

LEGAL UPDATES

Department of Education Certification Requirement Enforcement Date Extended to April 24

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What You Should Know

On April 9, an [agreement](#) was reached in a New Hampshire federal court blocking the U.S. Department of Education (ED) from taking any enforcement action under the February 14 [“Dear Colleague” Letter](#) (DCL) or the April 3 ED federal funding [Certification Requirement](#) notice until at least April 24, 2025. [See our prior alert on this topic [here](#).]

A New Hampshire federal court held an emergency hearing during which lawyers for plaintiffs ACLU, National Education Association, National Education Association-New Hampshire and the Center for Black Educator Development asked for a temporary restraining order (TRO) on the April 3 Certification Requirement that originally required certifications by April 10, 2025.

The parties agreed that:

- “ED will not initiate enforcement action, investigation, or otherwise take action” based on the Certification Requirement “until after the April 24, 2025 deadline has passed.” Through April 24, 2025, “States and LEAs may submit or re-submit the requested certifications and/or other responses to OCR, and ED will not act upon such submissions or rely on them as material representations until after April 24, 2025.”
- Certifications “are not effective until after April 24, 2025, and may not be used for any purpose” including “any enforcement action, investigation, claim under the False Claims Act, contract claim, or any other basis for liability by any public or private party.”
- “ED will not initiate any enforcement action, investigation, or otherwise take action” based on the DCL and “subsequent actions implementing the letter until after April 24, 2025.” This “would not preclude” actions “based on Title VI in general” or *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

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- “ED will direct States to notify every LEA in its jurisdiction” about the agreement by Thursday, April 10.

This litigation emerges from a March 5, 2025, complaint for declaratory and injunctive relief filed by plaintiffs against the ED, Secretary of Education Linda McMahon, and Acting Assistant Secretary for Civil Rights Craig Trainor. This filing argues the DCL imposes “vague and viewpoint-discriminatory prohibitions on schools that upend and conflict with longstanding law, guidance, and professional practice,” “invites arbitrary and discriminatory enforcement and compels immediate compliance,” “target[s] ideologies and practices with which it disagrees,” and “causes substantial, irreparable harm to Plaintiffs.” The subsequent April 3 Certification Requirement prompted the April 7 emergency motion for temporary restraining order in which plaintiffs state, “[d]uring the pendency of Plaintiffs’ Motion for Preliminary Injunction, Defendants have taken further enforcement action under the DCL, necessitating a TRO.” In the April 7 filing, plaintiffs challenge the April 3 Certification Requirement and argue a TRO is appropriate because plaintiffs face irreparable harm; plaintiffs’ injuries establish standing; plaintiffs are likely to succeed on the merits of their Fifth Amendment Vagueness claim, First Amendment Speech claim and Administrative Procedure Act claim; and the balance of hardships is in the plaintiffs’ favor and relief would benefit the public.

What This Might Mean

This agreement could have several implications for schools and institutions, including:

- States, agencies, schools and institutions now have through April 24, 2025, to assess and comply with the Certification Requirement.
- Continued litigation regarding the DCL and Certification Requirement.
- Continued uncertainty for schools and institutions as they await further guidance from federal and state agencies.

Next Steps

Due to current legal challenges surrounding DEI programming, much remains to be seen about the scope of this agreement and the Certification Requirement. In the meantime, schools and institutions should actively monitor and continue to be aware of potential changes in federal educational funding and programming, and work with legal counsel to best position themselves for any consequences.

If you have questions about the potential impacts of this Certification Requirement on your school or institution, please contact Tammy Somogyi or your regular Lathrop GPM attorney.