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WEBINAR

WHAT THE TRUMP ADMINISTRATION LEGALLY CAN AND CAN'T DO TO IMPLEMENT ITS
AGENDA IN PUBLIC SCHOOLS

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PANEL:

MODERATOR: RACHEL M. PERERA

Robert and Virginia Hartley Chair in Governance Studies, Fellow, Brown Center on Education Policy, Brookings

ALICE O'BRIEN

General Counsel, National Education Association

RAY LI

Policy Counsel, NAACP Legal Defense and Educational Fund, Inc.

LEAH WATSON

Senior Staff Attorney, Racial Justice Program, ACLU

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PERERA: Good afternoon and thank you for joining us. I'm Rachel Perera, a fellow in the Brown Center on Education Policy at the Brookings Institution. Today, we're here to discuss where things stand with the Trump administration's executive actions related to K-12 public schools. Since this administration took office earlier this year, the White House and officials at the Department of Education have attempted to rewrite the federal role in K-12 public schools through executive action. Many of these actions exceed the executive's authority to dictate state and local education policy and as a result have been subsequently challenged in federal courts and to some early success. Today, we'll be hearing from three panelists with deep expertise in education and civil rights law and close familiarity with many of the legal challenges to the Trump education agenda.

Our goal for this conversation is to give viewers a clear understanding of which executive actions the administration can and cannot lawfully enforce in public schools. But before we begin our panel discussion, let's take stock of where things stand. This table is adapted from a new litigation tracker we in the Brown Center released last week in collaboration with the Center for Racial and Economic Justice at UC Law San Francisco. The tracker, which will be updated monthly, is available on our website. The table shown highlights five of the most consequential executive actions for K-12 public schools. We've been closely tracking what impact each is having on public education and where legal challenges to these actions stand.

This includes EO 14151, which aims to end all support for DEI or DEIA within the federal government, DEIA being diversity, equity, inclusion and accessibility. This order has been used to justify millions of dollars in grant terminations and the shuttering of government agency offices that potentially support DEI. Here we have a number of active cases with varying statuses and some enforcement has been temporarily blocked through preliminary injunction.

The second executive action that we've been following is EO 14190, which calls for an end to quote unquote radical indoctrination in public schools. The order threatens to withhold federal funding from any public school that promotes DEI or teaches about racism bias or quote unquote gender ideology. Here litigation for the two active lawsuits is ongoing.

We've also been closely monitoring legal challenges to the February 14th "dear colleague" letter that attempted to redefine DEI programs and any other race conscious policy or initiative as illegal discrimination threatening to withhold federal funding from public schools that do not comply. The "dear colleague" letter, which is a non-binding guidance letter, was accompanied by a new requirement for states to certify their compliance with the administration's new interpretation of federal anti-discrimination law. A number of lawsuits were filed earlier this year, and in August, a federal judge found that the "dear colleague" letter and certification requirements were unlawful and vacated both of them.

We've also been following EO 14242, which calls for the dismantling of the U.S. Department of education. This order was released just days after a massive reduction in force was

announced at the Education Department, which led to the firing of nearly half of the agency's staff. A Supreme Court decision from July has allowed the federal government to resume enforcement of this order pending the federal government's appeal.

Finally, we've also been closely monitoring EO 14280, which attempts to recast any state or local efforts to remedy racial disparities and discipline as discriminatory and in violation of federal law. Here we're not aware of any lawsuits that have been filed to date. As we consider these executive actions together, we see an administration that's attempting to expand the federal role in education into areas of school practice that have long been the purview of state and local leaders.

To discuss the status of litigation challenging the Trump administration's executive actions on K-12 education, we'll be hearing from three panelists with deep expertise in education civil rights law. Today we'll be joined by Alice O'Brien. Alice has served as general counsel for the National Education Association, or NEA, since 2010. NEA is the largest labor union in the country, representing millions of educators and education professionals across all U.S. States. Previously, she served as chief counsel to the California Teachers Association, and before that, she represented NEA and many other unions as an associate and then member with the firm, Bredhoff & Kaiser. Leah Watson is a senior staff attorney with the ACLU's Racial Justice Program, where she focuses on classroom censorship, the attack on DEI, the criminalization of homelessness, bias in policing, and racial health disparities during the COVID-19 pandemic. She is the author of the piece, "The Anti-Critical Race Theory Campaign: Classroom Censorship and Racial Backlash by Another Name" and the Harvard Civil Rights Civil Liberties Law Review. Finally, we'll be joined by Ray LL, who serves as policy counsel for education equity at the NAACP Legal Defense and Education Fund, where he works on ensuring equal educational opportunities for all students. Prior to joining LDF, Ray served as an attorney in the U.S. Department of Education's Office for Civil Rights as a lawyer on the policy team addressing race, color, and national origin discrimination. Unfortunately, Thalia Gonzalez, professor of law, UC Law San Francisco, and my collaborator on the Trump Education Litigation Tracker is sick and unable to join us today. I want to thank the panelists for joining me for this important conversation.

