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April 17, 2025

VIA ELECTRONIC MAIL

Jeffrey Silvyn, Esq.
General Counsel and Vice Chancellor for Legal Affairs
Pima Community College District
4905 E. Broadway Blvd.
Tucson, AZ 85709

Re: Arizona Department of Education Authority to require Community Colleges to *provide Federal Assurances and Certification*

Dear Mr. Silvyn:

This law firm represents Pima Community College District (the "College"), an Arizona community college district that is organized and operates a community college providing post-secondary education pursuant to Arizona Revised Statutes ("A.R.S.") § 15-1401 *et seq*.

The purpose of this communication is to provide a legal opinion regarding the recent assurances and certification requested from the College by the Arizona Department of Education ("ADE"). These documents were provided by ADE pursuant to recent United States Department of Education ("DOE") directives.

On behalf of the College, we will seek an expedited formal review of this opinion by the Arizona Attorney General's Office pursuant to A.R.S. § 15-1448(H).

This matter is of statewide importance as it affects all 10 community college districts in Arizona, as well as a provisional community college district. It is our understanding that several community colleges will separately communicate to Attorney General Mayes that they concur with this opinion and urge expedited review.

I. Background

On March 28, 2025, the United States Department of Education ("DOE") issued a letter to the Arizona Department of Education ("ADE") requesting that ADE collect assurances from

all Local Education Agencies ("LEA").[1] These assurances pertain to compliance with the Family Educational Rights and Privacy Act ("FERPA") and the Protection of Pupil Rights Amendment ("PPRA").

In turn, ADE sent a form to all Arizona educational institutions, including community colleges and post-secondary institutions, to complete these assurances.[2] The current deadline to submit these assurances is April 30, 2025.

On April 3, 2025, ADE forwarded a "Request for Certification" from DOE.[3] This request requires LEAs and State Educational Agencies ("SEA") to acknowledge compliance with Title VI of the Civil Rights Act of 1964 and its implementing regulation. The language of the request is directed at K-12 schools. The current deadline to complete this certification is April 24, 2025.

LEAs and SEAs are defined in 34 C.F.R. §§ 303.23(a) and 303.36(a), respectively. LEAs are defined as "a public board of education or other public authority" for control of "public elementary schools or secondary schools." 34 C.F.R. § 303.23(a). And SEAs are defined as "the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools." 34 C.F.R. § 303.36(a).

Both definitions expressly exclude community colleges and other post-secondary institutions. The College does not operate or control a public elementary or secondary school. Nor is the College the agency responsible for supervision of public elementary and secondary schools. Further, the requested assurances and certification request signatures from LEAs and SEAs, and contain language directed at K-12 institutions.

II. Issue Presented

As explained, community colleges and other post-secondary institutions are neither LEAs nor SEAs as those terms are defined in the Code of Federal Regulations. Therefore, the issue presented is whether ADE has the legal authority to demand that these institutions sign these assurances and the certification.

III. Analysis

A. FERPA Assurances

[1] Exhibit 1.
[2] Exhibit 2.
[3] Exhibit 3.

The FERPA assurances form provided by ADE specifically requests LEAs to complete and submit the form.[4] As discussed, the College is not an LEA. However, there are several other reasons that these assurances do not apply to the College.

1. *FERPA*

FERPA is a federal law that protects the privacy rights of students' education records. 20 U.S.C. § 1232g. The statute applies to all schools that receive funding from the DOE. Under the statute, education records are defined as records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include, but are not limited to, grades, transcripts, class lists, student course schedules, health and safety information (depending on the situation) and student discipline files.

The assurances focus on parents' rights and records access. Essentially, it is a list of certifications required in President Trump's Executive Order entitled "Ending Radical Indoctrination in K-12 Schooling" issued on January 29, 2025. The Order intends to end the use of "radical, anti-American ideologies" and the deliberate blocking of parent oversight.

Notably, the "blocking" of records from parents does not apply here. Once a student becomes an "eligible student" the rights afforded his or her parents to access their records under FERPA transfer to that student. 20 U.S.C. § 1232g(d); 34 C.F.R. § 99.5(a)(1). A student becomes an "eligible student" once they turn eighteen or attend a post-secondary educational institution at any age. 20 U.S.C. § 1232g(d); 34 C.F.R. § 99. Therefore, parents do not have automatic rights to access these students' education records.

The College, through its dual enrollment program, has some students that are not yet eighteen. However, all College students, including any dual enrollment students or minors, have full FERPA rights to their own education records by virtue of their enrollment at the College. Between these students and the remaining College students, there are no parents that retain a right to inspect and review education records under FERPA.

