Dear Partner in Education,

As you are likely aware, the U.S. Department of Education (USDE) recently requested that all State Education Agencies (SEAs) certify their compliance with Title VI of the Civil Rights Act of 1964 and obtain similar certifications from all Local Education Agencies (LEAs). Today, the Pennsylvania Department of Education (PDE) sent this letter to USDE. PDE, like all of your education agencies, fully complies with Title VI and has certified to that effect multiple times through the acceptance of federal grant funding. This letter reaffirms PDE's commitment to fully complying with its obligations under the nation's civil rights laws, and likewise affirms that all of your agencies share that commitment.

To the extent USDE's request sought certifications from SEAs or LEAs going beyond the legal obligation to comply with Title VI, PDE views such a request as an attempt to change the terms and conditions of federal award without formal administrative process. As an agency with delegated authority, USDE cannot make improvisatory changes to legal assurances and impose new requirements on recipients without adhering to rulemaking procedures, nor can it alter substantive federal law by administrative fiat. *See* 20 USC § 1232 (discussing regulatory authority of U.S. Secretary of Education); *see also Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96–97 (2015) (Agency rules with the "force and effect of law" require notice-and-comment rulemaking.); 20 U.S.C. § 7842(a)(1)–(2) ("In order to simplify application requirements and reduce the burden for State educational agencies," a state may submit "a consolidated State plan or a consolidated State application."); *id.* at § 7842(b) (The Secretary "shall collaborate with State Education Agencies . . [and] "require only . . . assurances . . . that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application.").

While the letter from USDE referenced "certain DEI [diversity, equity, and inclusion] practices" and "illegal DEI," it did not identify those practices or define "illegal DEI," and there are no federal or state laws generally prohibiting efforts relating to diversity, equity, or inclusion. In addition, similar requests for certification of compliance with such nebulous concepts have been enjoined by federal courts or construed to only require certification of compliance with civil rights laws. *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); *see also Natl. Assn. of Diversity Officers in Higher Educ. v. Trump*, Slip Op. at 7, No. 25-1189 (4th Cir. Mar. 14, 2025) (Harris, J., concurring in grant of stay) (noting that enforcement provisions of certain executive orders "apply only to conduct that violates existing federal anti-discrimination law"). In *Chicago Women in Trade*, the court observed:

> [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.").

As a result, PDE has fully complied with its legal obligations, as have all of your agencies, and no further action is required at this time.

Carrie Rowe, Ed.D. | Acting Secretary
Pennsylvania Department of Education