HIGHER EDUCATION LAW
INFORMATION MEMO
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Trump Administration Drops Appeal to Defend Dear Colleague Letter on DEI – Implications for Higher Education Institutions

The U.S. Department of Education, on Jan. 21, 2026, withdrew its appeal to the U.S. Court of Appeals for the Fourth Circuit aimed at defending its anti-DEI Dear Colleague Letter issued last year. The Trump Administration's decision to formally drop its appeal leaves in place a federal district court's ruling finding the Dear Colleague Letter unenforceable.

Background

On Jan. 21, 2025, President Trump signed an Executive Order (EO), "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." Broadly speaking, the EO purported to prohibit what it characterized as unlawful "Diversity, Equity and Inclusion" programs (a term it did not explicitly define). On Feb. 14, 2025, the federal Department of Education, Office for Civil Rights (DOE) issued guidance in the form of a Dear Colleague Letter (DCL). The controversial DCL cited the U.S. Supreme Court decision in SFFA v. Harvard, which had banned the use of race in college admissions, as a basis for targeting various diversity, equity and inclusion programs and initiatives across a broad spectrum of areas in higher education. The DOE insisted that the DCL was merely reiterating existing legal requirements under Title VI of the Civil Rights Act of 1964 and other constitutional mandates. The DCL stated, in part,

> *In recent years, American educational institutions have discriminated against students on the basis of race, including white and Asian students, many of whom come from disadvantaged backgrounds and low income families. These institutions' embrace of pervasive and repugnant race-based preferences and other forms of racial discrimination have emanated throughout every facet of academia.*

The DCL went on to state:

> *Educational institutions have toxically indoctrinated students with the false premise that the United States is built upon "systemic and structural racism" and advanced discriminatory policies and practices. Proponents of these discriminatory practices have attempted to further justify them—particularly during the last four years—under the banner of "diversity, equity and inclusion" ("DEI"), smuggling racial stereotypes and explicit race-consciousness into everyday training, programming and discipline.*

The DCL went on to claim that institutions have violated the law by relying on nonracial information as a proxy for race and teaching students that certain racial groups bear unique moral burdens that others do not. On March 1, 2025, the DOE released Frequently Asked Questions (FAQs) further analyzing the issues outlined in the DCL.

The controversy surrounding the Dear Colleague Letter unraveled into injunctions, stays, and ultimately a federal district court ruling that voided the guidance altogether. On Aug.14, 2025, in *American Federation of Teachers v. Department of Education*, Judge Stephanie Gallagher of the U.S. District Court for the District of Maryland ruled that the DCL violated the Administrative Procedure Act (APA) and ran afoul of the First Amendment. While the Maryland district court did not rule on the specific contents of the DCL, the DCL was found legally void and unenforceable across the nation, resulting in the issuance of a preliminary injunction blocking the DCL. Judge Gallagher wrote that the DCL did not merely remind institutions that discrimination is illegal, but rather "initiated a

sea change in how the Department of Education regulates educational practices and classroom conduct, causing millions of educators to reasonably fear that their lawful, and even beneficial, speech might cause them or their schools to be punished."

Indeed, in the Maryland district court's ruling enjoining the DCL, it was noted that the DOE cited the DCL to initiate 51 Title VI investigations on March 14, 2025. Some of those investigations have since resulted in resolution agreements in which colleges and universities promised to cease certain programs that the DOE deemed as unlawful DEI. Notably, even prior to the decision in *AFT*, two other courts had blocked the DOE's anti-DEI measures, including the DCL, an anti-DEI complaint portal and an anti-DEI Certification requirement.

In Oct. 2025, the government filed an appeal with the Fourth Circuit Court of Appeals in an attempt to defend and enforce the DCL. Earlier this week, the DOE signed a joint motion to dismiss the appeal before the Fourth Circuit.

Implications for IHE

What does the DOE's sudden willingness to abandon its appeal and defense of the DCL mean for colleges and universities? Over the past year, many IHE have made significant changes to their DEI offices, programs and websites and some have implemented robust internal review processes to monitor new grant programs and other third-party partnerships.

The more nuanced aspects of the DCL, such as the use of other characteristics the DCL labeled "proxies" for race and the implications of differences in the regulatory schemes between Title VI and Title IX as applied to outside opportunities and financial aid, were more complicated to analyze and assess risk. For example, determining what is a proxy for protected characteristics versus what criteria are lawfully used requires a specific, fact-based analysis. These and certain other aspects of the DCL were less clear as to scope and the DOE's interpretation against existing civil rights law. Certain aspects of the DCL arguably extended beyond existing statutory and regulatory mandates and could not be traced to caselaw developed by the courts.

Institutions should not, however, assume that the absence of the DCL eliminates all legal concerns with respect to DEI programs and policies. As a general matter, DEI is not, per se unlawful. There is – and always has been – a difference between "unlawful" and "lawful" programs that may fall under a "Diversity, Equity and Inclusion" framework. In addition, as a general matter, an entity engages in unlawful discrimination when it makes decisions or extends preferential treatment based on an individual's race, color, ethnicity, sex or various other protected characteristics. These two concepts have been and continue to remain true. Despite the DOE's willingness to abandon the DCL, IHE are likely to continue to experience challenges to DEI programs by the DOE, individuals and advocacy groups. There remains the risk of liability based on illegal discrimination, even if the illegal discrimination resulted from well-intentioned efforts to increase diversity. IHE may still face the risk of compliance issues based on programs that run afoul of long-settled requirements that programs and activities generally be open to all students. The DCL was not integral to such challenges, as some programs and policies, including, but not limited to, race-based, sex-based or other demographically restricted scholarships or programs, have been identified by DOE as potentially unlawful long before the beginning of the second Trump Administration. DOE has historically taken the position that, generally speaking, all programs and activities must be "open to all" and not exclusionary based on protected characteristics. Thus, some programs currently under attack as "unlawful DEI" have presented compliance issues long before the February 14 DCL. Those issues continue to pose risks and should be assessed and addressed if warranted.

As was the case before this latest development, DEI programs, policies and initiatives should be reviewed to ensure their compliance with existing anti-discrimination law. The level of internal review and scrutiny will continue to remain an individualized and case by case judgment for each college and university. DOE is not the only agency warning recipients of federal funding of the government's concerns with DEI initiatives. On July 29, 2025, the U.S. Department of Justice (DOJ) issued a memorandum providing guidance on the application of

federal antidiscrimination laws to DEI programs and specifically warning that federally funded entities may not make decisions—such as hiring, admissions, contracting or programming—based on protected characteristics like race or sex, even if pursued under the banner of diversity or equity. Moving forward, close attention should be paid to the rapidly occurring developments against the backdrop of enforcement actions by both federal and state officials, including the DOJ and the Equal Employment Opportunity Commission, as well as the possibility of private litigation.

Bond continues to follow these and related developments closely. Please contact **Christa Richer Cook** or a Bond attorney with whom you normally work, for questions, concerns and tailored consultation.