Last week, three different judges in three different courts—two of whom were nominated by President Donald Trump himself—issued rulings repudiating the efforts of the U.S. Department of Education to weaponize its Office for Civil Rights and to restrict educators' and administrators' curriculum and other educational programming decisions based on an overly broad and vague interpretation of the scope of Title VI of the Civil Rights Act. This guidance, jointly prepared by the National Education Association and the AFT, which brought two of the lawsuits in question with the assistance of the ACLU and Democracy Forward, respectively, provides a brief overview of the cases and the key points to take away from the three rulings.

I. Attacks on Diversity, Equity and Inclusion by the Trump Administration

Since day one, the Trump administration has attempted to halt and roll back efforts to increase opportunity and equality, both in the federal government and in society at large. To that end, one of the first executive orders signed by Trump directed federal agencies to terminate any "equity-related" grants or contracts. This resulted in, among other things, the termination of programs to expand access to the teaching profession and support teachers who, in exchange for their training, committed to teach for a specified period in an underserved school district. The Trump administration went on to target K-12 education directly with EO 14190 ("Ending Radical Indoctrination in K-12 Schooling"), signed Jan. 29, 2025, which threatens to pull federal funding for "illegal and discriminatory treatment and indoctrination in K-12 schools."

In response to the "Radical Indoctrination" executive order, the Department of Education issued a Dear Colleague letter on Feb. 14 that threatened to revoke federal funding for any school or college that engages in certain DEI efforts. While the nature and scope of the targeted DEI practices are not clearly defined, the letter indicated that curriculum content and educational programming decisions would be subject to review. The department followed its letter with two sets of FAQs, which only added to the general confusion about the reach of the department's newly announced views. The department then set up an "End DEI" portal, endorsed by Moms for Liberty, encouraging the public to "share the receipts of the betrayal that has happened in our public schools" by reporting educators for teaching "divisive ideologies and indoctrination." The department also announced 45 investigations of colleges that participated in a particular scholarship program, and it took precipitous actions against marquee higher education institutions based on other alleged violations of Title VI. Finally, on April 3, the department demanded that state education agencies certify—and rapidly obtain certifications from all local education agencies—that they would agree to conform their conduct and educational programming to the views expressed in the Feb. 14 letter.

II. Litigation Challenging the Department's Attack on DEI in K-12 Schools and Colleges and Universities

The actions by the administration had an immediate and chilling impact on schools and colleges throughout the country. Teachers and professors were advised or directed to scrub their curriculums of topics that administrators believed might cross into territory now prohibited by the administration. Schools and colleges took sweeping steps to delete references to DEI efforts, to rename offices and centers, and to postpone or completely discontinue educational programming that might cross the vague but enormously consequential line that the department's letter had drawn. Given the impact of this censorship on students and members, the AFT, the NEA and many others, including several state education officials, state attorneys general and, more recently, the NAACP, moved to challenge the Dear Colleague letter and the actions the administration took to enforce the letter, including the "End DEI" portal and the certification requirement.

The AFT filed suit, with the support of Democracy Forward, in the U.S. District Court for the District of Maryland. The NEA filed suit, with the support of the ACLU, in the U.S. District Court for the District of New Hampshire. The NAACP filed suit, with the support of the NAACP Legal Defense Fund, in the U.S. District Court for the District of Columbia. In all three cases, the plaintiffs quickly moved for preliminary relief in the form of an administrative stay and/or a preliminary injunction against the Department of Education enforcing the Dear Colleague letter.

III. Rulings Staying the Department from Enforcing the Letter and/or Certification Requirement

On April 24, the final date by which state education agencies and local education agencies were to certify their compliance with the department's views in the Dear Colleague letter, all three courts granted some or all of the preliminary relief the plaintiffs had requested.

Specifically, in the AFT lawsuit, the District Court for the District of Maryland issued a national stay against enforcement of the Dear Colleague letter, finding that it had been issued by the department in violation of the Administrative Procedure Act. In the NEA lawsuit, the District Court for the District of New Hampshire issued a preliminary injunction against enforcement of the Dear Colleague letter or the certification requirement, or the use of the FAQs or the "End DEI" portal, in any school or college in which any NEA member is employed. And in the NAACP lawsuit, the District Court for the District of Columbia preliminarily enjoined the department from enforcing the certification requirement. Although appeals by the government are expected, at this juncture, the key takeaways of these rulings for educators are reviewed below.