The language of the initial DOE letter speaks to this point.[5] For example, the letter repeatedly references minor students and discusses the rights of parents to access their minor children's education records. Overall, a reading of the letter clearly shows that it is directed at K-12 schools and the institutions that operate those schools—not institutions of higher education.

Therefore, the first three assurances are inapplicable to the College.

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[4] Exhibit 2.
[5] Exhibit 1.

2. *PPRA*

The PRRA governs the administration of surveys, analyses, or evaluations to students if they concern one of eight specific protected areas. 20 U.S.C. § 1232h. If one of these areas is implicated, parents receive notice and can opt out. *Id.*

PPRA is a component of FERPA. Therefore, if a student is an "eligible student" these parental notifications and consent procedures do not apply. Again, these protections are tailored to elementary and secondary school settings. They do not apply to the College.

3. *Military Recruiting*

The fourth and final assurance on the ADE form discusses the sharing of student information with military recruiters.

At the post-secondary level, military recruiter access and opt-out provisions are governed by the Solomon Amendment. 10 U.S.C. § 983. This statute allows military recruiters to access limited student information from students that are seventeen or older. *Id.*

At this age, which is the minimum age of the majority of College students, there is no concern. The College is not required to notify parents of any request for information from a military recruiter or that the College will provide that information. Moreover, parents cannot opt out in these scenarios. As students at the College, the students are considered "eligible students" under FERPA. Accordingly, they can choose whether to restrict their directory information from military recruiters.

In short, none of the four required assurances legally apply to the College.

B. Title VI Certification

This certification specifically requires a signature from a representative of an LEA or SEA.[6] As discussed, the College is neither. But again, this certification raises other legal questions and concerns.

The College receives some Title II Workforce Innovation and Opportunity Act ("WIOA") grants. These funds permit the College to support its adult education, literacy, and civics education programs.[7]

[6] Exhibit 3 at 1.
[7] Exhibit 4 at 1.

In receiving these grants, the College has certified that it complies with Title VI of the Civil Rights Act of 1964 and its implementing regulations. This is a required certification for receiving federal funds.[8] Moreover, these assurances have been approved by DOE. Naturally, these assurances remain in effect, along with the grant terms and conditions.

The Title VI certification addresses diversity, equity and inclusion ("DEI") practices which, in the view of the current administration, violate the Civil Rights prohibitions on discrimination based on race, sex, religion, and national origin. This certification also comes from an Executive Order entitled "Ending Radical and Wasteful Government DEI Programs and Preferencing," which aims to end federal spending on DEI programs and policies.

The Order also cites to *SFFA v. Harvard*, 600 U.S. 181 (2023), which held race-based admissions policies at Harvard were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Although the certification ostensibly applies to all federal funding and bars all forms of DEI, the Order and the resulting certification do not contain a definition of "DEI" or "illegal DEI." There are also no current federal or Arizona laws prohibiting DEI. At this point, it remains a nebulous concept that is subject to change.

Federal courts have recently brought attention to this issue. In *Chicago Women in Trades v. Trump*, No. 1:25-cv-2005, 2025 WL 933871 (N.D. Ill. March 27, 2025), the court noted that the government had "studiously declined to shed any light" on the definition of DEI. *Id.* at *8. The court also noted that this lack of clarity puts grantees such as the College "in a difficult and perhaps impossible position. *Id.*

This analysis is on point. These assurances and certification ask the College to agree to terms that have no concrete definition. And to the extent DOE wishes to change the terms of these grants, they have arguably not engaged in the proper administrative process to do so. *See* 20 U.S.C. § 1232. Additionally, we are not aware of any legal authority allowing ADE to unilaterally add conditions to the receipt of federal funding.

C. Lack of Superintendent's Authority

As you know, ADE is headed by the State Superintendent of Public Instruction. A.R.S. § 15-231. The Superintendent's powers and duties are enumerated in A.R.S. § 15-251. Notably, § 15-251 does not give the Superintendent power to alter or demand updated compliance with federal grant terms. Nor do they allow the Superintendent to change the definitions of LEAs or SEAs, which are found in federal law.

[8] *Id.* at 3.

In contrast, the Superintendent is primarily tasked with "the execution of policies of the state board of education." A.R.S. § 15-231(B)(2); *see also* A.R.S. § 15-251(4). To our knowledge, the State Board of Education ("SBOE") does not have the authority, nor has taken any steps, to change any federal grant terms or alter any federal regulatory definitions. *See* A.R.S. § 15-203. Moreover, to our knowledge, the Superintendent and the SBOE do not exercise any authority over community colleges. *See* A.R.S. § 15-1401 *et. seq.*

These assurances and the certification were sent to the College by the Superintendent. However, it is our opinion that the Superintendent lacks the legal authority to demand that community colleges or other post-secondary institutions sign these assurances or the certification, nor does the Superintendent have the authority to withhold federal funds to community colleges and other institutions of higher education who refuse to do so.

