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April 17, 2025

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

To Whom it May Concern:

Please accept this letter in response to the U.S. Department of Education's ("USDE") April 3, 2025, correspondence entitled "Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and *SFFA v. Harvard*" ("Request for Certification").

The mission of the New Jersey Department of Education ("NJDOE") is to support schools, educators, and districts to ensure that all of New Jersey's students have access to a high-quality education and achieve academic excellence. The NJDOE uses federal financial assistance to further these goals for the benefit of its students, schools, and communities. To that end, it implements educational programs and scrupulously monitors the expenditure of federal funds in full compliance with State and federal laws, including Title VI of the Civil Rights Act of 1964 ("Title VI").

The NJDOE has already certified that it complies with Title VI and its implementing regulations. It did so in connection with New Jersey's Elementary and Secondary Education Act ("ESEA") Consolidated State Plan, submitted to USDE on June 1, 2017. The certification remains in effect, as do other certifications and assurances regarding Title VI that NJDOE has previously provided to USDE.¹ As has been made clear through these certifications, NJDOE will continue to comply with Title VI.² Relatedly, the NJDOE's grant administration process already collects yearly assurances from New Jersey LEAs that they are compliant with Title VI. In 2019, the NJDOE underwent extensive monitoring by USDE, which included a review of NJDOE's grant administration

¹ 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 NJDOE further notes that the "Request for Certification," which requires significant collection activities, does not appear to be issued in compliance with the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

² We also note that the requested certification sets forth that "[t]he continued use of illegal DEI practices may subject the individual or entity using such practices to serious consequences," including the federal False Claims Act ("FCA"). Such use of the FCA against a State or its agencies has been prohibited by the United States Supreme Court. See *United States ex rel. Stevens v. Vermont*, 529 U.S. 765 (2000).

process. The USDE did not issue any findings related to improper or insufficient LEA assurances following that review, and the NJDOE will continue to require LEAs to submit such assurances as a condition for their receipt of federal funds.

The NJDOE is unaware of any changes in federal law or regulations that would necessitate the provision of additional certifications beyond those that it or New Jersey LEAs have already provided, or that would warrant a material change in the terms and conditions of its award of federal funds. Furthermore, while USDE's request references "certain DEI practices" or "illegal DEI," it does not define those terms, and there are no known federal or New Jersey 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. Mar. 27, 2025) ("[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."); *see also ibid.* ("Against this backdrop, the Certification Provision puts [Plaintiff] (and other grantees) in a difficult and perhaps impossible position.").

Finally, the additional requested certifications appear to depart—without explanation—from the Administration's previous positions on diversity, equity, and inclusion. *See article [here](#)* (citing USDOE statements from 2020 that "[d]iversity and inclusion are the cornerstones of high organizational performance" and that "embracing diversity and inclusion are key elements for success" for "building strong teams"); *Encino Motorcars, LLC v. Navarro*, 579 U. S. 211, 221–222 (2016) (explaining that when changing positions, agencies must "provide a reasoned explanation for the change," "display awareness that [they are] changing position," and consider "'serious reliance interests'" (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009))). For these reasons, the NJDOE questions USDE's authority to condition continued receipt of federal funds on the submission of additional certifications.

As noted at the outset, the NJDOE and its LEAs have already provided the requisite guarantee that they have, and will continue to, comply with Title VI and its implementing regulations. Those certifications include our assurance that the NJDOE has and will continue to comply with all well-settled legal precedent concerning Title VI. Please let this letter serve as our response to the Request for Certification.

Sincerely,

/s/ Kevin Dehmer

Kevin Dehmer
Commissioner