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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF OREGON; STATE OF RHODE ISLAND; and STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; and LINDA MCMAHON, in Her Official Capacity as United States Secretary of Education,

Defendants.

NO.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1  
2 1. This lawsuit relates to actions that Defendants, the Department of Education and  
3 Secretary Linda McMahon, have decided to take against mental health grants within Plaintiff  
4 States that are currently protected by a permanent injunction in *Washington v. U.S. Department*  
5 *of Education*, Case No. 2:25-cv-01228-KKE (W.D. Wash.). Plaintiff States secured this  
6 injunction after Defendants unlawfully discontinued the grants by applying new, unpublished  
7 priorities pursuant to an internal directive.

8 2. The Department of Education persists in its illegal plan to deny critical mental  
9 health funding to public school students based on these new priorities even though a permanent  
10 injunction has been issued by this Court to stop it, and even though the underlying rationale upon  
11 which its plan is premised has been held unlawful. Defendants say they can do this because the  
12 *Washington* injunction enjoined “discontinuances,” and now, the Department plans to  
13 “terminate” the grants at issue. But though the precise mechanism by which the Department  
14 plans to end the protected grants may have changed, its illegality has not.

15 3. In *Washington*, Defendants filed a motion for clarification on June 10, 2026,  
16 seeking a ruling that the *Washington* injunction does not address Defendants’ grant termination  
17 authority. Defendants announced that if they receive a favorable ruling by July 30, 2026, they  
18 will begin terminating “some or all” of the protected grants on July 31, 2026. Plaintiffs disagree  
19 with Defendants’ interpretation and have asked Judge Evanson to clarify that the injunction bars  
20 Defendants from terminating the protected grants for failing to effectuate the same new,  
21 unpublished priorities that were the basis for Defendants’ unlawful discontinuances. Judge  
22 Evanson set the *Washington* motion for hearing on July 24, 2026.

23 4. Plaintiff States bring this Complaint protectively, because while the *Washington*  
24 injunction should prevent the Department from implementing the vacated and enjoined Directive  
25 procedure “through any means,” including termination, *Washington*, Dkt. # 269, the Court might  
26 hold otherwise, leaving the grants vulnerable to immediate and unlawful termination. Should

1 that happen, this lawsuit is necessary to secure a new injunction that prevents the precise  
2 irreparable harm from grant terminations that this Court in *Washington* already held supported  
3 preliminary and permanent relief from grant discontinuances.

4 5. The programs at issue were prompted by tragic, high-profile school shootings,  
5 after which Congress dramatically increased funding for mental health services in high-need,  
6 low-income, and rural schools pursuant to the Mental Health Service Professional  
7 Demonstration Grant Program (MHSP) and the School-Based Mental Health Services Grant  
8 Program (SBMH) (collectively referred to as “Programs”). This legislation came at a critical  
9 time when our youth were experiencing a mental health crisis, a crisis that continues today. The  
10 Programs tackled several aspects of this problem, including the lack of funds for hiring and  
11 retaining school-based mental health professionals, difficulty recruiting mental health  
12 professionals to work in rural and high-need school districts, and a well-recognized workforce  
13 shortage. Although this crisis continues, the Department has been on a mission for over a year  
14 to end funding for a subset of MHSP and SBMH grants within Plaintiff States based on its belief  
15 that the grants do not effectuate Defendants’ new priorities because they support diversity,  
16 equity, and inclusion (DEI).

17 6. Defendants issued a series of internal directives to ferret out and uproot these  
18 DEI-adjacent grants. On February 5, 2025, Defendants issued a Directive on Department Grant  
19 Priorities, titled “Eliminating Discrimination and Fraud in Department Grant Awards” (February  
20 Directive), asserting that “[i]llegal DEI policies and practices can violate both the letter and  
21 purpose of Federal civil rights law and conflict with the Department’s policy of prioritizing  
22 merit, fairness, and excellence in education,” and ordering staff to re-review and terminate grants  
23 that “fund discriminatory practices—including in the form of DEI,” because such grants were  
24 “deemed inconsistent with these priorities.” The February Directive cited 2 C.F.R.  
25 § 200.340(a)(4) as the basis for termination. In April 2025, Defendants then implemented the  
26 February Directive by discontinuing Program grants within Plaintiff States under a different

1 regulation, 34 C.F.R. § 75.253, rather than terminating these grants under 2 C.F.R.  
2 § 200.340(a)(4).

3 7. Shortly thereafter, Defendants memorialized the February Directive-based  
4 discontinuance process in a June 5, 2025, internal directive titled “Non-Competing Continuation  
5 Discretionary Grant Award Review Policy” (June Directive), which directed Department staff  
6 to “review all grant awards to advance the Administration’s priorities” and end funding for grants  
7 that were “inconsistent with” the Department’s view of “Federal civil rights requirements”  
8 because they supported purportedly unlawful DEI. The June Directive expressly required staff  
9 to review “the approved grant application (inclusive of the GEPA 427 statement),” referring to  
10 the equity statements that Congress requires grant applicants to provide under the General  
11 Education Provisions Act (GEPA), 20 U.S.C. § 1228a. In accord with these Directives,  
12 Defendants identified grants within Plaintiff States that Defendants believed supported DEI,  
13 discontinued them, and denied grantees’ requests to reconsider the discontinuances.

14 8. Although Defendants’ actions were motivated by their view that these grants  
15 purportedly include “DEI” activities that are somehow inconsistent with federal civil rights laws,  
16 Defendants made no attempt to comply with procedural requirements under those laws, such as  
17 advising grantees of their alleged failure to comply with federal civil rights requirements,  
18 working with grantees to secure voluntary compliance, providing grantees an opportunity for  
19 hearing and making an express finding on the record if compliance cannot be secured by  
20 voluntary means, or providing a full written report to Congress and waiting thirty days before  
21 the action takes effect.

22 9. Plaintiff States, harmed from losing these grants both as grant recipients and  
23 through the increased Medicaid and state education agency expenditures and strain from the loss  
24 of grant-provided services, filed suit and secured a permanent injunction in *Washington v. U.S.*  
25 *Department of Education*, No. 2:25-cv-01228-KKE (W.D. Wash.), from the Department’s  
26 unlawful implementation of its new priorities to end Program grants within their states. Pursuant

1 to the injunction, Defendants made new continuation decisions and issued continuation awards,  
2 ultimately continuing most of the grants and grantees covered by the injunction (the “Protected  
3 Grants” and “Protected Grantees”). Although Defendants stated they continued the Protected  
4 Grants for the full 2026 budget period (January 1 through December 31, 2026), Defendants  
5 provided only six months of funding and said they would make additional funding  
6 determinations after a mid-year review.

7 10. Having already lost that lawsuit for unlawfully attempting to discontinue the  
8 Protected Grants under 34 C.F.R. § 75.253 based on the new, unpublished Directive priorities,  
9 Defendants have now announced their plan to terminate “some or all” of the Protected Grants  
10 under 2 C.F.R. § 200.340 based on the same unlawful, unpublished priorities and have moved  
11 for clarification in *Washington* to allow them to do so. Defendants’ plan to circumvent the  
12 permanent injunction by targeting the grants protected by the *Washington* injunction for  
13 termination pursuant to the February and June Directives<sup>1</sup> (rather than making additional funding  
14 determinations) is referred to as the “*Washington* Plan.”

15 11. Although Plaintiff States maintain that the *Washington* injunction prohibits  
16 Defendants from terminating grants based on the same unpublished priorities and oppose  
17 Defendants’ pending clarification motion, Plaintiff States file this lawsuit protectively, in the  
18 event the Court in *Washington* determines Defendants are not enjoined from terminating the  
19 Protected Grants under *Washington*’s permanent injunction. In that event, a new preliminary  
20 injunction or temporary restraining order will be necessary, as, under the *Washington* Plan,  
21 Department staff will begin terminating “some or all” of the Protected Grants on July 31, 2026,  
22 if they receive a favorable ruling on the clarification motion. An injunction or a restraining order  
23 would be appropriate under those circumstances, because the Department’s Directives and the  
24 *Washington* Plan are unlawful for a multitude of reasons.

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25  
26 <sup>1</sup> Just as the February Directive relating to terminations caused Defendants to discontinue grants, the June  
Directive related to continuations likely informs the *Washington* Plan to terminate grants for supporting DEI  
activities.

1 12. For instance, just as in *Washington*, the Directives and the *Washington* Plan  
2 violate the Administrative Procedure Act (APA) because Defendants did not undergo notice and  
3 comment rulemaking for their new priorities, as required by GEPA. *See Washington v. U.S.*  
4 *Dep't of Educ.*, 167 F.4th 1241, 1245 (9th Cir. 2026) (holding Defendants' use of unpublished  
5 priorities in February Directive violated rulemaking requirements).

6 13. The Directives and the *Washington* Plan also violate the APA because they lack  
7 reasoned decision-making and are contrary to law. By singling out the Protected Grants for  
8 alleged discrimination because the grant applications apparently contain statements about DEI,  
9 Defendants have countermanded Congress's directive that grant applicants describe "the steps  
10 such applicant proposes to take to ensure equitable access to, and equitable participation in," the  
11 grant project activities when applying for a grant. 20 U.S.C. § 1228a(b). By directing Department  
12 staff to prepare to terminate "some or all" Protected Grants without first working with grantees  
13 to secure voluntary compliance or providing grantees an opportunity for a hearing, Defendants  
14 have violated procedural protections that Congress mandated prior to grant withholdings under  
15 GEPA and when a grantee has allegedly violated federal anti-discrimination laws under Title VI  
16 and Title IX. *See* 42 U.S.C. § 2000d-1; 20 U.S.C. §§ 1234d, 1682. Defendants seek to escape  
17 judicial review under these statutes by asserting their extra-statutory grant terminations can only  
18 be challenged in the Court of Federal Claims.

19 14. Additionally, the February Directive and the *Washington* Plan are unlawful  
20 because Defendants misuse and plan to misuse their authority under 2 C.F.R. § 200.340 in  
21 several ways.

22 15. First, Defendants' February Directive attempts to justify termination under  
23 Section 200.340(a)(4), based on new priorities, when only, at most, the original priorities that  
24 were in place when the grants were initially selected can be relevant to termination decisions.  
25 *See Washington v. U.S. Dep't of Commerce*, 812 F. Supp. 3d 1169, 1183 (W.D. Wash. 2025)  
26 ("A plain reading of this provision demonstrates that termination is proper only when the 'award

1 itself no longer effectuates the program goals or agency priorities,’ and does not extend to  
2 *changes* in program goals or agency priorities.”) (emphasis added). To the extent the *Washington*  
3 Plan involves terminating grants on this basis, it too is unlawful.

4 16. Second, Defendants’ February Directive does not instruct staff to confirm that  
5 grants must “clearly and unambiguously” include Section 200.340(a)(4) in the grant award’s  
6 terms and conditions. 2 C.F.R. § 200.340(b); *see* Guidance for Federal Financial Assistance,  
7 89 Fed. Reg. 30046, 30089 (Apr. 22, 2024) (explaining “the language” of § 200.340(a)(4) needs  
8 to be included in the “terms and conditions of the award”). The terms and conditions of the  
9 Protected Grants do not include the language of this termination provision. To the extent the  
10 *Washington* Plan involves terminating grants without meeting this requirement, it too is  
11 unlawful.

12 17. Third, Defendants’ February Directive and the *Washington* Plan cannot use  
13 Section 200.340(a)(4) to terminate Protected Grants because such termination is not authorized  
14 by law. *See, e.g., Pacito v. Trump*, 169 F.4th 895, 937 (9th Cir. 2026) (rejecting the government’s  
15 reliance on Section 200.340(a)(4) because it authorizes termination only “to the extent  
16 authorized by law”); *Washington v. DHS*, No. 2:25-cv-1401-BJR, 2026 WL 1469538, at \*9  
17 (W.D. Wash. May 26, 2026) (“[T]he [termination] regulation . . . permits termination on that  
18 basis only where such termination is otherwise authorized by law.”); *City of Chicago v. DHS*,  
19 815 F. Supp. 3d 727, 755 (N.D. Ill. 2025) (“[S]ection 200.340 does not permit the agency to  
20 decline to follow a statute simply because its priorities have changed.”).

21 18. Moreover, Defendants’ Directives and the *Washington* Plan violate the Spending  
22 Clause by springing new, impossibly vague conditions on grantees after they had accepted their  
23 awards.

24 19. Defendants’ unlawful actions will cause immediate, devastating, and irreparable  
25 harm to Plaintiffs. If the Directives and the *Washington* Plan are not set aside, Plaintiff States’  
26 educational agencies will be forced to lay off the very same professionals that Congress intended

1 to recruit, hire, and retain in rural and high-need school districts when it appropriated Program  
2 funds. Plaintiff States' institutes of higher education will be forced to terminate financial support  
3 for the very same graduate students that Congress intended to support through scholarships, paid  
4 internship opportunities, and training so they could pursue careers in school-based mental  
5 health—drying up a workforce pipeline Congress recognized needed development. And Plaintiff  
6 States' Medicaid agencies will have increased expenditures on mental health services and  
7 Plaintiff States' educational agencies will have increased expenditures on educational services  
8 for students with unmet mental health needs, due to the loss of grant-provided services within  
9 Plaintiff States. Each of these harms has already been held by this Court to support standing and  
10 to constitute irreparable harm sufficient to justify injunctive relief. *Washington*, Dkt. # 269  
11 at pp. 9, 31.

12 20. Accordingly, Plaintiffs bring this action against the Department and United States  
13 Secretary of Education Linda McMahon seeking to: vacate and set aside Defendants' Directives  
14 and the *Washington* Plan as applied to the Protected Grants; preliminarily and permanently  
15 enjoin Defendants from implementing or enforcing the Directives or the *Washington* Plan  
16 against the Protected Grants or reinstating the Directives or the *Washington* Plan for the same  
17 or similar reasons; and declare that the Directives and the *Washington* Plan violate the APA and  
18 that under 2 C.F.R. § 200.340 Defendants may not use new priorities to terminate grants or  
19 terminate grants before meeting procedural requirements imposed by law, including 20 U.S.C.  
20 § 1232i(b), 20 U.S.C. § 1234d, 42 U.S.C. § 2000d-1, 20 U.S.C. § 1682, and their implementing  
21 regulations.

## 22 II. JURISDICTION AND VENUE

23 21. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is  
24 also proper under the judicial review provisions of the APA. 5 U.S.C. §§ 702, 704.  
25  
26

1 22. An actual controversy exists between the parties within the meaning of 28 U.S.C.  
2 § 2201(a), and this Court may grant declaratory relief, preliminary and permanent injunctive  
3 relief, and other relief pursuant to 28 U.S.C. §§ 2201–02, and 5 U.S.C. §§ 705–06.

4 23. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1).  
5 Defendants are an agency of the United States Government, and an officer sued in their official  
6 capacity. Plaintiff State of Washington is a resident of this judicial district, and a substantial part  
7 of the events or omissions giving rise to this Complaint occurred and are continuing to occur  
8 within the Western District of Washington.

### 9 III. PARTIES

#### 10 A. Plaintiffs

11 24. Plaintiff State of Washington, represented by and through the Attorney General,  
12 is a sovereign state of the United States of America. The Attorney General is Washington’s chief  
13 law enforcement officer and is authorized under Wash. Rev. Code § 43.10.030 to pursue this  
14 action on the State’s behalf.

15 25. Plaintiff State of California is a sovereign state in the United States of America.  
16 California is represented by Rob Bonta, the Attorney General of California, who is the chief law  
17 enforcement officer of California and authorized to sue on the State’s behalf.

18 26. Plaintiff State of Colorado is a sovereign state of the United States of America.  
19 Colorado is represented by and through its Attorney General Phil Weiser. The Attorney General  
20 acts as the chief legal representative of the State and is authorized by Colo. Rev. Stat.  
21 § 24-31-101 to pursue this action on the State’s behalf.

22 27. Plaintiff State of Connecticut is a sovereign state of the United States of America.  
23 Connecticut is represented by and through its chief legal officer, Attorney General  
24 William Tong, who is authorized under Gen. Stat. § 3-125 to pursue this action on behalf of the  
25 State of Connecticut.

1 28. Plaintiff the State of Delaware is a sovereign state of the United States of  
2 America. Delaware is represented by and through its Attorney General, Kathleen Jennings. The  
3 Attorney General is Delaware's chief law enforcement officer and is authorized to pursue this  
4 action pursuant to Del. Code Ann. tit. 29, § 2504, on behalf of the State.

5 29. Plaintiff State of Illinois is a sovereign state of the United States. Illinois is  
6 represented by Kwame Raoul, the Attorney General of Illinois, who is the chief law enforcement  
7 officer of Illinois and authorized to sue on the State's behalf. Under Illinois law, the Attorney  
8 General is authorized to represent the State's interests by the Illinois Constitution, article V,  
9 section 15. *See* 15 Ill. Comp. Stat. 205/4.

10 30. Plaintiff State of Maine is a sovereign state of the United States of America.  
11 Maine is represented by Aaron M. Frey, the Attorney General of Maine. The Attorney General  
12 is authorized to pursue this action pursuant to Me. Rev. Stat. Ann. tit., 5 § 191.

13 31. The State of Maryland is a sovereign state in the United States of America.  
14 Maryland is represented by and through its chief legal officer, Attorney General Anthony G.  
15 Brown. Under the Constitution of Maryland, and as directed by the Maryland General Assembly,  
16 the Attorney General has the authority to file suit to challenge action by the federal government  
17 that threatens the public interest and welfare of Maryland residents and Maryland's public  
18 institutions. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, J. Res. 1.

19 32. Plaintiff the Commonwealth of Massachusetts is a sovereign state of the United  
20 States. Massachusetts is represented by Andrea Joy Campbell, the Attorney General of  
21 Massachusetts, who is the chief law officer of Massachusetts and authorized to pursue this action  
22 on its behalf.

23 33. Plaintiff the State of Michigan is a sovereign state of the United States of  
24 America. Michigan is represented by Attorney General Dana Nessel, who is the chief law  
25 enforcement officer of Michigan.  
26

1 34. Plaintiff State of New Mexico, represented by and through its Attorney General,  
2 is a sovereign state of the United States of America. Attorney General Raúl Torrez is the chief  
3 legal officer of the State of New Mexico. He is authorized to prosecute all actions and  
4 proceedings on behalf of New Mexico when, in his judgment, the interest of the State requires  
5 such action. N.M. Stat. Ann. § 8-5-2(B). Likewise, he shall appear before federal courts to  
6 represent New Mexico when, in his judgment, the public interest of the state requires such action.  
7 N.M. Stat. Ann. § 8-5-2(J). This challenge is brought pursuant to Attorney General Torrez's  
8 statutory authority.

9 35. Plaintiff the State of New York, represented by and through its Attorney General  
10 Letitia James, is a sovereign State of the United States of America. As the State's chief legal  
11 officer, the Attorney General is authorized to sue on the State's behalf.

12 36. Plaintiff State of Oregon is a sovereign state of the United States. Oregon is  
13 represented by Attorney General Dan Rayfield. The Attorney General is the chief legal officer  
14 of Oregon and is authorized to institute this action on the State's behalf.

15 37. Plaintiff State of Rhode Island is a sovereign state of the United States of  
16 America. Rhode Island is represented by Attorney General Peter F. Neronha, who is the chief  
17 law enforcement officer of Rhode Island and is authorized to institute this action on the State's  
18 behalf.

19 38. Plaintiff State of Wisconsin is a sovereign state in the United States of America.  
20 Wisconsin is represented by Joshua L. Kaul, the Attorney General of Wisconsin. Attorney  
21 General Kaul is authorized to sue on behalf of the State.

22 39. Plaintiff States are recipients of the Protected Grants through their universities,  
23 state education agencies, and/or school districts. Plaintiff States' Medicaid agencies and state  
24 education agencies would also bear additional expenditures, should any Protected Grant within  
25 their state lose Program funding.  
26

1 **B. Defendants**

2 40. Defendant United States Department of Education is a cabinet agency within the  
3 executive branch of the United States government that has been created by Congress. 20 U.S.C.  
4 § 3411.

5 41. Defendant Linda McMahon is the Secretary of the United States Department of  
6 Education and that agency's highest-ranking official. She is charged with the supervision and  
7 management of all decisions and actions of the agency. She is sued in her official capacity.  
8 20 U.S.C. § 3412.