IV. Conclusion

To reiterate, the College is not defined as an LEA or SEA. In our opinion, the assurances and the certification do not apply to the College. Yet even if they do apply, there are several legal reasons as to whether the conditions are either inapplicable or invalid.

The District will seek a formal opinion from the Attorney General's Office with respect to the advice provided herein.

Very truly yours,

Susan Segal

Susan P. Segal
For the Firm

SPS/JB3
6514730.2
Attachments

EXHIBIT 1

THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

March 28, 2025

Dear Educators:

By natural right and moral authority, parents are the primary protectors of their children. Yet many states and school districts have enacted policies that presume children need protection from their parents. Often, such policies evade or misapply the Family Educational Rights and Privacy Act (FERPA), turning the concept of privacy on its head to facilitate ideological indoctrination in a school environment without parental interference or even involvement. Going forward, the Department of Education will insist that schools apply FERPA correctly to uphold, not thwart, parents' rights.

COVID-19 opened parents' eyes to the pervasive indoctrination taking place in many classrooms. Families across the country saw gender ideology and critical race theory taught on-screen at their own kitchen tables. When parents understandably demanded answers and transparency, the Biden Administration treated them like criminals, directing the FBI to surveil school board meetings (one of the few places where parents can call for change in their schools) to intimidate parents. Under President Trump's leadership, my Department will no longer passively accept school officials' hostility to parental involvement. The Department stands with parents in exercising their rights to the full extent of the law.

Congress passed FERPA in 1974 to protect children's privacy in a manner that ensures parents can access their children's school records to gain information and insight necessary to act as proper guardians of their children's well-being. FERPA, as well as the Protection of Pupil Rights Amendment (PPRA), were intended to shelter families from invasion of their privacy—not to insulate schools from transparency and accountability to parents. Parents should not have to navigate a complex process to exercise their rights under FERPA or PPRA. Schools should not treat parents as enemies just for wanting to know about the mental and physical health and safety of their own children. Over the last four years, instead of vigorously enforcing these laws, the Biden Administration neglected the flood of complaints it received. The FERPA and PPRA complaint process is currently so overburdened with reports that parents who care deeply about their children's health and educational futures have had no recourse but to sit and wait. There was no obvious attempt by the Biden Administration to address this substantial backlog, which sent a loud and clear message that parental rights were not a priority. Meanwhile, states have taken advantage of this dereliction of government responsibility and installed policies that specifically instruct teachers and administrators to conceal student's critical information in student records from their parents.

The Trump Administration understands that the immense responsibility of raising children belongs to parents, not to the government. That's why I am announcing a revitalized effort to make FERPA and PPRA the source of proactive, effective checks on schools that try to keep parents in the dark. The Department will prioritize clearing the backlog of FERPA complaints so that parents can be confident that the Department is positioned to act on complaints in a timely manner.

Two weeks ago, I had the privilege of sitting down with a courageous group of detransitioners. They told me about their torturous and truly unfortunate experiences which led them down paths that, in many cases, will require lifelong medical care. A common thread among the stories I heard were the dogged efforts that schools took to promote and enable the transitioning of minor children, regardless of their mental state or their vulnerabilities. I repeatedly heard about the lengths schools would go to in order to hide this information from parents.

As any mother would be, I have been appalled to learn how schools are routinely hiding information about the mental and physical health of their students from parents. The practice of encouraging children down a path with irreversible repercussions—and hiding it from parents—must end. Attempts by school officials to separate children from their parents, convince children to feel unsafe at home, or burden children with the weight of keeping secrets from their loved ones is a direct affront to the family unit. When such conduct violates the law the Department will take swift action.

Attached is a letter from the Department's Student Privacy Policy Office (SPPO). This letter reminds educational institutions receiving federal financial assistance that they are obligated to abide by FERPA and PPRA if they expect federal funding to continue. This letter clarifies issues under FERPA that many states and school districts have intentionally muddied. I intend for SPPO's letter to convey my commitment to vigorously enforce important provisions in FERPA and PPRA for the protection of students and parents.

Sincerely,

Linda E. McMahon

Attachment

UNITED STATES DEPARTMENT OF EDUCATION

STUDENT PRIVACY POLICY OFFICE

March 28, 2025

Dear Chief State School Officers and Superintendents:

We are writing you to provide the notification required by 20 U.S.C. § 1232h(c)(5)(C). The U.S. Department of Education (Department) through its Student Privacy Policy Office (SPPO) is required to inform State educational agencies (SEAs) and local educational agencies (LEAs), as recipients of funds under programs administered by the Department, of their obligations under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98).

