DEPARTMENT OF EDUCATION

April 7, 2025
U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202

To Whom it May Concern:

We received your "Request for Certification" dated April 3, 2025. Please accept this response on behalf of the Minnesota Department of Education (MDE).

MDE has been faithfully implementing federal education programs in accordance with federal law and will continue to do so. Minnesota has a long-standing commitment to high-quality education and strong state-level policies that protect every child's right to learn in a safe, supportive, and inclusive environment. For decades, federal investments have played a key role in ensuring Minnesota students receive the support they need to learn and thrive.

Federal funds provide critical resources for students with disabilities, early learning programs, transportation, career and technical education, and teacher training—all of which strengthen Minnesota schools, workforce, and communities. Congress directs the U.S. Department of Education (ED) to pass these federal investments on to states so local leaders can plan and make decisions that are best for our communities. Threats to this funding without backing in law or established requirements put key programs at risk that students and schools depend on every day.

MDE has consistently complied with Title VI of the Civil Rights Act of 1964 and its implementing regulations and continues to do so. MDE submits regular applications certifying compliance with all required assurances for federal programs, all of which have been approved by ED. These certifications, assurances, and grant awards remain in effect, as do other certifications and assurances previously provided and communicated to and on file with ED. MDE has consistently complied with and continues to comply with applicable federal law.

The requested, additional certification seemingly seeks to change the terms and conditions of federal financial assistance awarded to MDE without formal administrative process. Adherence to rulemaking procedures is required in order for a federal agency to make improvisatory changes to legal assurances and impose new requirements on recipients. *See* 20 USC § 1232. When promulgating a rule with the force of law (i.e., "legislative rule"), ED must undertake notice and comment and respond to the public's comments on the proposed rule. Because this certification is an attempt to prescribe and enforce a nationwide legislative rule regarding "certain" undefined diversity, equity, and inclusion "practices" under the auspices of Title VI, it is improper without notice and comment rulemaking. 5 U.S.C. § 553(b)-(c); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 95-96 (2015); *see*

also Tennessee v. Dep't of Educ., 104 F. 4th 577, 609-13 (6th Cir. 2024) (enjoining ED application of Title VII law to Title IX in violation of the Administrative Procedures Act). ED may also promulgate "interpretive rules," but interpretive rules lack the force of law. *Perez* at 97. To the extent that ED's apparently changed positions are inconsistent with the text of the relevant statutes or impose conditions on federal funding greater than or inconsistent with any conditions that Congress intended to impose, those changes would be unsupported by law. With this certification request, ED apparently seeks to establish binding legal rules upon Minnesota without the support of either the appropriate administrative procedure, congressionally enacted statute, or judicial precedent.

MDE has long followed federal law in implementing federal programs. There is nothing unlawful in the principles underlying programs that promote diversity, equity, and inclusion. Indeed, ED has long supported these principles. *See* comments of former ED Secretary Betsy DeVos.[1] At their core, many federal education laws and programs are civil rights laws. These laws help ensure that every child has a right to an excellent education, regardless of circumstances outside of their control such as the zip code in which they live or their socio-economic status.

This value and commitment to civil rights continues to ground MDE's work today. In Minnesota, we believe every child—of every background, zip code and ability—deserves access to a world-class education.

It is unclear which specific programs or activities ED seeks to regulate by this certification. Although the letter references "certain DEI practices" or "illegal DEI," it does not define it, and there are no federal or applicable state statutes prohibiting diversity, equity, or inclusion. Similar requests for certification of compliance with such nebulous concepts have been enjoined by federal courts. *See, e.g.*, *Chicago Women in Trades v. Trump*, No. 1:25-cv-2005, 2025 WL 933871 (N.D. Ill. March 27, 2025). There, the Court noted:

> "[A]lthough the government emphasized . . . that the Certification Provision implicates only illegal DEI programs, it has studiously declined to shed any light on what this means. The answer is anything but obvious. Indeed, the thrust of the Orders is that the government's view of what is illegal in this regard has changed significantly with the new Administration—even though the government has not (in the Orders) and has been unwilling to (in its briefs or at argument) define how it has changed. Against this backdrop, the Certification Provision puts [Plaintiff] (and other grantees) in a difficult and perhaps impossible position."

Id. at *8.

[1] *See also*, Trump Cracks Down on Diversity Initiatives Celebrated in His First Term - The New York Times, noting Secretary DeVos stated to ED staff in 2020 that "[d]iversity and inclusion are the cornerstones of high organizational performance." Ms. DeVos also opined that "embracing diversity and inclusion are key elements for success" for "building strong teams." Id.

The same is true here. To the extent that ED has identified specific activities related to diversity, equity, and inclusion that it believes violate Title VI, we request advisement of them.[2]

The email that accompanies the Request for Certification also requests that MDE, "within ten (10) days . . . report the signature status for each of your LEAs, any compliance issues found within your LEAs, and your proposed enforcement plans for those LEAs." We are unaware of any legal authority permitting ED to require MDE to obtain individual certifications from each of its LEAs, report on their signature status, and propose enforcement plans to ED for approval in connection with a Request for Certification of this nature.[3]

ED does not have the authority to unilaterally overrule the will of Congress. The current uncertainty and threats would penalize the most vulnerable children in Minnesota and are a distraction from the good work we need to do to ensure every student has access to a world-class education.

As noted at the outset, MDE has already provided the requisite guarantee that it has and will comply with Title VI and its implementing regulation, and that includes our assurance that we do and will comply with Supreme Court cases interpreting the same. We submit this letter to serve as our response to this specific request.

Sincerely,

Willie Jett
Commissioner
Minnesota Department of Education

[2] We note that the implementing regulations for Title VI contain specific procedures for notifying entities of alleged violations, determining that voluntary compliance is not possible, and additional required steps before official findings of violations can be made. *See* 34 C.F.R. 100.8.

[3] *See e.g.*, 20 U.S.C. §§ 7842(a)(1)-(2), (b) ("in order to simplify application requirements and reduce the burden for State educational agencies" allowing for "a consolidated State plan . . . [or] I "require only . . . assurances . . . that are absolutely necessary for the consideration of the consolidated State plan . . . application"). MDE further notes that the "Request for Certification," which contains significant collection activities, does not appear to be issued in compliance with the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*