



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

April 10, 2025

U.S. Department of Education
Office for Civil Rights
Washington, DC 20202

To Whom it May Concern:

The Michigan Department of Education (MDE) received your "Request for Certification," dated April 3, 2025.

MDE remains committed to compliance with Title VI of the Civil Rights Act of 1964 and its implementing regulations. MDE has faithfully implemented federal education programs in accordance with both federal and state law and will continue to do so.

As part of our administration of federal education programs, MDE submits regular grant applications certifying compliance with all required assurances, all of which have been approved by the U.S. Department of Education (USDOE). These certifications and assurances for grant awards remain in effect, and our commitment to adhering to our prior certifications and assurances has not changed.

The requested *recertification* appears therefore unnecessary. If the intention of this request is to impose new terms and conditions or legal obligations on state education agencies including MDE, it would be inconsistent with federal administrative law. Adherence to rulemaking procedures is required for a federal agency to make changes to legal assurances and impose new requirements on recipients. See 20 U.S.C. § 1232.

For a federal agency's substantive rule to have the force and effect of law, the agency generally must provide notice to the public, permit public comment, and respond to those comments. To the extent that the requested recertification is an attempt to create or reinterpret legal obligations under Title VI—particularly regarding undefined diversity, equity, and inclusion practices—such an effort is improper without the notice-and-comment rulemaking required by the Administrative Procedures Act (APA). See 5 U.S.C. § 553(b)-(c); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 95-96 (2015) (federal agencies must adhere to the APA's notice and comment requirements when changing interpretive rules that have the force of law); see also *Tennessee v. Dep't of Educ.*, 104 F. 4th 577, 609-13 (6th Cir. 2024) (enjoining USDOE from enforcing its application of Title VII law to Title IX due to USDOE's failure to adhere to procedural requirements under the APA).

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In addition to seeking a recertification from state education agencies including MDE, the email accompanying the April 3 Request for Certification asks that MDE, “within ten (10) days^[1]. . . report the signature status for each of your LEAs, any compliance issues found within your LEAs, and your proposed enforcement plans for those LEAs.” MDE is unaware of any legal authority permitting USDOE to require a state education agency to obtain individual certifications from each LEA in the state, report on LEA signature status, or submit LEA enforcement plans to USDOE for approval.² Nevertheless, MDE believes Michigan’s more than 800 LEAs have previously certified their compliance with Title VI.

MDE has long followed federal law in implementing federal programs and believes that there is nothing inherently unlawful in the principles underlying programs that promote diversity, equity, and inclusion. Many of the activities that fall under the broad banner of diversity, equity, and inclusion are not zero sum, like elite college admissions in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), but rather positive sum. In other words, in these positive-sum activities, there are no preferences per se and by extension no losers, no illegal discrimination, and no Title VI violations associated therewith.

Examples of these positive-sum activities include but are not limited to the availability and reading of diverse literature, teaching of a more comprehensive and inclusive history, language accessibility beyond English for those who don’t read or speak English, Grow Your Own programs for students and support staff in *all* communities to become teachers, and a range of student voices in leadership roles within schools, districts, and communities. A larger literary canon, teaching the fullness of history, language that permits all to access services and not just some, programs to encourage all to consider teaching rather than a narrow swath of the population, and breadth of student voice are all enriching activities and not activities in which some win and others lose.

Indeed, in certain instances, activities under the banner of diversity, equity, and inclusion are federally mandated. For example, the education of students with disabilities in the least restrictive environment based on student Individualized Education Programs (IEPs) is required according to the Individuals with Disabilities Education Act (IDEA). See 20 U.S.C. § 1412(a)(5). Students with disabilities must be *included* in general education settings to the extent appropriate according to student IEPs. This is a federal mandate.

¹ An April 7, 2025 communication from USDOE extended the submission deadline by 10 days, until April 24, 2025.

² See *e.g.*, 20 U.S.C. §§ 7842(a)(1)-(2) (authorizing states to submit a single consolidated plan for covered programs and “only . . . assurances . . . that are absolutely necessary for the consideration of the consolidated State plan . . . application” in order to “simplify application requirements and reduce the burden for State educational agencies[.]”). MDE further notes that the Request for Certification would involve extensive data collection from LEAs and does not appear to comply with the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

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Pre-K-12 programs that promote diversity representing all children, regardless of race, and inclusion of all children, regardless of race, do not inherently harm particular groups of children and are not de facto violations of Title VI of the Civil Rights Act of 1964.

As noted at the outset, MDE has already provided the requisite guarantee that it has complied and will continue to comply with Title VI and its implementing regulations. We submit this letter to serve as our response to your April 3 communication.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Rice". The signature is written in a cursive style with a large, prominent initial "M".

Michael F. Rice, Ph.D.
State Superintendent
Michigan Department of Education