I encourage those watching live to submit questions for our guests. You can submit those questions via email at events at Brookings.edu. You can also submit those via X at Brookings's gov using the hashtag edulitigation. Those details are also on our event webpage. With that, let's get the conversation started.

So first again, I want thank you all for joining us today. And I would love to hear from each of you just to kick us off. What you each think is the most important thing for education leaders to know about where the Trump administration's K-12 education agenda stands? Alice, do you wanna kick us off?

O'BRIEN: Sure, thanks so much, Rachel. I really appreciate you framing this all up and Brookings for having this important conversation today. You asked for just one of the most

important things that people should take away from where the administration is going. I might stretch the boundaries of that a little bit, but I think number one, people need to understand, and I think people do understand this, that this administration really has weaponized civil rights enforcement in very aggressively, right? In order to attempt to assert control over education decisions that people have long understood and the law has long held, belong to state and local authorities in the public sector and in the private sector are matters of First Amendment academic freedom. So that's the first thing. At the same time, the administration also is dismantling the U.S. Department of Education, as you talked about the executive order and that decision happened very early in the administration. It actually predated that executive order and the administration has taken several steps to kind of dismantle the infrastructure at the federal level that supports you know, the supplemental services, the Title I services, the IDEA services that so many students and communities depend on. And while the department has withdrawn or kind of disabled those supports for our public K through 12 schools, the administration also has pushed through, you know an unprecedented national school voucher program, right, which potentially will drive more money into private schools in this country than is currently provided under both Title I and IDEA. So just sort of a complete reformation of the education sector writ large has been accomplished in just a few short months. So you really have this dynamic where the federal government is attempting to exercise really minute and unlawful control of public K through 12 education, while at the same time undermining the basic supports for that education that the federal government had been provided and at the time kind of creating a way to fund a wide array of private schools that states and local communities will not be able to exercise any effective control or oversight over.

PERERA: Yeah, that's a great summary of sort of where things stand. And I think it's a really important point that I've also been emphasizing that despite the rhetoric of sending education back to the states, they're attempting to exercise control over decisions that have never been in the purview of the federal government. Ray, I would love to hear from you. What do you think are the most important things for education leaders to know about where things stands?

LI: Absolutely. As anyone in education knows, the administration has been waging an assault on educational equity and public education itself at the K-12 level. And they've been using a flood the zone approach that has been very effective in terms of getting their point across. And so we've seen a ton of executive actions and those take many forms from actual executive orders from White House to these types of sub-regulatory guidance documents from OCR. We just saw OCR announce that they have a regulatory agenda of actual rule-makings they plan on going through. We see changes in funding restrictions and grant terms themselves, as well as terminations of grants outside of the regular process. And then obviously all the investigations from OCR.

And so all of these things are happening, and a common theme of a lot of it is regulating by threat and not exactly by lawmaking. And so with this flood-the-zone approach we see so many actions and hear so many things and and there's a bit of asymmetry in delivery of information where the government, every time they get to draft a "dear colleague" letter, sends it

out on gov delivery and every single school district and school in the country receives it but then people don't keep track of when things are enjoined by courts or when they're overturned. So they heard about the initial splash from the original document saying, you know, quote "Diversity equity inclusion is illegal and harmful to students" and then they don't hear about what happens when groups challenge and win in courts. And so a big thing here is they are seeking to get a lot of anticipatory compliance and so it's incredibly important through education events like this through discussion with legal counsel of where the actual legal lines are on programs and activities that might raise concerns under the law and what is just kind of rhetorical threat from the administration hoping that folks kind of get rid of activities that are perfectly lawful just to kind of appease what they see coming from D.C.

PERERA: Thank you, Ray. Leah would love to hear your big takeaways at this moment.