9 **IV. FACTUAL ALLEGATIONS**

10 **A. Congress's Creation and Funding of Mental Health Programs in Schools**

11 42. Congress created the two Programs at issue here, MHSP and SBMH, in response  
12 to profound losses Americans have suffered from school shootings.

13 43. On February 14, 2018, a former student shot and killed fourteen students and  
14 three staff members at a high school in Parkland, Florida.

15 44. Following the Parkland tragedy, Congress used its National Activities for School  
16 Safety, Elementary and Secondary Education Act, 20 U.S.C. § 7281(a)(1)(B), authorization to  
17 create the MHSP. Congress intended for this program to "to address the shortages of mental  
18 health service professionals" in "low-income" public schools, by funding scholarships and  
19 clinical training for graduate students providing services in these schools. H.R. Rep. No. 115-  
20 952, at 543 (2018), <https://www.congress.gov/115/crpt/hrpt952/CRPT-115hrpt952.pdf>.

21 45. Congress used the same National Activities for School Safety, Elementary and  
22 Secondary Education Act, 20 U.S.C. § 7281(a)(1)(B), authorization to establish SBMH in the  
23 Department's fiscal year 2020 "to increase the number of qualified, well-trained . . . mental  
24 health professionals that provide school-based mental health services to students." Explanatory  
25 Statement, *Division A-Departments of Labor, Health and Human Services, and*  
26 *Education, and Related Agencies Appropriations Act, 2020*, at 134 (Dec. 16, 2019),

1 <https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-JES-DIVISION-A.pdf>.

2 This program funded salaries for mental health professionals, allowing state education agencies  
3 and local education agencies to hire them directly.

4 46. In 2022, a gunman shot and killed nineteen students and two teachers at an  
5 elementary school in Uvalde, Texas. After this national tragedy, a bipartisan Congress  
6 dramatically increased funding through the Bipartisan Safer Communities Act. In this bill,  
7 Congress directed the Department to make available an additional \$100 million per year for each  
8 of MHSP and SBMH for fiscal years 2022 through 2026. Bipartisan Safer Communities Act,  
9 Pub. L. No. 117-159, 136 Stat. 1313, 1342 (June 25, 2022).

10 **B. The Department Sets Priorities at the Very Start of a Grant Competition and Then**  
11 **Uses Them to Monitor Performance**

12 47. The Department's administration of these Programs is governed by the General  
13 Education Provisions Act (GEPA) and the Education Department General Administrative  
14 Regulations (EDGAR). With limited exceptions, not applicable here, GEPA requires that rules  
15 affecting the Department's financial assistance go through the APA's notice-and-comment  
16 process. *See* 20 U.S.C. §§ 1221e-4, 1232; *see also* 5 U.S.C. § 553.

17 48. EDGAR fulfill these statutory requirements by publicly setting the rules for the  
18 competitive selection process for new grants. 34 C.F.R. § 75.200 (outlining selection process for  
19 new grants).

20 49. When the Department announces a competition for new grants for a particular  
21 fiscal year, it publishes a notice inviting applications (NIA) in the Federal Register that explains,  
22 among other things:

- 23 • How to apply for a new grant;
- 24 • Whether the Secretary plans to approve multi-year projects and, if so, the project
- 25 period that will be approved;
- 26 • The priorities for scoring and selecting grants in the competition;

- 1 • The selection criteria and factors used to decide which applications will be
- 2 awarded new grants and how the criteria will be weighed; and
- 3 • Any program performance measurements.

4 *See* 34 C.F.R. §§ 75.100, 75.101, 75.105, 75.110, 75.201.

5 50. In connection with the NIA, the Department also circulates a grant application  
6 package. A grant application package includes “information about the process and content that  
7 will be used to evaluate [the] application,” “the purpose and goals of the program,” and a  
8 standard application form. U.S. Department of Education, *Discretionary Grantmaking at ED*  
9 (*Discretionary Grantmaking*), at 12–13 (2024)<sup>2</sup> (describing the use of priorities in grant  
10 competitions).

11 51. To make award determinations, the Department scores the quality of each  
12 application using the selection criteria and competitive priorities, then ranks the applications and  
13 awards new grants. 34 C.F.R. § 75.217; *Discretionary Grantmaking* at 25–26 (describing the use  
14 of priorities in grant competitions). The selection criteria are given point values up to the total  
15 possible score that the Department announced for that year’s grant competition. *See* 34 C.F.R.  
16 § 75.201; *Discretionary Grantmaking* at 26–27. Additional points may be earned if applicants  
17 meet competitive preference priorities. 34 C.F.R. § 75.105(c); *Discretionary Grantmaking* at 28.

18 52. After a grant is awarded, the Department holds a post-award conference with the  
19 awardee to “establish a mutual understanding of the specific outcomes that are expected, and to  
20 clarify measures and targets for assessing the project’s progress and results. Information on  
21 project outcomes is needed to ensure that the project achieves the objectives stated in the  
22 application.” *Discretionary Grantmaking* at 31. Performance measures are based on the priorities  
23 and program goals published in the NIA and NIA package.

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<sup>2</sup> Available at: <https://web.archive.org/web/20260107025611/https://www.ed.gov/media/document/grant-making-ed-108037.pdf> (last visited July 9, 2026).

1           53. The Department monitors grantees to ensure that the project is “proceeding as  
 2 planned, consistent with the approved activities and budget.” *Id.* at 38. “The goal of monitoring  
 3 is to make every project successful. . . . If, in the course of monitoring, ED’s staff identify areas  
 4 of weakness or noncompliance, discover that the grantee is not making substantial progress, or  
 5 have suggestions for how the grantee might better achieve the program objectives, they will  
 6 provide technical assistance to help bring the project back on track. Unresolved monitoring  
 7 findings can result in such actions as additional grant terms and conditions, recovery of funds, a  
 8 decision to not award a continuation grant, or the termination of a grant.” *Id.*

9           **C. Program Grant Applicants Complied with the GEPA Equity Directive and**  
 10           **Defendants’ Priorities to Secure Grant Awards**

11           54. For each round of Program funding, the Department published an NIA in the  
 12 Federal Register outlining the priorities and selection criteria for that year’s grant competition.

13           55. State education agencies (SEAs), local education agencies (LEAs), and  
 14 institutions of higher education (IHEs) applied for MHSP and SBMH grants, addressing equity  
 15 measures as instructed and tailoring their projects to make their applications competitive based  
 16 on the Department’s published priorities.

17           56. The NIA packages instructed applicants to address equity measures, because  
 18 these grants are subject to the GEPA Equity Directive, which requires that applicants:

19           develop and describe in such applicant’s application the steps such applicant  
 20 proposes to take to ensure equitable access to, and equitable participation in, the  
 21 project or activity to be conducted with such assistance, by addressing the special  
 22 needs of students, teachers, and other program beneficiaries in order to overcome  
 barriers to equitable participation, including barriers based on gender, race, color,  
 national origin, disability, and age.

23           20 U.S.C. §1228a(b); *see also* 34 C.F.R. § 75.210(d). Accordingly, Defendants’ application form  
 24 provided a notice that “**ALL APPLICANTS . . . MUST INCLUDE INFORMATION IN**  
 25 **THEIR APPLICATIONS TO ADDRESS [GEPA SECTION 427] IN ORDER TO**  
 26 **RECEIVE FUNDING UNDER THIS PROGRAM.**”

1 57. For example, in 2022, one competitive priority for Defendants' MHSP grant  
2 competition was to increase the number of qualified school-based mental health services  
3 providers from diverse backgrounds. In alignment with this competitive priority and in  
4 compliance with the GEPA Equity Directive, Vancouver School District, submitted its Equity  
5 Policy, stating it was "committed to educational equity" and would "prioritiz[e] . . . resources to  
6 achieve equitable outcomes" and "promote workforce diversity." As a result, the Department  
7 awarded Vancouver School District an MHSP grant.

8 58. Generally, after selecting an applicant for a multi-year Program grant, the  
9 Department awarded funding for the first budget year, followed by annual one-year continuation  
10 awards awarded at the end of the budget year in December. *See* 34 C.F.R. § 75.251.

11 **D. Defendants Used New Administration Priorities to Discontinue Grants that Are**  
12 **Supposedly Non-Compliant under Defendants' View of Federal Civil Rights Laws**  
**Because the Grants Support DEI**

13 59. Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally  
14 funded programs and activities on the basis of race, color, or national origin. *See* 42 U.S.C.  
15 § 2000d. Under Title VI, federal agencies are "authorized and directed to effectuate the  
16 provisions of . . . this title . . . by issuing rules, regulations, or orders of general applicability."  
17 *Id.* § 2000d-1. Although federal agencies are permitted to terminate federal funding due to a  
18 grantee's non-compliance with Title VI, the federal agency must first "advise[] [the grantee] of  
19 the failure to comply with the requirement" and attempt to secure compliance "by voluntary  
20 means." *Id.* If voluntary compliance fails, the federal agency must secure "an express finding on  
21 the record, after opportunity for hearing, of a failure to comply with such requirement" before  
22 terminating funding, and the termination shall not become effective until thirty days after the  
23 agency files a full written report with Congress. *Id.*

24 60. Similarly, Title IX of the Education Amendments of 1972 prohibits  
25 discrimination in federally funded education programs and activities on the basis of sex.  
26 *See* 20 U.S.C. § 1681(a). Under Title IX, federal agencies are "authorized and directed to

1 effectuate the provisions of . . . this title . . . by issuing rules, regulations, or orders of general  
2 applicability.” *Id.* § 1682. Although federal agencies are permitted to terminate federal funding  
3 due to a grantee’s non-compliance with Title IX, the federal agency must first “advise[] [the  
4 grantee] of the failure to comply with the requirement” and attempt to secure compliance “by  
5 voluntary means.” *Id.* If voluntary compliance fails, the federal agency must secure “an express  
6 finding on the record, after opportunity for hearing, of a failure to comply with such requirement”  
7 before terminating funding, and the termination shall not become effective until thirty days after  
8 the agency files a full written report with Congress. *Id.*

9 61. On February 5, 2025, Defendants issued an internal “Directive on Department  
10 Grant Priorities” that instructed Department personnel to re-review grants, “ensuring that  
11 Department grants do not fund discriminatory practices—including in the form of DEI—that are  
12 either contrary to [the Department’s view of federal civil rights] law or to the Department’s  
13 policy objectives,” and asserted new priorities of “merit, fairness, and excellence in education.”  
14 Grants that did not meet these new priorities would be subject to termination under 2 C.F.R.  
15 § 200.340(a)(4).

16 62. The February Directive represented a change in the Department’s interpretation  
17 of Section 200.340(a)(4) and its termination procedure, as the Department’s prior policy did not  
18 allow termination based on new priorities and required Department staff to work with grantees  
19 to address any issues before terminating grants. *See Discretionary Grantmaking* at 39; *cf.*  
20 *Washington*, Dkt. # 269 at pp. 15–16 (holding that the change in continuation procedure resulting  
21 from the February Directive constituted a change of position). Defendants made this change  
22 without considering grantees’ reliance interests in five years of funding that Defendants  
23 expressly intended to provide and Defendants’ representations and past practices. *Cf. id.* at p. 18  
24 (finding the use of the February Directive to discontinue grants was arbitrary and capricious for  
25 failing to consider reliance interests); 34 C.F.R § 75.251(b)(2). Nor did the February Directive  
26 acknowledge, let alone direct, Department staff to follow the requirements of Title VI and Title

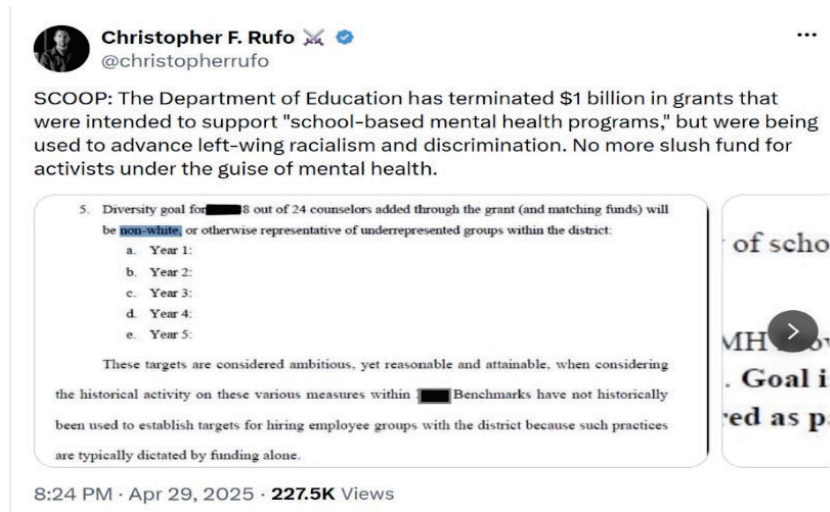
1 IX, such as the requirement to attempt to secure voluntary compliance before terminating any  
2 grants, or the procedural requirements under GEPA. *See* 42 U.S.C. § 2000d-1; 20 U.S.C.  
3 §§ 1232i, 1234d, 1682.

4 63. Publicly, the Department provided notice of its new interpretation of federal civil  
5 rights laws in a now defunct February 14, 2025, Dear Colleague Letter. *See* <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>. This Letter warned  
6 educational entities receiving financial assistance that they could lose funding if they failed to  
7 comply with measures outlined in the Letter. The Dear Colleague Letter was almost immediately  
8 subject to litigation, enjoined, and vacated. *See Nat'l Educ. Ass'n v. Dep't of Educ.*, 779 F. Supp.  
9 3d 149, 165 (D.N.H. 2025); Memorandum Opinion, *Am. Federation of Teachers v. U.S. Dep't*  
10 *of Educ.*, No. 1:25-cv-00628, (D. Md. August 14, 2025); Order, *Am. Federation of Teachers v.*  
11 *U.S. Dep't of Educ.*, No. 25-2228 (4th Cir. Jan. 22, 2026) (withdrawing appeal).

12 64. The February Directive caused Defendants to re-review grant applications and  
13 identify grantees whose projects conflicted with its new priorities. On or around April 29, 2025,  
14 Defendants applied the February Directive to Program grants. Although the February Directive  
15 instructed staff to *terminate* grants inconsistent with Defendants' new priorities under 2 C.F.R.  
16 § 200.340(a)(4), Defendants instead used boilerplate notices to *discontinue* Program grants  
17 under 34 C.F.R. § 75.253. These notices tracked, verbatim, key portions of the February  
18 Directive's language. Of the 339 Program grants eligible for non-competing continuation  
19 awards, 233 grants were discontinued, including about 140 grants discontinued within Plaintiff  
20 States. Defendants did not discontinue other Program grantees even though they competed with  
21 and served the same diversity priorities as the discontinued grants.

22 65. The cuts were made public in a social media post from conservative strategist  
23 Christopher Rufo, who claimed the money was used to advance "left-wing racialism and  
24 discrimination." Collin Binkley, *Trump administration cuts \$1 billion in school mental*  
25 *health grants, citing conflict of priorities*, Associated Press (April 30, 2025),  
26

1 <https://apnews.com/article/school-mental-health-grants-trump-biden-dei-00bec2d96371f023ac56fe3f32f3e92f>.



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12 @christopherrufo, X (April 29, 2025, 8:24 p.m.) <https://x.com/christopherrufo/status/1917314079406055660>.

14 66. That same day, the Department informed Congress that it only discontinued  
15 “certain” grants that “reflect the prior Administration’s priorities and policy preferences and  
16 conflict with those of the current Administration.” It claimed that “[t]he prior Administration’s  
17 preferences are not legally binding” and told Congress that it planned to “re-envision and re-  
18 compete” the funds.

19 67. On June 5, 2025, Defendants issued a second internal directive titled “Non-  
20 Competing Continuation Discretionary Grant Award Review Policy.” The June Directive  
21 appears to memorialize the process that Defendants used to discontinue Program grants under  
22 the February Directive, and it was issued before Defendants addressed Program Grantees’  
23 requests for reconsideration. *See generally Washington*, Dkt. # 237-1 (reconsideration responses  
24 sent in August and September 2025). Although Defendants included the February Directive in  
25 the administrative record for *Washington*, they did not include the June Directive. *See id.*,  
26 Dkt. # 208 at p. 13 n.2 (AR index). The *Washington* administrative record was prepared by

1 Department attorneys and certified by a Deputy General Counsel at the Department on  
2 November 4, 2025. *See id.*, Dkt. # 202 at p. 2. Now, six months after the *Washington* court  
3 entered summary judgment for Plaintiffs, Defendants have revealed the June Directive for the  
4 first time in the litigation, claiming that the February Directive “has not been in effect for over a  
5 year” and was “superseded” by the one from June. *Id.*, Dkt. ## 447 ¶ 5, 447-1 ¶¶ 5–6;  
6 *Washington v. Dep’t of Educ.*, No. 26-510, DktEntry # 36.1 at 32 (9th Circuit) (*Appeal*).

7 68. The June Directive directed program offices to review grants in connection with  
8 continuation decisions to “advance the Administration’s priorities of ensuring Federal funds do  
9 not support projects that: violate the letter or purpose of Federal civil rights laws; conflict with  
10 the Department’s policy of prioritizing merit, fairness, and excellence in education; undermine  
11 the well-being of the students these programs are intended to help; or constitute an inappropriate  
12 use of federal funds.”

13 69. The June Directive ordered Department staff to “act on any relevant information  
14 that may indicate that project activities are inconsistent with Federal civil rights requirements.”  
15 The June Directive further directed, “[t]o the extent that a grantee uses or has used grant funds  
16 in a manner that violates these laws, program offices must make appropriate recommendations,  
17 including denial of continuation funding and enforcement action which may include the recovery  
18 of funds under section 452 of the General Education Provisions Act (GEPA).”

19 70. In performing this review for discriminatory practices, the June Directive  
20 expressly ordered Department staff to consider grantees’ grant applications, including the GEPA  
21 equity statements that all applicants included pursuant to Congress’s GEPA Equity Directive  
22 and Defendants’ instructions. This, too, represented a change in position, as Defendants  
23 previously made continuation decisions based on grantee performance, not new priorities.  
24 *See, e.g., Washington*, Dkt. # 269 at pp. 13–16. It was also a change from Defendants’ previous  
25 policies, requiring grantees to set forth equity measures in their grant applications and  
26 committing Defendants to working with grantees to address any issues before taking the drastic

1 step of ending a grant. Defendants made these changes without considering grantees' reliance  
2 interests in five years of funding that Defendants expressly intended to provide and Defendants'  
3 representations and past practices. *See id.* at pp. 16–18; 34 C.F.R. § 75.251(b)(2). As with the  
4 February Directive, the June Directive did not acknowledge, let alone direct, Department staff  
5 to follow the requirements of Title VI and Title IX, such as the requirement to attempt to secure  
6 voluntary compliance before discontinuing any grants. *See* 42 U.S.C. § 2000d-1; 20 U.S.C. §  
7 1682.

8 71. For grantees that Defendants discontinued and who requested reconsideration, on  
9 information and belief, Defendants followed the June Directive during the reconsideration  
10 process. As a result, in Fall 2025, Defendants denied reconsideration requests, because the  
11 approved grant applications contained phrases supporting equity.

12 72. In accordance with their plan to recompete Program funds, on  
13 December 11, 2025, Defendants awarded \$208 million in Program funding to new grantees. *See*  
14 U.S. Department of Education, *U.S. Department of Education Awards Over \$208 Million in*  
15 *Mental Health Grants* (Dec. 11, 2025), [https://www.ed.gov/about/news/press-release/us-](https://www.ed.gov/about/news/press-release/us-department-of-education-awards-over-208-million-mental-health-grants)  
16 [department-of-education-awards-over-208-million-mental-health-grants](https://www.ed.gov/about/news/press-release/us-department-of-education-awards-over-208-million-mental-health-grants). These new grantees  
17 included a few grantees in Plaintiff States but did not replace all of the services provided by the  
18 discontinued grants. For example, Washington dropped from eleven discontinued grants down  
19 to two new grants, representing a projected loss of around \$25 million grant funding. Nor could  
20 the new grants compensate for the additional costs of having to start over at ground zero with  
21 new grant projects, rather than reaping the benefits of existing and successful grant projects that  
22 had already been set up and simply needed funds to continue providing results.

