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August 18, 2025

The Honorable Linda McMahon
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington DC 20202

RE: **Public Comment on School-Based Mental Health Services Grant Program, 2025-13384, 90 Fed. Reg. 33353 (July 17, 2025); and Public Comment on Mental Health Service Professional Demonstration Grant Program, 2025-13385, 90 Fed. Reg. 33349 (July 17, 2025)**

Dear Secretary McMahon,

The undersigned Attorneys General of Washington, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Nevada, Oregon, and Rhode Island, submit this comment on the priorities proposed by the U.S. Department of Education on July 17, 2025, for School-Based Mental Health Services Grant Program and Mental Health Service Professional Demonstration Grant Program (collectively Programs), under the title, Proposed Priorities, Requirements, and Definitions as required by 20 U.S.C. § 1232 and 34 C.F.R. § 75.105. To the extent the Department proposes these priorities, requirements, and definitions to further implement its decision to discontinue previously awarded, five-year Program grants to "reenvision" and "recompete" Program projects, it violates the Department's regulations, statutes, and the Constitution. *See* Plaintiffs' Motion for Preliminary Injunction, *Washington v. U.S. Department of Education*, Case No. 25-cv-01228 (W.D. Wash. July 8, 2025), attached as Appendix A. Under 34 C.F.R. § 75.253(c), the Department may not give priority to awarding new grants over continued funding for multi-year projects.

Initially, to the extent that additional funds are available that would not compete with already awarded multi-year projects, the Department may lawfully award new grants based on newly published priorities. However, we oppose the Department's proposed program priorities and requirements, which unnecessarily limit priorities to services provided by school psychologists, fail to provide grantees with sufficient notice of grant conditions, and impose requirements that conflict with grantees' existing obligations under federal law.

Unnecessarily Restricting Grants to Programs that Increase School Psychologists

The Department's proposed priorities and program requirements are concerning because they fund only services provided by "school psychologists" – as opposed to including other qualified mental health service providers. *See* 90 Fed. Reg. 33351; 90 Fed. Reg. 33354-55. Congress created these Programs to provide underserved students access to much needed school-based mental health services, because, as the Department recognizes, "the decline of children and youth mental health has become a serious concern for our nation." 90 Fed. Reg. 33354. Yet rather than continuing to award grants that would address the critical shortage of *all* school-based mental health service providers—counselors, social workers, and psychologists—the Department proposes priorities and program requirements that would limit grant funding to Programs that address only the shortage of school psychologists. *See* 90 Fed. Reg. 33351; 90 Fed. Reg. 33354-55. Limiting funding through this unduly narrow restriction will undermine the Program's goal of improving the mental health of school-age youth.

Previously, these Programs funded a broader category of mental health professionals, including school counselors, school social workers, and other mental health professionals licensed to provide mental health services to children and adolescents and with school-based mental health services licensing, certification, or training specifically to work in K–12 schools. *See, e.g.*, 87 Fed. Reg. 60092. This "other" category included mental health professionals licensed under a health care license (as opposed to a school license) that may diagnose and treat mental health conditions.

It is unclear why the Department has now limited these Programs only to school psychologists who in some states cannot diagnose and treat mental health conditions. This limitation defeats the broader purpose of the Programs to provide students with access to adequate mental health services. It also means that many discontinued grantees whose grants supported services by other mental health professionals cannot recompete. The Department provides no rationale for its abrupt change in position and fails to address States and grantees reliance interests.

This limitation could also encourage school psychologists to provide services beyond the scope of their practice, while not providing support for a clear pathway for upgrading their credentials if necessary (i.e. obtaining a health care license in states where that would be required).

Vague Program Requirement Likely Conflicts With Existing Legal Obligations

For both Programs, the Department proposes the following requirement:

> Applicants that receive an award under this program are prohibited from using program funds for promoting or endorsing: (1) gender ideology, (2) political

> activism, (3) racial stereotyping, or (4) hostile environments for students of particular races.

90 Fed. Reg. 33351; 90 Fed. Reg. 33355. This program requirement fails the Spending Clause's prohibition against vague or ambiguous conditions in government financial assistance programs. It could also be at odds with existing legal obligations, including critical civil rights protections, because it can be read to prohibit efforts at inclusion of students from particular racial backgrounds or English Language Learners. Yet applicants will not be considered for the grant if they do not pledge to meet this vague and problematic requirement.

Raises Spending Clause and the First Amendment Concerns

The Department's proposed program requirement also violates the Spending Clause's prohibition against vague or ambiguous conditions in government financial assistance programs. Federal agencies administering congressional funds must provide fair notice of conditions, so States may "voluntarily and knowingly" accept conditions attached to federal spending. *See Pennhurst State Sch. & Hosp. v. Halderman,* 451 U.S. 1, 17, 25 (1981); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 583-84 (2012); *City of Los Angeles v. Barr*, 929 F.3d 1163, 1175, n.6 (9th Cir. 2019) (applying Spending Clause constraints to administering agencies). Vague, ambiguous terms and conditions do not provide sufficient notice. *Pennhurst*, 451 U.S. at 17.

The Department previously complied with these constitutional constraints by defining competitive preference priorities to enable applicants to tailor their applications accordingly. *See, e.g.*, 87 Fed Reg 60083 n.3 (defining "identity-safe environment" to mean "a place where every student feels physically and emotionally safe"). Here, however, the Department does not define terms such as "gender ideology," "political activism," and "racial stereotyping." Because the Department did not define these terms, and they do not have obvious general definitions, potential applicants lack sufficient notice under the Spending Clause. The Department should explicitly define the terms "racial stereotyping" and "hostile environments" using the federal civil rights definitions in established case law or something similar to provide definitions. Also, to remove ambiguity, the Department should replace "of particular races" with the well-established phrase "on the basis of any protected characteristics." Lastly, the non-defined term "political activism" necessarily chills activities protected by the First Amendment.

Raises Civil Rights Concerns

This proposed program requirement raises possible civil rights concerns beyond its lack of clarity. For example, does the Department intend the prohibition against "racial stereotyping" to mean that grantees can no longer seek to recruit therapists with the needed skills and experience to serve their students? If so, some students would no longer receive appropriate services. For example, in districts where a significant number of students are learning English as a second language, an inability to specifically recruit mental health service providers that speak students' primary language would mean that those students would no longer receive services to the same extent as fluent English speakers. The same concern applies to recruiting mental health providers capable of providing services for gender-diverse students. One reading of "promoting or endorsing . . . gender ideology" could exclude recruitment efforts designed to ensure that students receive mental health services that meet their needs.

These examples make clear that the Department's proposed requirement could be interpreted in a way that is contrary to the Programs' purpose of improving the safety and well-being of all students. Specifically, students who are not English-speaking and who are gender diverse could be denied effective mental health services under this proposed requirement.