WATSON: Um, thanks, Rachel. And thank you for having me. I agree completely with what Alice and Ray said. Some of the themes that I was thinking about the weaponization of federal anti-discrimination law, the attempts to flood the zone, there's a lot of rhetoric that is being floated around what is illegal and what's not illegal and really a disregard for the way that law in our country is made. Regardless of what President Trump says in an executive order or even the Department of Education issues, they still can't overturn, like President Trump and the Department of Education cannot overturn decades of federal anti-discrimination law. And so I think my big takeaway is that we are in a period of censorship that has been unparalleled in many respects. And I see the Trump administration using a bully pulpit to even widen the chilling effect and the censorship that they seek. However, I think my most important note is that there are still opportunities to hold the line on censorship. And I think this builds on what Ray was saying about thinking carefully in conjunction with legal counsel about what is and is not actually illegal as opposed to what has been touted as illegal and rhetorical talking points. And I'm really interested in continuing this conversation about how we might hold the line because the federal anti-discrimination law still stands. And that isn't something that you can just decree to be different. And then there are also opportunities to continue to hold the lines, even within the DEI space that the Supreme Court is recognized or other courts have recognized. So I think the main thing is thinking carefully because to the point on anticipatory compliance or preemptive compliance, one takeaway that I've seen in the past eight months is that you cannot over-comply enough to fly under the radar of this administration. And in so doing, people often over-comply by eliminating perfectly lawful programs that have been initiated to ensure equity within education and often incorporate requirements that are necessary to fulfill obligations of anti-discrimination laws. So I think there is certainly a panic that is being manufactured intentionally, but I think continuing to think through what are the obligations that we had before this administration took over, which of those obligations still stand, how can we hold the line on those obligations and continue, I think, to document what is being removed from schools because I hope that once we're on the other side of that, there is an opportunity to think more broadly about what has been taken out, what we need to put in, what else should be added. And I worry that in the panic around compliance and just the

manufacturing emergencies that we have at the federal level, that documentation may be lacking and we won't have the materials we need to reconstruct when it's time.

PERERA: Thank you, Leah. And that's a great point around sort of documenting how things are changing in response to some of these threats. So I think this would be a great point to dive into one of the most common questions we got in the pre-submitted bunch of questions, which is like, what is legal? So given sort of where things stand with current federal law and the outcomes of these various legal challenges, we received a few questions that are asking really straightforward. You know, things like can schools still promote DEI? Can they still support DEI initiatives? Can they use race conscious approaches to reduce racial inequalities? So we'll start with that question and would love for any of you to jump in as you have remarks to add.

LI: Yeah, I can start and I'll leave talking about some of those cases to you too, Leah. But in terms of big bright line rules here, an incredibly important thing for schools to remember is that none of the laws related to federal anti-discrimination are directed at the concept of DEI itself, right, at diversity, equity, and inclusion. And even in the government's guidance documents, most of which have been enjoined, they make that same type of point in a slightly different way where they say just the label of something or then the naming of something doesn't create the legal problem and so what's really important is to look past kind of labels and names and look at the actual structures of programs and activities and that is always what is driving the legality or non-legality of them. And so kind of a lot of that is really fact-based, but at base there's nothing that's stopping an institution from pursuing trying to improve racial inclusivity and gender-inclusive campuses, that is absolutely something that is both important and often required by these same laws. And so on the race side of things, one kind of anchoring question that can help you figure out if something is likely going to raise concerns or not is are individual students being treated differently on the basis of race, right? Like is race being used as an explicit criteria in something. Is it being used as a way to provide benefits to some students or not to others? That being kind of the key question. A race-based theme does not raise those same types of concerns, right? So when we look at something like affinity groups, if we look kind of what past administrations have long talked about in how Title VI applies here is that if a group is open to all students on the basis of race, just because it's called the Black Students Union doesn't create a legal problem, right? And that kind of theory can be applied broadly to mentorship groups you might have, or reading groups, or different academic opportunities, like the name itself, or the theming itself doesn't create the problem. What does is when you create actual classifications, or uses of classifications on the other side. Also, you could create a problem if you create a hostile environment on the basis of race. It's been interesting that the definition of a hostile environment on basis of a race has really varied over time. There's some Supreme Court case law that establishes what it is when it comes to private litigation under Title VI, but OCR has taken many different definitions. And so It's notable that this administration hasn't really released a comprehensive definition, but generally some of the factors you look at when determining whether something creates a hostile environment is not just was a student offended or not. There's questions about whether objectively offensive statements or comments were made. You look at the severity of it, you look the pervasiveness, so both of those

things look at things like frequency or the intensity of the actions, and so things like that can also create problems under Title VI, but none of those are directly tied to the idea of something is DEI or not DEI, right? So promoting DEI, promoting inclusion on campus, that it all comes down to kind of how you structure it and how you think about it. And so again, there are a lot of fact-based analyzes here for specific programs, but kind of those two of the general legal frameworks to think through if you're thinking through this with counsel.

