

# HIGHER EDUCATION

## INFORMATION MEMO

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## Two Courts Found the Department of Education's Anti-DEI DCL Unlawful: Where Are We Now?

On April 24, 2025, two U.S. District Courts issued Orders finding the U.S. Department of Education (DOE)'s February 14, 2025 "Dear Colleague" Letter (DCL) to be unlawful and narrowly restricting the DOE's enforcement of the DCL. The DOE's ability to enforce the DCL is in a holding pattern, and it will likely face additional challenges. This is a developing issue that will not have a clear resolution any time soon.

### The New Hampshire Preliminary Injunction

The U.S. District Court for the District of New Hampshire granted a request for a preliminary injunction in *National Education Association, et al. v. United States Department of Education*, effectively preventing DOE from enforcing its February 14, 2025 DCL against the "[P]laintiffs, their members, and any entity that employs, contracts with, or works with one or more [P]laintiffs or one or more of [P]laintiffs' members."

The DCL, which was issued pursuant to the January 21, 2025 Executive Order "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," asserts that many educational institutions have "embrace[d] ... pervasive and repugnant race-based preferences and other forms of racial discrimination" in "every facet" of their operations, and 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 under the banner of [Diversity, Equity, and Inclusion] DEI." The DCL makes clear that institutions that continue to advance "illegal DEI," (which is not defined in the DCL or the Executive Order) "will jeopardize their receipt of federal funding, including federal financial aid."

In March of 2025, the National Education Association (NEA) and the American Civil Liberties Union (ACLU)—joined by the NEA-New Hampshire, the ACLU affiliates of New Hampshire and Massachusetts, and the Center for Black Educator Development (collectively the "Plaintiffs")—filed a lawsuit in federal court requesting preliminary injunctive relief to prevent the DOE's enforcement of this policy while the case is litigated. In this Order, the Court found that the Plaintiffs had shown that the DCL was so vague that it denied due process, suppressed legitimate speech in violation of the First Amendment, and violated the Administrative Procedure Act (APA) by not following the notice and comment process for rulemaking, which findings were sufficient for the Court to grant a preliminary injunction.

However, the Court, noting that nationwide injunctions, particularly nationwide preliminary injunctions, have recently received sharp criticism, including from members of the U.S. Supreme Court, did not issue a nationwide injunction, as the Plaintiffs had argued, but also did not limit the injunction to the Plaintiffs as requested by the government, as noted above. While this Order does not prevent the DOE from enforcing the DCL upon any institution or entity outside of this limited scope, it could very well serve as the template for similar orders across the country. On May 13, 2025, the parties agreed to a briefing

schedule regarding competing motions to dismiss. Assuming it is adopted, motions to dismiss will be fully briefed by the end of July 2025.

### The Maryland Temporary Stay

On the very same day as the New Hampshire decision, the U.S. District Court for the District of Maryland issued a “temporary stay” in a substantively similar case brought by the American Federation of Teachers and its Maryland affiliate, as well as the American Sociological Association, and a Eugene, Oregon School District. *American Federation of Teachers, et al., v. Department of Education, et al.* This temporary stay will prevent the DOE from enforcing the objectionable provisions of the DCL and its implementing FAQs that go beyond existing law so as to “preserve status or rights pending conclusion of the review proceedings,” without precluding the DOE from enforcing any policy within its existing legal authority. While the Maryland Court’s temporary stay is broader than the New Hampshire Court’s injunction in that it applies nationwide, it recognizes that during the litigation the DOE may undertake enforcement actions in accordance with existing law. As with the New Hampshire case, the Pparties recently agreed to a briefing schedule to file competing motions to dismiss. The Court adopted the joint proposal, and the motions are scheduled to be fully briefed by the end of July 2025.

### Takeaways

While these grants of temporary relief are a setback for the DOE, which has not appealed these decisions, the DOE will certainly continue to enforce its agenda wherever it can. Even if the courts ultimately strike down most or all of the DCL and its implementation, the DOE could move to clarify the regulations via notice and comment rulemaking, which typically takes months or even years to complete. All of this means the path forward in this area is still uncertain, which makes consultation with legal counsel to assess the impact of these developments on your particular institution imperative.

Bond attorneys are following these, and related legal developments, closely. If your institution would like further guidance, please reach out to an attorney in our [higher education practice](#) or the Bond attorney with whom you are regularly in contact.