FERPA protects the privacy interests and access rights of parents and students in education records maintained by educational agencies and institutions or by persons acting for such agencies or institutions. PPRA affords parents and students with rights concerning specified marketing activities, the administration or distribution of certain surveys to students, the administration of certain physical examinations or screenings to students, and parental access to certain instructional materials including ones used as part of a student's educational curriculum.

This letter serves as guidance in conjunction with the Department's annual notification, required by 20 U.S.C. § 1232h(c)(5)(C), which has not substantively changed since it was last issued and is available at: https://studentprivacy.ed.gov/annual-notices.

In addition to notifying you of your legal obligations, we would also like to take this opportunity to point out several priority concerns identified over the last year. At the direction of Secretary McMahon, SPPO is taking proactive measures to address the following:

Priority Concerns

- ***Parental Right to Inspect and Review Education Records.*** It appears many LEAs may have policies and practices that conflict with the inspect and review provisions afforded parents under FERPA. Further, some of these informal and formal practices may be occurring at the direction, or minimally with the tacit approval, of their SEAs. For example, schools often create "Gender Plans" for students and assert that these plans are not "education records" under FERPA, and therefore inaccessible to the parent, provided the plan is kept in a separate file and not as part of the student's "official student record." While FERPA does not provide an affirmative obligation for school officials to inform parents about any information, even if that information is contained in a student's education records, FERPA does require that a school provide a parent with an opportunity to inspect and review education records of their child, upon request. Additionally, under the current regulatory framework, FERPA does not distinguish between a student's "official student record" or "cumulative file." Rather, all information, with certain

statutory exceptions, that is directly related to a student and maintained by an educational agency or institution, is part of the student's "education records" to which parents have a right to inspect and review.

- ***Safety of Students***. Additionally, we have received many inquiries from parents concerned about the safety of their children as schools are withholding related information under the auspices of FERPA. Nothing is more important than the health and safety of our nation's school children. To that end, schools should not withhold information from parents that identifies other students who have made death threats against their children. For example, Student A writes a note or school assignment describing an intent, or even a detailed plan, to kill Student B (or multiple other students). To the extent that the education record in question directly relates to both students and the information cannot be segregated and redacted without destroying its meaning, the parents of both students have the right to inspect and review that information. While the disciplinary sanction imposed on Student A may not be shared with the parents of Student B, unless the sanction directly relates to both students, FERPA does not preclude school officials from communicating to Student B's parents, for example, that responsive action is being taken with respect to a threat assessment or potential disciplinary action. Nor does FERPA prevent a school from taking actions designed to protect Student B, such as a classroom reassignment to avoid interaction with Student A. Certain measures a school might impose to protect student safety that directly affect both students may be disclosed to the parents of both students; for example, an order that specifies that Student A must stay 500 feet away from Student B, is a record that relates to both students. Our guidance called *Addressing Emergencies on Campus* discusses other provisions in FERPA that permit disclosures of personally identifiable information from a student's education records in order to address safety issues in a manner that complies with FERPA. It is available at: https://studentprivacy.ed.gov/resources/addressing-emergencies-campus.

- ***Annual Notification of Rights***. Many LEAs are not properly notifying parents and eligible students of their rights under FERPA. A school is not required to notify parents individually but rather is required to provide the notice by any means that are reasonably likely to inform parents of their rights. These means could include publication in the school activities calendar, newsletter, student handbook, or displayed prominently on the school's website. *See* 34 CFR § 99.7.

- ***Military Recruiters.*** SPPO also administers the military recruiter provisions of the Elementary and Secondary Education Act (ESEA), which contains certain requirements for LEAs that are the recipients of ESEA funds. These provisions, as well as the Department of Defense companion law, give military recruiters the same access to secondary students as provided to postsecondary institutions or to prospective employers and require that schools provide student information to military recruiters, when requested, unless the parent has opted out of providing such information. The information schools are required to provide to military recruiters include student names, addresses, electronic mailing addresses, and telephone listings. *See* Section 8528 of the ESEA, as amended, 20 U.S.C. § 7908 and 10 U.S.C. § 503(c).

- ***Assurance of Compliance.*** As part of SPPO's fulfillment of the Secretary's priority to take proactive action to enforce FERPA, pursuant to the authority under 20 U.S.C. §1232g(f), 34 CFR §§ 99.60 and 99.62, SPPO is requesting that each SEA submit no later than April 30, 2025, documentation such as "reports, information on policies and procedures, annual notifications, training materials or other information necessary" to provide assurance that the SEA and their respective LEAs are complying with the provisions of FERPA and PPRA, specifically with regard to the priority concerns previously discussed. In an effort to expedite the processing of this information, please email your response to my attention at SAOP@ed.gov, including the name of the SEA in the subject line. In lieu of sending your response electronically, you may send your written response to the following address:

  Student Privacy Policy Office
  U.S. Department of Education
  400 Maryland Avenue, SW
  Washington, D.C. 20202 – 8520

SPPO is available to assist you with your questions about FERPA, PPRA, and student privacy. We encourage you to sign up for our monthly student privacy newsletter or submit your questions directly to our student privacy help desk by visiting the "Contact" tab at https://studentprivacy.ed.gov/.