The requirement also goes against the weight of evidence that patients are better served by providers who reflect their background.[1]

Conflict with Existing Legal Obligations

Because the terms in this requirement are undefined, the requirement's proposed prohibitions run the risk of causing grantees who seek to comply with this vague requirement to violate multiple federal statutes that prohibit discrimination in education programs and activities. For example, Title VI explicitly prohibits schools from "exclud[ing] from participation" any student "on the ground of race, color, or national origin," thereby requiring inclusion. 42 U.S.C. § 2000d. And the Every Student Succeeds Act (ESSA), which establishes the formula for Title I grants, requires as a condition for receiving such funds that educational institutions implement a number of practices to ensure equal access and inclusion of all students. *See, e.g.*, 20 U.S.C. § 6311(b) (requiring inclusion of English Language Learners); *id.* § 6311(c)(2)(B) (requiring measurement of academic indicators for children with disabilities, students from major racial and ethnic groups, and English learners).

The General Education Provisions Act (GEPA) likewise requires applicants to "describe their efforts to overcome barriers presented by gender, race, color, national origin, disability, and age." 20 U.S.C. § 1228a(b). Congress passed this law to ensure that the Department achieved its

[1] *See, e.g.*, Blake, J. J., Graves, S., Newell, M., & Jimerson, S. R. (2016). Diversification of school psychology: Developing an evidence base from current research and practice. *School Psychology Quarterly*, *31*(3), 305; Chang, M. J. (1999). Does racial diversity matter?: The educational impact of a racially diverse undergraduate population. *Journal of College Student Development, 40*(4), 377-95; Gomez, L. E., & Bernet, P. (2019). Diversity improves performance and outcomes. *Journal of the National Medical Association*, *111*(4), 383-92; Grapin, S. L., Bocanegra, J. O., Green, T. D., Lee, E. T., & Jaafar, D. (2016). Increasing diversity in school psychology: Uniting the efforts of institutions, faculty, students, and practitioners. *Contemporary School Psychology*, *20*, 345-55; Proctor, S. L., & Romano, M. (2016). School psychology recruitment research characteristics and implications for increasing racial and ethnic diversity. *School Psychology Quarterly*, *31*(3), 311; Proctor, S. L., Simpson, C. M., Levin, J., & Hackimer, L. (2014). Recruitment of diverse students in school psychology programs: Direction for future research and practice. *Contemporary School Psychology*, *18*, 117-26.

"mission to ensure equal access to education and to promote educational excellence throughout the Nation." *Id.* § 1228a(a). In other words, Congress passed this law to prevent unlawful discrimination. However, complying with GEPA, as applicants must, could run afoul of the program requirement. Because the prohibitions as drafted may also be inconsistent with GEPA, the Department should rescind them or with respect to "racial stereotyping" and "hostile environment" define the terms to be consistent with existing non-discrimination and anti-harassment federal law to protect all students regardless of protected characteristics.

There is nothing discriminatory about ensuring that all students have an opportunity to succeed or to receive mental health services that best serve them and their ability to equally access education; to the contrary, federally funded schools are required to ensure equal opportunity. By establishing this new requirement, the Department runs the risk of forcing grantees to violate longstanding legal commitments under Title VI, Title IX, ESSA, and GEPA. Such action will likely harm student performance and exacerbate the existing mental health provider shortage.

For these reasons, the States urge you to modify the proposed priorities, requirements, and definitions to bring them into conformity with governing law and resolve the forgoing deficiencies.

Sincerely,

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Appendix A

The Honorable Kymberly K. Evanson

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. 2:25-cv-01228-KKE

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR: August 5, 2025

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

The U.S. Department of Education recently upended two federal grant programs that provide critical mental health services in high-need schools: the Mental Health Service Professional Demonstration Grant Program (MHSP) and School-Based Mental Health Services Grant Program (SBMH) (collectively, the "Programs"). Congress created and funded these Programs following repeated tragic and devastating loss from school shootings. In 2022, spurred by the tragedy in Uvalde, Texas, a bipartisan Congress funded the Programs through 2026. These Programs have been an incredible success, providing services to nearly 775,000 students in their first year. Sampled projects showed real results: a 50% reduction in suicide risk, decreases in absenteeism and behavioral issues, and increases in positive student-staff engagement.

Nonetheless, on April 29, 2025, the Department inexplicably announced its decision to discontinue certain Program grants (the "Non-Continuation Decision") through boilerplate notices it issued to school districts, regional education agencies, state education departments, and universities across the country. These notices claimed that because grantees' projects supposedly conflicted with the Trump Administration's new priorities, continuing their grants was not in the federal government's best interest.

The Department's Non-Continuation Decision violates not only the moral imperative that we care for our children's safety and well-being, but also the Administrative Procedure Act (APA) and the Spending Clause. It bears the hallmark of an arbitrary and capricious action—boilerplate notices to an unknown subset of grantees that fail to provide an individualized basis for the discontinuance, consider grantees' substantial reliance interests, or consider the tremendously harmful impact to children dependent on these mental health services, the educational mission of affected schools, and the mental health workforce pipeline.

Moreover, in imposing new priorities, the Department violated its own regulations. Under 34 C.F.R.§ 75.253(b), the Department considers only the grantee's performance when deciding whether to continue a multi-year grant—and there is no indication whatsoever that grantee performance was even a factor in its Non-Continuation Decision. The Non-Continuation Decision also strips grantees of § 75.253(c)'s requirement that the Department fund multi-year projects over new grant awards.

Even if Defendants were somehow permitted to discontinue grants based on new priorities, they did not follow the required notice-and-comment process before unlawfully applying "new priorities" to discontinue grants. *See* 5 U.S.C. § 553; 20 U.S.C. §§ 1232(a)(2), (d), 1221e-4. Such surprise retroactive conditions also violate Spending Clause constraints. This Court should set aside the Non-Continuation Decision. *See* 5 U.S.C. §§ 706(2)(A), (B), (D).

The Non-Continuation Decision threatens the very purpose of these programs: to protect the safety and wellbeing of our children by permanently increasing the number of mental health professionals providing services in high-need schools. If the Non-Continuation Decision is not rescinded, students will once again have limited or no access to mental health services, undermining the gains grantees have made towards preventing another tragic school shooting. Grantees will be forced to lay off the very same professionals they expended Program funds to recruit and retain. They will also be forced to abandon the graduate students who received Program-funded scholarships in exchange for beginning their careers at high-need schools.

As the Non-Continuation Decision causes Plaintiffs immediate and irreparable harm, each of the preliminary injunction factors is met. Plaintiffs respectfully request that this Court issue an order rescinding the unlawful Non-Continuation Decision and enjoining Defendants from discontinuing Program grants based on new priorities.

II. STATEMENT OF FACTS

A. Congress Creates and Funds Mental Health Programs in Response to Mass School Shootings

On February 14, 2018, a former student shot and killed 14 students and 3 teachers at a high school in Parkland, Florida. Range Decl., Attach. E at 9. Later that year, Congress created

MHSP through the Department of Education Appropriations Act, 2019, Pub. L. No. 115-245 (Sept. 28, 2018). The conference report described this Program as:

> a demonstration program to test and evaluate innovative partnerships between institutions of higher education and States or high-need local educational agencies to train . . . [qualified] mental health professionals . . . with the goal of expanding the pipeline of these workers into low-income public elementary schools and secondary schools in order to address the shortages of mental health service professionals in such schools.

Range Decl., Attach. D at 4. President Trump then established a Federal Commission on School Safety. 84 Fed. Reg. 29,180 (June 21, 2019). The Commission found a consistent theme—"longstanding concern over limited access to mental health professionals in high-poverty districts and schools where needs are the greatest." *Id.* The Commission's final report offers recommendations for improving school safety, including providing students access to mental health care services in schools, where treatment is much more likely to be effective and completed. Range Decl., Attach. E at 36-37.