WATSON: Yeah, and I could agree with everything Ray said. That was an excellent overview. I would just piggyback with a few points. One, no court has declared all forms of DEI to be legal. That's a construct of the Trump administration, but it's not accurate, and it's not reflected in any court cases at any level. And then even if you look at the actual executive orders themselves, sometimes, there's a little wonkiness because none of them actually define DEI in a comprehensive way. That's one thing that's difficult to do because DEI encompasses a range of activities meant to promote diversity, equity, and inclusion. The range there, hundreds, even thousands of options that could be construed to be DEI. And even in the executive order, sometimes the Trump administration also says, oh, we're just prohibiting illegal DEI, which in of itself implies that there are, confirms that there are permissible forms of DEI. Courts have repeatedly considered various forms of DEI, it's a very fact-specific inquiry that requires a lot of consideration of various factors. I don't want to get too far into the legalese. But the point there is that there is no blanket prohibition on DEI. And honestly, when you think about it, DEI as a concept was born out of many, the failures of many institutions, workplaces, educational institutions to meet their anti-discrimination obligations. And so DEI came from the recognition that there are obligations that have been historically hard to meet and institutions need to do more to make sure they are ensuring that their environments are not discriminatory. And then finally, I will just also add that The Supreme Court, even in *Students for Fair Admissions versus Harvard and UNC*, recognized that some consideration of race is proper. Even in admissions, students can, applicants can write about their lived experience with racial discrimination in their essays that can be considered for some things. It just can't be, the court struck down the assumption that a person has experienced discrimination because of their race. But even there, there's texts within that opinion, which has been widely heralded by the Trump administration as prohibiting DEI. There's language directly to the contrary, and also language limiting the opinion to higher education admissions. And so generally I just want to, I think there's a lot of discussions about what is DEI or is DEI all illegal and it's not.

And I also would, I guess, now touch upon some of the litigation. That has been challenging the "dear colleague" letter that was issued on February 14th, purporting to declare DEI illegal across the board and educational institutions in K-12 and higher ed. And there have been three lawsuits filed that have all obtained relief from the requirements of the "dear colleague" letter. I'll start with our lawsuit where we represent NEA. It's NEA versus Department of Ed, but also we represent the NEA New Hampshire Chapter Center for Black Educator Development and a number of school districts. And we brought claims alleging violations of the First Amendment primarily on behalf of higher education professors, but also recognizing that K-12 teachers have First

Amendment rights as well. We've alleged a violation of the due process guarantees under the Fifth Amendment where professors, teachers, educators don't have fair notice of the line between permissible and prohibited instruction, but face very broad consequences, a number of procedural violations, and then also a spending clause violation, because here we have the Trump administration attempting to change the terms of the funding that they've already granted mid-cycle in ways that are impermissible. And so the claims across all of these cases are very similar. Democracy for representing the American Federation of Teachers in a school district, I think in Washington brought a case. Also the NAACP Legal Defense Fund representing the NAACP brought a case on April 24th. All three courts in, we're in New Hampshire, the AFT case is in Maryland, and the NAACP case is in DC, but three separate federal district courts issued preliminary injunctions blocking the Trump administration from enforcing the "dear colleague" letter. In the NEA case, we also received, our order extends to the attempts from the federal government to require that local and state education agencies certify compliance with their overinterpretation of Students for Fair Admissions versus Harvard and Title VI. And so those cases are ongoing largely. The AFT case obtained a permanent injunction that blocks the federal government from enforcing the "dear colleague" letter. We have completed briefing in July in the NEA case and are awaiting, hopefully, a similar order. And I believe in the NAACP case, they are still briefing. But the point is three separate courts have to consider the constitutionality of the "dear colleague" letter, found it to be unconstitutional on multiple grounds, overlapping grounds. That I think really speaks to the over breadth and the overreach that we see from the Trump administration and also goes back to the point about holding the line because courts are finding these actions to be unconstitutional and in various ways. And so that's been one way we've pushed back.

PERERA: Thank you, Leah. Alice do you have anything to add?

O'BRIEN: If I can just piggyback a little bit. Number one, the ACLU has been really fabulous to litigate these cases with and I cannot thank Leah and her colleagues enough for everything they've done to represent NEA and our members in this really important challenge. I do think I just want to punctuate a couple points that people made and add one more. And the one more is this: under the Department of Education Organization Act and the General Education Procedures Act, right, those are like the Department of Education's fundamental statutes, they are not to tell schools and school districts what they teach, right. And so when they do that, they are violating their fundamental statute. And I think that's an important point that can't be said enough. And so when people say there's a DEI problem with curriculum, that's just, it runs right into those federal prohibitions, right? States and school districts get to decide what is taught in K through 12 schools. They set the standards for what is taught in K through 12 school. And the federal government does not have authority to override those standards. So those curriculum decisions, those decisions about having African-American AP studies as an offering for high school students, those are state and local decisions. The federal government doesn't have authority to override them. And I think Ray's capsulization of what is prohibited and what is permissible with respect to student-themed groups also extends to faculty theme groups. Affinity groups are permissible as

long as they are open to all, so long as you are not excluding people from participating in those based on their protected characteristic.