Thank you for the vital work you do every day to safeguard student privacy and create safe and effective learning environments for our students nationwide.

Sincerely,

Frank E. Miller Jr.
Acting Director
Student Privacy Policy Office

EXHIBIT 2

ARIZONA DEPARTMENT OF EDUCATION

Family Education Rights and Privacy Act (FERPA) / Protection of Pupil Rights Amendment (PPRA) Assurances for FY25 & FY26

Pursuant to the letter dated March 28, 2025, from United States Department of Education's Student Privacy Policy Office (SPPO), the Arizona Department of Education (ADE) is required to collect information and these assurances from all of its federal grant subrecipients. **Your 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.**

Please complete these assurances and upload them into your LEA's Document Library in the Grants Management Enterprise (GME) system under the 2025 FERPA/PPRA Assurances.

1) All information and records directly related to a student and maintained by an educational agency are considered "education" records to which parents have a right to inspect and review. **Please sign to acknowledge.**

2) Information that identifies concerns with the health and safety of their child(ren) is not withheld from parents, including threat responses. **Please sign to acknowledge.**

3) Parents are notified annually of their rights under FERPA. **Please indicate the date(s) and methods by which this communication has been delivered and sign to acknowledge.**

4) Parents are notified that upon request the school will provide military recruiters the access to secondary students' information. Parents are notified of their right to opt out of this sharing of information with military recruiters. **Please indicate the date(s) and methods by which this communication has been delivered and sign to acknowledge.**

In addition to these assurances, please upload your FERPA Policies and Procedures into the LEA Document Library.

Reminder: Your continued access to federal grant funds is contingent upon agreement to these assurances and providing this information to ADE.

EXHIBIT 3

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

April 3, 2025

Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and *SFFA v. Harvard*

Requested Certification:

On behalf of _____[SEA/LEA], I acknowledge that I have received and reviewed this Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and *SFFA v. Harvard*. I further acknowledge that compliance with the below and the assurances referred to, as well as this certification, constitute a material condition for the continued receipt of federal financial assistance, and therefore certify our compliance with the below legal obligations.

_____
Signature

_____
Date

_____
Title and District or State

Title VI of the Civil Rights Act of 1964 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."[1]

Notification of the obligations imposed by Title VI are incorporated throughout federal funding and contracting as a specific condition on the receipt of federal funds by educational institutions throughout the United States such as your own and have been in force and effect for decades:

> Title VI of the Civil Rights Act unambiguously imposes a condition on the grant of federal moneys. Section 601 of Title VI states that "[n]o person ... shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Recipients of Federal financial assistance are automatically subject to the nondiscrimination obligation imposed by the statute.

[1] 42 U.S.C. § 2000d. The United States Department of Education's regulations regarding Title VI further state that a recipient of federal funds may not, "on ground of race, color, or national origin ... [r]estrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program." 34 C.F.R. § 100.3(b)(1)(iv). Nor may a funding recipient, such as a college or university "[d]eny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program" on the basis of race, color, or national origin. *Id.* § 100.3(b)(1)(vi).

> The statutory mandate can hardly escape notice. Every application for Federal financial assistance must, "as a condition to its approval and the extension of any Federal financial assistance," contain assurances that the program will comply with Title VI and with all requirements imposed pursuant to the executive regulations issued under Title VI. In fact, applicants for federal assistance literally sign contracts in which they agree to comply with Title VI and to "immediately take any measures necessary" to do so. This assurance is given "in consideration of" federal aid, and the federal government extends assistance "in reliance on" the assurance of compliance. *See* 3 R. Cappalli, Federal Grants § 19:20, at 57, and n. 12 (1982) (written assurances are merely a formality because the statutory mandate applies and is enforceable apart from the text of any agreement).

Guardians Ass'n v. Civ. Serv. Comm'n of City of New York, 463 U.S. 582, 629–30 (1983).

Direct receipt of federal funding under Title I Part A of the Elementary and Secondary Education Act of 1965 *as amended* (20 U.S.C. § 6301 *et seq.*) is conditioned with an assurance that your entity "[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." Revised Assurances Template: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, p. 6. Similar assurances are required under federal contracts and grants. Specifically, federal regulations require that "[t]he Federal agency or pass-through entity *must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal statutes and regulations*—including provisions protecting free speech, religious liberty, public welfare, and the environment, *and those prohibiting discrimination*—and the requirements of this part. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award." 2 CFR § 200.300(a) (emphasis added).

