



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

March 16, 2026

Please review comments. Top line feedback:

Transmitted via electronic mail

Heather F. Perfetti, J.D., Ed.D.
President
Middle States Commission on Higher Education
1007 North Orange Street
4th Floor, MB #166
Wilmington, Delaware 19801

- Appreciate ED articulating its opposition to diversity.
- Some notable logic and legal gaps.
- Assumption that DEI is purely race-based. What about lived experience, like veteran students?
- Legal precedent is misapplied through SFFA.

Dear Dr. Perfetti:

I write to inform you, in my capacity as the senior Department official (SDO), of my decision regarding the renewal of recognition of the Middle States Commission on Higher Education (MSCHE). In reaching this decision, I have considered recommendations from U.S. Department of Education (Department) staff and the National Advisory Committee on Institutional Quality and Integrity (NACIQI). These recommendations were made pursuant to sections 114 and 496 of the Higher Education Act of 1965, as amended, (HEA) and 34 C.F.R. Part 602.

Compliance with 34 C.F.R. § 602.26(f)(2)

MSCHE was reviewed for continued recognition in Spring 2023. At that time, the then-SDO determined that the agency was not in compliance with 34 C.F.R. § 602.26(f)(2). Specifically, the SDO found that MSCHE had not demonstrated compliance with the requirement that the agency maintain a policy requiring notification to the appropriate entities within 10 business days of receiving notice that an accredited or preaccredited institution has allowed its accreditation or preaccreditation to lapse. The SDO's determination was aligned with the recommendations of Department staff and NACIQI.

In a letter dated May 31, 2023, the SDO continued MSCHE's recognition contingent upon the agency demonstrating compliance with the cited criteria within 12 months and on the condition that MSCHE submits a compliance report.¹ MSCHE subsequently submitted its compliance report, which included documentation and information demonstrating compliance, as summarized below.

¹ Although the SDO's May 31, 2023, letter specifically references noncompliance with 34 C.F.R. § 602.26(f)(2), the accompanying description of noncompliance also suggests deficiencies under 34 C.F.R. § 602.26(f)(1). In particular, the description references not only the requirement to notify appropriate entities when a lapse of accreditation or preaccreditation occurs, as required under 34 C.F.R. § 602.26(f)(2), but also the requirement to provide notification when a program voluntarily withdraws from accreditation or preaccreditation, as addressed under 34 C.F.R. § 602.26(f)(1). Because the SDO's letter specifically cites noncompliance with 34 C.F.R. § 602.26(f)(2), this decision letter focuses on the agency's compliance with that cited provision, notwithstanding the broader description of noncompliance.

In reviewing the report, Department staff initially raised concerns that the agency's policy referenced "10 calendar days" rather than "10 business days." 34 C.F.R. Part 602, Subpart B has several instances where certain communications must occur "within 10 business days." It should, however, be plainly obvious that in any instance where a communication occurs within 10 calendar days, it will always also occur within 10 business days.

Only after Department staff issued its draft staff analysis, and the agency revised its policy to reference business days, did Department staff conclude that "the agency could use 10 calendar days within its Communication in Accreditation Process Policy and Procedures to meet the requirements of this section, as that is more stringent than (*sic*) the 10 business days stated in the regulatory language."

I highlight this sequence because it reflects an unnecessary expenditure of both Department and agency resources. The agency's policy, as originally submitted with its compliance report, was not only consistent with the cited regulatory requirement but was, in fact, more stringent than what the regulation requires.

When accrediting agencies fail to comply with statutory or regulatory requirements, including the Criteria for Recognition under 34 C.F.R. Part 602, Subpart B, the Department has a responsibility to hold them accountable, and I fully intend to do so. At the same time, when the Department expends scarce resources disputing immaterial technical issues that do not undermine regulatory compliance, we should likewise acknowledge the need for greater discipline in our oversight responsibilities.

For the reasons set forth in the final Staff Report, the transcripts of the NACIQI meeting, and the full administrative record before me, I find MSCHE to be fully compliant with 34 C.F.R. §

602.26(f)(2). Lacks legal foundation. Notion is both spurious + a projection of what

Accrediting Agencies May Not Have Standards that Violate Federal Law

ED is doing, as court found in DCL in Feb

Upon review of the transcripts of the December 16, 2025, NACIQI meeting, I note that a NACIQI member raised concerns with MSCHE that certain agency standards related to diversity, equity, and inclusion (DEI) may place MSCHE-accredited institutions in potential violation of the U.S. Supreme Court's decision in Students for Fair Admissions v. President & Fellows of Harvard College, 600 U.S. 181 (2023) ("SFFA").

