

To: Partners
From: Democracy Forward Foundation
Re: Fact Sheet: U.S. Department of Education Abandons Appeal in Defense of “Dear Colleague Letter” and Certification Requirement That Tried to Re-Write Civil Rights Laws—What This Means For Educators & Schools
Date: February 9, 2026

The U.S. Department of Education (Department) has [agreed](#) to dismiss its appeal of a court ruling that invalidated its “Dear Colleague Letter” and accompanying Certification Requirement. Because the Department abandoned its appeal, **the court ruling that struck down these documents is final. The bottom line: the Department cannot enforce the “Dear Colleague Letter” or Certification Requirement against any school district, school, or educator.**

Background

- In February 2025, the Department issued a “[Dear Colleague Letter](#)” (DCL) threatening to withhold federal funding from any school that taught lessons that acknowledge race—such as teaching accurate history, sociology, and other subjects—or that supported students of diverse backgrounds or had any programming to support efforts at diversity, equity, and inclusion.
- In early April 2025, the Department issued a [Certification Requirement](#) that required schools to certify that each state and school would adhere to the administration's baseless interpretation of civil rights law, under threat of termination of funding and criminal penalty.
- Democracy Forward Foundation [filed the first challenge to](#) the DCL and Certification Requirement on behalf of American Federation of Teachers (AFT), AFT-Maryland, the American Sociological Association, and Eugene School District 4J. Other suits followed led by [NAACP](#), [National Education Association](#), and by several [state AGs](#).

Courts Hit Pause on the DCL and Certification Requirement

- In late April 2025, [three separate federal courts](#) issued orders that blocked the Department from enforcing the DCL and Certification Requirement:
 - *American Federation of Teachers, American Sociological Association, American Federation of Teachers-Maryland, and Eugene School District 4J v. U.S. Department of Education et al*, [1:25-cv-00628](#) (Maryland District Court)
 - *National Education Association, National Education Association-New Hampshire, Center for Black Educator Development v. U.S. Department of Education et al*, [1:25-cv-00091](#) (New Hampshire District Court)
 - *National Association for the Advancement of Colored People v. U.S. Department of Education et al*, [1:25-cv-01120](#) (District of Columbia District Court)
- These orders were preliminary (that is, issued before a final decision), in the spring of 2025.

Final Decision

- The Maryland [District Court](#) in [AFT et al v. Department of Education](#) was the first to issue a final judgment, finding **that the DCL and Certification Requirement were not lawful**. That decision in

August 2025 [vacated](#) (or permanently invalidated) the DCL and Certification Requirement. **The Department may not enforce them against any educational institution.**

- In particular, the Court held that the DCL violated the First Amendment, was unconstitutionally vague, and was unlawful under the Administrative Procedure Act.
- The Court also held that the Certification Requirement was unconstitutionally vague and was unlawful under the Administrative Procedure Act.
- The Court’s opinion stated:
 - **Acknowledging and discussing race in a school setting is lawful.** “There is no basis in Title VI or SFFA [Students for Fair Admissions] for concluding that discussion of race—in the two ways highlighted in the Letter or otherwise—is ever, or especially always, discrimination.” [Op. at 54.](#)
 - **Teaching and learning about structural racism is lawful.** The court “rejected the government’s argument that discussing ‘systemic and structural racism’ or ‘teach[ing] students that certain racial groups bear unique moral burdens that others do not’ constitutes per se race discrimination.” [Op. at 56.](#)
 - **Appropriately promoting diversity, equity and inclusion is lawful:** The Department’s own regulations acknowledge that “educational institutions ‘may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served.” [Op. at 48.](#)
- While the government appealed this decision in October 2025, on **January 21, 2026, the Department [agreed](#) to stop defending the DCL and Certification Requirement and voluntarily dismissed its appeal.**

What This Means for You

- **The DCL and the Certification Requirement are permanently invalidated across the entire nation.**
- As the court stated, each document “is void, null, and nonexistent; the government cannot continue to enforce it, implement it, or otherwise use it.” [Op. at 74.](#)
- **The Department may not enforce this DCL or the Certification Requirement against any educator, school, school district, or educational institution of any kind.**
- Although the DCL and Certification are still available online, each includes a notice stating that the Department will not enforce them until further notice—now, the Department will not be able to enforce them going forward.

Other Questions

- **What about the other court cases?**
 - The relief sought in the other cases has already been granted by the Maryland District Court; the Dear Colleague Letter and Certification Requirement cannot be legally enforced.
- **What if my school or district voluntarily took steps to comply with the DCL or Certification Requirement?**
 - Please help get the word out about the ruling in this case so that all stakeholders know the outcome. Some schools or districts may wish to reconsider the steps taken in light of this final judgment and consult with counsel.

- **What does this mean for future enforcement?**
 - The court’s opinion makes clear: the “Dear Colleague Letter” and Certification Requirement are “void, null, and nonexistent,” and “the government cannot continue to enforce” them.
 - However, the Court observed: the government “has stated over and over that it disfavors its concept of ‘DEI’ [diversity, equity, and inclusion] and wishes to end it altogether.” We expect the administration to continue to issue guidance and initiate investigations and enforcement that seeks to curb programs that support diversity, equity, and inclusion.
 - The court explained that while the administration is “entitled to develop and pursue its own enforcement priorities within the law,” it is not “entitled to misrepresent the law’s boundaries,” and it must “consider the relevant legal framework as it is.” Any future actions taken by the administration must adhere to these guardrails.
 - We are staying alert to any actions taken by the Department of Education and by the Department of Justice, and assessing new issues as they arise. If you think any new guidance, investigations, or enforcement violates the court’s order, please contact us at democracy2025@democracyforward.org.

The Bottom Line

- Educators, schools, and districts are not required to comply with the unlawful Dear Colleague Letter or the Certification Requirement. Federal funding cannot be conditioned on adherence to this unlawful letter and Certification Requirement. Educators may continue teaching subjects that address race and inequality, and schools may continue operating programs that encourage diversity, equity, and inclusion in accordance with existing law.

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Please contact democracy2025@democracyforward.org for more information or with any questions.