And finally, to go to Leah's point, the administration is intentionally painting with an incredibly broad brush as to DEI because they want this anticipatory compliance, right? Ray made the point, you know, people are just kind of overwhelmed with information and a school district gets the notice of a "dear colleague" letter and then, you know loses track of the subsequent litigation. So I think they want to purposely blur the lines. But in many, many cases, this administration is citing to DEI to terminate programs that have nothing, like nobody would consider them related in any way to any effort to promote diversity, equity, inclusion. So, you know, in the Department of Education, a number of programs have been terminated, grant programs, competitive grant programs have been terminated across the board, effectively based on just sort of suspicions that they might somehow advance impermissible DEI efforts. And those programs include, school-based mental health grants, right? Which were provided to school districts pursuant, which were authorized by Congress and awarded to school districts across the country in order to hire counselors and school psychologists and school-based mental health professionals to support students. That is not what anyone considers DEI work, and yet this administration terminated all those programs and eliminated all those supports for students across the county by just sort of waving this flag of DEI. They did the same thing for several programs to support teacher, you know, the development of effective teachers and the development of effective partnerships for leadership in schools. And so they're using the term DEI both to kind of get rid of programs and shut down programs unlawfully, I would say. That they don't want to spend the funds on anymore. And they're also using it to try to chill people in their decisions about what they teach and they don't teach in the schools. And it's just very important for people to, you know, recognize that states and school districts get to decide that they have standards and that they can stand on their standards.

PERERA: Thank you, Alice, for that such an important point that I would underline and emphasize. It's one that I think a lot of folks are unaware of, but it's really important to understand that not only does the federal government not have a role in curriculum, but it is expressly prohibited from dictating local school curriculum. It is a long-held, not just a tradition, it is federal law. Alice, Ray, I'd be curious if either of you and Leah, if you have any additional reflections from what you've seen from the litigation so far. We've seen at this point some final orders in some cases for these various legal challenges to the Trump administration's various executive actions. And so I'm curious from folks who are closely following these different lawsuits and how they progress. What are your big takeaways so far? In terms of what's working, what's a compelling argument in a federal court context?

O'BRIEN: Well, I would say, you know, the "dear colleague" letters that targeted curriculum, right, based on DEI considerations, that litigation was a huge success, right? Three different cases, all decided the same day with injunctions issued against this administration, I think should, you know, just reaffirm for states and school districts that this is an area where they have the ability to decide what's gonna be taught in their schools. And I think that litigation, I'm cautiously optimistic

as to that litigation going forward. I think the ruling in the district court of Maryland on summary judgment was a great result and I'm hopeful that the subsequent rulings will be favorable as well. I do think the litigation where you're trying to prohibit the government from doing something as opposed to compel the government to do something has had an easier time of it. And that's because, and this is going to be a little bit wonky, but the courts have really been struggling with how to deal with claims that a grant, you know, someone who received a grant or someone who benefits from a grant like one of our members whose salary is paid by a grant, like who has standing to challenge, you know, who has a legally cognizable interest to challenge when that grant is terminated? And where does the claim that the grant was terminated unlawfully go? Like what court can you file it in? Do you file at a federal district court under the Administrative Procedures Act, or do you have to file it in the federal court of claims? And this is, you know, it's a jurisdictional point. It's a jurisdiction point on which the Supreme Court has ruled in on in very confusing terms. And the lower courts are just kind of all trying to figure it out the best they can without a lot of guidance from the Supreme Court. But we are in early days. And ultimately, I hope that it will reach a place where there is some relief in federal district court. When the administration is making programmatic termination decisions, which really should be reviewable under the Administrative Procedures Act in district court, and people should be able to get relief kind of on a programmatic basis when the administration is failing to comply with its statutory obligations under federal law, rather than having to go to the Court of Federal Claims and proceed each by each on each contract.

LI: And some other big picture themes on top of those, which are really important, especially for everyone who's dealing with grant terminations, is the breadth of the types of claims that Leah talked about in challenging these actions is incredibly important. And so these types of actions raise a host of issues, constitutionality under being too vague, of being viewpoint discrimination under the First Amendment, which is really supported as well by statements that accompany these types of actions from, from the government, of wide variety of administrative procedures that have problems related to the process for actually promulgating these, these types of actions on the federal government. And so pleading very broadly on these issues is really important because there are issues on other kind of judicial ability concerns as well that make these cases harder to proceed on standing, for example, and so you want to kind of bring as many of these types of claims as you can. And what hasn't been happening in any of the courts as far as I'm aware is the court making any sort of substantive agreement with the administration in terms of how it has interpreted Title VI, Title IX, the 14th Amendment. So these actions have failed before it has even gotten to that point of trying to say that these are actually lawful interpretations that could have been brought outside of the context of policy and so that that is important to note as well.