SFFA was about admissions. This lacks relevance. When same faulty logic was

When this member expressed this legitimate concern, you affirmed that "[a]s soon as the executive orders came out this year, we suspended all DEI standards and criteria."² You further explained that evaluation teams were instructed not to apply these DEI standards and that "all DEI criteria were immediately suspended until further notice, and that is what we have held to."

used in DCL, it was found unlawful.

You also indicated that MSCHE is engaged in a comprehensive review of its standards, including revisions beyond changes to its DEI standards, and that a revised version of MSCHE's standards is expected to take effect on July 1, 2026.

This is not a continuous improvement memo. It is a power-labor attempt to take over higher ed.

² Dr. Heather Perfetti, *Meeting of the National Advisory Committee on Institutional Quality and Integrity*, December 2025, 103.

You keep using this word - Not sure you know what it means.

there appears to be an intentional misleading of the public here. DEI is not solely race based. Veterans, Rural students, those w/ unique talents all need special support

I commend MSCHE for suspending standards that may give rise to unlawfully discriminatory practices through so-called DEI-based requirements. Your testimony before NACIQI and the Department was clear: MSCHE has suspended its DEI standards, communicated to evaluation teams that these standards are not to be applied, notified institutions that these standards are currently not in effect, and indicated that the Commission intends to issue revised standards this summer that will presumably remove any unlawful DEI-related provisions from its standards, as well as from any associated policies and practices, on a permanent basis.³

This concern underscores a broader legal principle governing accreditation. As the NACIQI member's question reflects, accrediting agency standards that conflict with federal law are impermissible. Institutions cannot comply with federal law while simultaneously implementing agency standards that require policies or practices that violate federal law. No accrediting agency, including MSCHE, may place institutions in such a no-win scenario where an institution must choose between violating federal law or violating the accreditor's standard. Indeed, MSCHE has recognized this basic principle in a recent press release, stating that "[MSCHE] has long recognized that federal or state law or other government mandates may sometimes present challenges for institutions as they make efforts to comply with a variety of regulatory expectations. Put simply, our Standards for Accreditation . . . require that institutions comply with applicable laws, regulations, and other government mandates."⁴

Exactly). Fed law should not be violated. Fed law is being circumvented by ED here w/c courts already found misapplication of SFFA logic to be unlawful.

Section 496(m) of the HEA limits the Secretary's authority to "recognize accrediting agencies or associations which accredit institutions of higher education [IHEs] for the purpose of enabling such institutions to establish eligibility to participate in [Title IV programs] or which accredit [IHEs] or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies." 20 U.S.C. § 1099b(m). In other words, the Secretary lacks the authority to recognize an accrediting agency if that agency is not accrediting IHEs for the purpose of enabling such institutions to establish eligibility to participate in Title IV programs or other federal programs.

Accrediting agencies that have standards that require institutions to not follow federal law are not enabling such institutions "to participate in [Title IV programs or] other programs administered by the Department of Education or other Federal agencies." 20 U.S.C. § 1099b(m). Indeed, compliance with federal law is a prerequisite for participating in Title IV. If an institution follows the accreditor's standard that violates federal law, those institutions cannot receive Title IV aid. Because the Secretary lacks the authority to recognize agencies that do not have a federal link, the Department must cease recognition of any accrediting agency that has policies that conflict with federal law. Put simply, accreditation policies that conflict with federal law effectively sever the federal link required by 20 U.S.C. § 1099b(m).

There is no such thing as "illegal DEI." The weaponization of tax dollars to threaten the well-being of students is a sad pivot for our democracy

Conflicting accreditor standards are also inconsistent with the structure and purpose of the regulatory triad, which vests the federal government, states, and accreditors with distinct authorities and responsibilities. Accreditors plainly lack the authority to overrule the federal

³ Id. at 104-105.

⁴ MSCHE Press Release, MSCHE Statement on Executive Orders and Recent Dear Colleague Letter, (February 24, 2025), <https://www.msche.org/2025/02/24/msche-statement-on-executive-orders-and-recent-dear-colleague-letter>.

government with respect to civil rights or other areas of federal law. Congress has reserved that domain for the federal government.

Standards that Require Racial Preferences Conflict with Federal Law

I appreciate the comments that MSCHE made during the NACIQI meeting regarding its commitment to update its standards to avoid these conflicts of federal law; however, MSCHE has not yet taken specific action to eliminate such standards. MSCHE's standards and "evidence expectations" continue to be littered with requirements that institutions take racial diversity into account.⁵ Specifically, MSCHE's "Guiding Principle 3" provides a roadmap for the integration of so-called "DEI" into seemingly all aspects of higher education administration. Specifically, Guiding Principle 3 states that:

So you agree that these policies aren't related to admissions?