Moreover, each State Education Agency is required to file a single set of assurances with the Secretary as part of its consolidated State plan or application under the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7844). These assurances include the SEA's commitment to comply with all Federal statutes regarding nondiscrimination, including, but not limited to, Title VI of the Civil Rights Act of 1964.

In *Students for Fair Admissions v. President and Fellows of Harvard College* ("*SFFA v. Harvard*"), 600 U.S. 181 (2023), the Supreme Court held that the race-based affirmative action programs at Harvard and the University of North Carolina were illegal because they violated the Equal Protection Clause of the Fourteenth Amendment (for state schools like North Carolina), as well as Title VI (for state and private schools that receive federal funding like Harvard). The Court explained that the Equal Protection Clause "represent[s] a foundational principle—the absolute equality of all citizens of the United States politically and civilly before their own laws." *Id.* at 201 (internal quotation marks omitted). It "'forbids discrimination by the General Government, or by the States, against any citizen because of his race.'" *Id.* at 205 (alterations omitted; quoting *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954)). Put simply, the Equal Protection Clause and Title VI prohibit race-based action, with only the narrowest of exceptions. *Id.*

"The entire point of the Equal Protection Clause is that treating someone differently because of their skin color is *not* like treating them differently because they are from a city or from a suburb, or because they play the violin poorly or well." *SFFA v. Harvard*, 600 U.S. at 220. That means that "race may never be used as a 'negative' and that it may not operate as a stereotype," and the Court's "cases have stressed that an individual's race may never be used against him in the admissions process." *Id.* at 218. Through its equity mandates, the Biden administration has, as did the colleges and universities in *SFFA v. Harvard*, "concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice." *Id.* at 231. As the Supreme Court emphasized, "[e]liminating racial discrimination means eliminating all of it." *Id.* at 206.[2]

Given the text of Title VI and the assurances you have already given, any violation of Title VI—including the use of Diversity, Equity, & Inclusion ("DEI") programs to advantage one's race over another—is impermissible. The use of certain DEI practices can violate federal law. The continued use of illegal DEI practices may subject the individual or entity using such practices to serious consequences, including:

1. The use of the provisions of 42 U.S.C. § 2000d-1 to seek the "termination of or refusal to grant or to continue assistance under such program," eliminating federal funding for any SEA, LEA, or educational institution that engages in such conduct.[3]

2. For entities and institutions that use DEI practices in violation of federal law, those entities may incur substantial liabilities, including the potential initiation of litigation for breach of contract by the Department of Justice in connection with civil rights guarantees contained in federal contracts and grant awards seeking to recover previously received funds paid to them under these contracts and grants.[4]

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[2] The only exception to this prohibition on the use of racial classifications is where their use satisfies "strict scrutiny" under the Equal Protection clause. A racial classification will survive strict scrutiny only where its use advances a compelling governmental interest and the use of race is narrowly tailored to achieve that interest. *SFFA v. Harvard*, 600 U.S. at 207. "Classifying and assigning' students based on their race 'requires more than an amorphous end to justify it.'" *Id.* at 214 (alteration omitted). Goals to correct "societal discrimination," for example, are insufficient. *Id.* at 226. The Supreme Court has been clear that only two interests rise to the level of "compelling": (1) "remediating specific, identified instances of past discrimination that violated the Constitution or a statute;" and (2) "avoiding imminent and serious risks to human safety in prisons, such as a race riot." *Id.* at 207. And even if there is an identified compelling interest, "the government's use of race" must be "'narrowly tailored'"—i.e., "'necessary'"—to "achieve that interest." *Id.*

[3] "Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law." 42 U.S.C. § 2000d-1.

[4] Title VI allows the enforcement of conditions attached to federal funding by "any other means authorized by law." One enforcement mechanism for Title VI violations is a suit by the Attorney General for breach of contract. *See, e.g.*, *Guardians Ass'n v. Civil Serv. Comm'n of N.Y.C.*, 463 U.S. 582, 630 n.24 (1983) ("the Federal Government can always sue any recipient who fails to comply with the terms of the grant agreement"); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 772 (1979) (White, J., dissenting) ("The 'other means' provisions of [Title VI] include agency suits to enforce contractual antidiscrimination provisions"); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 609–11 & 617 (5th Cir. 1980) (concluding "that the United States is entitled to sue to enforce contractual assurances of compliance with Title VI's prohibition against discrimination in the operation of federally-funded schools"); *see also* Arthur R. Block, *Enforcement of Title VI Compliance Agreement by Third Party Beneficiaries*, 18 HARV. C.R.C.L. L. REV. 1, 9 n.24 (1983) (noting that the Department has enforced Title VI "under two legal authorizations": suits under Title IV of the Civil Rights Act of 1964 and actions for "specific performance of contractual assurances of non-discrimination made by fund recipients").