1 **E. After the Permanent Injunction Enjoined the Discontinuance of the Protected**  
2 **Grants, Defendants Intend to Terminate “Some or All” of the Protected Grants**  
3 **Pursuant to the *Washington* Plan**

4 73. In *Washington*, No. 2:25-cv-01228-KKE, sixteen states filed suit challenging the  
5 unlawful change in Defendants’ discontinuance procedure resulting from the February Directive,  
6 as well as the discontinuances that followed.

7 74. On December 19, 2025, the Court granted Plaintiffs’ motion for summary  
8 judgment, and vacated and permanently enjoined the procedure by which the discontinuances  
9 were effected, the discontinuances themselves, and the reconsideration denials. *Washington*,  
10 Dkt. # 269 at pp. 34–36. It also ordered the Department to make lawful continuation  
11 determinations and declared that these determinations were restricted by 34 C.F.R. 75.253(b) to  
12 performance and financial data. *Id.* Defendants appealed the judgment and filed their opening  
13 appellate brief on June 17, 2026. *Id.*, Dkt. # 357; *Appeal*, DktEntry 36.1.

14 75. At a hearing on January 22, 2026, Defendants repeatedly represented that if the  
15 Department decided to continue a grantee’s program, the grant would be funded for the full year.  
16 *See Washington*, Dkt. # 367 at p. 7 (collecting quotes). But instead of issuing continuation awards  
17 that funded the year-long budget period, Defendants issued an initial award that only funded six  
18 months and told Protected Grantees that Defendants would not provide funding for the remaining  
19 six months unless the grantees “provide satisfactory mid-year performance and budget  
20 information and show that they are making substantial progress towards fulfilling the goals and  
21 objectives of their grant.”

22 76. For the first time, starting in January 2026, Defendants began incorporating  
23 following provision into their grants:

24 Grantees must not use federal funds under this project in any manner that violates  
25 the United States Constitution, Title VI or Title VII of the Civil Rights Act of  
26 1964 (42 U.S.C. 2000d et seq. or 42 U.S.C. 2000e et seq.), Title IX of the  
Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the  
Rehabilitation Act (29 U.S.C. 794), the Age Discrimination Act of 1975 (42  
U.S.C. 6101 et seq.), Title II of the Americans with Disabilities Act of 1990 (42  
U.S.C. 12131 et seq.), the Boy Scouts of America Equal Access Act of 2001 (20  
U.S.C. 7905), section 117 of the Higher Education Act of 1965, as amended (20

1 U.S.C. 1011f), or other applicable federal law. To the extent that a grantee uses  
2 grant funds for such unallowable activities, the Department intends to take  
3 appropriate enforcement action including under section 451 of the General  
Education Provisions Act (GEPA), which may include the recovery of funds  
under section 452 of GEPA.

4 This provision was lifted almost verbatim from the June Directive.

5 77. On information and belief, at about this time, Defendants formulated their  
6 *Washington* Plan. Pursuant to this plan, Defendants directed Department staff not to make  
7 additional funding determinations despite their prior representations. Instead, the *Washington*  
8 Plan provides that starting on July 31, 2026, Department staff will begin making individualized  
9 termination decisions and terminating the very grants that the Court in *Washington* enjoined  
10 them from unlawfully discontinuing, provided Defendants receive a favorable ruling on their  
11 pending motion for clarification by July 30. Although Plaintiffs do not yet know the exact date  
12 that Defendants formulated the *Washington* Plan, on June 10, 2026, Defendants publicly  
13 announced their plan “to terminate some or all of the grants affected by the [*Washington*]  
14 injunction,” by moving for an order, in *Washington*, that would clarify that the *Washington*  
15 injunction “does not restrict the Department’s separate authority to terminate grants under 2  
16 C.F.R. § 200.340.” *Washington*, Dkt. # 437 at pp. 1–2; *see also Appeal*, DktEntry 30.1 at 2  
17 (explaining that the Department of Education “intends . . . to terminate some or all of the  
18 remaining grants” protected by this Court’s injunction). The Department requested the Court’s  
19 ruling “by July 30, 2026, so that the Department can commence grant agreement terminations  
20 on July 31, 2026.” *Washington*, Dkt. # 437 at p. 1. According to Defendants, these terminations  
21 will render their appeal moot “if all grants are terminated and the terminations are unchallenged.”  
22 *See Appeal*, DktEntry 30.1 at 3.

23 78. Although Defendants told Protected Grantees that they would receive additional  
24 funding for the rest of the year following Defendants’ newly contrived mid-year check-ins and  
25 additional funding determinations, this did not occur. Instead, on June 30, 2026, Defendants sent  
26 Protected Grantees a “Notice of Additional Funding.” In this notice, Defendants informed the

1 grantees that it was considering terminating their grant (with a cite to Defendants’ motion for  
2 clarification), that challenges to grant terminations belonged exclusively in the Court of Federal  
3 Claims, and that terminations would occur no earlier than July 31, 2026, should the Court  
4 confirm that the existing permanent injunction does not bar termination. It concluded by  
5 providing wind down instructions. Most grantees were given one month of grant funds and given  
6 the opportunity to decline the award and instead wind down their grant. On information and  
7 belief, only Protected Grantees received these notices—not other grantees who received Program  
8 grants that were never discontinued and were not at issue in the *Washington* lawsuit.

9 79. By declaring that grant terminations can only be contested in the Court of Federal  
10 Claims, the *Washington* Plan unlawfully seeks to deprive Protected Grantees of their procedural  
11 rights for grant terminations, including judicial review, under GEPA. *See* 20 U.S.C.  
12 §§ 1234(a)(2), 1234d, and 1234g. The Protected Grantees qualify as “recipients,” and the  
13 Protected Grants qualify as “applicable programs” under 20 U.S.C. § 1231i(1), (2). They  
14 therefore qualify for GEPA’s procedural protections, which afford notice, an opportunity for  
15 hearing, and judicial review before the Department may withhold payments. *Id.* §§ 1234d(b)  
16 (“Before withholding payments . . .”), 1234g(a), (b) (staying administrative action until  
17 completion of judicial review by the Court of Appeals). “Withholding” includes grant  
18 terminations. *Cf.* 20 U.S.C. § 1232i(b) (listing terminations as a type of withholding); 34 C.F.R.  
19 § 75.903(c) (applying GEPA hearing procedure to terminations).

20 80. By declaring that grant terminations can only be contested in the Court of Federal  
21 Claims, the *Washington* Plan unlawfully seeks to deprive Protected Grantees of their procedural  
22 rights for grant terminations, including judicial review, based on alleged civil rights violations  
23 under 42 U.S.C. § 2000d-1 (Title VI) and 34 C.F.R. § 100.8 (Title VI procedures); and 20 U.S.C.  
24 § 1682 (Title IX) and 34 C.F.R. §106.81 (adopting Title VI procedural regulations for Title IX).  
25 As recipients of Federal financial assistance, Protected Grantees qualify for these procedural  
26 protections, which include notice, opportunity to comply, and a hearing before terminations may

1 occur. 34 C.F.R. § 100.8. Congress also mandated that agency action, including grant  
2 termination, based on an alleged failure to comply with Title VI and Title IX requirements is  
3 subject to judicial review:

4 Any department or agency action taken pursuant to [42 U.S.C. § 2000d-1 or 20  
5 U.S.C. § 1683] shall be subject to such judicial review as may otherwise be  
6 provided by law for similar action taken by such department or agency on other  
7 grounds. In the case of action, not otherwise subject to judicial review,  
8 terminating or refusing to grant or to continue financial assistance upon a finding  
9 of failure to comply with any requirement imposed pursuant to [42 U.S.C.  
10 § 2000d-1 or 20 U.S.C. § 1683], any person aggrieved (including any State or  
11 political subdivision thereof and any agency of either) may obtain judicial review  
12 of such action in accordance with chapter 7 of Title 5, and such action shall not  
13 be deemed committed to unreviewable agency discretion within the meaning of  
14 that chapter.

15 42 U.S.C. § 2000d-2; 20 U.S.C. § 1683.

16 81. The Department has enacted regulations consistent with these procedural  
17 requirements. For example, 34 C.F.R. § 75.903 specifies that the effective date of a grant  
18 termination may only be “on the latest of” a series of occurrences including “[t]he date of a final  
19 decision of the Secretary under part 81” of Title 34 C.F.R., which consists of the GEPA  
20 enforcement provisions governed by, among other statutes, 20 U.S.C. § 1234d. By directing that  
21 the planned terminations take effect immediately, the *Washington* Plan seeks to terminate  
22 Protected Grants earlier than permitted by law.

23 82. There are four bases to terminate under 2 C.F.R. § 200.340 and only two are  
24 possibly relevant here: (a)(1) for noncompliance with terms or conditions of the grant or (a)(4)  
25 based on the Directives’ priorities.

26 83. Therefore, on information and belief, Defendants plan to terminate “some or all”  
Protected Grants for noncompliance with the June Directive provision under 2 C.F.R.  
§ 200.340(a)(1); or for failing to effectuate the Directives’ unpublished priorities designed to  
end funding for DEI grants under 2 C.F.R. § 200.340(a)(4). *See Appeal*, DktEntry 36.1 at 9–10  
(asserting Defendants could use Section 200.340(a)(4) to end Protected Grants, and that this

1 would be “similar” to discontinuances under 34 C.F.R. § 75.253(a)(5)); *see also* Section IV.F.,  
2 *infra* (recent terminations of previously discontinued grants in another case).

3 84. On information and belief, Defendants plan to terminate “some or all” Protected  
4 Grants for alleged non-compliance based on Defendants’ view of federal civil rights law, under  
5 either Section 200.340(a)(1) or Section 200.340(a)(4), without first following federal procedural  
6 requirements under GEPA and federal civil rights law, such as attempting to secure voluntary  
7 compliance to cure any legal violations and providing an opportunity for a hearing, before  
8 termination.

9 85. On information and belief, Defendants plan to make their terminations effective  
10 immediately upon delivery to Protected Grantees of the termination notice, contrary to 34 C.F.R.  
11 § 75.903(c).

12 **F. Defendants’ Attempts to Terminate Unlawfully Discontinued Grants and Disregard**  
13 **Federal Civil Rights Procedural Requirements in Other Lawsuits**

14 86. The substance of the *Washington* Plan is consistent with Defendants’ actions in  
15 other grant discontinuance cases.

16 87. In *Council for Opportunity in Education v. United States Department of*  
17 *Education (COE)*, Defendants discontinued grants under eight programs collectively known as  
18 “TRIO” programs. *See COE*, No. 1:25-cv-03491-TSC, 2026 WL 120984, at \*1 (D.D.C. Jan. 16,  
19 2026). The purpose of the TRIO programs is to combat barriers to higher education faced by  
20 students from disadvantaged backgrounds. *Id.*

21 88. The TRIO grants, like the SBMH and MHSP grants, are governed by GEPA.  
22 Defendants discontinued TRIO grants by sending notices of non-continuation that included the  
23 same rationale that Defendants used to discontinue SBMH and MHSP grants:

24 The Department has undertaken a review of grants and determined that the grant  
25 specified above provides funding for programs that reflect the prior  
26 Administration's priorities and policy preferences and conflict with those of the  
current Administration, in that the programs: violate the letter or purpose of Federal  
civil rights law; conflict with the Department’s policy of prioritizing merit, fairness,

1 and excellence in education; undermine the well-being of the students these  
2 programs are intended to help; or constitute an inappropriate use of federal funds.

3 *Id.* at \*3.

4 89. The *COE* court entered a preliminary injunction and ordered Defendants to make  
5 new continuation determinations for dozens of unlawfully discontinued grants. *COE*, Dkt. # 42  
6 ¶¶ 1–2. But instead, Defendants continued some grants, discontinued others, and *terminated*  
7 more than half. *Id.* ¶ 4. Defendants sent letters stating these already-discontinued grants were  
8 being terminated under 2 C.F.R. § 200.340(a)(4) because they “no longer effectuates the program  
9 goals or the Department’s priorities,” effective immediately. *COE*, Dkt. # 47 at p. 6; *see*  
10 *generally id.*, Dkt. # 47-9 (termination letters). The letters did not state what those goals or  
11 priorities were; they simply quoted a DEI-related passage from the grant application. *See id.*,  
12 Dkt. # 47 at pp. 6–8; *id.*, Dkt. # 47-9.

13 90. On information and belief, some of the excerpts quoted in the new termination  
14 letters were the same or overlapped with the DEI-related excerpts that Defendants had previously  
15 quoted as the basis for discontinuing the TRIO grant in the original notices of non-continuation.  
16 On information and belief, these DEI-related excerpts include statements that the grantees  
17 included in the application pursuant to the GEPA Equity Directive and the original grant  
18 competition priorities. Although the *COE* court had concluded that plaintiffs were likely to  
19 succeed on their claim that Defendants were required to follow the federal civil rights  
20 procedural requirements under Title VI and Title IX before discontinuing grants, *see COE*,  
21 2026 WL 120984, at \*14, Defendants did not follow those requirements before terminating the  
22 TRIO grants.

23 91. The *COE* plaintiffs noted that Defendants issued continuation awards to grants  
24 under one of the TRIO programs, known as McNair grants, but terminated grants under the other  
25 TRIO programs. *COE*, Dkt. # 47 at p. 3. Defendants’ declarant, Murray Bessette, explained that,  
26 due to the nature of the McNair program, which included race-based classifications in its

1 authorizing statute, Defendants “determined that a potential termination of the McNair program  
2 grantees for race-based project activities could be interpreted as a termination that would require  
3 the Department to satisfy the requisite procedures of Title VI.” *Id.*, Dkt. # 53-1 ¶ 7. As a result,  
4 Defendants continued the McNair grants and directed grantees to operate their “McNair grant  
5 awards in a race-neutral manner”. *Id.* ¶¶ 8–9. Besette distinguished the decision to *continue*  
6 McNair grants from the decision to *terminate* the other TRIO grants, explaining that the TRIO  
7 termination notices “provided a novel explanation of the activities to be performed under the  
8 awards that no longer effectuate the program goals or the Department’s priorities,” and that  
9 “[n]one of the notices of termination... indicated that the identified project activities represented  
10 a failure or threatened failure to comply with Title VI or Title IX.” *Id.* ¶ 6. However, the excerpts  
11 that Defendants quoted in the termination letters show that Defendants terminated the other  
12 TRIO grants due to Defendants’ view that DEI activities are generally inconsistent with federal  
13 civil rights law, as reflected in the February and June Directives.

14 92. In another case, Defendants discontinued magnet school grants to schools within  
15 the New York City Public Schools (NYCPS) system. *Bd. of Educ. of City Sch. Dist. of City of*  
16 *New York v. U.S. Dep’t of Educ.*, No. 1:25-cv-08547-AS, 2026 WL 948205, at \*1 (S.D.N.Y.  
17 Apr. 8, 2026). Although Defendants had sought to enforce NYCPS’s compliance with Title IX,  
18 Defendants did not follow Title IX’s procedural requirements before discontinuing the grants.  
19 *See id.* at \*6. Defendants claimed they did not need to follow Title IX procedures because they  
20 discontinued the grants under the continuation regulation’s best interest determination, 34 C.F.R.  
21 § 75.253(a)(5). *Id.* The court rejected this argument. *See id.* at \*6–7.

22 93. Further, shortly after the Department issued the February Directive, Defendants  
23 attempted to use 2 C.F.R. § 200.340(a)(4) to terminate, effective immediately, some other grants  
24 authorized by the Elementary and Secondary Education Act of 1965 (ESEA), without complying  
25 with GEPA’s procedural requirements because Defendants contend they didn’t apply. *See, e.g.,*  
26 *In re St. Louis University*, No. 25-11-GT, 2025 WL 2256478, at \*1–2, \*4 (ED. O.H.A. July 10,

1 2025); *In re University of St. Thomas*, No. 25-09-GT, 2025 WL 2256477, at \*1–3 (ED. O.H.A.  
 2 July 10, 2025); *In re Cleveland State University*, No. 25-12-GT, 2025 WL 4740230, at \*1,  
 3 \*7–8 (ED. O.H.A. May 15, 2025).<sup>3</sup> The Department’s Administrative Law Judges rejected these  
 4 arguments, concluding that grant terminations are subject to the GEPA procedural requirements,  
 5 and they exercised jurisdiction under GEPA to hear the grantees’ challenges to the grant  
 6 terminations. *See* 20 U.S.C. § 1234d; *St. Louis*, 2025 WL 2256478, at \*5–7; *St. Thomas*,  
 7 2025 WL 2256477, at \*7–8; *Cleveland*, 2025 WL 4740230, at \*9–13.

8 **G. OMB’s Termination Regulation Does Not Allow Termination Based on New**  
 9 **Priorities or Without This Option Expressly Stated in Grants**

10 94. The text and rulemaking history of the OMB Uniform Guidance make plain that  
 11 2 C.F.R. § 200.340(a)(4) permits termination in only limited circumstances, specifically where  
 12 the grant can no longer feasibly achieve its original objectives. Section 200.340(a)(4) does not  
 13 confer upon federal agencies a broad power to terminate grants on a whim based on newly  
 14 identified agency priorities. Nor does it allow federal agencies to override statutory  
 15 requirements, as it limits termination “to the extent authorized by law.”

16 95. Additionally, Section 200.340(a)(4) cannot be used to terminate existing grants  
 17 if the award terms and conditions do not clearly and unambiguously specify that the award can  
 18 be terminated when it “no longer effectuates the program goals or agency priorities.” That is  
 19 abundantly clear from the plain text of Section 200.340(a)(4) itself, an adjacent clause of the  
 20 same regulation, over a decade of rulemaking history, and recent case law.

21 96. As with EDGAR, the OMB Uniform Guidance makes clear that priorities are set  
 22 at the start of a grant competition. 78 Fed. Reg. 78590, 78621–22 (Dec. 26, 2013) (setting forth  
 23 2 C.F.R. §§ 200.202, 200.203). As with NIAs, Notices of Funding Opportunities “must  
 24 include . . . [t]he general purpose of the funding and what it is expected to achieve for the public  
 25 good”; “[t]he Federal agency’s funding priorities or focus areas, if any”; and the “outcomes the  
 26

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<sup>3</sup> Based on the procedural history, the decision’s issue date of “May 15, 2025” is a clerical error.

1 Federal agency expects recipients to achieve.” *Guidance for Federal Financial Assistance*,  
2 89 Fed. Reg. 30046, 30204 (Apr. 22, 2024) (App’x I to Part 200—Full Text of Notice of Funding  
3 Opportunity). This required information includes a “program description” that “must  
4 include . . . [t]he general purpose of the funding and what it is expected to achieve for the public  
5 good”; “[t]he Federal agency’s funding priorities or focus areas, if any”; and the “outcomes the  
6 Federal agency expects recipients to achieve.” *Id.* And once selections are made, federal agencies  
7 “must include” in each award all the general terms and conditions as well as any agency- or  
8 program-specific terms and conditions. 78 Fed. Reg. at 78623–24 (2 C.F.R. §§ 200.210(b), (c)).  
9 The award must also clearly specify the “expected performance” of the grantee as well as “the  
10 outcomes intended to be achieved by the program.” *Id.* at 78624 (2 C.F.R. § 200.210(d)).

11 97. While termination is a remedy for noncompliance, the federal agency is required  
12 to first determine if “imposing additional conditions” could remedy the failure before taking  
13 action to terminate an award. *Id.* at 78637–38 (2 C.F.R. § 200.338).

14 98. In 2020, OMB added the clause that is now 2 C.F.R. § 200.340(a)(4), as 2 C.F.R.  
15 § 200.340(a)(2), to the termination regulation. 85 Fed. Reg. 49506, 49507–08 (Aug. 13, 2020).  
16 This clause states an agency may terminate an award if the award “no longer effectuates the  
17 program goals or Federal awarding agency priorities.” *Id.*

18 99. OMB explained that “the intent” in adding this clause was “to ensure that Federal  
19 awarding agencies prioritize ongoing support to Federal awards that meet program goals.” *Id.* at  
20 49507. For example, the clause permits termination where post-award “evidence reveals that a  
21 specific award objective is ineffective at achieving program goals” or where “additional  
22 evidence” causes the agency “to significantly question the feasibility of the intended objective  
23 of the award.” *Id.* at 49507–08. OMB did not suggest, however, that the clause enabled agencies  
24 to terminate awards mid-grant due to new agency priorities not contemplated at the time of the  
25 grant. To the contrary, in response to comments “express[ing] a concern that [this clause] will  
26 provide Federal agencies too much leverage to arbitrarily terminate awards without sufficient

1 cause,” OMB firmly stated that the Clause did *not* empower agencies “to terminate grants  
2 arbitrarily.” *Id.* at 49509.