And so to the extent that there are non-lawyers on the call as well wondering like how you can help with this stuff and In terms of standing, a lot of the times it's really hard to hunt for facts, of students or teachers or parents who've been harmed by actions as a direct result of policy. And so to the extent you have stories like that and relating them to groups that are litigating these cases or to your state AG's office or whoever else might be activated is going to be really helpful. Of saying I

was going to take this class and my school got rid of this class and they cited the reason for it is because some letter from the Department of Education. And so kind of drawing those types of facts together is really helpful in litigation where some of those challenges haven't been on the merits of people challenging and, you know, almost saying this is, you, know, a wild misreading of SFFA and of the statute. There haven't really been a lot of questions on that front. The questions have really been around standing and some of these other issues. And so there's some hope in that sense. But also incredibly scary to see as well what the administration can do when they're wholly outside of the confines of reasonable interpretations of the law. They can still get a lot of damage done.

PERERA: Yeah, absolutely. Leah, anything else to add, yeah.

WATSON: Can I answer? Yeah, I think just two things I forgot to cover earlier is that at least for the First Amendment arguments, there is a difference in K-12 and higher ed and the way courts interpret those claims. I think for all three of these lawsuits, we represent members in both areas, but that is one thing to look out for. And then I would also say along the lines of what Ray was saying, we've seen pivots too from the Trump administration. Initially, we have the DCL, the "dear colleague" letter, everything was citing back to the "dear colleague" letter. You can't do this per the "dear colleague" letter. Since the three preliminary injunctions, we're seeing a continuation of that same rhetoric, but less explicitly tied to the "dear colleague" letter itself, including with like the school mental health grants and some of the other steps that have been taken by the administration. So I think that's one thing to continue to look out for. Which I think speaks to the limits of litigation in some ways, or at least to these specific cases, but continuing to think through the logic that three courts have walked through and apply that to other actions to figure out if we need to just follow up with something separate. But unfortunately, we haven't seen the Trump administration back off completely from these goals, but we've certainly slowed them down and plan to continue.

PERERA: Thank you. On this point around how the Trump administration is carrying out civil rights enforcement and is trying to make these threats material in some ways, we've seen this I think more so in higher ed than we've see in K-12, but we have seen it in K12. I mean, one question that we got variations of is, in some ways, like, we've seen the Trump administration pivot to continue and advance their attacks against DEI and the rights of transgender students. And so, given this context, what advice would you have for school districts facing some imminent threats of withheld federal funding or some other penalty for equity-oriented policies or practices, even if we know that the Trump administration and does not have so strong legal arguments are supporting their interpretation of Title VI or Title IX?

O'BRIEN: So I'll start us off. I think Ray's first point when we started this conversation is know what your rights are is really important. Like, go talk to your lawyer right away. Don't assume that whatever the threat is is well-founded in law. We've talked a lot about DEI from the race side. We also need to talk about the transgender side. So, the administration's view is that the Skrmetti

decision in the Supreme Court, which was about whether or not a state could ban gender-affirming care for transgender persons, even if their parents, you know, sought the care for their child and wanted the care of their child, they want to take that decision, like they've taken the Students for Fair Admission decision and just like blow it up like a football to encompass everything that they would like to eliminate in terms of transgender student rights. But in fact, you know, the federal civil rights laws govern transgender students' rights. And the Supreme Court in the Bostock case decided that discrimination on the basis of sex of course includes discrimination on the bases of sexual orientation and gender identity. And Title IX has similar language and has been -- so Title VII prohibits discrimination in employment context, Title IX prohibits discrimination based on sex in the education context, and so while the Supreme Court hasn't interpreted Title IX in the educational context on transgender student rights, lower courts have, including the Fourth Circuit, and they have held that the prohibition against discrimination on the basis of sex means, among other things, that transgender students are entitled to have their names respected, to have the pronouns honored, and to have access to facilities and educational opportunities available to them consistent with their gender identity. And so when the administration comes in and says, you have to end that access, you have discriminate against transgender students or you're gonna lose your federal funding, your first call should be to your lawyer. And the second call should be to the civil rights community because we will support you in complying with the law as it stands, just like we have supported school districts and teachers across the country who stand for their right to teach inclusively in a way that honors the complete history of all their students in a way that respects the fact that most of the students in our schools are not white. And they come from different histories and those histories need to be taught in our schools in order for all students to have a complete education. So I feel like I said a number of things but I think people really, they really do need to understand what their rights are and they need to that there are broad and deep coalitions of people who are standing for those rights and believe in inclusive education practices in public schools that treat all students in those schools as belonging there and having civil rights that need to be honored there.

PERERA: Thank you, and thank you, Alice, for bringing in those details around Title IX, which I know are another area that we didn't have as much time to cover, but has been an area where the Trump administration is also pushing hard in terms of advancing an interpretation of Title IX that is divorced from current federal law and recent federal court precedents. And so I think that knowing, understanding, like, you know, what Title IX is versus the administration's interpretation of Title IX, just like understanding what Title VI says versus the administration's interpretational Title VI is really important for folks working in education settings right now. Ray and Leah, anything to add in terms of, you know what you would advise districts to do in the event they are facing imminent threats from the administration over these misinterpretations of federal law?

