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Re: U.S. Department of Education’s New Dear Colleague Letter

Dear Retainer Client:

President Trump has issued a series of executive orders on sex and gender, “diversity, equity, and inclusion” policies, and “radical indoctrination in K-12 schooling.” Consistent with those executive orders, on February 14, 2025, the U.S. Department of Education issued a [Dear Colleague Letter](#) (DCL) addressing how the administration will interpret and enforce federal civil rights laws that prohibit race discrimination. The DCL reflects the administration’s view that any race-based preference or initiative is likely unlawful.

The executive orders and DCL state that schools that fail to follow the administration’s directives risk losing federal funds. A school’s diversity, equity, and inclusion initiatives may be impacted by these proclamations.

As school officials navigate these executive branch actions, they should be mindful of the following:

1. The Michigan Constitution was amended in 2006 to prohibit schools from using race, sex, color, ethnicity, or national origin as a basis for discrimination against or preferential treatment to any individual or group, including, but not limited to, consideration in admissions, hiring, and other program decisions. That amendment also prohibits giving preferential treatment to any person or group based on race, sex, color, ethnicity, or national origin in the operation of public employment or public education. Accordingly, the DCL may have limited impact on school policies and practices that already comply with the Michigan Constitution.
2. The Michigan Elliott-Larsen Civil Rights Act (ELCRA) prohibits schools from discriminating against employees, students, and others based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status. See MCL 37.2101 *et. seq.* Nothing in the executive orders or DCL limits a school’s obligation to comply with ELCRA.
3. In most cases, the U.S. Department of Education must provide due process before withholding funds. A school must be given notice of non-compliance and the opportunity to have a hearing. If the hearing results in a final decision that a school violated a civil rights statute, funding cannot be terminated until 30 days after Congress is notified of the finding. Absent a change to this process, schools have statutory protection from the arbitrary withholding of federal funds.



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4. Finally, the amount of federal funds at stake varies greatly from one school to another. Schools must make individual decisions about policies, activities, and initiatives with an understanding of the scope of financial risk. All Michigan public schools must still comply with the Michigan Constitution, the ELCRA, and other state and federal laws.

Schools have broad discretion regarding curriculum and programming, so long as they do not violate express legal requirements (e.g., race-based admissions preferences or other prohibited preferencing or discrimination). That said, the language in the executive orders and DCL is so broad that many common programs that arguably fall under a “diversity, equity, and inclusion” umbrella may be questioned. The administration has stated that allegations of noncompliance with the executive orders and DCL will be a priority area for investigation by the U.S. Department of Education’s Office for Civil Rights. While schools may lawfully engage in many types of diversity, equity, and inclusion initiatives, risk exists that any specific initiative may prompt an investigation that could lead to a loss of federal funds.

The executive orders and DCL apply to all schools receiving federal funds, including post-secondary institutions. Colleges and universities may face different financial risks than early childhood and K-12 institutions and may have additional obligations (such as protecting academic freedom) that must be considered.

The application of the executive orders and DCL to specific school activities, initiatives, and policies is a fact-specific inquiry requiring individualized risk assessment. As legal counsel, we provide analysis of the legal landscape and the legal risk inherent in acting or failing to act. But only a school’s board of education makes policy decisions. We encourage you to contact us directly if you are concerned about how these federal directives may affect your school’s programs or activities.

Thrun Law Firm, P.C.

This client communication is intended to provide helpful information on school law topics and is not intended as legal advice or opinion for specific facts, matters, situations, or issues. Legal counsel should be consulted about the application of this information to a specific circumstance or situation.