3 100. In 2024, OMB again updated the termination regulation. 89 Fed. Reg. 30046  
4 (April 22, 2024). The 2024 Final Rule renumbered former Section 200.340(a)(2) to current  
5 Section 200.340(a)(4). *See id.* at 30089. The 2024 Final Rule also expressly clarified that a  
6 federal agency “must clearly and unambiguously specify all termination provisions in the terms  
7 and conditions of the Federal award.” *Id.* at 30169; 2 C.F.R. § 200.340(b).

8 101. In the 2024 Final Rule, OMB explained that this revision continued to permit  
9 termination of an award “pursuant to the terms and conditions of the Federal award,” and that  
10 “this may include a term and condition allowing termination . . . to the extent authorized by the  
11 law, if an award no longer effectuates the program goals or agency priorities.” 89 Fed. Reg. at  
12 30089. OMB further explained, “Provided that the language is included in the terms and  
13 condition of the award, [the new Section 200.340(a)(4)] continues to allow Federal agencies and  
14 pass-through entities with authority to terminate an award in the circumstances described in [the  
15 former Section 200.340(a)(2)] in the prior version of the guidance.” *Id.* OMB concluded that  
16 “the final version of the guidance provides greater clarity on the policy for termination of awards  
17 by the Federal agency or pass-through entity by underscoring the need for agencies and pass-  
18 through entities to clearly and unambiguously communicate termination conditions in the terms  
19 and conditions of the award.” *Id.*

20 102. On information and belief, prior to January 20, 2025, the Department had never  
21 invoked 2 C.F.R. § 200.340(a)(4)—or its predecessor, 2 C.F.R. § 200.340(a)(2)—to terminate  
22 any discretionary grant award on the grounds that the award does not effectuate new “agency  
23 priorities” identified after the time of the award.

#### 24 **H. The Directives and the *Washington Plan* Are Final Agency Actions**

25 103. Defendants’ Directives and the *Washington Plan* each constitute “final agency  
26 action” subject to review under the APA.

1 104. The February Directive announced new funding criteria and initiated mass review  
2 and termination of grants based on those criteria. *See, e.g., S. Educ. Found. v. U.S. Dep’t*  
3 *of Educ.*, 784 F. Supp. 3d 50, 59 (D.D.C. 2025); *California v. U.S. Dep’t of Educ.*,  
4 2025 WL 3165713, at \*6–7 (D. Mass. 2025). It also changed the Department’s approach from  
5 its long-standing practice of making termination decisions based on changes in the awards that  
6 failed to meet established priorities, to one based on established awards failing to meet new  
7 priorities. As a consequence of the February Directive, the Protected Grants were identified as  
8 failing to meet these new priorities (see April 2025 discontinuances) and now face termination  
9 on the same or similar basis, starting on July 31, 2026. It thus meets the definition of final agency  
10 action, which must constitute the consummation of an agency’s decision-making process from  
11 which legal consequences flow. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

12 105. The June Directive announced new review criteria to be used in continuation  
13 awards and directed Department staff to discontinue grants based on those criteria. *See, e.g.,*  
14 Complaint ¶¶142–46, *Council for Opportunity in Educ. v. U.S. Dep’t of Educ.*,  
15 No. 1:25-cv-03514-TSC, 2025 WL 2797678, (D.D.C. Sept. 30, 2025), Dkt. # 1 (discontinuing  
16 TRIO grants based on same priorities); Complaint ¶¶ 92–95, *California v. U.S. Dep’t of Educ.*,  
17 No. 4:26-cv-05549-HSG (N.D. Cal. June 9, 2026), Dkt. # 1. The June Directive continues to  
18 apply the same new, unpublished priorities announced in the February Directive, “merit,  
19 fairness, and excellence in education,” as a basis for funding decisions. It also changed the  
20 Department’s approach to GEPA equity measures, from requiring and approving them as part of  
21 the application review process, to now, using those same measures as a basis for ending funding.  
22 As a consequence of the June Directive, the Protected Grants were identified as failing to meet  
23 these new priorities (see Fall 2025 reconsideration denials) and now face termination on the  
24 same or similar basis, starting on July 31, 2026. Therefore, the June Directive also constitutes  
25 final agency action subject to review under the APA.  
26

1           106. The *Washington* Plan is definite and certain enough to be a final agency action as  
2 well. See *Nat'l Lab. Rel. Bd. v. Siren Retail Corp.*, 99 F.4th 1118, 1123 (9th Cir. 2024) (the  
3 requirement for final agency action is applied in a “pragmatic and flexible manner” (quoting  
4 *Saliba v. SEC*, 47 F.4th 961, 967 (9th Cir. 2022)). The *Washington* Plan is Defendants’ plan to  
5 target the Protected Grants and terminate “some or all” of these grants under 2 C.F.R.  
6 § 200.340(a)(1) and/or § 200.340(a)(4), for failing to meet the unpublished priorities announced  
7 in the February and June Directives. On June 10, 2026, Defendants publicly announced this plan  
8 to “terminate some or all of the [Protected Grants]” beginning on July 31, 2026, provided Judge  
9 Evanson issues a clarification ruling in their favor by July 30, 2026. *Washington*, Dkt. # 437 at  
10 pp. 1–2. The *Washington* Plan has legal consequences, because, if this Court issues a ruling  
11 favorable to Defendants by July 30, then starting on July 31, 2026, Department staff will begin  
12 to make their individualized termination decisions for each Protected Grant, ultimately  
13 terminating “some or all” of the Protected Grants for failing to meet these new agency priorities.  
14 The *Washington* Plan is definite and certain enough that Defendants can begin executing the  
15 plan the day after the Court’s ruling, came to the *Washington* court to seek permission to carry  
16 it out, and alerted the Ninth Circuit that their appeal of this Court’s summary judgment order  
17 may become moot if permission to terminate is granted. It is therefore challengeable under the  
18 APA.

19 **I. Harmful Impact of the Department’s Directives and the *Washington* Plan on**  
20 **Plaintiff States**

21           107. Defendants’ Directives and the *Washington* Plan will cause Protected Grants to  
22 end. The same harm from losing grants due to discontinuances, established in *Washington*,  
23 No. 2:25-cv-01228-KKE, will occur if the terminations take place. Plaintiff States established  
24 numerous irreparable harms flowing from the permanently enjoined discontinuance decisions,  
25 such as the immediate cessation of mental health services to students in rural and underserved  
26 parts of Plaintiff States, staff layoffs in Grantee programs, a steep decline in graduate student

1 retention in Grant-funded training programs, the termination of ongoing scholarships and  
2 research projects, and the dismantling of the workforce development programs in Plaintiff States  
3 that the grants were intended to promote. *See, e.g., Washington*, Dkt. # 193 at pp. 16–20; *id.*,  
4 Dkt. # 269 at pp. 31–32. These same harms would be caused by the threatened terminations.

5 108. Plaintiff States have also demonstrated the irreparable harm that ending any  
6 Protected Grant within Plaintiff States inflicts on Plaintiff States’ education agencies and mental  
7 health systems, for which money damages are inadequate to ameliorate. *See id.*, Dkt. # 269 at  
8 pp. 31–32.

9 109. Loss of any of the Protected Grants in Plaintiff States will require Plaintiff States  
10 to incur additional Medicaid expenditures for students who previously accessed mental health  
11 services at school. Further, even supposing that state Medicaid programs could step in  
12 immediately to provide care in the event of a termination, which they could not, it would disrupt  
13 the provision of effective therapeutic care for students by changing their providers from known  
14 and familiar ones, in an environment that means students don’t have to leave school to receive  
15 services, funded through the grant programs at issue.

16 110. For example, the Medicaid Director for the Oregon Health Authority has  
17 explained that:

18 While community-based services cost the same as similar school-based services,  
19 taking youth away from schools to receive services has additional impacts that  
20 result in higher levels of cost for the families and the state in transportation, wages  
21 lost, and beyond. Youth who do not receive services in a timely manner may  
22 require higher levels of care, including crisis intervention services, which come  
23 at a higher cost to the state (\$112.87 per 15 minutes) than outpatient services,  
24 require more state resources, and in rural counties may also place a burden on  
25 first responders outside the cost of healthcare services. Delayed initiation of care  
26 often results in need for more intensive services in addition to outpatient care.  
The highest levels of inpatient services may be provided in specialty hospitals or  
facilities and cost Oregon a daily rate of \$972.93 for psychiatric residential  
treatment services, and \$1,630 for secure inpatient residential treatment.

1 111. The lack of accessible services at school resulting from the unlawful termination  
 2 of the Protected Grants would also increase the burden on Plaintiff States to provide an  
 3 appropriate education to students entitled to mental health services.

4 112. For example, the State Superintendent of Education for the Illinois State Board  
 5 of Education (“ISBE”) described the increasing burdens facing his state because of the loss of  
 6 grant funding:

7 In recent years, parents have filed an increasing number of due process hearing  
 8 requests and state special education complaints with ISBE. To address the  
 9 growing complaint volume, ISBE has since 2023 contracted with private  
 10 attorneys to investigate and adjudicate due process complaints. During the 2024–  
 2025 school year, ISBE spent a total of \$417,000 responding to due process  
 hearing requests.

11 As the shortage of school-based mental health providers Illinois already  
 12 experiences is exacerbated by the non-continuation of federal grants to Illinois  
 13 school districts and universities, ISBE anticipates that parents will increasingly  
 request mediation and file state special education and due process complaints in  
 an effort to obtain necessary school-based mental health services for their  
 children.

14 113. In sum, Defendants’ Directives and the *Washington* Plan will cause immediate  
 15 and irreparable harm, not only to Plaintiffs, but also their youth experiencing mental health  
 16 crises, the school-based mental health service provider workforce pipeline, education agencies,  
 17 mental health care system, and partnering institutions of higher education—as the *Washington*  
 18 court already concluded. Without vacating and enjoining these unlawful actions, Plaintiffs will  
 19 suffer immediate and irreparable harm from the loss of critical grants supporting mental health  
 20 services and a brighter, better, and safer future for their youth.

## 21 V. CAUSES OF ACTION

### 22 Count I

### 23 Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

### 24 February Directive

### 25 June Directive

### 26 *Washington* Plan

### Arbitrary and Capricious

1 114. Plaintiffs reallege and incorporate by reference the allegations contained in each  
2 of the preceding paragraphs as if fully set forth herein.

3 115. The APA requires a court to “hold unlawful and set aside agency action, findings,  
4 and conclusions found to be . . . arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C.  
5 § 706(2)(A).

6 116. The Department is an “agency” under the APA, 5 U.S.C. § 551(1), and the  
7 Directives and the *Washington* Plan are final agency actions subject to review under the APA.

8 117. The Directives are arbitrary and capricious because Defendants relied on factors  
9 which Congress has not intended it to consider. *See Motor Vehicle Mfrs. Ass’n of the U.S., Inc.*  
10 *v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). First, pursuant to the GEPA Equity  
11 Directive, Congress required grant applicants to describe in their applications the steps they  
12 would take to ensure equity in their programs. 20 U.S.C. § 1228a; *see also* 34 C.F.R. § 75.210(d).  
13 Yet, pursuant to the Directives and the *Washington* Plan, Defendants will direct Department staff  
14 to review Protected Grants’ GEPA Equity statements to decide whether to end funding. The  
15 Department’s consideration of GEPA Equity statements when deciding to terminate is arbitrary  
16 and capricious. Second, Congress requires that the Department publish priorities before  
17 considering new grant award applications; Congress did not intend for these rules to be applied  
18 retroactively to terminate existing grants. 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d); 34 C.F.R.  
19 § 75.105; 2 C.F.R. § 200.340(a)(4). The Department’s retroactive application of new priorities  
20 is arbitrary and capricious.

21 118. Additionally, the Directives are arbitrary and capricious because Defendants  
22 violated the “[t]he change-in-position doctrine,” which prevents agencies from “mislead[ing]  
23 regulated entities.” *FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 917 (2025). “Under that  
24 doctrine, ‘[a]gencies are free to change their existing policies as long as they provide a reasoned  
25 explanation for the change,’ ‘display awareness that [they are] changing position,’ and ‘consider

26

1 serious reliance interests.” *Id.* (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211,  
2 221–22 (2016)).

3 119. Defendants’ February Directive changed: (1) its interpretation of 2 C.F.R.  
4 § 200.340, as the Department’s prior policy did not allow termination based on a change in  
5 priorities, and the February Directive directed Department staff to terminate grants based on  
6 changed priorities; and (2) its prior policy of giving grantees an opportunity to come into  
7 compliance before taking any remedial actions, *Discretionary Grantmaking* at 37.

8 120. Defendants’ June Directive changed: (1) its interpretation of the continuation  
9 regulation, as the Department’s prior policy required the Department to consider grant  
10 performance based on established priorities, and the June Directive directed Department staff to  
11 discontinue grants based on new priorities and language in the grant application without any  
12 regard to grant performance; (2) its approach of requiring grantees to provide GEPA Equity  
13 statements in their grant applications in order to receive funding, to ending funding based on  
14 these very same statements; and (3) its prior longstanding policy of working with grantees to  
15 resolve any issues and giving grantees an opportunity to come into compliance before taking any  
16 remedial actions, *Discretionary Grantmaking* at 37.

17 121. On information and belief, Defendants’ *Washington* Plan changed: (1) their  
18 interpretation of 2 C.F.R. § 200.340, as the Department’s prior policy did not allow termination  
19 based on a change in priorities, and the *Washington* Plan directed Department staff to terminate  
20 grants based on changed priorities; (2) its prior policy of giving grantees an opportunity to come  
21 into compliance before taking any remedial actions, *Discretionary Grantmaking* at 37; and (3)  
22 its prior policy of affording grants covered by GEPA an administrative hearing and appeal prior  
23 to terminating grants, 34 C.F.R. § 75.903(c); 20 U.S.C. §§ 1234d, 1234g.

24 122. In changing their position, Defendants failed all three requirements of the change-  
25 in-position doctrine. Defendants provided the public with no explanation. The Directives and the  
26 *Washington* Plan were issued in secret. Defendants’ Directives and the *Washington* Plan do not

1 display an awareness that they were changing their position, nor do they consider grantees  
2 serious reliance interests when doing so.

3 123. The February Directive has already caused Department staff to identify certain  
4 grants in Plaintiff States as being inconsistent with Defendants' new priorities because they  
5 supported DEI. Now that the subsequent discontinuances have been ruled unlawful, Defendants  
6 intend to use the same policy to terminate some or all of these Protected Grants, causing Plaintiff  
7 States substantial injury, including immediate and irreparable harm.

8 124. On information and belief, the June Directive has already caused Department  
9 staff to identify certain grantees in Plaintiff States as purportedly discriminatory. Now that the  
10 subsequent reconsideration request denials have been ruled unlawful, Defendants intend to use  
11 the same policy to terminate some or all of these Protected Grants, causing Plaintiff States  
12 substantial injury, including immediate and irreparable harm.

13 125. On information and belief, the *Washington* Plan has already caused Department  
14 staff to notify Protected Grantees that, starting July 31, they intend to unlawfully terminate some  
15 or all of their grants without first affording a GEPA hearing, causing Plaintiff States substantial  
16 injury, including immediate and irreparable harm.

17 126. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
18 judgment on this claim and an order holding unlawful, staying and then vacating Defendants'  
19 Directives and the *Washington* Plan, as applied to the Protected Grants, and preliminarily and  
20 permanently enjoining Defendants from implementing, maintaining, or reinstating the Directives  
21 and the *Washington* Plan, or any materially similar policies, as applied to the Protected Grants.

22 **Count II**  
23 **Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**  
24 ***Washington* Plan**  
25 **Arbitrary and Capricious**

26 127. Plaintiffs reallege and incorporate by reference the allegations contained in each  
of the preceding paragraphs as if fully set forth herein.

1 128. The APA requires a court to “hold unlawful and set aside agency action, findings,  
2 and conclusions found to be . . . arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C.  
3 § 706(2)(A).

4 129. The Department is an “agency” under the APA, 5 U.S.C. § 551(1), and the  
5 *Washington* Plan is a final agency action subject to review under the APA.

6 130. An agency action is arbitrary or capricious where it is not “reasonable and  
7 reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Defendants  
8 have an obligation to “examine[] ‘the relevant data’ and articulate[] ‘a satisfactory explanation’  
9 for [the] decision, ‘including a rational connection between the facts found and the choice  
10 made.’” *U.S. Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

11 131. An agency action is also arbitrary and capricious if the agency has “relied on  
12 factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at  
13 43 (citation modified).

14 132. The *Washington* Plan is arbitrary and capricious because it is without reason.  
15 Defendants continue to persecute Protected Grantees for meeting the very same “diversity”  
16 priorities that were met by other Program grantees that Defendants did not discontinue and that  
17 have remained fully funded.

18 133. The *Washington* Plan is arbitrary and capricious because the Department does not  
19 intend to examine the relevant data or articulate a satisfactory explanation for its action including  
20 a rational connection between the facts found and the choice made. *See U.S. Dep’t of Com.*, 588  
21 U.S. at 773. The relevant data for terminating grants based on non-compliance with program  
22 priorities is whether the grants comply with the original grant priorities established through  
23 required notice-and-comment rulemaking via publication in the Federal Register. *See* 20 U.S.C.  
24 § 1232; 34 C.F.R. § 75.105. Instead, Defendants plan to terminate the Protected Grants based on  
25 their failure to effectuate new, unpublished priorities. Further, Defendants rely on language in  
26 the grant application, rather than the current operation of the grant, to determine whether the

1 grant is inconsistent with these new priorities. And although Defendants informed grantees of  
2 the *Washington* Plan on June 30, 2026, they have yet to provide an explanation to grantees for  
3 why they are planning to terminate grants that have been meeting or exceeding performance  
4 measures, let alone a satisfactory explanation.

5 134. The *Washington* Plan is arbitrary and capricious because Defendants intend to  
6 rely on factors which Congress has not intended it to consider. *Motor Vehicle Mfrs. Ass'n*,  
7 463 U.S. at 43. Pursuant to the GEPA Equity Directive, Congress required grant applicants to  
8 describe in their applications the steps they would take to ensure equity in their programs. Yet,  
9 as part of the *Washington* Plan, Defendants intend to review each Protected Grant's GEPA equity  
10 statement to decide whether to terminate that grant. Further, given Congress requires the  
11 Department to attempt to secure voluntary compliance with federal civil rights law before  
12 terminating grants that are purportedly inconsistent with the Department's interpretation of those  
13 laws, Congress intended for the Department to consider how the grant is currently operating, not  
14 what the grantee said in the initial grant application. The Department's consideration of GEPA  
15 equity statements when deciding to terminate is arbitrary and capricious. Second, Congress  
16 requires that the Department publish priorities before considering new grant award applications;  
17 it did not intend for these priorities to be considered and applied retroactively to terminate  
18 existing grants. 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d); 34 C.F.R. § 75.105; 2 C.F.R.  
19 § 200.340(a)(4). The Department's plan to retroactively apply new priorities is arbitrary and  
20 capricious.

21 135. Defendants' *Washington* Plan has caused and will cause Protected Grantees  
22 immediate and irreparable harm.

23 136. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
24 judgment on this claim and an order holding unlawful, staying and then vacating the *Washington*  
25 Plan, and preliminarily and permanently enjoining Defendants from implementing, maintaining,  
26 or reinstating the *Washington* Plan, or any materially similar policy.

**Count III**  
**Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**  
**February Directive**  
***Washington Plan***  
**Contrary to Law - 2 C.F.R. § 200.340(a)(4) (2024)**

137. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as if fully set forth herein.

138. The APA requires a court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law.” 5 U.S.C. § 706(2)(A).

139. The Department is an “agency” under the APA, 5 U.S.C. § 551(1), and the February Directive and the *Washington Plan* are final agency actions subject to review under the APA.

