



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING


GRETCHEN WHITMER  
GOVERNOR

MICHAEL F. RICE, Ph.D.  
STATE SUPERINTENDENT

## **MEMORANDUM**

**DATE:** February 27, 2025

**TO:** Local and Intermediate School District Superintendents  
Public School Academy Directors

**FROM:** Michael F. Rice, Ph.D.   
State Superintendent

**SUBJECT:** February 14 U.S. Department of Education Dear Colleague Letter and Diversity

Late on Friday, February 14, the acting assistant secretary for civil rights in the U.S. Department of Education wrote a "Dear Colleague" letter ostensibly to the leaders of educational institutions - "preschool, elementary, secondary, and postsecondary educational institutions that receive federal financial assistance from the Department."<sup>1</sup> The assistant secretary stated his intent "to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the United States Department of Education (Department)."<sup>2</sup>

In pertinent part, the acting assistant secretary wrote:

In recent years, American educational institutions have discriminated against students on the basis of race, including white and Asian students, many of whom come from disadvantaged backgrounds and low-income families. These institutions' embrace of pervasive and repugnant race-based preferences and other forms of racial discrimination have emanated throughout every facet of academia. For example, colleges, universities, and K-12 schools have routinely used race as a factor in admissions, financial aid, hiring, training, and other institutional programming.<sup>3</sup>

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<sup>1</sup> U.S. Department of Education, Office for Civil Rights. (2025, February 14). *Dear Colleague Letter on SFFA v. Harvard* (p. 1). <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

<sup>2</sup> U.S. Department of Education, 2025, p. 1.

<sup>3</sup> U.S. Department of Education, 2025, p. 1.

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Additionally, he asserted:

Educational institutions have toxically indoctrinated students with the false premise that the United States is built upon “systemic and structural racism” and advanced discriminatory policies and practices.<sup>4</sup>

The acting assistant secretary continued and concluded:

This letter provides notice of the Department’s existing interpretation of federal law. Additional legal guidance will follow in due course. The Department will vigorously enforce the law on equal terms as to all preschool, elementary, secondary, and postsecondary educational institutions, as well as state educational agencies, that receive financial assistance. . . . Institutions that fail to comply with federal civil rights law may, consistent with applicable law, face potential loss of federal funding.<sup>5</sup>

Buried in a footnote in the letter is the following:

This document provides significant guidance under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). This guidance does not have the force and effect of law and does not bind the public or create new legal standards.<sup>6</sup>

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“Somewhere I read that the greatness of America is the right to protest for right.”  
(Rev. Dr. Martin Luther King, Jr.)

**Federal and State Civil Rights Laws.** The Fourteenth Amendment to the United States Constitution ensures that all individuals, including students and support staff, are entitled to equal protection under the law. Cited in the “Dear Colleague” letter, Title VI of the Civil Rights Act of 1964<sup>7</sup> prohibits excluding individuals from participating in, denying benefits under, or discriminating in any program or activity receiving federal financial assistance on the basis of race, color, or national origin. Michigan’s Elliott-Larsen Civil Rights Act<sup>8</sup> prohibits discrimination on the basis of these elements, as well as on the basis of religion, sex, sexual orientation, or gender identity or expression.

Article I, Section 26 of the Michigan Constitution notes that “[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on

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<sup>4</sup> U.S. Department of Education, 2025, p. 2.

<sup>5</sup> U.S. Department of Education, 2025, pp. 3-4.

<sup>6</sup> U.S. Department of Education, 2025, p. 1 n.3.

<sup>7</sup> Civil Rights Act of 1964, Title VI, 42 USC 2000d *et seq.* (1964).

<sup>8</sup> Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* (1976).

the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Article VIII, Section 2 of the Michigan Constitution says that “[e]very school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.”

Laws prohibiting discrimination on the basis of race have existed for decades and remain unchanged by the non-binding “Dear Colleague” letter.

**Inclusion, Diversity, and Equity.** These terms have different meanings to different people and different manifestations in different institutions, a central reason why it is misleading, unintentionally or otherwise, to consider them all under the same rubric.