LI: Absolutely. Everything that Alice said, unfortunately, it's, you know, call your lawyer and have a really in-depth conversation. And to fill it in a little bit, like some of what those kind of know-your-rights are is that, when it comes to a threat like we have seen in the mascot cases is kind of where we've seen this at the K through 12 level, where OCR has come in and said we're going to

terminate federal funds. Title VI and Title IX have very clear statutory provisions on what needs to happen before the Department of Education terminates all federal funding for you under these statutes. And so that's like one important thing to keep in mind here. And so, that statutory process requires things like an actual written finding and notice to the recipient of their actual legal violation. That includes a voluntary process for resolving the concerns prior to terminating funding. It requires a hearing before an administrative law judge at the department, and then they actually need to notify Congress within a certain timeline that they plan to remove all federal funds. And even then, you have kind of your traditional APA challenges in courts of law as to or not the decision here, you know, is arbitrary and capricious or many of these other things. And so, what we have seen them, you know, successfully do in trying to, again, bully through intimidation instead of through, you know, lawmaking is at the higher ed level, they're able to kind of pick off institutions by pausing or withholding individual research grants which all have their own terms and conditions that might give them some sort of hook as to how civil rights compliance could lead to a pause or termination here. On the K through 12 side, they are going to more likely have to go through this process. I mean, some districts obviously receive different sorts of discretionary grants in the department, but a lot of this money, the Title I money, IDEA money, the main things you're getting from the federal government, they're going to have to go through a process like this to actually go through and withhold all that federal money. And that's really important for lawyers to understand and that might kind of change the scope of your negotiations or your decision-making that they can't really just operate in this more ad hoc world of one-by-one grants that we've been seeing in the higher ed space on the K through 12 side. Obviously, there's, again, still one-by-one grants that can go through this process, and I've heard of districts having questions from the administration on some of the grants that they do have. But at least on the OCR side of things, it should be really important to keep those things in mind. And again, we've seen a regulatory agenda from OCR that they're proposing to change some of their rules around that, but that's just changing the Department of Ed's regs themselves and not these underlying statutory provisions. And so those provisions are, you know, baked into the actual language of the law and haven't changed and won't change until Congress does.

PERERA: Thank you, Ray. That's a really important point around sort of the sources of funding and the ways that the different sources of funding means that the administration has different levers in higher ed versus K-12. Leah, anything to add here?

WATSON: I would just say very quickly that, especially for the local education agencies, if you're attempting to comply with the broad statements by the Trump administration, you will likely have questions about what is or is not covered. And I think going to the state education agencies with questions about and thinking very narrowly about what actually illegal DEI, going back to the point of some things being illegal or non-illegal in consultation with counsel. But I think thinking more narrowly, just because something says, involves race or sexual orientation, gender, does not mean that it is DEI at all. And so keeping that connection very tight. And I think also being very forthcoming with community members, with parents about what is going to be missing from their schools if you don't have the funding. This came up in our NEA case where various districts

discuss what the implications are going to be. My elementary school classes in my school are going double in size, which anyone who's been an elementary school teacher will tell you is disastrous. Or there are often reading, fundamental courses for struggling readers, math enrichment opportunities, a variety of things that parents actually want in schools for their students and for other students. Summer enrichment opportunities to reduce summer learning loss. These are things that benefit students in very tangible ways and aren't DEI and don't feel like DEI. So I think also keeping those in mind and being very upfront because there are, I'm not, there is a vocal minority pushing these forward, but there are more people who want inclusive schools, who want good schools to serve all students. Encountering that narrative I think is something that is important that we haven't been able to really shepherd thus far but I have to hope still has legs as well. And then also thinking very carefully for a district or a state about how much federal funding you use or where you're directing that because one thing that we found is that some states use very receive very little of their budget in federal funding and thinking through how to redirect if necessary. But I think starting with, is there something we actually have to do? And if so, how can we share what's really being removed from classes?

PERERA: Yeah, that's a really great point. So on this, we only have time for one audience question, but I think it's a good one and related to the direction this discussion has been going. And that question is, besides challenging the administration and their agenda in court, what else can states and local districts do to ensure they are able to maintain their federal funding for schools and to protect students' civil rights and their, and to protect teachers and educators who are working in these contexts?