140. When a federal agency has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265, 268 (1954). It is contrary to law for an agency to disregard its own regulations and policies. *See Nat’l Ass’n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003); *Wallace v. Christensen*, 802 F.2d 1539, 1552 n.8 (9th Cir. 1986) (an agency is “bound by its own regulations so long as they remain in force”); *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (“Pursuant to the *Accardi* doctrine, an administrative agency is required to adhere to its own internal operating procedures.”); *Lopez v. Fed. Aviation Admin.*, 318 F.3d 242, 246 (D.C. Cir. 2003).

141. Defendants’ February Directive and the *Washington Plan* are contrary to law because they violate Defendants’ termination regulation.

142. Defendants rely on 2 C.F.R. § 200.340(a)(4), which only authorizes termination (1) “pursuant to the terms and conditions of the federal award,” only (2) “if an award no longer effectuates the program goals or agency priorities,” and only (3) “to the extent authorized by law.” 2 C.F.R. § 200.340(a)(4) (2024).

1 143. Defendants' February Directive and the *Washington* Plan fail all three prongs.  
2 First, the grant terms and conditions do not allow for this type of termination, and so by directing  
3 Department staff to terminate grants irrespective of these terms and conditions without also  
4 directing Department staff to review said terms and conditions to first determine if this  
5 termination provision was included in the grant terms and conditions, Defendants violated  
6 Section 200.340(a)(4). Second, both agency actions violate the termination regulation by  
7 terminating grants for failing to meet new priorities, when the regulation only permits  
8 termination for failure to effectuate agency priorities that were in place at the time grantees  
9 crafted their grant applications and accepted their grant awards. Third, Defendants cannot use  
10 Section 200.340(a)(4) to override constitutional and statutory requirements.

11 144. Defendants' February Directive and the *Washington* Plan have caused and is  
12 causing substantial injury, including immediate and irreparable harm.

13 145. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
14 judgment on this claim and an order holding unlawful, staying and then vacating the February  
15 Directive, as applied to the Protected Grants, and the *Washington* Plan, and preliminarily and  
16 permanently enjoining Defendants from implementing, maintaining, or reinstating the February  
17 Directive, as applied to the Protected Grants, and the *Washington* Plan, or any materially similar  
18 policy.

19 **Count IV**  
20 **Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (D)**  
21 **February Directive**  
22 **June Directive**  
23 ***Washington* Plan**  
24 **Notice and Comment**

25 146. Plaintiffs reallege and incorporate by reference the allegations contained in each  
26 of the preceding paragraphs as if fully set forth herein.

1 147. The APA requires that a reviewing court “hold unlawful and set aside agency  
2 action, findings, and conclusions found to be . . . not in accordance with law” or “without  
3 observance of procedure required by law.” 5 U.S.C. §§ 706(2)(A), (D).

4 148. The Department is an “agency” under the APA, 5 U.S.C. § 551(1), and the  
5 Directives and the *Washington* Plan are final agency actions subject to review under the APA.

6 149. The APA requires agencies to follow certain procedures when it decides to issue  
7 a rule, including: publishing notice of the proposed rule-making in the Federal Register, 5 U.S.C.  
8 § 553(b); and providing a period for interested persons to comment on the proposed rule, which  
9 comments will be considered by the agency prior to adopting the rule, *id.* at § 553(c).

10 150. “In enacting the APA, Congress made a judgment that notions of fairness and  
11 informed administrative decision-making require that agency decisions be made only after  
12 affording interested persons notice and an opportunity to comment.” *Chrysler Corp. v. Brown*,  
13 441 U.S. 281, 316 (1979); *see also Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th  
14 Cir.1992) (“[T]he notice and comment requirements . . . are designed to ensure public  
15 participation in rulemaking.”). “Ordinarily when a regulation is not promulgated in compliance  
16 with the APA, the regulation is invalid.” *Idaho Farm Bureau Fed. v. Babbitt*, 58 F.3d 1392, 1405  
17 (9th Cir. 1995).

18 151. Under GEPA, Defendants are required to follow the APA’s notice-and-comment  
19 rulemaking procedure when changing the requirements for grants. *See* 20 U.S.C. §§ 1221e-4,  
20 1232(a)(2), (d).

21 152. Defendants cannot terminate or discontinue Plaintiffs’ grants based on changed  
22 priorities, but even if they could, they may not do so without following the proper procedures.

23 153. Without having proceeded through notice-and-comment procedures, Defendants’  
24 Directives and the *Washington* Plan are procedurally invalid under the APA, because they use  
25 new, unpublished priorities to end grant funding.  
26

1 154. Defendants' Directives and the *Washington* Plan have caused and are causing  
2 substantial injury, including immediate and irreparable harm.

3 155. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
4 judgment on this claim and an order holding unlawful, staying and then vacating Defendants'  
5 Directives and the *Washington* Plan, as applied to the Protected Grants, and preliminarily and  
6 permanently enjoining Defendants from implementing, maintaining, or reinstating the Directives  
7 and the *Washington* Plan, or any materially similar policies, as applied to the Protected Grants.

8 **Count V**  
9 **Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A),(D)**  
10 **February Directive**  
11 ***Washington* Plan**  
12 **Violations of GEPA Procedural Protections**

13 156. Plaintiffs reallege and incorporate by reference the allegations contained in each  
14 of the preceding paragraphs as if fully set forth herein.

15 157. The APA requires that a reviewing court "hold unlawful and set aside agency  
16 action, findings, and conclusions found to be . . . not in accordance with law" or "without  
17 observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

18 158. The Department is an "agency" under the APA, 5 U.S.C. § 551(1), and the  
19 February Directive and the *Washington* Plan are final agency actions subject to review under the  
20 APA.

21 159. The February Directive and the *Washington* Plan are governed by the statutes and  
22 regulations providing procedural protections to grant recipients of certain financial assistance  
23 funds administered by Defendants. *See, e.g.*, 20 U.S.C. §§ 1234(a)(2), 1234i(1), (2), 1234d, and  
24 1234g; 34 C.F.R. § 75.903. The Protected Grants are under an "applicable program" and qualify  
25 for these procedural protections, which afford notice, a hearing, and judicial review *before* the  
26 Department may withhold payments. *Id.* § 1234d(b) ("Before withholding payments . . ."),  
§ 1234g(a), (b) (staying administrative action until completion of judicial review by the Court

1 of Appeals); 34 C.F.R. § 75.903(c) (termination may only become effective after relevant  
2 administrative appeals have concluded).

3 160. On information and belief, instead of complying with these procedural  
4 protections, Defendants plan to terminate grants, effective immediately, without an  
5 administrative hearing or judicial review. The February Directive and the *Washington* Plan make  
6 no mention of these procedural protections, let alone direct Department staff to comply with  
7 them. Defendants have also erroneously contended GEPA procedural protections do not apply  
8 when the Department terminates a grant. *See, e.g., St. Louis*, 2025 WL 2256478, at \*1–2; *St.*  
9 *Thomas*, 2025 WL 2256477, at \*1–2; *Cleveland*, 2025 WL 4740230, at \*7. Defendants have  
10 informed Protected Grantees that should Defendants terminate the Protected Grants, grantees  
11 can only contest these terminations in the Court of Federal Claims.

12 161. Defendants’ February Directive and the *Washington* Plan have caused and are  
13 causing substantial injury, including immediate and irreparable harm.

14 162. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
15 judgment on this claim and an order holding unlawful, staying and then vacating Defendants’  
16 February Directive and the *Washington* Plan, as applied to the Protected Grants, and  
17 preliminarily and permanently enjoining Defendants from implementing, maintaining, or  
18 reinstating the February Directive and the *Washington* Plan, or any materially similar policies,  
19 as applied to the Protected Grants.

20 **Count VI**  
21 **Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A),(D)**  
22 **February Directive**  
23 **June Directive**  
24 ***Washington* Plan**  
25 **Procedural Violations for Alleged Civil Rights Violations**

26 163. Plaintiffs reallege and incorporate by reference the allegations contained in each  
of the preceding paragraphs as if fully set forth herein.

1 164. The APA requires that a reviewing court “hold unlawful and set aside agency  
2 action, findings, and conclusions found to be . . . not in accordance with law” or “without  
3 observance of procedure required by law.” 5 U.S.C. §§ 706(2)(A), (D). The Department is an  
4 “agency” under the APA, 5 U.S.C. § 551(1), and the Directives and the *Washington* Plan are  
5 final agency actions subject to review under the APA.

6 165. The Directives and the *Washington* Plan are governed by the statutes and  
7 regulations governing civil rights protections in federally assisted programs (*see, e.g.*, 42 U.S.C.  
8 § 2000d-1; 20 U.S.C. § 1682; 34 C.F.R. § 100.1 et seq.).

9 166. Pursuant to the Directives and the *Washington* Plan, Department staff will  
10 terminate Protected Grants in part because their projects allegedly violate the terms and  
11 conditions of their award under 2 C.F.R. § 200.340(a)(1) because they allegedly “violate the  
12 letter or purpose of Federal civil rights law”—relying on a term that was taken from the June  
13 Directive and added to the Protected Grants’ grant award notices in January 2026.

14 167. 34 C.F.R. § 75.500 outlines the requirements for grantees to comply with federal  
15 civil rights laws and specifically cites Title VI and Title IX.

16 168. Title VI prohibits discrimination on the basis of race, color, or national origin in  
17 any program receiving federal financial assistance. *See* 42 U.S.C. § 2000d. Further, Title VI  
18 authorizes and directs “[e]ach Federal department and agency which is empowered to extend  
19 Federal financial assistance to any program or activity, by way of grant . . . to effectuate the  
20 provisions of section 2000d of this title with respect to such program or activity by issuing rules,  
21 regulations, or orders of general applicability which shall be consistent with achievement of the  
22 objectives of the statute authorizing the financial assistance in connection with which the action  
23 is taken.” 42 U.S.C. § 2000d-1.

24 169. In addition to requiring compliance by programs receiving federal funding, Title  
25 VI requires an agency administering federal funds to follow specific steps to enforce compliance.

26

1 170. Specifically, Title VI provides that no action refusing to grant federal financial  
2 assistance “shall be taken until the department or agency concerned has advised the appropriate  
3 person or persons of the failure to comply with the requirement and has determined that  
4 compliance cannot be secured by voluntary means.” *Id.*

5 171. If an agency cannot secure voluntary compliance with Title VI, it may terminate  
6 funding. But refusing to provide funding requires “an express finding on the record, after  
7 opportunity for hearing, of a failure to comply with such requirement.” *Id.*

8 172. Once the agency has terminated financial assistance, the head of the agency “shall  
9 file with the committees of the House and Senate having legislative jurisdiction over the program  
10 or activity involved a full written report of the circumstances and the grounds for such action.”  
11 Any department action terminating financial assistance does not “become effective until thirty  
12 days have elapsed after the filing of such report.” *Id.* Agency actions under Title VI are subject  
13 to judicial review. *Id.* § 2000d-2.

14 173. Title IX prohibits discrimination “on the basis of sex.” 20 U.S.C. § 1681. Title  
15 IX’s procedural requirements and enforcement mechanisms mirror those of Title VI and also  
16 require an agency to first seek voluntary compliance before terminating funding, and subject  
17 agency actions under Title IX to judicial review. *See* 20 U.S.C. §§ 1682, 1683.

18 174. The Department’s regulations outline a detailed process for Title VI compliance.  
19 34 C.F.R. Part 100 “effectuate[s] the provisions of title VI of the Civil Rights Act of 1964.”  
20 34 C.F.R. § 100.1.

21 175. 34 C.F.R. Part 100 “applies to any program to which Federal financial assistance  
22 is authorized to be extended to a recipient under a law administered by the Department.

23 176. 34 C.F.R. § 100.6 provides that “the responsible Department official shall to the  
24 fullest extent practicable seek the cooperation of recipients in obtaining compliance with this  
25 part and shall provide assistance and guidance to recipients to help them comply voluntarily with  
26 this part.”

1 177. 34 C.F.R. § 100.8 provides that “[i]f there appears to be a failure or threatened  
2 failure to comply with this regulation, and if the noncompliance or threatened noncompliance  
3 cannot be corrected by informal means, compliance with this part may be effected by the  
4 suspension or termination of or refusal to grant or to continue Federal financial assistance or by  
5 any other means authorized by law.”

6 178. 34 C.F.R. § 100.8(c) provides that “[n]o order suspending, terminating or refusing  
7 to grant or continue Federal financial assistance shall become effective until (1) the responsible  
8 Department official has advised the applicant or recipient of his failure to comply and has  
9 determined that compliance cannot be secured by voluntary means,” (2) “there has been an  
10 express finding on the record, after opportunity for hearing, of a failure by the applicant or  
11 recipient to comply with a requirement imposed by or pursuant to this part,” and (3) “the  
12 expiration of 30 days after the Secretary has filed with the committee of the House and the  
13 committee of the Senate having legislative jurisdiction over the program involved, a full written  
14 report of the circumstances and the grounds for such action.”

15 179. 34 C.F.R. § 106.81 applies the Title VI procedural regulations at 34 C.F.R. §§  
16 100.6-.11 and 34 C.F.R. part 101 to the regulations implementing Title IX.

17 180. The Directives and the *Washington* Plan violate these procedural protections.  
18 They direct Department staff to end funding for the Protected Grants for allegedly being  
19 inconsistent with Defendants’ view of federal civil rights requirements without informing  
20 grantees about any failure or threatened failure to comply with Title VI or Title IX, without  
21 seeking voluntary compliance, without an opportunity for a hearing, and accordingly, without  
22 an express finding on the record that any of the grantees failed to comply with Title VI or Title  
23 IX, and without a full written report of the circumstances and the grounds for discontinuing or  
24 terminating the grants with the Senate Committees on Health, Education, Labor, and Pensions  
25 or the House Committee on Education and the Workforce. On information and belief,  
26

1 Defendants do not plan to comply with these procedural protections under Title VI or Title IX  
2 before ending the Protected Grants—consistent with their actions in *COE* and *NYCPS*.

3 181. Consequently, Defendants act contrary to law and without observance of  
4 procedure.

5 182. Defendants’ Directives and the *Washington* Plan have caused and are causing  
6 substantial injury, including immediate and irreparable harm.

7 183. Pursuant to 5 U.S.C. §§ 705, 706 and 28 U.S.C. § 2201, Plaintiffs are entitled to  
8 judgment on this claim and an order holding unlawful, staying and then vacating Defendants’  
9 Directives and the *Washington* Plan, as applied to the Protected Grants, and preliminarily and  
10 permanently enjoining Defendants from implementing, maintaining, or reinstating the Directives  
11 and the *Washington* Plan, or any materially similar policies, as applied to the Protected Grants.

12 **Count VII**  
13 **February Directive**  
14 **June Directive**  
15 **Washington Plan**  
16 **Substantive Violation of the Spending Clause**

17 184. Plaintiffs reallege and incorporate by reference the allegations contained in each  
18 of the preceding paragraphs as if fully set forth herein.

19 185. Federal courts possess the power in equity to grant injunctive relief “with respect  
20 to violations of federal law by federal officials.” *Armstrong v. Exceptional Child Ctr., Inc.*,  
21 575 U.S. 320, 326–27 (2015).

22 186. The Spending Clause of the U.S. Constitution, Article I, Section 8, Clause 1,  
23 provides that Congress—not the Executive—“shall have Power To lay and collect Taxes, Duties,  
24 Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare  
25 of the United States.”

26 187. The Spending Clause requires States to have fair notice of the conditions that  
apply to the disbursement of funds. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S.  
1, 17–18, 25 (1981); *Landor v. La. Dep’t of Corrs. and Pub. Safety*, 2026 WL 1791277, at \*6

1 (U.S. June 23, 2026) (conditions may “apply only to those who have knowingly and voluntarily  
2 agreed to them”). Agencies must set out funding conditions “unambiguously.” *Arlington Cent.*  
3 *Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006); *City of Los Angeles v. Barr*, 929  
4 F.3d 1163, 1175 & n.6 (9th Cir. 2019) (applying Spending Clause constraints to “middleman  
5 agencies” charged with administering funds). This requirement flows from the Spending Clause  
6 principle that States must “voluntarily and knowingly” accept conditions attached to federal  
7 spending. *Arlington Cent. Sch. Dist. Bd. of Educ.*, 548 U.S. at 296 (quoting *Pennhurst*, 451 U.S.  
8 at 17). States “cannot knowingly accept conditions of which they are ‘unaware’ or which they  
9 are ‘unable to ascertain.’” *Arlington Cent. Sch. Dist. Bd. of Educ.*, 548 U.S. at 296 (quoting  
10 *Pennhurst*, 451 U.S. at 17). The requirement of unambiguous conditions “enable[s] the States to  
11 exercise their choice knowingly, cognizant of the consequences of their participation.”  
12 *Pennhurst*, 451 U.S. at 17. Defendants’ Directives and the *Washington Plan* impose new  
13 conditions that fail these requirements in three ways.

14 188. *First*, the new priorities announced in the February and June Directives of “merit,  
15 fairness, and excellence in education” and to be imposed by the *Washington Plan* are  
16 impermissibly ambiguous. *See id.* These terms are so broad they are rife with vagueness and  
17 ambiguity. Because Defendants have yet to publish or define these new priorities, giving the  
18 opportunity to the public to comment and receive answers from Defendants, it is impossible to  
19 discern their meaning. Nor have Defendants provided any clarifying guidance defining more  
20 precisely what is meant by these terms. Accordingly, the Directives and the *Washington Plan* are  
21 “fatally ambiguous because [they] fail[] to clarify what conduct is proscribed.” *See San*  
22 *Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 746 (N.D. Cal. 2025)  
23 (quotation omitted).

24 189. *Second*, Defendants’ Directives and the *Washington Plan* retroactively impose  
25 their new priorities. To give grantees sufficient notice of the applicable conditions for these  
26 awards, the Department had published priorities, requirements, and definitions in the Federal

1 Register before grantees competed for and accepted their grant awards. *See, e.g.*, 87 Fed. Reg.  
2 47159, 47164–65 (Aug. 2, 2022). The new priorities announced in the February and June  
3 Directives and imposed by the *Washington* Plan are retroactive conditions which the Department  
4 determined may be applied retroactively to discontinue existing grants.

5 190. *Third*, to the extent that the Department now seeks to eliminate equity measures  
6 through its Directives and the *Washington* Plan, this anti-equity condition is impermissibly  
7 retroactive and unrelated to purpose of the Programs, the GEPA Equity Directive, and the final  
8 rulemaking priorities governing the Programs. *See South Dakota v. Dole*, 483 U.S. 203, 207, 209  
9 (1987) (“[C]onditions on federal grants” must be “reasonably calculated to address th[e]  
10 particular . . . purpose . . . for which the funds are expended.”).

11 191. Defendants’ Directives and the *Washington* Plan have caused and are causing  
12 substantial injury, including immediate and irreparable harm.

13 192. For the foregoing reasons, Plaintiffs are entitled to a preliminary and permanent  
14 injunction barring Defendants from implementing, maintaining, or reinstating the Directives and  
15 the *Washington* Plan, or any materially similar policies, as applied to the Protected Grants, and  
16 a declaration pursuant to 28 U.S.C. § 2201, declaring unconstitutional the Directives and the  
17 *Washington* Plan and any action taken to enforce or implement them.

18 **Count VIII**  
19 **Equitable Ultra Vires**  
20 **Conduct Outside the Scope of Statutory Authority Conferred on the Executive**

21 193. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as  
22 if set forth herein.

23 194. Federal courts possess the power in equity to “grant injunctive relief . . . with  
24 respect to violations of federal law by federal officials.” *Armstrong*, 575 U.S. at 327. Indeed, the  
25 Supreme Court has repeatedly allowed equitable relief against federal officials who act “beyond  
26 th[e] limitations” imposed by federal statute. *Larson v. Domestic & Foreign Com. Corp.*, 337  
U.S. 682, 689 (1949).

1 195. The Department, through its officials, may exercise only the authority conferred  
2 by statute and regulations.

3 196. Defendants do not have authority to terminate Plaintiffs' grants based on a change  
4 in priorities after grants were issued in accordance with the GEPA Equity Directive and final  
5 grant program priorities following statutorily required notice and comment process. Defendants'  
6 Directives and the *Washington* Plan are contrary to law and outside of Defendants' authority.

7 197. The Directives and the *Washington* Plan place new, retroactive, ambiguous, and  
8 unrelated conditions on the grants, and the Defendants encroached upon Congress's Spending  
9 Clause authority, and thereby acted ultra vires.