In 2020, Congress established SBMH by appropriating $10 million "to increase the number of qualified, well-trained . . . mental health professionals that provide school-based mental health services to students." Range Decl., Attach. F at 4. To promote the sustainability of these programs, Congress required the awards to include a 25% match from the grantee and to not supplant existing mental health funding. *Id.* It also directed the Department to continue the MHSP. *Id.*

Congress continued to fund these Programs. For fiscal year 2021, Congress increased funding for SBMH to $11 million. *See* Range Decl., Attach. G at 4. For fiscal year 2022, Congress increased MHSP funding to $55 million and SBMH funding to $56 million. Range Decl., Attach. H at 4.

A few months later, a gunman shot and killed 19 students and 2 teachers at an elementary school in Uvalde, Texas. *See* Range Decl., Attach. I at 3. The Uvalde tragedy prompted a bipartisan Congress to dramatically increase the funding levels for the Programs. Specifically, Congress directed the Department to make available an additional $100 million per year for each Program for fiscal years 2022 through 2026. Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313, 1342 (June 25, 2022).

The Act's Republican champions explained, "We crafted this landmark law with a simple purpose: to reduce violence and save lives." Range Decl., Attach. B at 3. Congress achieved this purpose by "providing the resources to help bring 14,000 additional mental health professionals into U.S. schools." *Id*. They also explained, "Too often, adolescents with untreated mental health conditions become the very same perpetrators who commit acts of violence. For this reason, we crafted our law to . . . connect [students experiencing mental health crises] with the care they need before it's too late." *Id.*

MHSP and SBMH are "applicable programs" under the General Education Provisions Act (GEPA) and are therefore subject to Congress's mandate that the Department require grant applicants to address equity issues. 20 U.S.C. §§ 1221, 1228a(b). Applicants are required to:

> develop and describe in such applicant's application the steps such applicant proposes to take to ensure equitable access to, and equitable participation in, the project or activity to be conducted with such assistance, by addressing the special 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.

20 U.S.C. § 1228a(b) (GEPA Equity Directive). The Department provides instructions for grant applicants, explaining how to meet this Directive. *See, e.g.*, Gustafson Decl., Attach. A at 18.

B. The Department's Process for Awarding New Grants Is Separate and Apart from its Process for Awarding Continuing Grants

GEPA and the Department's regulations ensure that applicants have fair and adequate notice of the rules and criteria the Department uses for grantmaking. GEPA requires the Department to use the APA's notice-and-comment process for grant programs. *See* 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d); 5 U.S.C. § 553. The Department's regulations set the requirements governing: (1) the Department's competitive grantmaking process for awarding new grants; and

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(2) its determination whether to make a continuation award for an existing multi-year grant—a non-competitive process that is based on the grantee's performance.

1. The Department uses a competitive process to award new grants based on published priorities and selection criteria

Each fiscal year, the Department awards billions in discretionary grants. Range Decl., Attach. O at 2. These grants are awarded competitively. *Id.* When the Department announces a competition for new grants for a particular fiscal year, it publishes an application notice that explains, among other things:

1. How to apply for a new grant;
2. The project period that will be approved for multi-year projects;
3. The priorities established for the selection of new grants for the program that year;
4. The selection criteria used to decide which applications will be awarded new grants and how the criteria will be weighted; and
5. Any program performance measure requirements, including whether the application should propose project-specific performance measures and explain how the proposed measures would accurately measure project performance.

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

The Department uses the published "priorities" to focus a particular year's grant competition on particular activities and objectives. *See* Range Decl., Attach. O at 3, Attach. N at 15-16; 34 C.F.R. § 75.105. The Department then scores the quality of each application using the selection criteria and priorities, ranks the applications, and awards new grants to the strongest applicants. 34 C.F.R. §§ 75.201, 217; Range Decl., Attach. N at 27-28.

2. The Department makes continuation awards based on grantee performance

The Department generally approves funding for 12-month budget periods. 34 C.F.R. § 75.251(a). When awarding a new multi-year grant, the Department funds the initial budget

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period and "indicates [its] intention to make continuation awards to fund the remainder of the project period." 34 C.F.R. § 75.251(b)(2).

Unlike the process for awarding new grants, grantees do not compete for continuation awards, and the priorities for future years' grant competitions are not relevant. Multi-year grant recipients do not submit applications that are scored and ranked against other applicants. *Compare* Range Decl., Attach. N at 27-28, *with id.* at 32-33, 46; *see also* 59 Fed. Reg. 30,258, 30,259 (June 10, 1994) (announcing "entirely new paradigm" for continuation awards based on "projects' reporting on results and performance" rather than annual application). Instead, the Department considers "any relevant information regarding grantee performance," including performance reports, performance measures, and financial data. 34 C.F.R. §§ 75.118, .253(b); Range Decl., Attach. N at 33 ("The program staff uses the information in the performance report in combination with the project's fiscal and management performance data to determine subsequent funding decisions."); 59 Fed. Reg. 30,258, 30,259 (June 10, 1994) ("[T]he continuation award decision . . . will be based entirely on the submission of [performance] reports . . . rather than on the submission of a continuation award application.").

Further, the Department "gives priority to continuation awards over new grants." 34 C.F.R. § 75.253(c); Range Decl., Attach. N at 46 ("A grantee does not have to compete with other applicants to receive [a continuation award]."); 45 Fed. Reg. 22,552, 22,559 (Apr. 3, 1980) (explaining that each "continuation award will be judged on the basis of the criteria in [§ 253(a)] and *will not be subject to competition with other applications*") (emphasis added). The Department has long represented that a denial of continuation award funding is "extremely rare in practice." *See* 59 Fed. Reg. 30,258, 30,259 (June 10, 1994); *see also* 89 Fed. Reg. 70,300, 70,316 (Aug. 29, 2024) ("In general, we do not deny a large number of non-competing continuation awards . . . . ").

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C. The Department's Selection of MHSP Applications Based on Published Priorities

In 2019, under the first Trump Administration, the Department published a notice inviting applications for the first MHSP grant competition and setting the inaugural program priorities. 84 Fed. Reg. 29,180 (June 21, 2019); *see* 20 U.S.C. § 1232(d)(1) (exempting regulations governing first-time grant competitions from APA rulemaking requirements).

In 2022, under the Biden Administration, the Department used rulemaking to add new priorities for future MHSP competitions. *See* 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d)(1); Range Decl., Attach. P at 5. The Department published the proposed priorities, requirements, and definitions, and invited the public to comment. 87 Fed. Reg. 47,159 (Aug. 2, 2022). The Department explained the proposed priorities would "enable the Department to administer a competitive grant program consistent with the intent of Congress . . . . " *Id.* at 47,165. The Department then published a notice announcing the "final priorities, requirements, and definitions" for future MHSP grant competitions and addressing public comments. 87 Fed. Reg. 60,083 (Oct. 4, 2022). For instance, in response to one comment, the Department explained it would not add a definition for "diverse backgrounds" due to "the breadth of diversity that exists across [local education agencies] nationwide." *Id*. at 60,087.

