

Department of Education Drops Defense of Anti-DEI Guidance for Colleges: 3 Things Higher Ed Institutions Should Do

Insights

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The US Department of Education recently abandoned its legal defense of controversial guidance that sought to ban DEI programs at colleges and universities nationwide. On January 21, the Department quietly dismissed its appeal at the 4th Circuit Court of Appeals, effectively leaving in place a lower court ruling that rendered its February 2025 Dear Colleague Letter unenforceable. While the Department (DoE) has not released a public comment, this action appears to mark a retreat from the Administration's overall attempt to deprioritize DEI initiatives in higher education, which at its peak included threats to withdraw federal funding. Here's what higher ed institutions need to know about this development and what it means for your campus DEI policies going forward – and three steps you should consider taking.

What the Letter Said

The February 14, 2025, Dear Colleague Letter caused shockwaves in the higher education community because of its sweeping definition of DEI and broad interpretation of the 2023 SCOTUS Student For Fair Admissions holding.

- In sum, it targeted educational institutions that receive federal financial assistance from the DoE, claiming that common DEI programs could violate federal law and put their funding in jeopardy.
- It also asserted that the SCOTUS 2023 decision that prohibited race-conscious admissions should be extended to many other educational operations, including all aspects of student, academic, and campus life.

What Was it Challenged?

The Letter and its accompanying FAQs were almost immediately subjected to court challenges. Within weeks of its release, education groups filed lawsuits in federal courts arguing that the guidance made sweeping policy changes without following required rulemaking procedures.

In August 2025, a Maryland federal judge blocked enforcement of the letter nationwide, finding that the guidance inappropriately "initiated a sea change in how the Department of Education regulates educational practices and classroom conduct." At least two other federal courts issued similar

injunctions blocking the guidance, creating legal obstacles that prevented the DoE from enforcing the letter while appeals were pending.

What Changed?

The DoE's dismissal of this legal challenge may signal to higher ed institutions that the Administration's focus in this area is waning. Its decision to drop its appeal represents a notable shift in its approach to DEI. After spending months defending the letter in court – and using it as justification to launch dozens of Title VI investigations into universities – the Department signed a joint motion with plaintiffs on January 21 to dismiss the 4th Circuit appeal without explanation or public comment.

However, institutions should not interpret this as a complete retreat from DEI scrutiny. The DOJ's nine-page memorandum on DEI still exists, and other federal agencies (including the Department of Justice and the Equal Employment Opportunity Commission) continue to pursue enforcement actions against what they characterize as unlawful DEI programs. The dismissal simply means the Department will no longer attempt to enforce the specific interpretations and requirements outlined in the now-unenforceable February 2025 guidance.

What Should Institutions Do?

Given the current situation, higher ed leaders should consider the following steps:

1. Review Existing Policies. With the dismissal of the appeal, the underlying district court ruling supporting institutional practices remains intact. You should audit existing policies relating to Title VI, Title IX, ADA/Section 504, and other non-discrimination commitments to ensure they align with current federal and state law and legal guidance. You should also update internal compliance guidance and training for faculty, staff, and administrators – especially those in student affairs, academic affairs, and human resources – so that institutional interpretations are not unduly influenced by the now-dismissed appeal.

2. Communicate clearly with stakeholders about legal status and expectations. The dismissal of the DoE's appeal may cause uncertainty among faculty, students, and DEI professionals about what DEI activities or curricula are permissible. You should work with legal counsel and relevant stakeholders to issue clear communications to campus communities explaining that the Letter is no longer enforceable, what that means practically for academic programs and student support activities, but that federal nondiscrimination laws still govern institutional conduct. This may also include educating key constituencies (e.g., department chairs, DEI officers, internal legal counsel) about ongoing obligations and risk areas even in the absence of the specific Letter. Clear communication helps reduce confusion and supports compliance with the applicable legal duties, many of which did not change even with the issuance of the Letter.

3. Strengthen institutional risk-assessment and compliance infrastructure. Consider expanding or refining compliance reviews to assess how external legal developments (like this case) affect risk exposure, especially in areas such as DEI programming, speech and academic freedom, and federal funding conditions. This should include coordination across cross-functional compliance teams (legal counsel, Title IX coordinators, equity offices, academic leadership) to monitor enforcement trends, adjust policies where appropriate, and prepare for potential future guidance from the DoE or other federal agencies.

Final Caution

Just a reminder: While the stipulation of dismissal effectively ends the DoE's attempt to uphold the challenged guidance in the court of appeals, it does not eliminate federal civil rights obligations applicable to higher education. Institutions still must comply with Title VI, Title IX, and other federal and state laws.

Conclusion

We will continue to monitor developments related to the DoE's approach to higher education institutions, so make sure you are subscribed to [Fisher Phillips's Insight System](#) to get the most up-to-date information direct to your inbox. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Higher Education Team](#).

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