10 198. Defendants' Directives and the *Washington* Plan have caused and are causing  
11 substantial injury, including immediate and irreparable harm.

12 199. Pursuant to 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that  
13 Defendants' Directives and the *Washington* Plan are ultra vires and therefore unlawful.

14 200. Plaintiffs are also entitled to a preliminary and permanent injunction barring  
15 Defendants from implementing, maintaining, or reinstating the Directives or the *Washington*  
16 Plan, or any materially similar policies, as applied to the Protected Grants.

## 17 VI. PRAYER FOR RELIEF

18 WHEREFORE, the Plaintiffs pray that the Court:

19 a. Set a hearing on July 24, 2026, to determine, in conjunction with  
20 Defendants' motion for clarification in *Washington v. U.S. Department of Education*,  
21 No. 2:25-cv-01228-KKE (W.D. Wash.), whether this Court should enter a preliminary injunction  
22 or a temporary restraining order;

23 b. Pursuant to 5 U.S.C. § 705, stay the Directives and the *Washington* Plan as  
24 applied to the Protected Grants;

25 c. Pursuant to 5 U.S.C. § 706(2), hold unlawful and vacate the Directives and the  
26 *Washington* Plan as applied to the Protected Grants;

1 d. Temporarily restrain or issue preliminary injunctive relief and permanent  
2 injunctive relief barring Defendants from implementing or enforcing the Directives and the  
3 *Washington* Plan as applied to the Protected Grants, or any materially similar policies, pending  
4 further orders from this Court, including enjoining Defendants from terminating or withholding  
5 federal financial assistance as applied to the Protected Grants without satisfying the requirements  
6 under 20 U.S.C. § 1232i, 20 U.S.C. § 1234d, 42 U.S.C. § 2000d-1, 20 U.S.C. § 1682 and their  
7 implementing regulations;

8 e. Pursuant to 28 U.S.C. § 2201, issue a judicial declaration that 2 C.F.R. § 200.340  
9 (2024) does not independently permit or authorize termination of awarded grants based on  
10 agency priorities identified or promulgated after the time of the Federal award;

11 f. Pursuant to 28 U.S.C. § 2201, issue a judicial declaration that terminations under  
12 2 C.F.R. § 200.340 (2024) must comply with 20 U.S.C. § 1234d procedural requirements;

13 g. Pursuant to 28 U.S.C. § 2201, issue a judicial declaration that 2 C.F.R. § 200.340  
14 (2024) does not independently permit or authorize termination of awarded grants based on an  
15 alleged inconsistency with Title VI or Title IX without complying with federal civil rights  
16 procedural requirements;

17 h. Pursuant to 28 U.S.C. § 2201, issue a judicial declaration that Defendants'  
18 Directives and the *Washington* Plan as applied to the Protected Grants and actions to effectuate  
19 the Directives and the *Washington* Plan are unlawful because they violate the APA;

20 i. Pursuant to 28 U.S.C. § 2201, issue a judicial declaration that Defendants'  
21 Directives and the *Washington* Plan as applied to the Protected Grants, and actions to effectuate  
22 the Directives and the *Washington* Plan, are unlawful because they violate the Spending Clause;

23 j. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys'  
24 fees, pursuant to 28 U.S.C. § 2412; and

25 k. Award such other relief as this Court may deem just and proper.  
26

1 DATED this 10th day of July 2026.

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

NO. 2:26-cv-02409

PLAINTIFFS' EMERGENCY MOTION  
FOR EXPEDITED PRELIMINARY  
INJUNCTION OR, IN THE  
ALTERNATIVE, TEMPORARY  
RESTRAINING ORDER

NOTE ON MOTION CALENDAR:  
JULY 24, 2026

ORAL ARGUMENT REQUESTED

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## I. INTRODUCTION

For the past fourteen months, Defendants have tried to unlawfully end over 100 grants providing critical mental health services to public schoolchildren within Plaintiff States—all because Defendants believe these grants support diversity, equity, and inclusion (DEI).<sup>1</sup> After months of protracted litigation, this Court entered a permanent injunction protecting the grants in *Washington v. U.S. Department of Education*, No. 2:25-cv-01228-KKE (W.D. Wash.) (*Washington*). To circumvent this court order, Defendants now seek to take the same illegal actions through a different procedural mechanism, claiming the injunction only prohibits “discontinuing” grants, not “terminating” them. Defendants filed a motion for clarification in *Washington*, seeking permission to begin terminating “some or all” of the grants on July 31, 2026. Plaintiffs oppose their motion, but because termination would cause the same irreparable harm that necessitated the *Washington* injunction, and this harm is imminent, Plaintiffs bring this new suit and motion for a preliminary injunction. Plaintiffs respectfully request the Court set this motion for hearing on **July 24, 2026**, alongside the motion for clarification hearing in *Washington*, and resolve both motions contemporaneously.<sup>2</sup>

Defendants have not revealed whether they plan to claim termination authority under the guise of the grants’ alleged failure to effectuate their new priorities under 2 C.F.R. § 200.340(a)(4) (as they have done in other cases) or the grants’ alleged inconsistency with federal civil rights law terms under 2 C.F.R. § 200.340(a)(1) (as their communications indicate they might). Either way, Defendants’ plan (the *Washington* Plan) targets the *Washington* grants for termination using the same unpublished priorities (provided in internal February and June

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<sup>1</sup> Plaintiffs are fifteen states who have grants within their states that were continued pursuant to the permanent injunction in *Washington*.

<sup>2</sup> Counsel for Plaintiffs emailed Brian Kipnis (brian.kipnis@usdoj.gov), Defendants’ counsel in *Washington*, in advance of filing to notify his office of Plaintiffs’ intention to file this motion. See Chung Decl. ¶ 3. If the Court does not grant Plaintiffs’ concurrently filed motion for expedited briefing schedule, Plaintiffs request the Court consider this a motion for temporary restraining order.

1 Directives) that *Washington* enjoins for, among other reasons, failing to meet statutory notice-  
2 and-comment rulemaking requirements. It therefore shares this defect.

3 Plaintiff States are also likely to show the *Washington* Plan and the Directives upon  
4 which it is based are unlawful for three additional and independent reasons.

5 *First*, these actions are contrary to law under the APA. Defendants unlawfully use  
6 2 C.F.R. § 200.340 to justify grant termination based on a failure to effectuate new priorities.  
7 They also violate binding procedures under the General Education Provisions Act (GEPA) that  
8 require the Department to complete certain administrative steps *before* a termination is effective.  
9 *See* 20 U.S.C. §§ 1234d, 1234g(a); 34 C.F.R. § 75.903(c). Defendants also plan to terminate  
10 grants based on alleged non-compliance with federal civil rights laws without first providing  
11 grantees with procedural protections to which they are entitled under those laws, such as  
12 an opportunity to come into compliance or for a hearing. *See* 20 U.S.C. § 1682;  
13 42 U.S.C. § 2000d-1.

14 *Second*, these actions are arbitrary and capricious. They rely on factors that Congress did  
15 not intend Defendants to consider, as the terminations are based on applicant equity statements  
16 that Congress required grantees to include in their applications. Defendants also violate the  
17 change-in-position doctrine, as they provide no explanation for changing their interpretation of  
18 the termination regulation or their longstanding policy of working with grantees before ending  
19 grants, and Defendants did not consider reliance interests.

20 *Third*, Defendants' actions violate the Spending Clause because Defendants'  
21 unpublished priorities are fatally ambiguous, impermissibly retroactive, and wholly unrelated to  
22 the purpose of these grant programs, which were designed to increase school-based mental health  
23 services in high-need schools and encourage graduate students and professionals to pursue and  
24 maintain these careers—not to discourage these services or careers by making funding volatile.

25 The Western District of Washington has already found, multiple times, that allowing  
26 Defendants to unlawfully end the protected grants will cause irreparable harm to Plaintiffs,

1 grantees, mental health professionals, universities, schools, students, and others who rely on the  
 2 grants to provide mental health services to children at high-need public schools within Plaintiff  
 3 States. *See Washington v. U.S. Dep't of Educ.*, 807 F. Supp. 3d 1275, 1289-92 (W.D. Wash.  
 4 2025) (*Washington I*); *Washington v. U.S. Dep't of Educ.*, 813 F. Supp. 3d 1222, 1246-48 (W.D.  
 5 Wash. 2025) (*Washington II*). The Court should preliminarily enjoin Defendants from carrying  
 6 out their Directives and implementing the *Washington* Plan.

## 7 II. STATEMENT OF FACTS

### 8 A. The MHSP and SBMH Grant Programs

9 Following tragic school shootings in Parkland and Uvalde, Congress created and funded  
 10 the Mental Health Professional Demonstration Grant Program (MHSP) and School-Based  
 11 Mental Health Services Grant Program (SBMH) (collectively, “Programs”) to increase the  
 12 number of mental health professionals serving the nation’s public schools and providing school-  
 13 based mental health services to students. *See Washington II*, 813 F. Supp. 3d at 1228-30. Using  
 14 a competitive grant selection process, the Department awarded Program grants to Plaintiff States  
 15 and other grantees that would fund mental health services at Plaintiff States’ public schools. *See*  
 16 *id.* at 1230-31.

17 The Programs are governed by GEPA and the Department’s regulations. *See* 20 U.S.C.  
 18 § 1221(b)(1); 34 C.F.R. § 75.1(a)(1). With limited exceptions, GEPA requires that rules  
 19 affecting the Department’s grant competitions go through notice-and-comment procedures. *See*  
 20 20 U.S.C. §§ 1221e-4, 1232; 5 U.S.C. § 553. Rules subject to notice-and-comment include the  
 21 priorities used to score and select grants. *See, e.g.*, 34 C.F.R. §§ 75.101(a)(4), 75.105(a),  
 22 75.217(a); Chung Decl. Ex. A, at 14-16, 27-28 and Ex. B, at 22-24. Accordingly, prior to each  
 23 year’s MHSP and SBMH grant competitions, the Department publishes the grant priorities for  
 24 that year’s competition, reviews comments, and determines the final priorities used to judge the  
 25 competition. *See Washington II*, 813 F. Supp. 3d at 1230-31; Chung Decl. Ex. A, at 15-16.

1 Under Section 427 of GEPA, Congress directs the Secretary to require each grant  
 2 applicant to describe “the steps such applicant proposes to take to ensure equitable access to, and  
 3 equitable participation in” Program activities. 20 U.S.C. § 1228a(b) (the GEPA Equity  
 4 Directive). Applicants must specifically address “the special needs of students, teachers, and  
 5 other program beneficiaries in order to overcome barriers to equitable participation, including  
 6 barriers based on gender, race, color, national origin, disability, and age.” *Id.* Accordingly,  
 7 Defendants’ application form directed that “**ALL APPLICANTS... MUST INCLUDE**  
 8 **INFORMATION IN THEIR APPLICATIONS TO ADDRESS [GEPA SECTION 427] IN**  
 9 **ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**” *Washington*, Dkt. # 202-1  
 10 at 1056 (2022 SBMH application); *see, e.g., id.*, Dkt. # 202-18 at 1072 (2024 MHSP application).  
 11 And the Department considers this statement when evaluating grant applications. *See* 34 C.F.R.  
 12 § 75.210(d). Plaintiff States and other grantees responded to this instruction by including  
 13 statements about equity in their applications. *See, e.g., id.*, Dkt. # 202-1 at 1057 (SBMH  
 14 example); *id.*, Dkt. # 202-18 at 1072-74 (MHSP example).

15 Between 2022 and 2024, the Department selected and issued Program grant awards with  
 16 five-year performance periods to more than 100 grants within Plaintiff States. *See generally id.*,  
 17 Dkt. # 203-1 at 1-6846 (initial grant awards).

18 **B. Defendants Discontinued Program Grants within Plaintiff States**

19 On February 5, 2025, Defendants issued an internal “Directive on Grant Priorities” that  
 20 addressed “Eliminating Discrimination and Fraud in Department Grant Awards” (the “February  
 21 Directive”). Chung Decl. Ex. C. The February Directive stated, “Illegal DEI policies and  
 22 practices can violate both the letter and purpose of Federal civil rights law and conflict with the  
 23 Department’s policy of prioritizing merit, fairness, and excellence in education.” *Id.* at 2. It  
 24 “direct[ed]” Department staff to “conduct an internal review of ... issued grants ... to ensur[e]  
 25 that Department grants do not fund discriminatory practices—including in the form of DEI—  
 26 that are either contrary to law or to the Department’s policy objectives.” *Id.* It directed

1 Department staff to “terminate[]” any grants that did not survive review, citing its 2 C.F.R.  
2 § 200.340(a)(4) authority. *See id.* at 3.

3 This Directive omitted two statutory frameworks, both of which afford important  
4 procedural protections to Program grantees.

5 *First*, the Department must comply with procedural requirements before terminating  
6 or discontinuing grants for alleged civil rights violations. *See* 20 U.S.C. § 1682;  
7 42 U.S.C. § 2000d-1. For instance, Title VI of the Civil Rights Act of 1964, which prohibits  
8 discrimination in federally funded programs on the basis of race, color, or national origin,  
9 requires the Department to first “advise[] [the grantee] of the failure to comply with” any Title  
10 VI requirement and attempt to secure compliance “by voluntary means.” 42 U.S.C. §§ 2000d,  
11 2000d-1. If the Department fails, it must secure “an express finding on the record, after  
12 opportunity for hearing, of a failure to comply with such requirement” before terminating  
13 funding, and the termination shall not become effective until thirty days after the Department  
14 files a full written report with Congress. 42 U.S.C. § 2000d-1. The Department’s regulations  
15 implement Title VI’s procedures. *See* 34 C.F.R. § 100.8(c). The same procedures apply to  
16 allegations of sex discrimination under Title IX of the Education Amendments of 1972. *See* 20  
17 U.S.C. §§ 1681(a), 1682; 34 C.F.R. § 106.81.

18 *Second*, GEPA imposes notice and procedural requirements when the Department  
19 terminates certain grants, including Program grants. *See* 20 U.S.C. §§ 1234d, 1234i. *Before*  
20 terminating the grant, the Department must notify the grantee of “the factual and legal basis for  
21 the Secretary’s belief that the recipient has failed to comply substantially with a requirement of  
22 law” and provide an opportunity for an administrative hearing. *Id.* § 1234d(b)-(c).

23 Instead of citing these statutory procedural protections or directing Department staff to  
24 follow them, the February Directive only directed staff to follow a regulatory notice provision  
25 and requirements “in the relevant award, agreement, or other instrument.” *See* Chung Decl.  
26 Ex. C, at 3 (citing 2 C.F.R. § 200.341). The February Directive similarly ignored the

1 Department’s longstanding policy of requiring staff to work with grantees to address any issues  
2 before terminating grants. *See, e.g., id.* Ex. A, at 38; *id.* Ex. B, at 47-48.

3 Defendants implemented the February Directive as to MHSP and SBMH grants by  
4 discontinuing grants effective at the end of their current one-year budget period under 34 C.F.R.  
5 § 75.253, rather than terminating the grants under 2 C.F.R. § 200.340(a)(4). On April 29, 2025,  
6 Defendants discontinued nearly 150 grantees within Plaintiff States. *See Washington*,  
7 Dkt. # 203-1 at 6847-7122.

8 Unbeknownst to Plaintiffs,<sup>3</sup> around June 5, 2025, Defendants issued another internal  
9 directive regarding “Non-Competing Continuation Grant Award Review Policy” (the “June  
10 Directive”) that memorialized the procedure Defendants had used to discontinue Program grants.  
11 *See Chung Decl. Ex. D.* The June Directive directed Department staff to review grant awards  
12 based on the same new priorities in the February Directive:

13 The Department will review all grant awards to advance the Administration’s  
14 priorities of ensuring Federal funds do not support projects that: violate the letter  
15 or purpose of Federal civil rights law; conflict with the Department’s policy of  
16 prioritizing merit, fairness, and excellence in education; undermine the well-  
being of the students these programs are intended to help; or constitute an  
inappropriate use of federal funds.

17 Consistent with these requirements, program offices must act on any relevant  
18 information that may indicate that project activities are inconsistent with Federal  
civil rights requirements.

19 *Id.* at 2; *cf. Washington II*, 813 F. Supp. 3d at 1232 (quoting April 2025 discontinuation notices  
20 with same disjunctive list). Rather than termination, the June Directive directed Department staff  
21 to conduct this review when deciding whether to continue a grant. *See Chung Decl. Ex. D*, at 2.  
22 The June Directive expressly instructed staff to consider “the approved grant application  
23 (inclusive of the GEPA 427 statement)” when conducting this review. *Id.* at 3. Like the February  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Defendants omitted the June Directive from *Washington’s* certified administrative record.  
*See Washington*, Dkt. # 208, at 13 n.2 (cataloguing AR).

1 Directive, the June Directive did not acknowledge, let alone direct Department staff to follow,  
2 notice and procedural requirements under federal civil rights law.

3 Following the June Directive, Defendants denied multiple grantees' requests to  
4 reconsider their discontinuation, quoting purportedly DEI-related excerpts from the grantees'  
5 applications as justification. *See Washington*, Dkt. # 237-1 (collection of letters).

6 **C. The *Washington* Lawsuit**

7 On June 30, 2025, sixteen states filed a lawsuit challenging the discontinuation of  
8 Program grants within their states. *See Washington*, Dkt. # 1. In October 2025, the *Washington*  
9 court issued a preliminary injunction that protected the funds of several dozen grantees from  
10 being recompeted. *See Washington I*, 807 F. Supp. 3d at 1294-95. The Court found the states  
11 showed "numerous irreparable harms flowing from the discontinuation decisions" and that the  
12 balance of equities and public interest "easily favor[ed] injunctive relief." *Id.* at 1290, 1292.  
13 Defendants sought an emergency stay of the preliminary injunction in the Ninth Circuit, but the  
14 appellate court denied the stay. *See Washington v. U.S. Dep't of Educ.*, 161 F.4th 1136, 1138-39  
15 (9th Cir. 2025) (*Washington III*).

16 On December 19, 2025, the *Washington* court granted summary judgment and a  
17 permanent injunction to the states. *Washington II*, 813 F. Supp. 3d at 1249. The Court again  
18 found the state "ha[d] submitted un rebutted evidence demonstrating the irreparable harm that  
19 the Department's actions have inflicted on Plaintiff States' education agencies and mental health  
20 systems" and had shown the balance of equities and public interest weighed in favor of an  
21 injunction. *Id.* at 1246, 1248. The *Washington* court vacated Defendants' procedure and  
22 discontinuances, ordered Defendants to make new continuation determinations, and enjoined  
23 Defendants from "[i]mplementing or enforcing through any means the Directive procedure, the  
24 discontinuation notices, or reconsideration denial letters, including recompeting Grant funds,  
25 with respect to any discontinued Grant within Plaintiff States." *Id.* at 1249.

1 Defendants also sought an emergency stay of the permanent injunction, which the Ninth  
 2 Circuit again denied. *See Washington v. U.S. Dep't of Educ.*, 167 F.4th 1241, 1245 (9th Cir.  
 3 2026) (*Washington IV*). On March 2, 2026, Defendants continued most of the grants protected  
 4 by the *Washington* injunction (“Protected Grants”), extending the budget and project period to  
 5 December 31, 2026, but obligating only six months of funds. *Washington*, Dkt. # 365 at 2.  
 6 Defendants stated, “Grantees may receive additional funds following the submission of mid-year  
 7 performance and budget reports, due June 1, 2026.” *Id.*

8 **D. Defendants’ Plan to Target the Grants in *Washington***

9 Defendants conducted mid-year check-ins for the Protected Grants in April and May.  
 10 *Washington*, Dkt. # 445 at 1. However, rather than issue additional funding to cover the second  
 11 half of the 2026 budget period, Defendants now plan to terminate some or all of the Protected  
 12 Grants. *Id.* at 1-2.