O'BRIEN: So I think one thing which is really important, which is what Leah was talking about just now, is making very concrete and clear the programs that are at risk by what the federal government is doing. The programs that have been eliminated by what federal government has doing. I do think districts should be making you know, contingency plans, and I'm sure they have been, but I don't think people understand the extent to which many, many school districts across the country are very dependent on federal education funding, and they are very dependent on that funding arriving when it's promised, not being withheld, like the federal government withheld billions of dollars of education funding at the beginning of July, and threw, you know, school districts across the county in disarray because, you know, they had already started after school programs for the year and all of a sudden the federal government was pulling the plug on them. So I think being very concrete about how what the federal government is doing is placing in jeopardy educational opportunities for students in the district and the educational opportunities that are being lost by what the government is demanding that the district do. Because I think the community and parents generally will not support that, right? They're not going to support a school in which, you know, half the books are taken out of the library or all the books that reflect stories of Black, you, know, protagonists or LGBTQ protagonists are taken out of library because that's not what libraries are for, right. They're for students to be able to go and find a book that, you know, speaks to their interests so they're excited about learning and excited about reading. And I think more of

that kind of public engagement and discussion and just making it very transparent what is going on is enormously helpful in the current context.

LI: Yeah, absolutely. All of that is incredibly helpful and I think part of this is, you know, you don't have to be a lawyer to work on some of these problems that we discussed today, of especially the information asymmetry problem where the government is able to push out its narrative and updates on things getting overturned don't always get to the right decision makers especially in smaller LEAs or smaller districts. And so it's really important when there are important updates in litigation or otherwise in legislation or something else to try to get that information to school board members and district leaders who just might be too busy or haven't seen certain information. And so, for example, after that April 24th day when all three of these cases got really great decisions at the same time, you know, enjoining the DCL and all these things, the groups that were litigating this got together and did kind of like a quick press release letter that we then were able to circulate to all 50 of the state SEAs as well as a few hundred of the largest LEAs and got that information and got a lot of responses from folks who were like, oh I didn't see this, or thanks for letting me know. And we actually saw two different school districts one in Georgia and one in New York change their policies because they had originally removed the policies because of the DCL and after they were enjoined, they reversed. And so that is something that any student, parent, teacher can do. Is, our groups are always putting out information, that's a lot of my job is drafting these fact sheets and press releases and all of that stuff. And so you don't need to try to dissect the 70 page district court opinion, but check the websites of groups like on the call here of NEA, AFT, of you know ACLU, LDF here, Democracy Forward, a lot of these groups that are litigating these cases will often have a press release where we kind of break stuff down into plain language and you can just forward that along and say, hey, have you seen this, it might be relevant to policies in our district. And so that's like one little concrete thing.

And similarly, as I was noted, like the attacks here from the administration are really broad and it's not just on DEI, we're seeing just an attack on public education at the K-12 level in general, and lots of that fight is happening right now. Some of it happened during the reconciliation process. We saw the passing of this big federal voucher program for the first time, but we have current appropriations battles where they're trying to cut around \$12 billion from federal education funding from the Department of Ed. Some of that's coming out of consolidating programs that will result in losses of money from Title I and supports for English learners. And there's a ton of money that is on the table right now that, these are active things for your members of Congress and Senators to really know matter to you in your district. And again, not all of it falls on the same political partisan lines as you would expect. In the summer when that funding was held back, it was a couple of Republican senators who helped lead the effort of making calls to the White House to try to get those changes done. And so there's a little opportunity here to get some of that cross-aisle work on funding. So that's something to get activated on in terms of like calls and letters to your representatives

PERERA: Yeah, Ray, that's such an important point. I always underscore that a vast majority of Title I money goes to red states. It is supporting rural education. And so it's not safe to assume you sort of know where your member of Congress stands on some of these smaller education federal funding issues. Leah, anything to add on this question?

WATSON: I would just reiterate considering your federal obligations under federal law, meaning congressional statutes that have been passed or jurisprudence from courts. Going back to anti-discrimination law, we didn't talk a lot about disability rights, but they are obligations. And as you're considering what to cut, remembering that you can't cut everything just because the Trump administration said so. I think it's something that is very, very important and also to just reiterate the importance of supporting our unions, because the litigation that we have filed specifically to ACLU's case applies to NEA members in any schools where there are NEA members, which is very broad. And there have been lots of changes to the ability of getting a nationwide injunction recently. But I just want to emphasize the importance, both major teachers unions are fully engaged in this fight and having members in the schools is really important to making sure that schools get the relief that we are able to secure through litigation.

PERERA: Thank you, Leah. So with that, I think we need to wrap up. I knew we'd have far more questions than we had time for. I want to thank each of you again, so much for your time and participation in this event. This was an incredibly insightful and valuable conversation at a time when I know many of us are trying to wrap our heads around a very fast evolving, quickly evolving federal education policy landscape. And so again, thank you for your time. And I look forward to following all of the work you all are doing to slow down the Trump agenda.

O'BRIEN: Thanks so much, Rachel. We really appreciate you and Brookings doing this important conversation.