Separately, the Department invited applications for new MHSP grants for fiscal year 2022 and announced it would consider three of the final priorities for that year's competition. *See* 87 Fed. Reg. 60,144 (Oct. 4, 2022). The notice also explained that "[n]on-Federal peer reviewers will evaluate and score each application program narrative" based on selection criteria such as "need for the project" and "quality of the project design." *Id*. at 60,149-50. The notice stated that "[a]ll strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964." *Id*. n.2. The Department repeated this process for fiscal years 2023 and 2024. *See* 87 Fed. Reg. 72,976 (Nov. 28, 2022); 89 Fed. Reg. 15,180 (Mar. 1, 2024).

D. The Department's Selection of SBMH Applications Based on Published Priorities

The Department ran the first SBMH grant competition in 2020. 85 Fed. Reg. 32,025 (May 28, 2020). As with MHSP, the Department later used rulemaking to add new priorities for future SBMH competitions. *See* 87 Fed. Reg. 47,152 (Aug. 2, 2022) (proposed priorities, requirements, and definitions); 87 Fed. Reg. 60,092 (Oct. 4, 2022) (final priorities, requirements, and definitions). The Department explained that it needed to establish the priorities, requirements, and definitions to "evaluat[e] the quality of applications" and "ensur[e] that the program achieves its intended objectives." 87 Fed. Reg. 47,152, 47,158 (Aug. 2, 2022).

As with MHSP, the Department issued a notice inviting applications from state education agencies (SEAs) and local education agencies (LEAs) for new SBMH grants for fiscal year 2022, setting two "competitive preference" priorities that were optional but would earn applicants extra points. 87 Fed. Reg. 60,137, 60,138 (Oct. 4, 2022). The SBMH competition also used an objective peer review process based on scoring selection criteria, *id.* at 60,142-143, and stated that "[a]ll strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964." *Id.* n.2. The Department repeated this process for fiscal year 2024. *See* 89 Fed. Reg. 15,173 (Mar. 1, 2024).

Against this backdrop, grantees applied for Program grants, tailoring their projects to the priorities announced for that year's Program to make their applications more competitive. *See, e.g.*, Piazza Decl. ¶7. After deciding the grantees would receive multi-year, multi-million-dollar grants for Program projects, the Department awarded funding for the first budget year, followed by annual one-year continuation awards. *See, e.g.*, Piazza Decl. ¶8.

E. Grantees Are Making Substantial Progress Towards the Programmatic Goals of These Mental Health Grants

Once the grants were awarded, grantees accomplishing programmatic goals, improving the mental health of thousands of students and making substantial progress towards Congress's goal of permanently adding 14,000 additional mental health professionals into high-need schools. *See* Range Decl., Attach. B at 3. The National Association of School Psychologists found that during the Programs' first year, grantees served nearly 775,000 K-12 students and hired nearly 1,300 mental health professionals. *See* Range Decl., Attach. C at 3. These improvements led to real results: a 50% reduction in suicide risk at high-needs schools, decreases in absenteeism and behavioral issues, and increases in positive student-staff engagement based on data from sampled programs. *Id.* Program success is also reflected in the following grant project examples from Plaintiff States.

1. SBMH

__Washington.__ The Department awarded a five-year SBMH grant beginning on January 1, 2023 to Educational Service District 189 (NWESD), an LEA that serves as a regional liaison between Washington State and 35 northwest Washington school districts. Gustafson Decl. ¶4. By its second year, NWESD had hired 19 new mental health professionals—exceeding its early recruitment and retention goals. *Id.* ¶¶14, 24. NWESD also improved its MHP-to-student ratio by 60%—from 1:1,160 to 1:656—making substantial progress towards its target ratio of 1:547 by December 2027. *Id.* ¶9, 15. In 2024, NWESD provided 795 individual students with 7,870 mental health related service sessions—treatment that students may not have otherwise been able to access. *Id.* ¶15.

__California.__ Since the launch of the Santa Clara County School Behavioral Health Workforce Pipeline Grant, over 15,000 students have received school-based mental health services, growing from 3,080 students in Year 1 to 12,074 in Year 2, a 392% increase in reach. Totson (SBMH) Decl. ¶12. The program successfully hired 21 new professionals across 32 LEAs, 11 in Year 1, and 10 in Year 2, greatly expanding school-based mental health capacity. *Id.* Notably, 81% of professionals have been retained across two years, thanks to strategic support through financial incentives and licensure assistance. *Id.* Clinically, more than 6,000 hours of mental health services, including therapy, crisis intervention, and behavioral support, have been delivered, with a projected total of 6,500 hours by year-end. *Id.*

Maine. In 2022, the Department awarded the Maine Department of Education a SBMH grant. Welter Decl. ¶8. As a result, nine participating school districts were successful in hiring ten new school-based mental health professionals and retaining an additional four providers with grant funds. *Id.* ¶12. In 2024, this cohort of 14 providers worked with almost 5,000 students, providing lessons, skill building exercises, and counseling. *Id.* Without these school-based services, students in Maine's rural communities faced yearslong waitlists. *Id.* ¶¶7, 12.

2. MHSP

Washington. The Department awarded a five-year MHSP grant beginning in 2023, to the University of Washington SMART Center for its Workforce for Student Well-Being Initiative (WSW). Stuber Decl. ¶19. The WSW uses Program funds to provide competitive conditional scholarships to graduate students who are enrolled in six schools of social work across Washington. *Id.* ¶21. These scholarships allow graduate students who are passionate about and adept at working with youth to avoid the high amount of debt that would normally be a barrier to low-paying school-based mental health careers. *Id.* WSW scholarship recipients are required to work in a high-need school district for a minimum of two years after graduation. *Id.* ¶33. As of June 2025, the WSW project has recruited, trained, and significantly reduced the debt burden for 27 graduate students committed to maintaining employment as school social workers in high-need Washington school districts. *Id.* ¶23.

Colorado. The Department awarded the University of Denver, a private institution of higher education, an MHSP grant beginning on April 1, 2023. Lengsfeld Decl. ¶¶6, 16. Since then, the University of Denver has enrolled 13 current students from 12 different rural LEAs, who are now entering their second year of training; partnered with 21 different LEAs in rural Colorado to support school-based mental health shortages; provided rural Colorado students with much needed school-based mental health services; provided rural Colorado community members who have aspired to become school psychologists with access to higher education and the training to do so; facilitated a rural-focused school psychologist curriculum lens, empowering rural practitioners with the skills necessary to practice within their communities; and funded approximately nine graduate student employees to support their tuition costs. *Id.* ¶18. By all accounts, the project has been a highly successful public-private partnership between the State of Colorado, the University of Denver, Colorado's public LEAs, and the Department of Education. *Id.* ¶19.

Oregon. In Oregon, another state that suffers from chronic mental health service shortages in its rural areas, the Department awarded Oregon State University a grant in 2023. Tumer Decl. ¶¶8, 10. To address these gaps for schoolchildren, Oregon State University partnered with the High Desert Education Service District and four Central Oregon school districts to recruit a pipeline of school counseling graduates, train interns and place them in these high-need schools; provide supervision support, and employ program graduates in these schools. *Id.* and ¶7. Since the Department has awarded this grant, the project has met or exceeded its aims and received positive feedback from the Department. *Id.* ¶10.