13 On June 10, 2026, Defendants announced their *Washington* Plan through a motion in  
 14 *Washington*, seeking clarification that the permanent injunction “does not restrict the  
 15 Department’s separate authority to terminate grants under 2 C.F.R. § 200.340.” *Washington*,  
 16 Dkt. # 437 at 1. Defendants explained that they “intend to move forward with a proposal to  
 17 terminate some or all of the grants affected by the injunction.” *Id.* at 2. Defendants requested a  
 18 ruling by July 30 “so that the Department can commence grant agreement terminations on  
 19 July 31, 2026.” *Id.* at 1. Defendants also sought an abeyance of the pending summary judgment  
 20 appeal “[i]n light of the Department’s planned termination of the grants,” because “[i]f the  
 21 district court confirms that the terminations may proceed, the terminations will... moot this  
 22 appeal.” *Washington v. U.S. Dep't of Educ.*, No. 26-510, DktEntry. # 30.1 at 3 (9th Cir.)  
 23 (*Appeal*). The motion for clarification is set for hearing on July 24, 2026.

24 This is not the first time Defendants have tried to use grant termination to get around a  
 25 court order enjoining them from unlawfully discontinuing grants. In *Council for Opportunity in*  
 26 *Education (COE)*, Defendants discontinued eight grant programs, collectively known as “TRIO”

1 programs, that combat barriers to higher education faced by students from disadvantaged  
 2 backgrounds. *See Council for Opportunity in Educ. v. U.S. Dep't of Educ.*, No. 1:25-cv-03491-  
 3 TSC, 2026 WL 120984, at \*1 (D.D.C. Jan. 16, 2026). Defendants discontinued TRIO grants,  
 4 using the same language as in the MHSP and SBMH notices of non-continuation. *See id.* at \*3.

5 After the *COE* court entered a preliminary injunction and ordered Defendants to make  
 6 new continuation determinations, Defendants *terminated* more than half of the TRIO grants.  
 7 Chung Decl. Ex. E, ¶¶ 1-2, 4. Defendants terminated the grants under 2 C.F.R. § 200.340(a)(4),  
 8 effective immediately, because they “no longer effectuate the program goals or the Department’s  
 9 priorities,” supporting this conclusion with only a DEI-related quote from each grant application.  
 10 Chung Decl. Ex. F, at 6-8; *see generally id.* Ex. G (TRIO termination letters). The *COE* plaintiffs  
 11 have moved to enforce the preliminary injunction. *See id.* Ex. F.

12 Plaintiff States each have grants within their states that were continued pursuant to the  
 13 *Washington* injunction. *See Washington*, Dkt. # 445 at 2-5. Plaintiffs contend the permanent  
 14 injunction protects their grants from termination. *See id.*, Dkt. # 443. However, Plaintiffs  
 15 separately seek a preliminary injunction or a temporary restraining order in this new action to  
 16 protect the grants from termination, should the *Washington* court determine that the permanent  
 17 injunction does not enjoin Defendants from terminating the Protected Grants.

18 **E. Harm to Plaintiff States and their Grantees**

19 If the *Washington* court rules on the pending clarification motion in Defendants’ favor,  
 20 Defendants will terminate “some or all” of the Protected Grants. This loss of funding, expected  
 21 to be effective immediately, will cause even greater rupture than the irreparable injuries that the  
 22 *Washington* court has repeatedly found from Defendants’ discontinuations. *See Washington I*,  
 23 807 F. Supp. 3d. at 1290; *Washington*, Dkt. # 49 at 21-23, 36-40(citing declarations); *and see*  
 24 *Washington II*, 813 F. Supp. 3d at 1246-47; *Washington*, Dkt. # 208 at 16-20, 37-41 (citing  
 25 declarations).

1           These same harms will irreparably injure Plaintiff States and other grantees should  
 2 Defendants terminate the Protected Grants. *See* Gustafson Decl. ¶¶ 7-9; Beaudoin Decl. ¶¶ 5-7.<sup>4</sup>  
 3 For instance, SBMH grantees will be forced to lay off mental health clinicians, which will cause  
 4 grantees to lose the considerable investments of time and resources they have already put into  
 5 recruiting, retaining, and training these clinicians; the trust and relationships these clinicians  
 6 have developed with staff and students; and the benefits from having school-based mental health  
 7 services, such as improved academic performance, student-staff engagement, and emotional and  
 8 social climates in their schools. *See, e.g.*, Gustafson Decl. ¶ 8; *Washington*, Dkt. # 208 at 17.  
 9 MHSP grantees will still be unable to meaningfully recruit graduate students for their programs,  
 10 discouraging candidates from pursuing school-based mental health careers and further shrinking  
 11 the pipeline; they will also still be unable to fund internship opportunities, damaging their  
 12 relationships with school districts and making it more difficult for students to receive mental  
 13 health services. *See, e.g.*, Beaudoin Decl. ¶ 6; *Washington*, Dkt. # 208 at 17.

14           As recognized in *Washington*, Plaintiff States experience these harms not only as  
 15 grantees, but also as sovereigns whose mental healthcare systems will be strained if the Protected  
 16 Grants are no longer funded and students no longer receive mental health services at school. *See*  
 17 *Washington II*, 813 F. Supp. 3d at 1246-47; *Washington*, Dkt. # 208 at 18-19 (citing  
 18 declarations). These harms also include increased costs through each state's share of Medicaid  
 19 funding due to providing mental health services, and the higher costs of crisis care as students'  
 20 mental health needs to go untreated. *Washington*, Dkt. # 208 at 18-19. Plaintiff States' education  
 21 systems will also suffer from the loss of the Protected Grants, including more students with  
 22 health problems, lower grades and graduation rates, and increased absenteeism, suspensions, and

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23  
 24           <sup>4</sup> Plaintiffs submitted over 175 declarations in *Washington*. *See Washington*, Dkt. ## 153, 251, 341, 402  
 25 (declaration indices). To avoid overwhelming the docket, Plaintiffs provide two new declarations that are  
 26 representative of SBMH grantees (Gustafson) and MHSP grantees (Beaudoin), and that, combined with the fulsome  
 record in *Washington*, allow the Court to find the same irreparable harms that arose from Defendants' grant  
 discontinuations, will also arise from Defendants' grant terminations. Should the Court wish, Plaintiffs can provide  
 copies of the *Washington* declarations.

1 expulsions. *Id.* at 19-20. These consequences will interfere with Plaintiff States’ public education  
 2 missions and obligations, leading to increased administrative and cost burdens to Plaintiffs.  
 3 *Id.* at 20; *Washington II*, 813 F. Supp. 3d at 1246-47.

### 4 III. LEGAL STANDARD

5 Preliminary injunctions and temporary restraining orders are warranted where the  
 6 moving party establishes that (1) it is likely to succeed on the merits; (2) irreparable harm is  
 7 likely in the absence of preliminary relief; (3) the balance of equities tips in the movant’s favor;  
 8 and (4) an injunction is in the public interest. Fed. R. Civ. P. 65(c); *Winter v. Nat. Res. Def.*  
 9 *Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1). All of these factors strongly favor  
 10 injunctive relief.

### 11 IV. ARGUMENT

12 Plaintiffs are likely to succeed on the merits of their claims. First, the *Washington* Plan  
 13 and the Directives are subject to review under the APA. Second, they are each contrary to law.  
 14 Third, they are arbitrary and capricious. Fourth, they violate the Spending Clause. Plaintiffs are  
 15 likely to suffer irreparable harm if the *Washington* Plan and the Directives are not enjoined, and  
 16 a preliminary injunction is in the public interest.

#### 17 A. The *Washington* Plan and the Directives are subject to review under the APA

18 The *Washington* Plan and the Directives are all “final agency actions” subject to review  
 19 under the APA, 5 U.S.C. § 704. The APA defines “agency action” broadly, *see* 5 U.S.C.  
 20 § 551(13), and the definition “is meant to cover comprehensively every manner in which an  
 21 agency may exercise its power.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 478 (2001)  
 22 (citation omitted).<sup>5</sup>

23  
 24 <sup>5</sup> This lawsuit seeks prospective relief only, including an injunction to prevent the Department from  
 25 terminating grants pursuant to its unlawful Directives, and is well within the jurisdiction of this Court. *See, e.g.*,  
 26 *Washington III*, 161 F.4th at 1140 (holding that district court had jurisdiction because Plaintiffs seek “purely  
 prospective relief regarding multiyear grant discontinuations”); *Washington v. DHS*, No. 2:25-cv-1401-BJR,  
 2026 WL 1469538 at \*6 (W.D. Wash. May 26, 2026) (holding challenge to “[t]ermination [p]olicy” was properly  
 before district court); *California v. Wright*, No. 3:26-cv-01417-RFL, 2026 WL 1915590, at \*6 (N.D. Cal. July 2,  
 2026) (referencing federal agency’s concession that injunctive relief to prevent re-termination of cooperative

1 Final agency actions (1) “mark the consummation” of agency decision-making, and (2)  
 2 determine “rights or obligations. . . from which legal consequences will flow.” *Bennett v. Spear*,  
 3 520 U.S. 154, 177-78 (1997) (citation modified). Courts consider “factors such as whether the  
 4 action amounts to a definitive statement of the agency’s position, whether it has a direct and  
 5 immediate effect on the day-to-day operations of the subject party, and if immediate  
 6 compliance. . . is expected.” *Prutehi Litekyan: Save Ritidian v. Dep’t of Airforce*, 128 F.4th  
 7 1089, 1108 (9th Cir. 2025) (quotation omitted). Finality is “interpreted in a pragmatic and  
 8 flexible manner[,]” “focus[ing] on the practical and legal effects of the agency action.” *Saliba v.*  
 9 *SEC*, 47 F.4th 961, 967 (9th Cir. 2022) (quotation omitted). The *Washington Plan* and the  
 10 Directives easily meet this test.

11 **1. The February and June Directives are final agency actions**

12 The February and June Directives, which instruct Department personnel to evaluate  
 13 grants against new administration priorities to make termination and discontinuation decisions,  
 14 are obviously subject to review under the APA. *See Nat. Insts. of Health v. Am. Public Health*  
 15 *Ass’n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring) (“Plaintiffs frequently seek vacatur  
 16 of internal agency guidance on arbitrary-and-capricious grounds in district court or directly in  
 17 the D.C. Circuit.” (citing cases)). They set out new procedures that Department personnel are  
 18 directed to follow, so they consummate the agency’s decision making. *See Chung Decl. Exs. C,*  
 19 *D.* And legal consequences flow from them, namely that Program grantees (among others) are  
 20 subject to discontinuation and termination for failure to align their grant projects *ab initio* with  
 21 new administration priorities that sprang into existence long after the 5-year grants were  
 22 awarded. *See id.* Exs. C, D.

23  
 24  
 25 \_\_\_\_\_  
 26 agreements would need to be sought in district court); *Illinois v. Vought*, 820 F. Supp. 3d 727, 731 (N.D. Ill. 2026)  
 (concluding “final internal guidance articulating a basis to implement grant termination” was “reviewable under the  
 APA”); *City of Chicago v. DHS*, 815 F. Supp. 3d 727, 747 (E.D. Ill. 2025) (allowing challenge to “enjoin[] the  
 government from relying on its stated reasons to withhold payment”).

1 For exactly these reasons, the *Washington* court already held the February Directive is  
 2 final agency action subject to APA review. *Washington II*, 813 F. Supp. 3d at 1237.<sup>6</sup> The June  
 3 Directive is no different, as it apparently memorialized the procedure that was vacated and  
 4 enjoined in *Washington*, and Department staff clearly applied it to deny reconsideration requests  
 5 for protected grantees that were subsequently vacated. *See id.* at 1246-49 (enjoining and  
 6 vacating, among other things, denials of reconsideration). Moreover, the Department now  
 7 appears to be applying both the February and June Directives to terminate Protected Grants after  
 8 the Court declared unlawful, enjoined, and vacated the Department’s initial application of the  
 9 same Directives to discontinue the same grants. *See Washington*, Dkt. # 437 at 2 (“Defendants  
 10 intend to move forward with a proposal to terminate some or all of the grants affected by the  
 11 [*Washington*] injunction[.]”); *supra* Section II.D (discussing Defendants’ termination of TRIO  
 12 grants after *COE* court found discontinuances unlawful).

## 13 2. The *Washington* Plan is final agency action

14 The *Washington* Plan, which implements the February and June Directives by applying  
 15 2 C.F.R. § 200.340 to terminate up to all Protected Grants, is also final agency action subject to  
 16 APA review.

17 First, there is no doubt that the *Washington* Plan is consummated. Defendants  
 18 communicated it to the *Washington* court, grantees, and the Ninth Circuit. *Washington*,  
 19 Dkt. # 437 at 1-2 (announcing intent “to terminate some or all of the grants affected by the  
 20 [*Washington*] injunction” and seeking clarification “so that the Department can commence grant  
 21 agreement terminations on July 31, 2026”); Gustafson Decl. Ex. D, at 2 (notifying grantee that  
 22 “[t]he Department. . . is considering terminating this grant” and citing Dkt. # 437); *Appeal*,  
 23 DktEntry # 39.1 (explaining that the Department has a “plan to terminate some or all of the  
 24 grants” protected by injunction). To the extent that the *Washington* Plan is contingent on

25 \_\_\_\_\_  
 26 <sup>6</sup> Since a court has already held the February Directive to be a final agency action in litigation between  
 Plaintiff States and Defendants, any claim to the contrary here would be precluded. *See Montana v. United States*,  
 440 U.S. 147, 153 (1979).

1 obtaining permission from the Court, that is no obstacle to finality. “[A] federal agency’s  
 2 assessment, plan, or decision qualifies as final agency action even if the ultimate impact of that  
 3 action rests on some other occurrence—for instance, a future site-specific application, a decision  
 4 by another administrative agency, or conduct by a regulated party.” *Prutehi Litekyan: Save*  
 5 *Ritidian*, 128 F.4th at 1110; *Gill v. DOJ*, 913 F.3d 1179, 1185 (9th Cir. 2019) (“An agency action  
 6 can be final even if its legal or practical effects are contingent on a future event.”).

7 Second, legal consequences clearly flow from it. On top of the straightforward  
 8 consequence that Protected Grants will be evaluated for termination according to Defendants’  
 9 *new* priorities, instead of the published priorities that governed their grant applications, the  
 10 *Washington* Plan implicates a host of other consequences that Defendants have explicitly  
 11 communicated to grantees. The Department contends that “exclusive jurisdiction for challenges  
 12 to grant terminations is in the United States Court of Federal Claims.” Gustafson Decl. Ex. D,  
 13 at 2. In fact, this consequence is the very first statement in the Department’s letter  
 14 communicating the *Washington* Plan, showing that one primary aim is to divest this Court of  
 15 jurisdiction.

16 The *Washington* Plan also has consequences for grantees’ current obligations. Grantees  
 17 face a choice *now*—whether to voluntarily wind down their projects and “be closed in full  
 18 compliance,” or face potential consequences including not only involuntary termination, but a  
 19 threat “to repay the government for funds already expended” or even possible ineligibility for  
 20 future federal grants. *See id.* Ex. D, at 3 (threatening consequences if grantee does not “elect[]  
 21 to wind down their grant”); 2 C.F.R. § 200.339 (specifying remedies for noncompliance). These  
 22 legal consequences flow directly from the Department’s plan to evaluate each Protected Grant  
 23 for termination based on the new priorities in the Directives.

24 It is no matter that *particular* grant-by-grant termination decisions have yet to be made.  
 25 *See Illinois v. FEMA*, 801 F. Supp. 3d 75, 89 n.6 (D.R.I. 2025) (collecting cases holding that  
 26 policies affecting grant funding can constitute final agency action even where funding decisions

1 still need to be made); *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 600 (2016)  
 2 (“Respondents need not assume such risks while waiting for [the agency] to ‘drop the hammer’  
 3 in order to have their day in court.”). It is customary in APA litigation to challenge policies  
 4 separate from their application to individual grants. *E.g.*, *New York v. Trump*, 171 F.4th 1, 23  
 5 (1st Cir. 2026) (upholding preliminary injunction against “the immediate and categorical  
 6 freezing of federal financial assistance”); *Illinois v. Vought*, 825 F. Supp. 3d 721, 729 (N.D. Ill.  
 7 2026) (“Plaintiffs’ challenge is not to grant-by-grant, award-by-award terminations, but instead  
 8 to agency-wide policies targeting states.”); *cf. supra*, n.5.

9 **B. Plaintiffs are Likely to Show the Plan and the Directives Are Contrary to Law**

10 **1. The *Washington* Plan and the Directives require the Department to review**  
 11 **Protected Grants based on priorities not set through notice and comment**

12 Defendants’ actions are contrary to law because they apply priorities not set through  
 13 notice-and-comment rulemaking as criteria for funding decisions.<sup>7</sup> Under GEPA, a “regulation”  
 14 subject to notice and comment includes “[1] any generally applicable rule, regulation, guideline,  
 15 interpretation, or other requirement that [2] is prescribed by the Secretary or the Department;  
 16 and [3] has legally binding effect in connection with, or affecting, the provision of financial  
 17 assistance under any applicable program.” *Washington IV*, 167 F.4th at 1245 (quoting 20 U.S.C.  
 18 § 1232(a)); *see also* 20 U.S.C. § 1232e-4. The Court has already held that Defendants’  
 19 application of the February Directive’s unpublished criteria to existing grants violated GEPA’s  
 20 rulemaking requirements. *See Washington II*, 813 F. Supp. 3d at 1244-45. Accordingly,  
 21 Defendants are precluded from rearguing this issue. *See Montana*, 440 U.S. at 153. The same  
 22 result applies to the June Directive, which imposes the same unpublished priorities. *See Chung*  
 23 Decl. Ex. D, at 2. To the extent that the *Washington* Plan applies the unpublished criteria from  
 24 the Directives as a basis for termination, it violates GEPA’s rulemaking requirements too.

25 \_\_\_\_\_  
 26 <sup>7</sup> For the same reason, Defendants acted without observance of procedure required by law under 5 U.S.C.  
 § 706(2)(D).

1           Regardless, as with the vacated and enjoined February Directive, the June Directive  
2 prescribed staff to review all grants, including grantees’ GEPA equity statements, against the  
3 Department’s criteria, to identify grants “supporting any discriminatory activities.” Chung Decl.  
4 Ex. D, at 3. This qualifies as a “generally applicable rule.” *See Washington II*, 813 F. Supp. 3d  
5 at 1244 (“[T]he Directive ordered an across-the-board re-review of Department grants, including  
6 those previously awarded, and measured them against new criteria.”).

7           The June Directive instructed the Department to then take “take appropriate action, which  
8 may include non-continuation of the grant.” Chung Decl. Ex. D, at 4. It therefore has a “legally  
9 binding effect,” because it affects funding decisions. *Washington II*, 813 F. Supp. 3d at 1244.  
10 Indeed, although Plaintiffs did not know it at the time, Defendants used the June Directive to  
11 deny requests to reconsider the original grant discontinuations. The *Washington* court  
12 subsequently vacated those actions, but Defendants will now use the June Directive to identify  
13 and terminate Protected Grants should the Court fail to enjoin the *Washington* Plan. Defendants’  
14 Directives thus trigger GEPA rulemaking requirements which have not been followed. *See id.*;  
15 *Washington IV*, 167 F.4th at 1245.

16           Allowing grant terminations based on unpublished criteria would also run counter to  
17 Defendants’ grantmaking framework, which requires Defendants to propose and publish  
18 program goals and funding priorities at the *outset* of each grant competition, and measure grant  
19 performance against those defined goals. 34 C.F.R. §§ 75.105, 75.110, 75.201, 75.253(a)(1); *see*  
20 *also* Chung Decl. Ex. A, at 15-17. The Department accordingly used rulemaking to establish the  
21 original priorities applied to the Protected Grants. *See supra* Section II.A. But the Department  
22 never used rulemaking to promulgate the new priorities underlying the Directives.

23           It was required to do so. *See* 20 U.S.C. § 1232(a); 20 U.S.C. § 1221e-4. And “if a statute  
24 requires rulemaking, the affected agency must comply.” *FDA v. Wages & White Lion Invs.,*  
25 *L.L.C.*, 604 U.S. 542, 565 (2025).

1           **2. Defendants cannot use 2 C.F.R. § 200.340(a)(4) to terminate existing grants**  
 2           **based on new priorities**

3           The *Washington* Plan and the February Directive are also contrary to 2 C.F.R. § 200.340.  
 4 They direct the termination of grant awards based on new agency priorities, but this regulation  
 5 only contemplates termination based on, at most, the already-established agency priorities that  
 6 apply to the grant.

