

## One-Two Punch Delivered to Department of Education on DEI

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April 25, 2025

### Separate District Courts Take Divergent Routes to Temporarily Bar Enforcement of the Dear Colleague Letter on DEI in Education

On April 24, 2025, the U.S. District Courts for the District of New Hampshire and the District of Maryland issued separate orders blocking enforcement of all, or large portions of, the Dear Colleague Letter (“DCL”) issued by the Department of Education (“DOE”) on February 14, 2025. The DCL related to the viability of various “DEI” programs in the wake of last year’s Supreme Court decision in *Students for Fair Admissions v. Harvard*.

After the DCL, the DOE also issued a February 28, 2025, Frequently Asked Questions document About Racial Preferences and Stereotypes under Title VI of the Civil Rights Act (the “FAQ”) and later created the End DEI Portal pursuant to the DCL. Further, on April 3, 2025, the DOE issued a compliance certification requirement (the “Certification Requirement”), mandating state and local education agencies certify adherence to Title VI of the Civil Rights Act of 1964 and the 2023 Supreme Court ruling in *Students for Fair Admissions v. Harvard*. Certification is reportedly an imposed condition for receiving federal financial assistance.

In the New Hampshire case, *NEA, et al v. U.S. Dept. of Education*, the court preliminarily enjoined the enforcement or implementation of the DCL, the February 28 FAQ, the End DEI Portal, and the Certification Requirement. The Court found that the plaintiffs had a high likelihood of establishing that the DCL, FAQs, and Portal are facially unconstitutional due to their vagueness, and thus enjoined enforcement of these documents and the Certification Requirement until further action of the court. **The injunction, however, only limits enforcement as to the plaintiffs in the case, the NEA, NEA New Hampshire and the Center for Black Educator Development as well their respective affiliates. Thus, the order is not a nationwide injunction.**

In the second case, *AFT v. U.S. Department of Labor*, the Maryland federal court took a different path to a similar end. The court preliminarily held that in issuing the DCL, DOE failed to comply with the federal Administrative Procedure Act, and as a result, the DCL was presumptively invalid. Rather than enjoin enforcement, as the New Hampshire court had done, the Maryland court held that a nationwide stay of the DCL was the appropriate remedy under the APA. The court declined to stay the FAQs or the Portal, however, finding neither to be a final agency action. Similarly, the court did not stay the Certification Requirement, holding it was not identified or raised in the Amended Complaint, but cryptically ruled “Insofar as the Court considers the Certification Requirement as an implementation of the Letter, it would of course be improper for the government to initiate enforcement based on a stayed policy, through certification or otherwise.” The stay, nevertheless, effectively precludes enforcement of the DCL nationally against any party.

Significantly, the court explained that only those aspects of the DCL that represented a change from pre-existing law were stayed, and that the stay would also preclude enforcement based on the FAQs to the extent they were based on changes made in the DCL. This will leave room for argument about which portions of the DCL are “new” law and which are merely declarative of prior law.

As a practical matter, the two decisions give educational institutions (particularly those who employ or contract or work with members or affiliates of the NEA) some breathing room to assess how to respond to the administration’s focus on DEI efforts in educational programming. While the issue is unlikely to go away entirely, enforcement of the penalties and

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the Certification Requirement have been kicked down the road for now.

If you have questions about these orders or the Certification Requirement and would like to discuss how your educational organization should respond to them, please contact your Miller Canfield attorney or one of the authors of this alert.