F. The Department Discontinued Certain Program Grants Due to a Purported Conflict with the Trump Administration's Priorities

On April 29, 2025, the Department implemented its Non-Continuation Decision by sending "Notice[s] of Non-Continuation of Grant Award," notifying certain grantees that their Program grants would be discontinued at the end of the grants' current budget period. *See, e.g.*, Gustafson Decl., Attach. E. To Plaintiff States' knowledge, all notices stated the following:

> This letter provides notice that the United States Department of Education has determined not to continue your federal award, S184xxxxxxx, in its entirety, effective at the end of your current grant budget period. See, *inter alia*, 34 C.F.R. § 75.253(a)(5) and (f)(1).
>
> . . . The Department has undertaken a review of the grants and determined that the grant specified above provides funding for programs reflect prior 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, 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. The grant is therefore inconsistent with, and no longer effectuates, the best interest of the Federal Government and will not be continued.

Gustafson Decl., Attach. E. The notices also reminded grantees to "carefully review and discharge your closeout responsibilities" and "submit all final reports by no later than 120 calendar days after the end of the grant period of performance." *Id*.

On that same day, the Department also sent an email to Congress informing it of the Non-Continuation Decision and stating that only "certain recipients" received notices, claiming $1 billion in savings. Range Decl., Attach. A. The Department claimed that "[t]he prior Administration's preferences are not legally binding" and told Congress that it planned to "re-envision and re-compete" the funds. *Id.*

To the media, the Department has suggested that it targeted grants for their perceived diversity, equity, and inclusion (DEI) efforts. *See* Range Decl., Attach. I at 4-5. However, the Department's claimed rationale does not square with the grants that were not discontinued. For instance, media has reported that "[t]he Indiana Department of Education, Fort Wayne Community Schools in Indiana, and Norma[n] Public Schools in Oklahoma" had not been contacted about funding changes. Range Decl., Attach. I. But these projects competed with and served the same priorities as the discontinued projects. *See* Range Decl., Attach. J at 9 (explaining Fort Wayne Community Schools' 2023 MHSP project would "meet Competitive Priorities 1, 2, and 3");[1] Range Decl., Attach. K at 5 (explaining Norman Public Schools' 2024 SBMH project would meet "Competitive Preference Priority 2");[2] Range Decl., Attach. L at 21-22 (explaining Indiana Department of Education's SBMH project "seeks to . . . recruit and retain school counseling candidates by creating a talent pipeline of mental health service providers whose racial and ethnic backgrounds parallel their students").

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[1] The MHSP priorities for 2023 were: "Competitive Preference Priority 1—Increase the Number of Qualified School-Based Mental Health Services Providers in High-Need LEAs Who Are from Diverse Backgrounds or from Communities Served by the High-Need LEA"; "Competitive Preference Priority 2—Promote Inclusive Practices"; and "Competitive Preference Priority 3—Partnerships with [minority serving institutions]." 87 Fed. Reg. 72,976, 72,977-78 (Nov. 28, 2022).

[2] The second SBMH priority for 2024 was: "Competitive Preference Priority 2—Increasing the Number of Credentialed School-Based Mental Health Services Providers in LEAs with Demonstrated Need Who Are from Diverse Backgrounds or from Communities Served by the LEAs with Demonstrated Need." 89 Fed. Reg. 15,173, 15,175 (Mar. 1, 2024).

G. The Harmful, Immediate Impact of The Department's Non-Continuation Decision on Students, Schools, and Plaintiff States

The Department's Non-Continuation Decision, and apparent abandonment of Congress's GEPA Equity Directive and appropriation directives, is causing irreparable harm to our children, our schools, and school-based mental health service providers. Program funding will be discontinued on December 31, 2025, but the harmful effects of the Non-Continuation Decision—which disrupt multi-year, multi-million-dollar grant projects operating on the academic year throughout Plaintiff States—are immediate.[3] And without this funding, the Program projects will come to an end.[4]

The cost to our children's safety, well-being, and academic success is incalculable. The Department made its Non-Continuation Decision amid an unprecedented mental health crisis for our youth following years of isolation during the pandemic.[5] These grants were designed to respond to America's school shooting crisis and fill a critical need in schools. *See supra* § II.A. Without them, many children in rural and/or lower-income schools throughout Plaintiff States will likely go without mental health services.[6] And these children will suffer the attendant

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[3] *See, e.g.*, Dishongh Decl. ¶¶19, 23; Feuerborn Decl. ¶19; Gustafson Decl. ¶23; Nelson Decl. ¶¶19, 25; Stuber Decl. ¶29; Furedi Decl. ¶17; Kleinsmith Decl. ¶18; Rodriguez Decl. ¶18; Khan Decl. ¶¶17, 21; Totson Decl. (MHSP) ¶¶17, 23; Totson (SBMH) Decl. ¶17; Ciriza Decl. ¶¶18, 23; Welter Decl. ¶22; Frey Decl. ¶18; Amoussou Decl. ¶¶18, 19; Stalker Decl. ¶20; Hutchins Decl. ¶17; Owen-Deschryver Decl. ¶¶15, 23; Garcia-Diaz Decl. ¶20; Eklund Decl. ¶¶21-22; Piazza Decl. ¶¶11, 15; Lengsfeld Decl. ¶¶25, 27; Matuszewicz Decl. ¶¶18, 23; Mocarski Decl. ¶22; Tumer Decl. ¶¶17, 21; Tankersley Decl. ¶¶20, 25; Gilge Decl. ¶¶18, 23; Chamberlin-Scholle Decl. ¶28; Jensen Decl. ¶¶18, 22.

[4] *See* Furedi Decl. ¶16; Baranski Decl. ¶16; Bareilles Decl. ¶20; Kleinsmith Decl. ¶17; Rodriguez Decl. ¶17; Khan Decl. ¶16; Totson (MHSP) Decl. ¶16; Totson (SBMH) Decl. ¶16; Ciriza Decl. ¶17; Jensen Decl. ¶17; DeOrian Decl. ¶17; Knight-Teague Decl. ¶18; Miller (MHSP) Decl. ¶16; Miller (SBMH) Decl. ¶16; Strear Decl. ¶16; Parr Decl. ¶15; Cisneros Decl. ¶16; Gragg Decl. ¶23; Hire Decl. ¶17; Nadler Decl. ¶17; Chamberlin-Scholle Decl. ¶27; Anderson/Hulac (CRISP) ¶16; Anderson/Hulac (TISP) ¶16; Lengsfeld Decl. ¶24; Matuszewicz Decl. ¶17; Ongart Decl. ¶20; Christensen Decl. ¶14; Curran Decl. ¶18; Garcia-Diaz Decl. ¶19; Sanders Decl. ¶23; Mocarski Decl. ¶19; Barton Decl. ¶24; Frey Decl. ¶17; Amoussou Decl. ¶17; Welter Decl. ¶16; Hutchins Decl. ¶16; Owen-Deschryver Decl. ¶14; Gilge Decl. ¶17; McGill Decl. ¶16; Kida Decl. ¶16; Rimkunas Decl. ¶18; Stalker Decl. ¶17; Storie Decl. ¶14; Tumer Decl. ¶16; Tankersley Decl. ¶19; Chammat Decl. ¶18; Dishongh Decl. ¶18; Feuerborn Decl. ¶18; Nelson Decl. ¶18; Stuber Decl. ¶28; Eklund Decl. ¶20; Piazza Decl. ¶14; Iversen Decl. ¶17; Giannini-Previde Decl. ¶16.

