

## LEGAL UPDATES

# Dept. of Education Certification Requirement Tied to “Antidiscrimination Obligations” for Continued K-12 Federal Funding

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## What You Should Know

On April 3, 2025, the U.S. Department of Education (ED) issued a [press release](#) announcing the ED sent certification letters to state commissions that oversee K-12 State Education Agencies (SEAs), charging SEAs with the responsibility of reporting on their state and collecting certification responses from Local Education Agencies (LEAs) within 10 days in order to continue receiving federal financial assistance.

The [certification letter](#) requires SEAs and LEAs to acknowledge compliance with Title VI of the Civil Rights Act of 1964 and *Students for Fair Admissions v. President and Fellows of Harvard College* (“*SFFA v. Harvard*”), 600 U.S. 181 (2023), as a condition for continued federal financial assistance. Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” In *SFFA v. Harvard*, the U.S. Supreme Court held that the race-based affirmative action programs at Harvard and the University of North Carolina were illegal because, for state schools, such programs violated the Equal Protection Clause of the Fourteenth Amendment, and, for state and private schools that received federal funding, such programs violated Title VI.

The certification letter states that “any violation of Title VI—including the use of Diversity, Equity, & Inclusion (“DEI”) programs to advantage one’s race over another—is impermissible.” The letter concludes by noting that the “continued use of illegal DEI practices may subject the individual or entity using such practices to serious consequences,” such as:

- the termination of a grant or assistance,
- refusal to issue a grant or assistance,
- elimination of federal funding for any SEA, LEA, or educational institution that engages in prohibited conduct,

## Related People

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- liability for breach of contract in connection with civil rights guarantees contained in federal contracts and grant awards for certain DEI practices, and
- False Claims Act liability for submissions of claims for money when an entity is not in compliance with Title VI due to certain prohibited DEI practices.

Secretary of Education Linda McMahon has not clearly defined what the ED considers prohibited DEI practices or violations of civil rights law. However, following President Trump's signing of a Jan. 29 Executive Order titled "[Ending Radical Indoctrination in K-12 Schooling](#)," the department issued a "[Dear Colleague](#)" letter on February 14 advising educational institutions to "ensure that their policies and actions comply with existing civil rights law," "cease all efforts to circumvent prohibitions on the use of race by relying on proxies," and "cease all reliance" on third-parties "that are being used by institutions in an effort to circumvent prohibited uses of race." The "Dear Colleague" letter noted that race-based practices constitute illegal discrimination, and DEI programs "discriminate in less direct, but equally insidious, ways."

On February 28, the ED released "[Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act](#)" to clarify the "Dear Colleague" letter. Further, the April 3 press release quotes Assistant Secretary for Civil Rights Craig Trainor, stating, "[f]ederal financial assistance is a privilege, not a right .... Unfortunately, we have seen too many schools flout or outright violate these obligations, including by using DEI programs to discriminate against one group of Americans to favor another based on identity characteristics in clear violation of Title VI."

## What This Might Mean

This certification requirement could have several implications for schools and institutions, including:

- Threats of elimination or elimination of federal educational funding to current K-12 recipients.
- Delays in issuing federal educational funding to prospective recipients.
- Threats of litigation or litigation regarding breach of contract claims for civil rights guarantees.
- Threats of litigation or litigation regarding False Claims Act liability.
- Uncertainty for K-12 school districts as they await further guidance from state agencies.
- Disruption to programming and resources for K-12 schools that rely on federal educational funding, such as rural and low-income communities that heavily rely on Title I funding.

## Next Steps

Due to [current legal challenges surrounding DEI programming](#) and anticipated legal challenges to this certification requirement, much remains to be seen about the scope of the ED's press release and certification letter. In the meantime, schools and institutions should actively monitor and continue to be aware of potential changes in federal educational funding and programming, and work with legal counsel to best position themselves for any consequences.

If you have questions about the potential impacts of this certification requirement on your school or institution, please contact [Tammy Somogyi](#) or your regular Lathrop GPM attorney.