IV. Key Takeaways from April 24 Rulings

The April 24 rulings make plain that the department does not have authority to infringe on state and local decisions regarding educational curriculum and instruction and, at least at the higher education level, may not act to censor or silence one particular viewpoint that it disfavors. The rulings also mean that the department cannot enforce the certification

requirement. Taken together, this trifecta of rulings allow states, universities, colleges, school districts and schools to continue to support and advance the important work of ensuring that curriculum is inclusive, honest history is taught, and all students are supported in accordance with their needs. Where schools or colleges had halted or shelved such efforts, affiliates and advocates should demand their reinstatement and should call on schools and colleges to loudly and proudly affirm the importance of such approaches. A template letter for such efforts is provided below.

A. Department May Not Direct, Supervise or Control Curriculum, Instruction, Textbook or Library Selections; Nor May It Act at the Higher Education Level to Censor or Silence Viewpoints It Disfavors

The courts recognized that the department is limited by federal law from exercising "direction, supervision or control" over the "curriculum, program of instruction, administration, or personnel of any educational institutional, school ... or over the selection or content of library resources, textbooks, or other instructional materials." *Maryland ruling* at 31 (quoting the Department of Education Organization Act). As the Maryland court explained, "the government cannot proclaim entire categories of classroom content discriminatory to side-step the bounds of its statutory authority." *Id.* at 33-34.

The New Hampshire court found the Dear Colleague letter to violate the same prohibition by classifying whole tranches of classroom instruction as potentially impermissible—for example, by labeling as discrimination any instruction or curriculum that "indoctrinated" the view that the United States is "built upon 'systemic and structural racism.'" *New Hampshire ruling* at 50. The court reasoned that the prohibition "arguably extends to simply speaking with students about the role that race and attitudes toward race have played in American history and culture." *Id.* at 54-55. That reach into curricular matters is prohibited by federal law. *Id.* at 69-71.

Both the Maryland and New Hampshire courts went further to find that the letter impermissibly targeted speech based on viewpoint, by labeling instruction about "systematic and structural racism" as discriminatory. *Maryland ruling* at 41-42; *New Hampshire ruling* at 61 ("The Letter targets speech based on viewpoint."). By threatening the loss of federal funding if curriculum, instruction or scholarship expressed this viewpoint, both courts found the government likely violated the First Amendment. While the Maryland court reached that conclusion as to the impact of the administration's actions on education generally, including K-12 schools, *Maryland ruling* at 42-43, the New Hampshire court reached that conclusion only as to higher education, *New Hampshire ruling* at 61-62.

B. State Education Agencies and Local Education Agencies Do Not Need to Comply with the Dear Colleague Letter or the Certification Requirement

Between the national stay on enforcement of the Dear Colleague letter, and the preliminary injunctions against enforcement of both the letter and the certification requirement, the department may not require any state education agency or local education agency to

comply with the Dear Colleague letter or the certification requirement. The Maryland court issued a national stay against enforcement of the Dear Colleague letter, *Maryland ruling* at 46-47, the District of Columbia court issued a national preliminary injunction against the certification requirement, *DC ruling* at 2, and the New Hampshire court enjoined enforcement of both in any school or college in which an NEA member is employed, *New Hampshire ruling* at 81.

That means that states, colleges, universities, school districts and schools remain free to make decisions about curriculum and educational programming, including efforts to support a diverse student body, staff and faculty; efforts to ensure curriculum and instruction is inclusive and accessible; and educational programming that recognizes and celebrates the rich diversity of our country and our history. The department has no authority to act on the Dear Colleague letter or the certification requirement against any state, school district, college or university.

C. Schools and Colleges Can and Should Continue to Support Inclusive Curriculum and Efforts to Increase Educational Opportunity for All Students through DEI Initiatives

School districts, schools, colleges and universities both can and should continue their work to recognize and advance equal educational opportunity by ensuring that instruction, curriculum and programs recognize racial diversity and address the ways in which racism has limited instruction, educational curriculum, educational programming and opportunity.

An established body of research affirms what educators have long known: A culturally responsive and racially inclusive education benefits all students—and is the most effective pedagogical approach. *See* National Education Association and the Law Firm Antiracism Alliance, *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* (2022). These studies show that students who participate in a curriculum that is culturally responsive and racially inclusive are more engaged, perform better academically and graduate at higher rates. *Id.* at 9 (citing studies).

What's more, as the New Hampshire court recognized, providing students with "wide exposure to [a] robust exchange of ideas which discovers truth out of a multitude of tongues [rather] than through any kind of authoritative selection," *New Hampshire ruling* at 1, is the foundation of our democracy. "The right to speak freely and to promote diversity of ideas and programs is one of the chief distinctions that sets us apart from totalitarian regimes." *Id.* (quoting *Terminello v. City of Chicago*, 337 U.S. 1 (1949)).