"Throughout the seven standards, institutions should reflect deeply and share results on diversity, equity, and inclusion (DEI) in the context of their mission by considering at a minimum: goals and actions (Standard I); demographics and policies or processes (Standard II and VII); curriculum and services (Standard III and IV); assessments (Standard V); and resource allocation (Standard VI). *One goal of DEI reflection would be to address disparate impacts on an increasingly diverse student population if discovered* (emphasis added). Throughout the standards, institutions define DEI and populations and follow best practices with attention to data integrity and security."

Using data to improve student outcomes is critical.

In accordance with Guiding Principle 3, MSCHE's "evidence expectations" likewise call for institutions to consider racial diversity in student learning, employment practices, strategic planning, and institutional governance.⁶ It is clear that "throughout the seven standards" MSCHE prioritizes racial diversity over merit.

Appreciate ED articulation that the opposition to racial diversity is the foundation of claims of proactive efforts to fight racial diversity is called segregation.

The U.S. Supreme Court has long held that racial classifications are subject to strict scrutiny analysis. To survive strict scrutiny, racial classifications are only permissible if "used to further compelling governmental interests" and if "narrowly tailored—meaning necessary—to achieve that interest." *SFFA*, 600 U.S. at 207. And although the Supreme Court has left "a door ajar" to the possibility of racial classifications being constitutional, strict scrutiny is "automatically fatal in most cases" involving racial classifications.⁸

This is an unfounded blanket statement. It also further falls apart in the context of open access colleges, which MSCHE also accredits

With respect to college admissions, the Supreme Court has aptly noted that racial preferences are "zero-sum" and that benefits that flow to some but not others "necessarily advantages the former at the expense of the latter." *SFFA*, 600 U.S. at 218-19. The Department of Justice's Office of Legal Counsel has noted that "after *SFFA*, it is now unmistakably clear that this test applies to all racial distinctions in education, however benign they may appear."⁹ It is clear from this

⁵ See generally, MSCHE, Standards for Accreditation and Requirements of Affiliation (Fourteenth Edition); and MSCHE, Evidence Expectations by Standard Guidelines (Effective July 1, 2023).

⁶ *Id.* Standard I, #3, (b) (pg. 4); Standard II, #5 (pg. 7); Standard VI, #4 (pg. 23); Standard VII, #2 (b) (pg. 28).

⁷ *Edwards v. Vannoy*, 593 U.S. 255, 282 (2021) (Gorsuch, J., concurring).

⁸ *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 752 (Thomas, J., concurring) (cleaned up).

⁹ *Constitutionality of Race-Based Department of Education Programs*, 49 Op. O.L.C. (Dec. 2, 2025) (slip op. at 2).

precedent that policies that treat students differently in an academic setting based upon race have essentially no chance of surviving strict scrutiny review.

MSCHE's Guiding Principle 3 calls on institutions to "share results on diversity, equity, and inclusion" across the functions of an IHE. Of course, to "share results" you must have a result in *No.* mind and take concerted action to achieve such results. Although Guiding Principle 3 lacks a direct call to action, the subliminal message is clear: *The message is to advance student outcomes* [MSCHE assumes and expects all institutions to take steps to achieve results to increase racial diversity.] Indeed, it would not make sense for MSCHE to be asking institutions to report results unless it expected results to be sought. *This memo's admission that diversity is*

Problematic proves that disparate impact is ED's intention
The breadth of MSCHE's diversity expectations is staggering. Guiding Principle 3 reaches across all of the seven standards to touch virtually all major aspects of university life: demographics and policies or processes, curriculum and services, assessments, and resource allocation. Like college admissions, many of these functions can be zero sum. Allocating scarce resources based upon race necessarily advantages those who receive such resources at the expense of those who do not. *Confusing. Are we talking about admissions or operations here? You are aware they are different?* *SFFA*, 600 U.S. at 218-19. Providing better or more tailored "services" to one racial group gives those students an unearned advantage over students who do not receive those services.

Not has it created one [MSCHE has not created any record to support why it would have a compelling interest in a race-conscious standard.] But even if we assumed that there was a compelling interest here (which there is not), the sweeping nature of MSCHE's standard is clearly not narrowly tailored. I fail to see how racial preferences across such a wide swath of college operations—like "demographics and policies or processes"—could ever hope to fit through the "door ajar" that the Supreme Court has theoretically left open.¹⁰ As such, I find that Guiding Principle 3 and its broad application across MSCHE's standards fails strict scrutiny review and violates Title VI of the Civil Rights Act.