[5] *See, e.g.*, Chammet Decl. ¶¶9,10; Dishongh Decl. ¶20; Feuerborn Decl. ¶9; Gustafson Decl. ¶35; Stuber Decl. ¶17; Rodriguez Decl. ¶21; Steer Decl. ¶22; Owen-Deschryver Decl. ¶8; Curran Decl. ¶9. Matuszewicz Decl. ¶10; Gilge Decl. ¶18; Iversen Decl. ¶4; Knight-Teague ¶9.

[6] *See, e.g.*, Storie Decl. ¶16 (80% of students get their mental health services at school); Barton Decl. ¶25; Gustafson Decl. ¶32; Knight-Teague Decl. ¶9; Parr Decl. ¶8; Matuszewicz Decl. ¶18; Welter Decl. ¶7.

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consequences: short- and long-term health problems; lower grades; increased absenteeism, suspensions, and expulsions; and a higher risk of suicide and drug overdose. *See* Range Decl., Attach. C at 6.[7]

If the Non-Continuation Decision is not rescinded, grantees will be forced to lay off project staff and mental health service providers, reducing access to much-needed mental health services for students in Plaintiffs' rural and low-income schools.[8] Grantees will lose qualified mental health service providers who were hired, retained, and trained using Program funds as part of Congress's goal to permanently add thousands of new providers to schools throughout Plaintiff States.[9] Grantees will lose the benefits of the relationships that students and school staff members have developed with these providers.[10] The spillover effect of students turning to community mental health services—to the extent they are available—will tax Plaintiffs' already-strained mental health care systems.[11]

Grantees will also be forced to cut financial assistance for the graduate students who were receiving specialized training to provide school-based mental health services in high-need settings throughout Plaintiff States, drying up the pipeline.[12] The sudden loss of funding will discourage these students and others from pursuing careers as school-based mental health services providers in Plaintiff States' rural and low-income communities.[13] Grantees' relationships with community partners will be irreparably damaged because they can no longer

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[7] *See also, e.g.*, Furedi Decl. ¶22; Ciriza Decl. ¶19; DeOrian Decl. ¶18; Matuszewicz Decl. ¶10; Welter Decl. ¶18; Gilge Decl. ¶18; Dishongh Decl. ¶9; Feuerborn Decl. ¶22; Gustafson Decl. ¶22; Eklund Decl. ¶21.

[8] *See, e.g.*, Gustafson Decl. ¶¶23, 34; Nelson Decl. ¶¶19, 23; Stuber Decl. ¶34; Furedi Decl. ¶¶19, 23; Kleinsmith Decl. ¶¶19, 20, 23; Rodriguez Decl. ¶23; Khan Decl. ¶18; Totson (SBMH) Decl. ¶¶17, 19, 22; Criza Decl. ¶¶18, 22; Miller (SBMH) Decl. ¶¶17, 19; Parr Decl. ¶¶11, 16, 21; Garcia-Diaz Decl. ¶22.

[9] *See, e.g.,* Totson (MHSP) Decl. ¶¶19-21; Welter Decl. ¶¶17, 20-21; Amoussou Decl. ¶¶21-22; Stalker Decl. ¶¶19, 21; Gilge Decl. ¶¶19-21.

[10] *See, e.g.*, Gustafson Decl. ¶¶23, 28; Furedi Decl. ¶¶19-20; Rodriguez Decl. ¶21; Totson (MHSP) Decl. ¶¶18, 22; Totson (SBMH) Decl. ¶18; Jensen Decl. ¶19; Knight-Teague Decl. ¶24; Rimkunas Decl. ¶¶19, 24.

[11] *See, e.g.*, Gustafson Decl. ¶¶31-32; Tumer Decl. ¶7; Gragg Decl. ¶ 28; DeOrian Decl. ¶18.

[12] *See e.g.*, Barton Decl. ¶24; Feuerborn Decl. ¶¶19, 23; Nelson Decl. ¶23; Tankersley Decl. ¶¶22, 25; Eklund Decl. ¶21c.

[13] *See, e.g.*, Storie Decl. ¶15; Ciriza Decl. ¶¶18, 20; Parr Decl. ¶¶18, 22.

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honor the commitments they made to provide mental health services to the children in these communities.[14]

III. LEGAL STANDARD

A preliminary injunction is warranted where Plaintiffs establish that (1) they are likely to succeed on the merits, (2) irreparable harm is likely in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's sliding-scale approach to preliminary relief, "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (citation modified). The balance of the equities and public interest factors merge when the government is a party. *Roman v. Wolf*, 977 F.3d 935, 940-41 (9th Cir. 2020).

IV. ARGUMENT

Plaintiffs have satisfied the *Winter* factors for issuance of a preliminary injunction.

A. Plaintiffs Are Likely to Succeed on the Merits of their Claims

Plaintiffs are likely to succeed on the merits of their APA and Spending Clause claims challenging the Non-Continuance Decision. First, Defendants' Non-Continuation Decision is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). Second, Defendants' Non-Continuation Decision is contrary to law because Defendants cannot discontinue grants based on new priorities. *Id.* And third, even if Defendants could consider new priorities when continuing grants, they violated procedural laws by failing to first publish these priorities in the Federal Register. 5 U.S.C. §§ 553, 706(2)(D); 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d). As the

[14] *See, e.g.*, Piazza Decl. ¶18; Rimkunas Decl. ¶20, 25; Parr Decl. ¶¶16, 18; Lengsfeld Decl. ¶33; Matuszewicz ¶19; Gragg Decl. ¶25.

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Administration sought to impose retroactive conditions on Program grants, the Non-Continuation Decision also violates the Spending Clause.

1. Defendant's Non-Continuation Decision is subject to review under the APA

As a threshold matter, Defendants' Non-Continuation Decision constitutes a "final agency action" subject to review under the APA. Final agency actions (1) "mark the consummation" of agency decision-making, and (2) determine "rights or obligations . . . from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation modified); *see also Or. Nat. Desert Ass'n v. U.S. Forest Serv*., 465 F.3d 977, 982 (9th Cir. 2006). Finality is interpreted in a "pragmatic and flexible manner." *Abbott Labs. v. Gardner*, 387 U.S. 136, 150 (1967).

The Non-Continuation Decision meets both prongs. First, the Department drew its definitive conclusion that certain Program grants are not in the government's best interest. Gustafson Decl., Attach. E. There is no indication that the Department intends to reverse course, or that any further steps are required to make this determination. Ongart Decl., Attach. C (email from the Department refusing to provide more information and stating, "The letter of non-continuation contains all the information I have about the reason . . . ."). Although the Department offered discontinued grantees the opportunity to request reconsideration within 30 days, Gustafson Decl., Attach. E, this reconsideration process is voluntary and not necessary for the discontinuance to be considered final. *See S. Educ. Found. v. United States Dep't of Educ.,* CV 25-1079 (PLF), 2025 WL 1453047, at *15 (D.D.C. May 21, 2025); *see also Darby v. Cisneros*, 509 U.S. 137, 137 (1993) (if reconsideration is voluntary, administrative exhaustion is not required for the agency action to be considered final). The Non-Continuation Decision is therefore the final agency action.