V. Enforcing the Rulings

Because school districts and colleges both can and should continue to support inclusive education and embrace DEI to expand educational opportunities for all students, advocates should use the rulings to affirm schools and colleges that are standing behind those

educational offerings and to urge schools and colleges that have cut back on such offerings to immediately reinstate them. And particularly given the Trump administration's repeated use of bullying, intimidation and scare tactics to push its racist, anti-education agenda, it is even more important for educators, unions, school districts and colleges to stand firm and resist any and all unlawful and unjust demands. A sample letter that advocates can use for that purpose is attached.

Template Letter: Please Customize as Needed to Enforce April 24 Rulings

Dear Superintendent/School Board/University President:

Last week three different judges in three different federal courts halted the actions by the U.S. Department of Education to stifle and shutter efforts in schools, colleges and universities to advance educational opportunity for all students through inclusive curriculum and diversity, equity and inclusion efforts.

On Feb. 14, 2025, the department issued a Dear Colleague letter that threatened to revoke federal funding for any school or college that engaged in certain DEI efforts, which the department did not define. The department followed its letter with two sets of FAQs, which also did not provide clarity as to what conduct was prohibited. The department then set up an "End DEI" portal for the public to report on impermissible "indoctrination" in the schools. And then on April 3, the department demanded that state education agencies certify—and rapidly obtain certifications from all local education agencies—that they agree to conform their conduct and educational programming to the views expressed in its Feb. 14 letter. In response to these troubling actions, school districts and colleges took steps to censor or shutter efforts to advance DEI work, including by [*insert here any actions taken by your school district or college to censor or shutter efforts to advance diversity, equity and inclusion work*].

The AFT, the NEA and the NAACP responded to the department's unlawful attempt to interfere with school and college curriculum and educational programming decisions by filing suits, with the support of Democracy Forward, the ACLU and the NAACP Legal Defense Fund. The three separate lawsuits challenged the department's actions as violations of the First Amendment, the due process clause of the Fifth Amendment, and the Administrative Procedure Act on several grounds, including that the department is prohibited from directing or controlling, directly or indirectly, curriculum and educational programming decisions by states, school districts and colleges and universities. *See, e.g.*, Department of Education Organization Act 20 U.S.C. §3403(b) (recognizing that states and localities retain control over education decisions and that the department has no authority to interfere with such curriculum and educational programming decisions in states).

The three lawsuits were filed by each organization, in coalition with others, in the U.S. District Courts in New Hampshire, Maryland and D.C. And each set of plaintiffs subsequently moved for preliminary relief against the department's actions. On April 24, all three courts issuing rulings granting, in whole or in part, the requested relief. The New Hampshire court enjoined the department from enforcing or implementing the Feb. 14 Dear Colleague letter, the April 3 certification requirement or the "End DEI" portal in any school district or college in which an NEA member works [*insert "including this school district/college/university" if an NEA member works in the district or for the college/university*]. *New Hampshire ruling* at 81. The Maryland court enjoined the department from enforcing the Feb. 14 Dear Colleague letter anywhere in the country. *Maryland ruling* at 46-47. And the D.C. court enjoined the department from enforcing the certification requirement. *D.C. ruling* at 2.

These three rulings mean that the U.S. Department of Education can no longer enforce and/or implement the Dear Colleague letter, the related FAQs, the "End DEI" portal or the certification requirement. The department has no authority to interfere, directly or indirectly, with state, school district, college or university decisions over the curriculum that will be taught and the educational programming that will be offered.

We therefore call on [*the district/college/university*] to restore fully and immediately all programs, curriculum, syllabuses and other educational offerings that were paused, halted or modified as a result of the department's Feb. 14 Dear Colleague letter or the enforcement of that letter through the "End DEI" portal, the certification demand or any other means. These program and instructional approaches [*fill in specifics of programs cut or censored and explain their importance to students and their education*]. These programs and instructional approaches advance equal educational opportunity by ensuring that instruction, curriculum and programs recognize racial diversity and address the ways in which racism has limited instruction, educational curriculum, educational programming and opportunity. We know that a culturally responsive and racially inclusive education benefits all students and offers the most effective pedagogical approach,[1] leading to students who are more engaged, perform better academically, and graduate at higher rates.[2] And such approaches prepare students to thrive in our multiracial democracy, preparing them as citizens and voters who are able to critically engage with the world and make their place within it.

We further call on [*the district/college/university*] to reaffirm its commitment to academic freedom and to protect students, faculty and staff in the exercise of their First Amendment rights. Our schools and universities must be forums where free and open debates about the issues that matter most are encouraged, not silenced or chilled by fears of retaliation for engaging in speech that is disfavored. As institutions whose very mission is education, our schools and colleges must set an example, by their words and actions, that decisions about curriculum and instruction are off-limits from federal interference and censorship efforts.

[1] *See* National Education Association and Law Firm Antiracism Alliance, *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* (2022).

[2] *Id.* at 9 (citing studies).