3. Moreover, the submissions of claims for money from the federal government when an entity is not in compliance with Title VI and/or its assurances due to certain DEI practices subjects the entity to liability under "[t]he False Claims Act (FCA) [which] imposes liability on anyone who 'knowingly' submits a 'false' claim to the Government." *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 742 (2023) (citing 31 U.S.C. § 3729(a)). Under the FCA, violators face penalties including treble damages and civil penalties of thousands of dollars per violation.

EXHIBIT 4

Adult Education Services

February 14, 2025

Laurie Kierstead-Joseph
Pima County Community College District
4905 E Broadway Blvd
Tucson, AZ 85709

Dear Laurie Kierstead-Joseph,

This is the official grant award notification for the ***WIOA Title II Supplemental Grant for Section 243 Grant Funds: Integrated English Literacy/Civics Education Plus Training*** for March 1, 2025, through December 30, 2025, pending approval by the Arizona State Board of Education.

The **Pima County Community College District** has been awarded a supplemental grant allocation of **$210,000**. This allocation will be added to your current grant budget for the Federal Section 243 - IELCE + Training grant budget and should be available in the *ADE Grants Management Enterprise (GME) system* by February 28, 2025.

Please carefully review pages 2-5 of this award notification as it contains important grant information and contract requirements, as listed below.

1. Federal subaward identification (2 CFR § 200.332).
2. Grant contract terms and conditions.
3. Grant contract assurances.
4. Required Grants Management Enterprise (GME) system grant budgets' revisions.

Please acknowledge receipt of this supplemental grant award notification by sending an acknowledgement of this grant award to the RFGA@azed.gov inbox.

Sincerely,

Beverly L. Wilson

Beverly L. Wilson, Deputy Associate Superintendent, Adult Education and HSE Services
Arizona Department of Education

NOTICE OF ADULT EDUCATION GRANT

1. Federal subaward identification (2 CFR § 200.332).

i. Subrecipient name	Pima County Community College District
ii. Subrecipient unique entity identifier	100601001
iii. Federal Award Identification Number (FAIN)	V002A240003
iv. Federal award date	07/01/2024 - 09/30/2025
v. Subaward period of performance	07/01/2024 - 06/30/2025
vi. Subaward availability and budget period	07/01/2024 - 06/30/2025
vii. Federal funds obligated to subrecipient	$3,549,056
viii. Total Federal funds obligated to subrecipient	$3,549,056
ix. Total Federal subaward to subrecipient	$3,549,056
x. Federal award project description	PL 113-128 II Workforce Innovation and Opportunity Act
xi. Federal awarding agency, pass-through entity, and contact information	US Department of Education, Arizona Department of Education/Adult Education Services (ADE/AES), Contact: Janice Cruz, janice.cruz@azed.gov
xii. Assistance Listing Number (ALN) and Title	84.002A and Title II, Adult Education and Family Literacy Act State Grant
xiii. Research & Development identification	The Federal subaward is not for research & development.
xiv. Indirect cost rate for the Federal subaward	The indirect cost rate supplement for the Federal subaward must be submitted in the ADE Grants Management Enterprise (GME) System.

2. Grant contract terms and conditions.

a. The supplemental grant award allocation is to serve the number of non-duplicated, proposed eligible individuals for services, referenced below.

Funding Source(s)	**Number of Proposed Eligible Individuals for Services**
Current ESOL IELCE+T (Federal Section 243 - IELCE + Training)	400
Supplemental ESOL IELCE+T (Federal Section 243 - IELCE + Training)	250
Total Number of Non-Duplicated Individuals (ESOL IELCE+T)	**650**

b. Mandatory participation of applicable program staff in technical assistance provided by ADE-AES staff to address specific program needs throughout the program year.

c. Mandatory participation in ***required state leadership initiatives and trainings*** identified by ADE-AES. Additional required training will be offered throughout the program year that is designed to facilitate compliance to grant contract requirements, effective implementation of services, and program improvement.

3. Grant contract assurances.

a. Please carefully read the eighteen federal and state assurances listed below. **The grantee must agree to all eighteen assurances.** Documents that are ***bolded and italicized*** below can be found in the ADE GME - **Grants Management Resource Library**.

