting to lower monthly payments and help borrowers get out from under the burden of student debt.”

[Secretary Cardona’s full statement on the decisions can be found here.](https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-missouri-and-kansas-district-court-rulings-biden-harris-administrations-saving-valuable-education-save-plan)

Resources:

Bianca Quilantan, “White House to appeal student loan repayment plan ruling,” *Politico*, June 25, 2024.
Author: BTW

### Supreme Court Questions Reliance on Internal Agency Hearings

In a decision on Thursday, the U.S. Supreme Court ruled that the Securities and Exchange Commission could not use in-house legal proceedings to institute penalties on those it believes have committed fraud. The ruling said the reliance on internal administrative law judges, rather than federal courts, violates the Seventh Amendment to the U.S. Constitution, which guarantees the right to a jury trial. The Court said that Congress exceeded its authority in allowing administrative judges to impose penalties, despite the fact that such rulings can be challenged in federal court.

The majority opinion argues that a defendant in a fraud trial has “the right to be tried by a jury of his peers before a neutral adjudicator” rather than an administrative proceeding, which justices say, “would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch.”

In a dissenting opinion, Justice Sonia Sotomayor said that this ruling could have significant implications for administrative law judges at numerous federal agencies. “The constitutionality of hundreds of statutes may now be in peril, and dozens of agencies could be stripped of their power to enforce laws enacted by Congress,” wrote Sotomayor, joined by Justices Elena Kagan and Ketanji Brown Jackson. “Rather than acknowledge the earthshattering nature of its holding, the majority has tried to disguise it.”

The U.S. Department of Education is one of a number of agencies that uses administrative law judges to hear challenges to federal actions, and that could be impacted by this decision.

Resources:
Justin Jouvenal and Ann E. Marimow, “In conservative win, Supreme Court limits use of SEC in-house tribunals,” *The Washington Post*, June 27, 2024.
Author: JCM

### SCOTUS Limits Federal Anti-Corruption Law

On Wednesday, the U.S. Supreme Court handed down its decision in *Snyder v. United States*, in which the Court decided whether a federal law made it a crime for State and local officials to accept gratuities after-the-fact. In 6-3 decision along ideological lines, the Court decided that Section 666, which bars officials from accepting “anything of value of any person, intending to be influenced or rewarded” for an official act, does not criminalize accepting gratuities for actions that have already occurred.

The case surrounded a former mayor in Indiana who received $13,000 from a trucking company, which had previously received contracts from the city for over $1 million. Snyder argued that the payment from the company a year later was for consulting services, however, a jury convicted him, and he was sentenced to 21 months in prison for violating Section 666.

The Court’s decision was authored by Justice Brett Kavanaugh, who included six reasons why Section 666 did not apply to after-the-fact gratuities. The reasoning focused mostly on the difference between bribery and gratuities and distinguishing the two different crimes. The text of section 666, Kavanaugh says, does not resemble similar laws related to the federal officials, and when Congress rewrote the law in 1986, they relied on the bribery statute, as opposed to the gratuities statute, for federal officials. Further, Congress applies different punishments for crimes of bribery versus accepting gratuities, with up to 15 years for bribery and only two years for accepting gratuities.

Justice Kavanaugh also determined that if Section 666 was applied to gratuities, it would interfere with States’ rights to regulate their own officials with their gratuity policies. He also noted that the government did not provide any guidelines for distinguishing criminal gratuity from innocent gratuities.

In her dissent, Justice Ketanji Brown Jackson argued that the term “rewarded” in the statute “easily covers the concept of gratuities paid to corrupt officials after the fact—no upfront agreement necessary.” She also wrote that the majority’s decision now hinders the ability of the federal government to prosecute corrupt actions.

The decision may have an impact on the interpretation of the conflict of interest and gratuities rules in the Uniform Grants Guidance under 2 CFR 200.318(c)(1).

Resources:

Amy Howe, “Supreme Court limits scope of anti-bribery law,” *SCOTUS Blog*, June 26, 2024.

Author: BTW

## Reports

### Senate HELP Democrats Issue Report Criticizing School Choice

Chairman of the Senate Committee on Health, Education, Labor, and Pensions (HELP) Bernie Sanders (I-VT), along with other Democratic members of the Committee, issued a report on Tuesday harshly criticizing school choice programs across the country.

The report takes issue with major organizations that fund school choice programs, as well as Republican-led State governments implementing these types of programs. The report says that “the public education system—one of the cornerstones of democracy—is under attack.” The Committee argues that school choice programs primarily benefit wealthy families, as opposed to disadvantaged students, and allow schools to exclude certain subgroups of students, like students of color, low-income students, students with disabilities, LGBTQIA+ students, and others.

The report explains the various types of school choice programs available across the country, as well as which States implement them, and provide data demonstrating the high income status of families who participate in choice programs in certain States. Further, the report claims that “[S]tates are prioritizing spending on private school voucher programs over increasing funding for public education.”

The Committee states that States and Congress should be investing more in public education, including expanding early childhood education programs, implementing strategies to reduce the nationwide teacher shortage, investing in community schools, and providing free higher education for all students.

[The HELP Committee report on school choice is available here](https://www.sanders.senate.gov/wp-content/uploads/06.24.24-Education-Privatization-Report.pdf).

Author: KSC

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