For many, inclusion is welcoming and creating a sense of belonging, a concept embodied throughout pre-K-12 education, from making a place at a lunchroom table for a new student to the least restrictive environment for students with disabilities.

For many, diversity is simply difference and variety. For many, there is richness, not stigma, in diversity: richness in experiences, perspectives, languages, cultures, and histories.

For many, equity is simply fairness and access. It is the work to provide fair opportunities and access to education and resources. For many, equity goes hand in hand with inclusion (a welcoming) and diversity (the richness of difference).

**Examples of Efforts of Inclusion and Diversity.** Below are a few efforts that are often included, in some way or another, as inclusion, diversity, and/or equity efforts.

- (1) *Diversity in Literature.* For much of our history, the literary canon was dominated by white male authors. In the last few decades, there has been an effort to expand what is published and made available, in community and in schools, for our children. This is not an effort to remove Chaucer, Emerson, Faulkner, Frost, Hemingway, Shakespeare, Thoreau, and others from bookshelves, but rather to expand the canon to include Langston Hughes, Maya Angelou, James Baldwin, Gwendolyn Brooks, Nikki Giovanni, Zora Neale Hurston, James Weldon Johnson, Gabriel Garcia Marquez, Toni Morrison, Pablo Neruda, and others. Over the last four years, through MDE materials and webinars, thousands of educators have benefited from learning more about a wide range of authors, to help engage more students in reading.
- (2) *Comprehensive History Instruction.* Just as the literary canon has historically been narrow, so too the breadth of our history instruction. With an understanding that few have a strong base of history knowledge when they graduate from college, let alone high school, in 2022 MDE began a series of history webinars to expand teachers’ knowledge of historical movements, themes, and people.
- (3) *Grow Your Own Programs for Students and Support Staff to Become Teachers.* To address a significant teacher shortage, MDE sought funding from the governor and legislature for Grow Your Own programs in local and

- intermediate school districts across the state. In these programs, districts encourage students and support staff members to consider, explore, and prepare for careers as teachers. All districts across the state are eligible for funding, and hundreds of districts across the state have begun programs. Districts recruit broadly from their student bodies and support staffs.
- (4) *MDE Student Advisory Council*. For five school years, MDE has had a student advisory council, drawn from recommendations from superintendents and principals in the 835 school districts across the state. MDE values the broad range of student voices in the student advisory council and believes that student participants benefit as well. All districts across the state are welcome to nominate students.
  - (5) *Language Access*. State law<sup>9</sup> requires state departments to provide meaningful language access in every language spoken by a population with limited English proficiency that constitutes 3% or more of the population served by the department. Language access at MDE applies to MDE printed or electronic documents that provide important information necessary for access to or participation in services, programs, and activities for families of public school students.
  - (6) *General Education Transportation Reimbursement*. Prior to FY24, there was no state funding for general education transportation. Districts had to fund general education transportation from their local revenue or state per pupil foundation allowance. Rural remote districts, which spent more money per pupil on transportation, had less to spend in the classroom, simply because the populations that they served were more spread out and required more funding per pupil to transport. The department's research and advocacy effort to get general education transportation reimbursement—\$125 million in each of FY24 and FY25—benefited all districts but benefited more those districts that had to spend more on a per pupil basis on transportation. This effort was a matter of rural funding equity. It didn't adversely affect districts that weren't remote and benefited rural remote districts.

The efforts above do not discriminate on the basis of race, though they broadly fit under the umbrella of inclusion, diversity, and equity efforts. Indeed, the efforts above don't "prefer" particular people or groups; rather, they expand opportunity: to read more diversely, to study history more comprehensively, to give students and support staff in all districts the opportunity to become teachers, to hear from a range of student voices, to provide language access, and to increase transportation reimbursement.

**Preferences, or Zero Sum versus Positive Sum.** Importantly, the "Dear Colleague" letter was entitled: "Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions [SFFA] v. Harvard."

