



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I25-002 (R25-007)
By KRIS MAYES ATTORNEY GENERAL	Re: Applicability of Certification Requests from U.S. Department of Education to Post- Secondary Institutions
April 23, 2025	

To: Susan Segal, Gust Rosenfeld, on behalf of the Pima County Community College District

Pursuant to A.R.S. § 15-1448(H), this opinion affirms in part and declines to review in part the opinion prepared for the Pima County Community College District (“PCCCD”) regarding a certification request from the Arizona Department of Education (“ADE”). That opinion is attached as Appendix A.

Background

The United States Department of Education (“USDOE”) recently sent two letters to ADE in its capacity as a State Educational Agency (“SEA”), as defined by federal regulation. 34 C.F.R. § 303.36(a) (defining SEA as “the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools”). Both USDOE letters purport to require certain “assurances” from SEAs and Local Education Agencies (“LEAs”), which are defined in federal regulation as “a public board of education or other public

authority legally constituted within a State for either administrative control or direction of ... public elementary schools or secondary schools” 34 C.F.R. § 303.23(a).

The first USDOE letter, dated March 28, 2025 (the “March 28 Letter”), purports to require that SEAs provide “assurance that the SEA and their respective LEAs are complying with” the Family Educational Rights and Privacy Act (“FERPA”) and the Protection of Pupil Rights Amendment (“PPRA”). App. A at 12. The second USDOE letter, dated April 3, 2025 (the “April 3 Letter”), purports to require LEAs and SEAs to certify compliance with Title VI of the Civil Rights Act of 1964. *Id.* at 16.

In response to the March 28 Letter, ADE sent a form to all Arizona educational institutions, including PCCCD and other institutions of higher education (the “ADE Form”). *Id.* at 14. The ADE Form states that ADE “is required to collect information and these assurances from all of its federal grant subrecipients,” and that “[y]our organization’s continued access to federal grant funds for which ADE is the pass through agency is contingent upon you agreeing to these 4 assurances and providing the required information by April 30, 2025.” *Id.*

The underlying opinion notes that ADE “forwarded” the April 3 Letter to PCCCD.

Analysis

The March 28 Letter requests that “each SEA ... provide assurance that the SEA and their respective LEAs are complying with the provisions of FERPA and PPRA.” App. A at 12. PCCCD is neither an SEA nor an LEA. *See* 34 C.F.R. § 303.36(a); 34 C.F.R. § 303.23(a). The March 28 Letter therefore does not, on its face, request or require anything of PCCCD.

To the extent ADE reads the March 28 Letter as requiring it or authorizing it to collect assurances from PCCCD or other post-secondary educational institutions, neither the ADE Form nor the March 28 Letter cite any authority supporting that proposition. The March 28 Letter cites

to part of FERPA and its implementing regulations—20 U.S.C. § 1232g(f) and 34 C.F.R. §§ 99.60 and 99.62—as the basis for its request that SEAs “provide assurance that the SEA and their respective LEAs” are complying with FERPA and PPRA. Those authorities do not appear to require or authorize ADE to collect assurances from post-secondary educational institutions regarding compliance with FERPA or PPRA. *See* 20 U.S.C. § 1232g(f) (provides that the Secretary of USDOE “shall take appropriate actions to enforce [FERPA] and to deal with violations of [FERPA] ... except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with [FERPA], and he has determined that compliance cannot be secured by voluntary means”); 34 C.F.R. § 99.60 (assigning USDOE’s “Office of the Chief Privacy Officer” the responsibility to investigate complaints of FERPA violations and “[p]rovide technical assistance to ensure compliance with [FERPA]” and its implementing regulations); 34 C.F.R. § 99.62 (stating that the Office of the Chief Privacy Officer “may require an educational agency or institution ... to submit reports, information on policies and procedures, annual notifications, training materials, or other information necessary to carry out [USDOE]’s enforcement responsibilities”).

The April 3 Letter is also directed at SEAs and LEAs. *See* App. A at 16 (directing certification request at “SEA/LEA”); 17 (purporting to require “each [SEA] to file a single set of assurances with [USDOE] as part of its consolidated State plan or application under the Elementary and Secondary Education Act” that “include the SEA’s commitment to comply with all Federal statutes regarding nondiscrimination, including, but not limited to, Title VI”). Again, PCCCD is neither, so the April 3 Letter does not, on its face, purport to request or require anything of PCCCD or any other post-secondary educational institution.

Given this conclusion, it is unnecessary to review any other portions of the underlying opinion, and I decline to do so.

Conclusion

The March 28 and April 3 Letters are not directed at post-secondary educational institutions, such as PCCCD, because such institutions are neither SEAs nor LEAs. *See* 34 C.F.R. § 303.36(a); 34 C.F.R. § 303.23(a).

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Kris Mayes
Attorney General