

April 9, 2025

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

Dear Sir or Madam:¹

We received your “Request for Certification” dated April 3, 2025. Please accept this response on behalf of the State Superintendent of Education.

The Illinois State Board of Education has certified that it complies with Title VI of the Civil Rights Act of 1964 and its implementing regulation. The Illinois State Board of Education submits regular applications certifying compliance with all required assurances for federal programs, all of which have been approved by the U.S. Department of Education (USDOE). These certifications, assurances, and grant awards remain in effect, as do other certifications and assurances regarding Title VI previously provided and communicated to and on file with USDOE.

We are concerned that USDOE seemingly seeks to change the terms and conditions of the Illinois State Board of Education’s award without formal administrative process. USDOE cannot make changes to legal assurances and impose new requirements on recipients without adhering to rulemaking procedures. *See* 20 USC § 1232.²

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 it, and there are no federal or State laws 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, 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

¹ The request for certification was sent from a generic email address and is unsigned.

² When promulgating a rule with the force of law (i.e., “legislative rule”), agencies 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. 5 U.S.C. § 553(b)-(c); *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 95-96 (2015).

(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. As indicated in this [article](#), former Secretary of Education Betsy DeVos informed USDOE 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.” USDOE has provided no explanation for how and why it 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.

The email that accompanies the Request for Certification also requests that the Illinois State Board of Education, “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.” Please provide the legal authority permitting USDOE to require a State Education Agency 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.³

As noted at the outset, the Illinois State Board of Education 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. Tony Sanders
State Superintendent of Education

³ 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”). The Illinois State Board of Education 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.*