With respect to any "disparate impact" remedy (which is lauded as "one goal" in Guiding Principle 3),¹¹ the Supreme Court has been quite clear that the Constitution's equal-protection guarantee—which undergirds Title VI—requires proof of intentional discrimination.¹² Race-neutral policies that have a disparate impact without discriminatory intent are not unlawful. In 2001, the Court stated that interpreting Title VI's implementing regulations to cover unintentional discrimination is in "considerable tension" with the fact that Title VI itself

¹⁰ See *Edwards*, 593 U.S. at 282 (Gorsuch, J., concurring).

¹¹ "One goal of DEI reflection would be to address disparate impacts on an increasingly diverse student population if discovered."

¹² See, e.g., *Washington v. Davis*, 426 U.S. 229, 238, 242 (1976) (finding a violation of the Equal Protection Clause requires discriminatory intent, compared to Title VII's statutorily enacted disparate-impact standard in employment); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1979) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."); *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) ("[E]ven if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.").

Sound equity practice (considers race as one aspect in strategy + resource allocation, not the only aspect. To pretend this is not the case is both faulty + disingenuous. Moreover, why are elements of campuses allowed to continuously improve but not student success?
"prohibits only intentional discrimination."¹³ Policies or standards that are designed to remedy a "disparate impact" on the basis of race violate the promises of Title VI and are themselves unlawful to the degree that they treat people differently on the basis of their race.

Although I have deep concerns about MSCHE's current standards, I acknowledge and commend you for suspending such standards and working toward eliminating them. Because MSCHE has suspended its DEI standards and anticipates eliminating such policies, I do not find MSCHE to be noncompliant with the recognition criteria. Instead, I find MSCHE to be substantially compliant because you need to make modifications to your standards (as cited above) to be fully compliant. I also have concerns about the agency maintaining compliance so long as MSCHE has not formally rescinded any and all agency standards that violate federal law.

Because this all lacks legal and process standing

As such, MSCHE is hereby directed to submit two monitoring reports describing what actions the agency has taken to eliminate standards that violate federal law. The first monitoring report is due 6 months from the date of this decision letter, and the second monitoring report is due 12 months from the date of this decision letter. In accordance with 34 C.F.R. § 602.36(e)-(f), the monitoring reports will be reviewed by Department staff for approval.¹⁴

MSCHE is responsible for ensuring that, until the agency permanently removes its DEI-related standards, it continues to refrain from implementing or enforcing such standards. If the agency were found to be applying suspended DEI standards to one or more institutions, such action could constitute noncompliance. Such a finding could lead to the denial, limitation, suspension, or termination of the agency's recognition.

During which time the DEI posts will be moved to create further confusion

Has been following the law and best practices for a century

I want to remind MSCHE of its obligation to consistently apply and enforce its standards, as required under 34 C.F.R. § 602.18. This obligation includes maintaining effective controls to prevent the inconsistent application of the agency's standards. As applicable, each monitoring report shall include details about how MSCHE ensured that, prior to formal rescission of its DEI-related standards, principles, procedures, and guidelines, that none of the suspended policies were enforced or implemented against any institution of higher education.

Recognition Decision: For the reasons set forth in the final Staff Report, the transcripts of the NACIQI meeting, and the full administrative record before me, I approve MSCHE's application for continued recognition until May 31, 2028, subject to MSCHE's submission of two monitoring reports as set forth above.

Scope of Recognition: The accreditation and preaccreditation ("Candidacy status") of institutions of higher education including distance, correspondence education programs and direct assessment programs offered at those institutions. Recognition extends to the Executive Committee to act on behalf of the Commission as necessary on cases of initial, reaffirmed, and

¹³ See *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *id.* at 281 ("Title VI itself directly reaches only instances of intentional discrimination." (alteration omitted) (quoting *Alexander v. Choate*, 469 U.S. 287, 293 (1985))).

¹⁴ The term "Department staff" refers to staff members within the Office of Postsecondary Education involved in making recommendations and decisions under 34 C.F.R. Part 602. This includes both career staff in the Accreditation Group within the Office of Postsecondary Education and non-career staff, such as the Assistant Secretary for Postsecondary Education. The Assistant Secretary supervises the Accreditation Group and holds final decision-making authority over any staff recommendations or decisions under 34 C.F.R. Part 602.

continued candidacy or initial, reaffirmed and continued accreditation. Geographic Area of Accrediting Activities: The United States.

Recognition Period: Through May 31, 2028, which represents five years from the date of the previous SDO decision letter issued on May 31, 2023.¹⁵

Sincerely,



Nicholas Kent
Under Secretary

cc: Susan D. Looney, J.D., Ed.D.
Commission Chair, MSCHE

¹⁵ The recognition period is limited to a maximum of five years, including any time during which recognition was extended for the submission and review of a compliance report. *See* § 602.36(e)(1)(ii).