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<sup>9</sup> Meaningful Language Access to State Services Act, MCL 37.21, *et seq.* (2023).

The United States Supreme Court's decision in the *SFFA v. Harvard* case addressed elite university admissions, a zero-sum process. Distinct from the facts in *SFFA v. Harvard*, the efforts or activities described above regarding expansion of the literary canon and comprehensive history instruction, Grow Your Own programs broadly offered to students and support staff to become teachers, a statewide student advisory council, broad language accessibility, and transportation reimbursement are all positive sum; there are no losers, because there are no preferences. Nets that had previously been cast narrowly are cast more widely, and the net casting harms no one. There is no unlawful discrimination or preferential treatment under either Title VI of the Civil Rights Act or the Elliott-Larsen Civil Rights Act.

**The statutory role of the federal government over curriculum and instruction.** In multiple sections, federal law prohibits employees of the U.S. Department of Education and/or the broader federal government from exercising control over local schools and school districts in, among other areas, curriculum, instruction, personnel, and administration. The Department of Education Organization Act,<sup>10</sup> at 20 USC 3403(a), states:

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

Similarly, 20 USC 3403(b) reads:

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

The General Education Provisions Act,<sup>11</sup> at 20 USC 1232a, makes clear:

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United

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<sup>10</sup> Department of Education Organization Act, 20 USC § 3401 *et seq.* (1979).

<sup>11</sup> General Education Provisions Act, 20 USC 1221 *et seq.* (1974).

States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

The Every Student Succeeds Act (ESSA),<sup>12</sup> passed and signed into law in 2015, includes similar prohibitions at 20 USC 7906a(a) and (b), which state:

No officer or employee of the Federal Government shall, through grants, contracts, or other cooperative agreements, mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic standards and assessments, curricula, or program of instruction developed and implemented to meet the requirements of this Act (including any requirement, direction, or mandate to adopt the Common Core State Standards developed under the Common Core State Standards Initiative, any other academic standards common to a significant number of States, or any assessment, instructional content, or curriculum aligned to such standards), nor shall anything in this Act be construed to authorize such officer or employee to do so.

No officer or employee of the Federal Government shall condition or incentivize the receipt of any grant, contract, or cooperative agreement, the receipt of any priority or preference under such grant, contract, or cooperative agreement, or the receipt of a waiver under section 8401 upon a State, local educational agency, or school's adoption or implementation of specific instructional content, academic standards and assessments, curricula, or program of instruction developed and implemented to meet the requirements of this Act (including any condition, priority, or preference to adopt the Common Core State Standards developed under the Common Core State Standards Initiative, any other academic standards common to a significant number of States, or any assessment, instructional content, or curriculum aligned to such standards).

**Final reflections and conclusions.** The resources shared throughout this document and advice of your legal counsel are important when making decisions and educating your staff related to the educational rights of the children in your community and staff responsibilities. This memo is for informational purposes and should not be considered legal advice. School leaders are encouraged to promptly consult with district legal counsel, who should guide you on any specifics that you, your students, or your staff may encounter.

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<sup>12</sup> Every Student Succeeds Act, 20 USC 6301 *et seq.* (2015).

The Michigan Department of Civil Rights (MDCR) is a law enforcement agency that has jurisdiction over Michigan's civil rights laws, most pertinently for this memo the Elliott-Larsen Civil Rights Act (ELCRA). Article 4 of ELCRA provides civil rights protections in education based on religion, race, color, national origin, sex, sexual orientation, or gender identity or expression.<sup>13</sup> MDCR may investigate complaints in education based on allegations of unlawful discrimination when individuals are not provided "the full use or benefit of an educational institution, its services, activities or programs." Furthermore, if an individual is excluded or unlawfully discriminated against and is treated differently or denied educational opportunities due to protected classes listed above, MDCR may investigate the allegations.

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.

cc: Michigan Education Alliance  
Confederation of Michigan Tribal Education Departments

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<sup>13</sup> MCL 37.2402(a).