A LETTER UNDER SCRUTINY: RECENT RULINGS REJECT D.O.E. D.E.I. GUIDANCE

As you may recall, on February 14, 2025, the United States Department of Education (DOE) published a "Dear Colleague Letter" (DCL) setting out the Trump administration's position with respect to diversity, equity and inclusion (DEI) principles and federal antidiscrimination law. Subsequently, DOE issued a certification directing school districts to affirmatively certify their compliance with DOE's interpretation of anti-discrimination laws. Both documents have been the focus of ongoing litigation in several federal courts.

On August 14, 2025, a Maryland federal district court judge, in the case of *American Federation of Teachers, et al., v. Department of Education*, issued a comprehensive decision concerning both the DCL and the certification requirement. The judge concluded that both documents were unlawful and ordered that neither document could be implemented. The judge found that both documents reflected final decisions of the DOE and therefore, as a final decision of a federal agency, should have been developed in accordance with procedures under the federal Administrative Procedure Act. Since they were not, the judge concluded both documents were procedurally defective.

Significantly, the judge also concluded that the DCL, which identified specific classroom speech the administration claimed would violate federal anti-discrimination laws, violated the First Amendment of the U.S. Constitution. The DCL singled out classroom speech regarding "systemic and structural racism and teach[ing] students that certain racial groups bear unique moral burdens that others do not" as categories of speech now viewed as discriminatory, stereotyping and stigmatizing. The judge concluded that the DOE could not regulate the content of curriculum by making certain types of content categorically discriminatory. The judge noted that the DCL expressly targeted proponents of diversity, equity, inclusion and social justice which the judge stated was viewpoint discrimination and was exactly what the First Amendment protects.

The judge also concluded that the DCL was unconstitutionally vague. She stated that the DCL says to teachers and schools that if they engage in DEI practices which DOE deems impermissible, they will be punished, but it does not provide any clarity on which DEI practices are impermissible. The judge noted that it was "impossible to determine what conduct triggers the prohibitions and sanctions of the letter. That enables the government to enforce the letter arbitrarily."

The judge also determined that the certification requirement was unconstitutionally vague, stating that the certification threatened serious consequences if schools engage "in certain DEI practices, illegal DEI practices or DEI practices that advantage one race over another." However, the judge noted that the certification neither defined DEI nor delineated between permissible and "illegal" DEI. The judge concluded that because "the terms at issue are so broad and involve value judgments, they leave regulated persons without proper notice of what conduct they must certify they are not engaging in."

The judge pointed out that federal judges in New Hampshire (*Nat'l Educ. Ass'n v. Dept. of Educ.)* and the District of Columbia (*NAACP v. Dept. of Educ.)* had already stopped implementation of both documents.

We will continue to keep you informed as these cases wind their way through the courts.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.