Second, Defendants' actions have clear legal consequences: grantees in Plaintiff States lost the benefit of a fair continuation award determination based on their performance under

34 C.F.R. § 75.253(b); the priority of continued funding over funding new grants promised by 34 C.F.R. § 75.253(c); and millions of dollars in prospective funding, Range Decl., Attach. A.

2. Defendants' Non-Continuation Decision was arbitrary and capricious

The APA requires that a court "hold unlawful and set aside agency action" that is "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). Agency actions must "be reasonable and reasonably explained." *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). When making this assessment, courts consider "only whether the [agency] examined 'the relevant data' and articulated 'a satisfactory explanation' for [its] decision, 'including a rational connection between the facts found and the choice made.'" *Dep't of Commerce v. New York*, 588 U.S. 752, 773 (2019) (quoting *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Notices providing the same boilerplate explanations untethered to specific grants and the performance of specific grantees are the epitome of an arbitrary and capricious action because they show an obvious lack of individualized assessment. *See, e.g.*, Range Decl., Attach. Q at 5 (*New York v. U.S. Dep't Educ.*, No. 25-1424, ECF No. 40.1 (2d Cir. 2025) (blanket action failed to provide individualized assessment)); *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1405 (D.C. Cir. 1995) (faulting boilerplate language for making it impossible to discern agency's rationale). Furthermore, when an agency has "relied on factors which Congress has not intended it to consider," its action is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.

Defendants' Non-Continuation Decision is arbitrary and capricious for at least five independently sufficient reasons.

First, the Non-Continuation Decision is not reasonable or reasonably explained. In making this determination, the Court looks to the "grounds that the [Department] invoked" when it discontinued the grant. *Michigan v. EPA*, 576 U.S. 743, 758 (2015); *see also Motor Vehicle Mfrs. Assn.*, 463 U.S. at 50. Defendants have an obligation to "examine[] 'the relevant data' and articulate[] 'a satisfactory explanation' for [the] decision, 'including a rational connection

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between the facts found and the choices made.'" *Dep't of Commerce*, 588 U.S. at 773 (quoting *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43). Here, the Department plainly did not make the individualized assessment required for agency actions, because its implementing notices used the same boilerplate language for each termination. As a result, the Non-Continuation Decision provides no factual findings, much less a rational connection between any facts and the Department's conclusion that the grant was not in the federal government's best interest. Instead, the Department lists four theoretical bases for the grant discontinuances and does not identify which, if any, of these bases apply specifically to the grantee. *See, e.g.*, Gustafson Decl., Attach. E. Where a grantee cannot or does not identify the basis for its discontinuance, the decision is arbitrary and capricious. *See SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947) (holding agency action is arbitrary and capricious where party is "compelled to guess at the theory underlying the agency's action"). Accordingly, the Non-Continuation Decision and its implementing notices provided no reasoned explanation.

Second, Defendants executed a major change in policy without any notice or concrete explanation and without considering the impacts or reliance interests. As the Supreme Court recently reiterated, "[t]he change-in-position doctrine" prevents agencies from "mislead[ing] regulated entities." *FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 917 (2025) (quoting *Encino Motorcars v. Navarro*, 579 U.S. 211, 221-22 (2016)). "Under that doctrine, '[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change,' 'display awareness that [they are] changing position,' and 'consider serious reliance interests.'" *Id.* (quoting *Encino Motorcars*, 579 U.S. at 221-22). What the agency must not do is depart from its prior position *sub silentio. FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Here, Defendants' notices obliquely reference the Department's change in priorities and policy preferences without identifying or explaining this changed position, or how they allegedly conflicted with the prior Administration's priorities and policy preferences. *See, e.g.*, Gustafson Decl., Attach. E.

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Third, Defendants' Non-Continuation Decision also failed to account for the substantial reliance interests of discontinued grantees. "When an agency changes course, . . . it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020) (internal quotation marks and citation omitted). The agency must also consider alternatives to its change in position that are "within the ambit of existing [policy]." *Id.* Grantees structured their projects and budgets with the understanding that Defendants would make annual continuation awards based on grantees' project performance. *See, e.g.*, Dishongh Decl. ¶13; Feuerborn Decl. ¶15; Nelson Decl. ¶13; Stuber Decl. ¶20; Knight-Teague Decl. ¶22; Frey Decl. ¶11; Amoussou Decl. ¶11-12. This reliance is supported by, among other things:

- Defendants' history and practice of making continuation award decisions based on grantee performance under these and other grant programs. *See* 59 Fed. Reg. 30,258, 30,259 (June 10, 1994) (instituting performance reports as the basis for continuation decision rather than applications); Lengsfeld Decl. ¶23; Mocarski Decl. ¶15; Barton Decl. ¶19;
- Defendants' regulations expressly requiring Defendants to state an "intention to make continuation awards to fund the remainder of the project period" upon approval of multi-year grants, 34 C.F.R. § 75.251(b)(2), consider any information relevant to grantee's performance, 34 C.F.R. § 75.253(b), and assign priority to "continuation awards over new grants," 34 C.F.R. § 75.253(c); and
- Defendants' guidance document explaining to prospective grantees, "The program staff uses the information in the performance report in combination with the project's fiscal management performance data to determine subsequent funding decisions." Range Decl., Attach. N at 33.

Believing that discontinuances would be based on criteria within their control—i.e. their performance—grantees invested time and resources that will be lost based on improper criteria outside their control. 34 C.F.R. § 75.253(b); *see e.g.* Feuerborn Decl. ¶20; Matuszewicz ¶19.

The Department also failed to account for the reliance interests of the Program participants: school-based mental health services providers who were recruited or provided retention incentives to work in LEAs with demonstrated need, *see e.g.*, Hutchins Decl. ¶18; graduate students who are in the middle of multi-year graduate programs and are learning that they will no longer receive tuition assistance or post-graduate supervision and support, *see e.g.*, Nelson Decl. ¶25; and—most importantly—the students in low-income and rural areas throughout Plaintiff States who, as the first Trump Administration recognized, need access to school-based mental health services and will go without should these Programs close, *see* n.6, *supra*. Defendants did not consider any of these reliance interests, much less weigh them against competing policy concerns (if any), or consider any alternatives. *See Regents of the Univ. of California*, 591 U.S. at 30.

Fourth, the Non-Continuation Decision is without reason because the Department did not apply the same standards to all Program grants in deciding which grants to discontinue. Although its provided basis—the alleged "conflict" between the prior and current Administration's Program priorities—applied to all grantees, Defendants' Non-Continuation Decision only discontinued "certain" grants and has permitted other Program grants to continue. Range Decl., Attach. A at 2. Yet those non-discontinued grants are a part of the same Programs, were awarded using the same application criteria, and necessarily reflect the same prior Administration's priorities and policy preferences as Plaintiffs' grants. *See supra* §§ II.C, D, F.