Federal Assurances

1. The grantee agrees to comply with federal and state statutes, regulations, policies, and procedures, and to use state appropriated funds to carry out activities and the local provision of adult education services solely in a manner consistent with the Arizona Unified Workforce Development Plan and the Workforce Innovation and Opportunity Act.
2. The grantee agrees to comply with the following Federal and State Non-Discrimination Laws:
   - Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination of all persons on the basis of race, color, or national origin (*28 C.F.R. § 42.101 et seq.*),
   - Title VII of the Civil Rights Act of 1964, as amended (*Public Law (P.L.) 88-352*), the Age Discrimination in Employment Act of 1967 (*Public Law (P.L.) 90-202*) and Arizona State Executive Order 99-4, amending 75-5 (A.R.S. § 41-1013), which prohibits discrimination of all persons on the basis of race, age, color, religion, sex, national origin or political affiliation,
   - The Americans with Disabilities Act of 1990 (*Public Law (P.L.) 101-336*) and the Arizona Disability Act of 1992 (*A.R.S. § 41-1492 et seq.*), which prohibit discrimination of all persons on the basis of physical or mental disabilities from equal access to public services or in the employment, or advancement in employment of qualified individuals.
3. The grantee agrees to comply with Section 427 of the General Education Provisions Act (***GEPA Notice OMB Control No. 1894-0005***) enacted as part of the Improving America's Schools Act of 1994 (*Public Law (P.L) 103-382*).
4. The grantee agrees to comply with the ***Family Educational Rights and Privacy Act*** (FERPA) (*34 C.F.R. § 99*).
5. The grantee agrees to comply with the ***Fair Labor Standards Act*** (FLSA) (*29 C.F.R. § 500-899*).
6. The grantee agrees to administer the ADE-AES-approved standardized assessments in accordance with the ***Arizona Adult Education Assessment Policy***.
7. The grantee agrees to follow all Uniform Guidance & ***Code of Federal Regulations (CFR200) Requirements***.
8. The grantee agrees to use funds received under WIOA Section 225 to provide corrections education and educational services for other institutionalized individuals and priority shall be given to serving individuals who are likely to leave the correctional institution within five years of participation in the program.
9. The grantee agrees to use funds received under WIOA Section 243 to provide services to adults who are English language learners that include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic

participation *in combination with* integrated education and training activities designed to: 1) prepare adults for, and place such adults in, unsubsidized employment in in-demand industries and occupations leading to economic self-sufficiency, and 2) integrate with the local workforce development system and its functions to carry out the activities of the program.

State Assurances

10. The grantee agrees to use state-allocated funds to establish and conduct adult education courses of study, as prescribed by ADE-AES in this grant contract, to assist adults with continuing basic education; attaining secondary school diplomas, transitioning to postsecondary education, training, and career pathways; improving employment opportunities; and increasing adults' knowledge of the rights and responsibilities of citizenship (A.R.S. § 15-232 A).
11. The grantee agrees to use state-allocated funds to deliver services and adult education classes only to adults who are citizens or legal residents of the United States or are otherwise lawfully present in the United States, and shall be enforced without regard to race, religion, gender, ethnicity or national origin (A.R.S. § 15-232 B).
12. The grantee agrees to provide a bi-annual report on the total number of adults who applied for instruction and the total number of adults who were denied instruction under this section because the individual was not a citizen or legal resident of the United States or was not otherwise lawfully present in the United States (A.R.S. § 15-232 C).
13. The grantee agrees to follow Arizona Adult Education Supplemental Fee Guidelines and state law regarding the charging of supplemental fees to adults eligible to participate in the adult education program (A.R.S. § 15-234 D). The Department of Corrections shall not charge supplemental fees.
14. The grantee agrees to fully cooperate with evaluation and monitoring processes conducted by ADE-AES, including review of all records and documents pertaining to Title II Adult Education and core partner services.
15. The grantee agrees that adult education program director, administrator(s), instructional leader(s), and instructional staff will hold valid Arizona Adult Education teaching certificates or will obtain such certificates within 60 days of the hire date. Copies of certificates must be kept on file (hard copy or digital) for audits.
16. The grantee agrees that instruction in ADE-AES-funded adult education classes is conducted by certified adult education teachers as described in State Assurance #15 above.
17. The grantee agrees to use the designated adult education data management system and to follow ADE-AES policies and National Reporting System (NRS) Guidelines.
18. The grantee agrees to comply with all 2025-2028 Grant Contract Requirements, minimum performance measures, and ADE-AES policies.

4. Required Grants Management Enterprise (GME) system grant budget revision.

a. The funding application identified below must be revised in the GME system **ASAP and no later than March 31, 2025**. If you have any questions regarding budget revision and submission, please contact Janice Cruz at janice.cruz@azed.gov.

Funding Application	Budget Name	Allocation Amount
FY 2025 Adult Education Consolidated - Year 1	**CURRENT** Federal Section 243 - IELCE + Training	$300,000
	SUPPLEMENTAL Federal Section 243 - IELCE + Training	$210,000
Total Federal Section 243 - IELCE + Training Grant Allocation		**$510,000**