7           Starting with the plain language, Section 200.340 allows the termination of a grant award,  
 8 in some circumstances, if the award “no longer effectuates the program goals or agency  
 9 priorities.” 2 C.F.R. § 200.340(a)(4); *see Cleveland v. City of Los Angeles*, 420 F.3d 981, 989  
 10 (9th Cir. 2005) (courts construe federal regulations by starting with the plain text of the  
 11 regulation according to its terms’ common meaning). Generally, “the” is a “function  
 12 word. . . indicating that a following noun or noun equivalent is definite or has been previously  
 13 specified by context.” *Nielsen v. Preap*, 586 U.S. 392, 408 (2019) (citation modified); *Gale v.*  
 14 *First Franklin Loan Servs.*, 701 F.3d 1240, 1246 (9th Cir. 2012) (explaining “‘the’. . . is a word  
 15 of limitation”). So, “the” program goals or agency priorities means not just any goals or priorities  
 16 that agencies identify whenever they wish, but rather, the specific goals and priorities applicable  
 17 to the grant award. In the context of the Programs here, that means the goals and priorities that  
 18 went through notice-and-comment procedures and that applicants tailored their applications to.  
 19 *See supra* Section IV.A.

20           The language also makes clear that Section 200.340 can only be used to terminate when  
 21 “*an award* no longer effectuates the program goals or agency priorities.” 2 C.F.R.  
 22 § 200.340(a)(4) (emphasis added). “A plain reading of this provision demonstrates that  
 23 termination is proper only when *the award itself* no longer effectuates the program goals or  
 24 agency priorities, and does not extend to *changes* in program goals or agency priorities.”  
 25 *Washington v. U.S. Dep’t of Commerce*, 812 F. Supp. 3d 1169, 1183 (W.D. Wash. 2025)  
 26 (emphasis added). The phrase “no longer” implies “once did.” *See No Longer*, Merriam-

1 Webster.com, <https://www.merriam-webster.com/dictionary/no%20longer> (last visited July 9,  
2 2026); *No Longer*, Cambridge Dictionary, [https://dictionary.cambridge.org/dictionary](https://dictionary.cambridge.org/dictionary/english/no-longer)  
3 [/english/no-longer](https://dictionary.cambridge.org/dictionary/english/no-longer) (last visited July 9, 2026). Applied here, that an award “no longer effectuates”  
4 certain program goals or agency priorities means the award “once did effectuate” those goals  
5 and priorities. This straightforward reading only works if, as here, the goals or priorities are fixed  
6 at the start: a grantee clearly met existing program goals or agency priorities when the agency  
7 issued the award, and the grantee must continue to meet those same goals or priorities to satisfy  
8 the regulation’s language. That reading is impossible, however, if the goals or priorities can be  
9 changed midstream, as Defendants claim: a grantee could never have met program goals that did  
10 not exist when the agency issued the award.

11 The regulation’s rulemaking history confirms this reading. OMB added this language in  
12 2020 “to ensure that Federal awarding agencies prioritize *ongoing support* to Federal awards  
13 that meet program goals.” 85 Fed. Reg. 49506, 49507 (Aug. 13, 2020) (emphasis added). In  
14 response to comments “express[ing] a concern that [the language] will provide Federal agencies  
15 too much leverage to arbitrarily terminate awards without sufficient cause,” OMB firmly stated  
16 that the clause does *not* empower agencies “to terminate grants arbitrarily.” *Id.* at 49509. But  
17 Defendants’ interpretation, evinced in their February Directive and Plan, allows for the exact  
18 arbitrary, unchecked discretion they previously disavowed.

19 Defendants’ interpretation violates other canons of construction. It impermissibly  
20 renders superfluous the other provisions circumscribing when agencies can terminate existing  
21 grants. *See, e.g.*, 2 C.F.R. § 200.340(a)(1)-(3); *Fischer v. United States*, 603 U.S. 480, 498 (2024)  
22 (“Although the Government’s all-encompassing interpretation may be literally permissible, it  
23 defies the most plausible understanding . . . and it renders an unnerving amount of . . . text mere  
24 surplusage.”); *cf. Washington II*, 813 F. Supp. 3d at 1243 (rejecting interpretation of 34 C.F.R.  
25 § 75.253 that “would allow the coherent scheme established in the continuation regulation to be  
26 upended by a vague, undefined ‘best interest’ determination”). This Court should not “permit

1 the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation.”  
 2 *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019). Especially, where, as here, Defendants’ interpretation  
 3 would run afoul of the Spending Clause. *See infra* Section IV.D; *DeBartolo v. Fla. Gulf Coast*  
 4 *Bldg. and Const. Trades Council*, 485 U.S. 568, 588 (1988) (construing statute to avoid an  
 5 interpretation raising grave constitutional concerns).

6 In sum, 2 C.F.R. § 200.340’s language contemplates termination only where an award  
 7 “no longer effectuates” *established* agency priorities. Defendants’ February Directive and their  
 8 *Washington* Plan, requiring termination of grants “deemed inconsistent with” *new* agency  
 9 priorities, are thus contrary to law.

### 10 **3. Defendants unlawfully deprive Protected Grantees of GEPA procedural** 11 **protections**

12 The *Washington* Plan and the February Directive are also contrary to law because  
 13 termination based on agency priorities is only permitted “to the extent authorized by law,”  
 14 2 C.F.R. § 200.340(a)(4), and Defendants have directed staff to terminate grants without first  
 15 complying with GEPA’s procedural requirements.

16 The Programs are authorized under 20 U.S.C. § 7281, which is section 4631 of the  
 17 Elementary and Secondary Education Act of 1965 (ESEA), as amended. *See, e.g.*, 87 Fed. Reg.  
 18 60083, 60084 (Oct. 4, 2022) (program authority for MHSP); 87 Fed. Reg. 60092, 60093 (Oct. 4,  
 19 2022) (SBMH). These Programs are, therefore, afforded GEPA procedural protections. *See* 20  
 20 U.S.C. § 1234i(2). Under GEPA procedures, the Department may “withhold from a recipient, in  
 21 whole or in part, further payments” only *after* notice, an administrative hearing, and, should the  
 22 grantee pursue it, appeal. *See* 20 U.S.C. §§ 1234d(a) and (c), 1234g(a). The Department’s  
 23 regulations implement these procedural requirements. *See* 34 C.F.R. §§ 81.1-.45.

1 Congress, the Department, and courts have interpreted a “withholding” under 20 U.S.C.  
 2 § 1234d to include terminations for GEPA programs.<sup>8</sup> See 20 U.S.C. § 1232i(b) (listing  
 3 terminations as a type of withholding); 34 C.F.R. § 75.903(c) (providing that termination is not  
 4 effective until after a final decision under the GEPA hearing procedure); *Freeman v. Cavazos*,  
 5 923 F.2d 1434, 1440 (11th Cir. 1991) (“20 U.S.C. § 1234d describes the procedure for  
 6 termination of assistance[.]”). However, following the February Directive, Defendants have  
 7 attempted to terminate other ESEA grants under 2 C.F.R. § 200.340(a)(4), effective  
 8 immediately, without complying with GEPA’s procedural requirements. See, e.g., *University of*  
 9 *St. Thomas*, No. 25-09-GT, 2025 WL 2256477, at \*1-3 (ED. O.H.A. July 10, 2025);<sup>9</sup> *In re*  
 10 *St. Louis University*, No. 25-11-GT, 2025 WL 2256478, at \*1-4 (ED. O.H.A. July 10, 2025);<sup>10</sup>  
 11 *In re Cleveland State University*, No. 25-12-GT, 2025 WL 4740230, at \*1-3, \*7-8 (ED. O.H.A.  
 12 May 15, 2026).<sup>11</sup> The Department’s Administrative Law Judges have repeatedly rejected  
 13 Defendants’ contention that these requirements don’t apply, concluding that grant terminations  
 14 are withholdings under GEPA and exercising § 1234d jurisdiction to hear grant termination  
 15 challenges. See *St. Thomas*, 2025 WL 2256477, at \*7-8; *St. Louis*, 2025 WL 2256478, at \*5-7;  
 16 *Cleveland*, 2025 WL 4740230, at \*9-13.

17 Nonetheless, Defendants’ February Directive fails to acknowledge these GEPA  
 18 procedural protections, let alone direct Department staff to follow them. See Chung Decl. Ex. C.  
 19 The *Washington* Plan repeats this error. In their recent notice to grantees, Defendants asserted  
 20 that grant terminations can only be challenged in the Court of Federal Claims. Gustafson Decl.  
 21 Ex. D, at 2. This flies in the face of the ALJ decisions retaining jurisdiction and ordering the  
 22

23 <sup>8</sup> This contrasts with grant discontinuances, which the Department has expressly determined are not  
 24 afforded this relief. 34 C.F.R. § 75.253(i).

25 <sup>9</sup> <https://www.ed.gov/media/document/oha-2025-09-gt-0j-judges-decision-110442.pdf> (last accessed  
 26 July 7, 2026).

<sup>10</sup> <https://www.ed.gov/media/document/oha-2025-11-gt-0j-judges-decision-110441.pdf> (last accessed  
 July 7, 2026).

<sup>11</sup> Based on the procedural history, the decision’s issue date of “May 15, 2025” is a clerical error. Available  
 at <https://www.ed.gov/media/document/oha-docket-no-2025-12-gt-114102.pdf> (last accessed July 7, 2026).

1 Department to continue funding grants pending a final decision. *St. Thomas*, 2025 WL 2256477,  
 2 at \*13; *St. Louis*, 2025 WL 2256478, at \*7; *see also Cleveland*, 2025 WL 4740230, at \*19  
 3 (granting petitioner’s motion for summary judgment and reversing grant termination).

4 Additionally, it is clear, based on Defendants’ briefing and recent practice, that the  
 5 *Washington* Plan violates 20 U.S.C. §§ 1234d and 34 C.F.R. § 75.903(c), by making any grant  
 6 terminations effective immediately. *See Washington*, Dkt. # 437 at 1 (requesting ruling by  
 7 July 30, “so that the Department can commence grant agreement terminations on July 31,  
 8 2026”); *cf. Chung Decl. Ex. G* (TRIO grant terminations effective immediately).

9 **4. The *Washington* Plan and the Directives terminate grants for alleged**  
 10 **discrimination without required procedure**

11 Similarly, although the *Washington* Plan and the Directives are rooted in Defendants’  
 12 apparent belief that DEI activities violate federal civil rights law, they do not acknowledge the  
 13 procedural requirements imposed by these laws, let alone direct Department staff to comply with  
 14 them. *See Chung Decl. Exs. C, D*. This violates Title VI and Title IX, which require agencies to  
 15 first attempt to secure voluntary compliance and provide an opportunity for hearing before  
 16 terminating a grant. *See* 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682. The agency must also report to  
 17 Congress thirty days before the terminations become effective. *See* 42 U.S.C. § 2000d-1; 20  
 18 U.S.C. § 1682. GEPA does not displace the requirements of Title VI and Title IX. *See* 20 U.S.C.  
 19 § 1221(d).

20 Defendants’ recent practices show that Defendants intend to disregard these procedural  
 21 protections, too. In one case, Defendants discontinued magnet school grants due to alleged Title  
 22 IX violations. *See Bd. of Educ. of City Sch. Dist. of City of New York v. U.S. Dep’t of Educ.*,  
 23 No. 1:25-cv-08547-AS, 2026 WL 948205, at \*1-2 (S.D.N.Y. Apr. 8, 2026). Defendants argued  
 24 they did not need to follow Title IX’s procedures because they discontinued the grants for not  
 25 being in the government’s best interest under 34 C.F.R. § 75.253(a)(5). *See id.* at \*6. The court  
 26 rejected this argument, noting that “there would be little point to the formal procedures Congress

1 mandated” if the Department “could simply withdraw funding under the guise of a  
2 ‘discretionary’ § 75.253(a)(5) determination” when it suspects a Title IX violation. *Id.*

3 In *COE*, Defendants terminated already-discontinued grants, claiming they “no longer  
4 effectuate[d] the program goals or the Department’s priorities.” Chung Decl. Ex. F, at 7, Ex. G.  
5 The termination letters, effective immediately, supported this conclusion with only a DEI-related  
6 excerpt from the grant application, showing the termination was motivated by a review for  
7 alleged inconsistency with federal civil rights law under the February and June Directives.  
8 *See id.* Ex. F, at 6-7, Ex. G. However, Defendants took no steps to seek voluntary compliance  
9 before terminating the grants. *See id.* Ex. F, at 15. Defendants cannot rely on the guise of the  
10 termination regulation, 2 C.F.R. § 200.340, to ignore the notice and procedure requirements in  
11 Title VI and Title IX.

12 **C. The *Washington* Plan and the Directives Are Arbitrary and Capricious**

13 Defendants’ actions are arbitrary and capricious because they rely on factors Congress  
14 did not intend them to consider. *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut.*  
15 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Pursuant to the GEPA Equity Directive, Congress  
16 requires grant applicants to describe in their applications how they will ensure equity in their  
17 programs. 20 U.S.C. §1228a(b). Under federal civil rights laws, Congress also intended  
18 Defendants to consider what the grantees are doing, not what grantees said they would do in  
19 their applications. *See* 42 U.S.C. § 2000d-1 (requiring that agency attempt to secure voluntary  
20 compliance); 20 U.S.C. § 1682 (same). Yet, Defendants’ actions require Department staff to  
21 consider the GEPA equity statements as a basis to end Protected Grants, as reflected in the June  
22 Directive. *See* Chung Decl. Ex. D, at 3. Defendants already tried to do this once, *see Washington*,  
23 Dkt. # 237-1 (reconsideration request denials), and now intend to terminate Protected Grants on  
24 this same basis under the *Washington* Plan. *Cf.* Chung Decl. Ex. G (TRIO termination letters).  
25 It is also arbitrary and capricious to terminate Protected Grants based on GEPA equity statements  
26

1 that Defendants themselves instructed the applicants to include, and that Defendants used to  
2 evaluate and select the Protected Grants. *See supra* Section II.A; 34 C.F.R. § 75.210(d).

3 Additionally, the *Washington* Plan and the Directives are arbitrary and capricious  
4 because Defendants violated the “[t]he change-in-position doctrine,” which “requires agencies  
5 to provide a reasoned explanation for the change, display awareness that they are changing  
6 position, and consider serious reliance interests.” *Wages & White Lion Invs.*, 604 U.S. at 544  
7 (citation modified). The actions share two common changes in position. First, they instruct  
8 Department staff to end funding based on new priorities, rather than established priorities, as  
9 was its prior practice. *Cf. Washington II*, 813 F. Supp. 3d at 1237-38. Second, they also changed  
10 Department policy by not offering grantees an opportunity to come into compliance before  
11 ending funding. *See Chung Decl. Ex. A*, at 38. In changing their position, Defendants provided  
12 the public with no explanation and issued the Directives in secret. Additionally, Defendants did  
13 not display an awareness that they were changing their position, nor did they consider grantees  
14 serious reliance interests when doing so.

15 **D. Defendants Retroactively Imposed New, Ambiguous Conditions on Awarded**  
16 **Grants in Violation of the Spending Clause**

17 Federal courts possess the power in equity to grant injunctive relief “with respect to  
18 violations of federal law by federal officials.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575  
19 U.S. 320, 326-27 (2015). Such relief is appropriate because the Directives violate the Spending  
20 Clause. *See U.S. Const.*, art. I, § 8, cl. 1.

21 “Though Congress’s power to legislate under the spending power is broad, it does not  
22 include surprising participating States with post acceptance or ‘retroactive’ conditions.”  
23 *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981). States must have fair notice,  
24 so they may “voluntarily and knowingly” accept conditions attached to federal spending. *See id.*  
25 at 17, 25; *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 583-84 (2012); *City of Los*  
26 *Angeles v. Barr*, 929 F.3d 1163, 1175, n.6 (9th Cir. 2019). States “cannot knowingly accept

1 conditions of which they are ‘unaware’ or which they are ‘unable to ascertain.’” *Arlington Cent.*  
2 *Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst*, 451 U.S. at  
3 17). Thus, “if Congress intends to impose a condition on the grant of federal moneys, it must do  
4 so unambiguously.” *Pennhurst*, 451 U.S. at 17.

5 Defendants’ actions impose new conditions that fail these requirements in three ways.

6 *First*, the new priorities of “merit, fairness, and excellence in education” announced in  
7 the Directives and imposed by the *Washington Plan* are impermissibly ambiguous. *See id.* These  
8 terms are so broad they are rife with vagueness and ambiguity. Nor have Defendants provided  
9 any clarifying guidance defining more precisely what is meant by these terms. Accordingly, the  
10 actions are “fatally ambiguous because [they] fail[] to clarify what conduct is proscribed.” *See*  
11 *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 746 (N.D. Cal. 2025)  
12 (quotation omitted).

13 *Second*, the *Washington Plan* and the Directives retroactively impose their new priorities.  
14 To give grantees sufficient notice of the applicable conditions for these awards, the Department  
15 had published priorities, requirements, and definitions in the Federal Register. *See supra*  
16 Section II.A. The new priorities are retroactive conditions which the Department have directed  
17 staff to apply to terminate existing grants. This retroactive application of Defendants’ new  
18 priorities violates the Spending Clause. *Cf. Barr*, 929 F.3d at 1175-76 (holding new priorities  
19 would not violate Spending Clause because government applied them only prospectively to new  
20 grants); *Dep’t of Comm.*, 812 F. Supp. 3d at 1187 (applying new priorities to terminate grants likely  
21 violated Spending Clause).

22 *Third*, to the extent that the Department now seeks to eliminate equity measures, this  
23 anti-equity condition is impermissibly unrelated to purpose of the Programs, the GEPA Equity  
24 Directive, and the final rulemaking priorities governing the Programs. *See South Dakota v. Dole*,  
25 483 U.S. 203, 207, 209 (1987).

1 **E. Injunctive Relief is Necessary to Avoid Irreparable Harm and is in the Public**  
 2 **Interest**

3 Over the past year, Defendants have not meaningfully disputed the harms that Plaintiff  
 4 States, other Protected Grantees, mental health professionals, graduate students, universities,  
 5 elementary and secondary schools, and students will experience if Defendants end the Protected  
 6 Grants. Indeed, “[s]ince April 2025, the Department’s conduct has ranged from confusing to  
 7 contrary to law in multiple ways, and that conduct has resulted in disruptive harm to the Grantees  
 8 many times over.” *Washington v. U.S. Dep’t of Educ.*, No. 2:25-cv-01228-KKE, 2026 WL  
 9 1429284, at \*5 (W.D. Wash. May 21, 2026), *reconsideration denied*, No. 2:25-cv-01228-KKE,  
 10 2026 WL 1736200 (W.D. Wash. June 16, 2026).

11 Plaintiff States presented ample evidence of irreparable harm from the discontinuation  
 12 of Protected Grants in *Washington*, and these same harms will occur if the *Washington* Plan and  
 13 the Directives are not enjoined and Defendants are allowed to terminate the Protected Grants.  
 14 See Gustafson Decl., ¶¶ 7-9; Beaudoin Decl., ¶¶ 5-7; see generally *supra*, Section II.E. The  
 15 *Washington* court repeatedly recognized these irreparable harms justified injunctive relief. See  
 16 *Washington I*, 807 F. Supp. 3d at 1290; *Washington II*, 813 F. Supp. 3d at 1246-47. The loss of  
 17 the Protected Grants will lead to a loss of mental health providers at Plaintiff States’ public  
 18 schools (including graduate student interns), loss of the investments that grantees have made in  
 19 training those providers, loss of the relationships that those providers have built with school staff  
 20 and students, and loss of mental health services for some of the most vulnerable students within  
 21 Plaintiff States. See *supra* Section II.E. Plaintiff States’ mental health and educational systems  
 22 will also suffer, and Plaintiffs will incur additional costs from the loss of the Protected Grants.  
 23 See *id.*

24 These harms outweigh any potential hardship to Defendants. Further, “the public interest  
 25 is served by requiring agencies to comply with the APA.” *Washington II*, 813 F. Supp. 3d at  
 26 1247. The remaining factors tip heavily in favor of an injunction.

V. CONCLUSION

The Court should preliminarily enjoin the *Washington* Plan and the Directives and prohibit the Department from implementing or enforcing them against the Protected Grants.

DATED this 10th day of July 2026.

I certify that this memorandum contains 8399 words in compliance with Local Civil Rules.

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