



April 24, 2025

via E-mail: FederalCompliance@doe.virginia.gov

Ms. Emily Gullickson
Superintendent of Public Instruction
Virginia Department of Education

Re: VDOE's Request for LEAs to Submit USDOE's Requested Certification

Dear Ms. Gullickson:

Loudoun County Public Schools (LCPS) has received the Virginia Department of Education's (VDOE's) request to sign and return the certification the U.S. Department of Education (USDOE) circulated to K-12 State Education Agencies (SEAs) on April 3, 2025.

After careful review of the certification, LCPS has identified significant concerns and is responding with this letter by providing assurances that we will continue to comply with Title VI and explaining why we will not be signing the requested certification.

USDOE's requested certification requires direct recipients of federal funding to provide assurances that they "[w]ill comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: . . . Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin." (USDOE Requested Certification, p. 2). LCPS provides annual assurances and certification to USDOE, in accordance with federal law, that we comply with Title VI, and this requested certification does not appear to supersede nor replace the certifications and assurances LCPS already provides. Therefore, it is not clear what purpose the requested certification serves.

Next, USDOE's requested certification is vague and does not clearly specify the programs or activities USDOE seeks to regulate by the certification. Specifically, USDOE's requested certification references "certain DEI practices" or "illegal DEI," but does not identify those "certain DEI practices" or concretely define practices that it deems illegal. As a practical matter, it is unwise for any public entity to enter into an agreement, contract, or certification with undefined terms.

LCPS is also aware of the ongoing legal challenges concerning USDOE's requested certification. Specifically, there are other technical legal issues concerning rulemaking requirements to change certification processes, the authority to change the conditions around federal education funding during the annual cycle without a formal administrative process, USDOE's authority to require SEAs to obtain individual certifications from each of its LEAs, and the authority to withhold funding without following established procedural due process, all of which should be resolved with clarity before requiring this submission.

Moreover, LCPS' policies and programs related to diversity, equity, and inclusion are informed and driven by federal law. For example, the Every Student Succeeds Act (ESSA) requires that schools "provide all children a significant opportunity to receive a fair, equitable, and high quality education, and to close educational achievement gaps," including by race. Federal accountability driven by ESSA requires LEAs to submit student achievement data by race, ethnicity and gender (amongst other reporting categories) and to develop plans for certain schools which are placed into federal improvement status based on that data. Additionally, there are resources that are provided to students of particular national origins that are legally required in other instances—e.g., Title III's provision of language instruction for students who are English learners (ELs) and immigrants. VDOE is well aware of these processes and partners with LEAs to support these plans. It is unclear how compliance with these requirements can be achieved without considering factors such as race and national origin when developing specific plans for student support, and it is therefore unclear whether the demanded certification would create legal risk for LCPS.

Given the foregoing concerns and lack of resolution to the current legal challenges, LCPS is constrained from submitting a certification to VDOE, and in lieu of the requested certification USDOE circulated, submits the following assurances:

- LCPS certifies that it complies with Title VI of the Civil Rights Act of 1964, which 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."
- LCPS also certifies that it does not treat individuals differently based on their race, color, and national origin, so as to give an advantage to one race, color, and national origin over another. LCPS further assures that its initiatives and programs are designed to support all students in achieving academic, social, and functional success.

USDOE's Office for Civil Rights' April 22, 2025 email to State Superintendents, Chiefs, and Commissioners further acknowledges that schools "can and should prioritize their students' civil rights protections and maintain educational autonomy to determine what is best for students, families, and educators in their communities while following federal law." That is precisely what LCPS continues to do.

LCPS is committed to its mission to empower all students, no matter their respective backgrounds, to make meaningful contributions to the world, and its vision that all students will reach their full potential and achieve their dreams. LCPS believes that its diversity, equity, and inclusion programs and initiatives serve to assist and ensure that LCPS executes on its mission, vision, and core values, and LCPS carries out these initiatives in compliance with applicable state and federal law.

In fact, we find that in schools, promoting diversity, equity, and inclusion among staff and students is essential to creating a supportive and thriving learning environment. Providing education on how to recognize, prevent, and respond to discrimination and harassment helps foster safety and mutual respect. Lessons that highlight diverse perspectives and encourage inclusive communication and instructional practices build cultural competency and strengthen relationships across differences. These practices not only help schools meet their legal responsibilities under civil rights laws, but also contribute to a sense of belonging by ensuring

that every student and staff member feels seen, valued, and respected. Through intentional diversity, equity, and inclusion efforts, schools can proactively reduce the likelihood of exclusionary practices or discriminatory behavior and build stronger, more inclusive communities. LCPS' work in this regard is consistent with former U.S. Secretary of Education Betsy DeVos' remarks that, "embracing diversity and inclusion are key elements for success."

In closing, under no circumstance should the constraint we feel in sending this letter in lieu of signing the requested certification be interpreted as political or ideological or as a sign of non-compliance with federal or state law. LCPS remains committed to fostering the best outcomes for every single one of our students by providing a safe, inclusive, and empowering learning environment. In creating this exceptional learning environment for all students, we comply—and will continue to comply—with Title VI and its implementing regulation, and any applicable case law interpreting the same.

Sincerely,

A handwritten signature in dark ink, appearing to read 'AS', is written over a light gray grid background.

Aaron Spence, Ed.D.
Superintendent