



Oregon

Tina Kotek, Governor



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Dr. Charlene Williams

Director of the Department of Education

April 10, 2025

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

To Whom it May Concern:

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

ODE has certified that it complies with Title VI of the Civil Rights Act of 1964 and its implementing regulation. It did so recently in connection with its most recent Every Student Succeeds Act Plan, which the U.S. Department of Education (USDOE) approved on October 25, 2023. The certification remains in effect, as do other certifications and assurances regarding Title VI previously provided and communicated to and on file with USDOE, including with respect to ODE's Part B of the Individuals with Disabilities Education Act (IDEA) program, which were submitted to USDOE on May 21, 2024. Any further request by USDOE is duplicative, unnecessary, and unduly burdensome.¹

Oregon has implemented and continues to implement education programs in accordance with state and federal law. Oregon remains fiercely committed to its values of diversity, equity and inclusion, and we celebrate our differences and common humanity. Our moral and ethical obligation is to stand up for public education. We want to assure Oregonians that their children can learn and thrive in safe, welcoming, and supportive environments.

Threats to this federal funding without lawful authority or established requirements put key programs at risk that students and schools across Oregon depend on every day. There is no circumstance where it is okay to leverage children's resources as a political tool. Oregonians paid for and deserve these federal investments. We are standing up for the rights of all Oregonians and will continue to promote diversity in our schools because we recognize it enhances learning outcomes for all students.

¹ Local Education Agencies (LEAs) in Oregon that receive federal funds regularly, but at least annually, provide assurances that programs and services are and will be in compliance with Title VI. Oregon's LEAs have already submitted such assurances for 2024-2025.



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This requested additional certification from USDOE seemingly seeks to change the terms and conditions of ODE's award without formal administrative process. USDOE cannot make improvisatory changes to legal assurances and impose new requirements on recipients without adhering to rulemaking procedures. See 20 U.S.C. § 1232. When promulgating a rule with the force of law (i.e., "legislative rule"), USDOE 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 USDOE application of U.S. Supreme Court case related to Title VII to Title IX in violation of the Administrative Procedures Act).

It is also unclear which specific programs or activities USDOE seeks to regulate by this certification. Although the letter references "certain DEI practices" or "illegal DEI," it does not define those terms, and there are no federal or State laws prohibiting diversity, equity, or inclusion. Similar requests for certification of compliance with such vague concepts have been enjoined by federal courts. See, e.g., *Chicago Women in Trades v. Trump*, No. 1:25-cv-2005, 2025 WL 933871, at *18 (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.”)

The same is true here. The requested certification and other recent communications from USDOE represent an abrupt shift from its previous positions on diversity, equity, and inclusion. Indeed, former Secretary of Education Betsy DeVos informed USDOE staff in 2020 that “[d]iversity and inclusion are the cornerstones of high organizational performance.”² Ms. DeVos also opined that “embracing diversity and inclusion are key elements for success” for “building strong teams.” USDOE has provided no explanation for how and why it

² See Erica L. Green & Zach Montague, *Trump Cracks Down on Diversity Initiatives Celebrated in His First Term*, N.Y. Times (Feb. 14, 2025).



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changed positions. *See e.g., Encino Motorcars, LLC v. Navarro*, 579 U. S. 211, 221–222 (2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (when changing positions agencies must “provide a reasoned explanation for the change,” “display awareness that [they are] changing position,” and consider “serious reliance interests.”)). To the extent that USDOE has identified specific activities related to diversity, equity, and inclusion that it believes violate Title VI, please provide them.³

The Request for Certification is also not authorized under the federal Paperwork Reduction Act. *See* 44 U.S.C. § 3501 *et seq.* The email that accompanies the Request for Certification also requests that ODE, “report the signature status for each of your LEAs, any compliance issues found within your LEAs, and your proposed enforcement plans for those LEAs.” Because the Request for Certification seeks a collection of information from thousands of State Education Agencies (SEAs) and Local Education Agencies (LEAs) across the country, this collection by USDOE is subject to the Paperwork Reduction Act. *See* 5 C.F.R. § 1320.3(c) (defining “collection of information”). However, USDOE failed to follow any of the required administrative procedures—including posting a notice in the Federal Register and seeking public comment—before seeking to collect new information from SEAs and LEAs. *See* 44 U.S.C. § 3506(c)(2)(A). Because of this failure, USDOE was never assigned an OMB Control Number and now cannot compel ODE to respond to this unduly burdensome collection of information.⁴ *See* 44 U.S.C. § 3512. As a result, please otherwise provide the legal authority permitting USDOE to require an SEA to obtain individual certifications from each of its LEAs, report on their signature status, and propose enforcement plans to USDOE for approval in connection with a Request for Certification of this nature.⁵

³ 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 steps before official findings of violations can be made. *See* 34 C.F.R. § 100.8.

⁴ Even if the Request for Certification were authorized under the Paperwork Reduction Act, 10 or 21 days is an insufficient amount of time for ODE to gather signed assurances involving new subject matters from over 200 entities in Oregon.

⁵ *See e.g.,* 20 U.S.C. §§ 7842(a)(1)-(2) (“in order to simplify application requirements and reduce the burden for State educational agencies” allowing for “a consolidated State plan . . . [or] application”); *Id.* at (b) (Secretary “shall collaborate with State Education Agencies . . . [and] “require only . . . assurances . . . that are absolutely necessary for the consideration of the consolidated State plan . . . application”).



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

Sincerely,

Dr. Charlene Williams