Fifth, the Department's Non-Continuation Decision relied on factors which Congress has not intended it to consider. *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. Per the GEPA Equity Directive, Congress requires grant applicants to describe in their applications the steps they will take to ensure equity in their programs. 20 U.S.C. § 1228a(b). To the extent that Defendants' discontinued Program grants based on applicants' compliance with the GEPA Equity Directive, the Non-Continuation Decision was arbitrary and capricious. *Id.*

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In sum, Defendants failed to engage in any "reasoned decision making" whatsoever and the Department's Non-Continuation Decision was arbitrary and capricious. *See Michigan*, 576 U.S. at 750; *Encino Motorcars*, 579 U.S. at 222 ("[A] reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.").

3. Defendants' actions were contrary to law

The Department's regulations require the Department to use a fair and transparent process when awarding and assessing grants for continuation. But under the Department's interpretation of its continuation regulation, 34 C.F.R. §75.253, it can change the rules of the game midstream, torpedoing multi-year, multi-million-dollar projects that were selected through a competitive peer-reviewed process. *See supra* §§ II.B-D. Not so. The Department's Non-Continuation Decision should be set aside because it violates Defendants' grant regulations by (1) considering information (i.e., an alleged conflict with new priorities) that is not relevant to grantee's performance (based partly on priorities established prior to grantees' applications) and (2) failing to prioritize continuation awards over new grants. *See* 5 U.S.C. § 706(2)(A); 34 C.F.R. § 75.253(b), (c).

a. The Department violated 34 C.F.R. § 75.253(b) by discontinuing Program grants based on new priorities

Defendants' Non-Continuation Decision violates § 75.253(b) because the Department impermissibly considered information not relevant to grantee performance—the current Administration's new priorities—when determining whether to discontinue Program grants. Gustafson Decl., Attach. E.

In order to receive a continuation award, a grantee must meet the requirements of 34 C.F.R. § 75.253(a). The parties dispute whether the Department may consider new priorities when evaluating the fifth requirement that grantees, "Receive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government." 34 C.F.R.

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§ 75.253(a)(5); *see, e.g.*, Range Decl., Attach. A. Under 34 C.F.R. § 75.253(b), the Department may not.

"[A] court must 'carefully consider' the text, structure, history, and purpose of a regulation" when determining whether to defer to an agency's interpretation of a regulation. *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019). "[I]f there is only one reasonable construction of a regulation," then the court cannot "defer[] to any other reading, no matter how much the agency insists it would make more sense." *Id*. Otherwise, that would "permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation." *Id*.

The Department's novel application of new priorities to the continuation determination goes against the plain text of the continuation regulation, the Department's own interpretation of this regulation as reflected in its guidance, the Department's regulatory framework for grantmaking, the regulatory history, and the regulation's purpose.

First, the plain text of the regulation cabins the information that the Department "may consider" when "determining whether the grantee has met the [§ 75.253(a)] requirements." 34 C.F.R. § 75.253(b). Specifically, the regulation only permits the Department to consider "relevant information regarding grantee performance":

> *Information considered in making a continuation award.* In determining ***whether the grantee has met the requirements described in paragraph (a)*** of this section, the Secretary may consider ***any relevant information regarding grantee performance***. This includes considering [performance] reports required by § 75.118, performance measures established under § 75.110, financial information required by 2 CFR part 200, and any other relevant information.

34 C.F.R. § 75.253(b) (emphasis added). Because "best interest" is one of "the requirements described in paragraph (a) of this section," the § 75.253(b) limitation applies, and the Department may only consider "grantee performance" when determining whether continuing a multi-year grant is in the federal government's best interest.

The Department might argue that "may" should be read permissively and, therefore, § 75.253(b) does not limit what it can consider. But "[d]epending on the context, 'may' can be limiting, meaning '***may only***.'" *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1034-35 (9th Cir. 2022) (emphasis added). The "natural meaning" of § 75.253(b) is that the Department "may only" consider the "specified" information when determining whether the grantee has met the § 75.253(a) requirements. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 166 (2004). To read otherwise would "render part of the [regulation] entirely superfluous." *Id*.

The Department might also argue that it can consider new priorities under "any other relevant information." But new priorities cannot be read into the second sentence because they do not fit the common attributes of the performance-related items in the list. *See, e.g.*, *Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (explaining doctrine of *expressio unius est exclusio alterius*); *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252 (2024) ("[C]ourts interpret a 'general or collective term' at the end of a list of specific items in light of any 'common attribute[s]' shared by the specific items.") (quote omitted). Quite the opposite—because priorities are set at the outset of a grant competition, and grantees design, propose, and execute their projects based on those priorities, it would be nonsensical to evaluate a grantee's performance using a different set of priorities.

Second, the Department's own guidance document supports that the Department is limited to considering grantee performance when determining whether a grantee has met the "best interest" requirement. *See* Range Decl., Attach. N at 32-33; *cf. Backcountry Against Dumps v. Fed. Aviation Admin.*, 77 F.4th 1260, 1269 (9th Cir. 2023) (concluding agency order interpreting regulation supported court's interpretation). The guidance explains that program staff reviews a grantee's performance information to determine, *inter alia*, if continuation is in the federal government's best interest:

> ***How do I get funds after the first year if my organization receives a multiyear award?***
>
> . . .

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> The program staff uses the information in the performance report in combination with the project's fiscal and management performance data to determine subsequent funding decisions. . . . ***Before a continuation award can be issued, program staff reviews the information in the performance report and the financial and project management activities. The goal is to determine*** if you have made substantial progress in reaching the project's objectives, if expenditures correspond to the project's plans and timelines, if the recommended funding amount is appropriate, and ***if continuation of the project is in the best interest of the Federal government***.

Range Decl., Attach. N at 32-33 (emphasis added). The guidance assures prospective applicants that continuations are based on information related to their performance—that is, factors within the grantee's control. *See id.*; *cf. id.* at 38 (explaining that if program staff "identify areas of weakness or noncompliance, discover the grantee is not making substantial progress, or have suggestions for how the grantee might better achieve the program objectives," and these findings are "unresolved," the Department could discontinue the grant). The Department's interpretation of 34 C.F.R. § 75.253(b) follows the plain meaning of the text: when making a continuation determination—including determining whether the "best interest" requirement is met—it considers only information relevant to grantee performance.

Third, the regulatory framework also supports applying the § 75.253(b) limitation to the "best interest" requirement and prohibiting consideration of new priorities as part of a grantee's performance. As explained earlier, the Department uses a competitive process when awarding new grants, and a non-competitive process when making a continuation award for an existing multi-year grant. *See generally supra* § II.B. "Priorities" is a term of art and refers to activities and objectives that the Department announces it may use when selecting applications for new grant awards under a particular year's grant competition rules. *See, e.g.*, 34 C.F.R. § 75.105(a) ("[T]he Secretary establishes priorities for selection of applications ***in a particular fiscal year***.") (emphasis added); *id.* § 75.101(a)(4) ("application notice" includes "[a]ny priorities established by the Secretary for ***the program that year***"); *supra* § II.B.1. The term is reserved for the competitive grantmaking process for new grants. *See* Range Decl., Attach. N at 27-28. In contrast, grantees do not submit applications for continuation awards, and the Department makes

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the decision using a non-competitive process. *See, e.g.*, 59 Fed. Reg. 30,258, 30,259 (June 10, 1994) (removing application requirement for continuation awards). The regulation also requires the Department to prioritize continuation awards over new awards—showing that new priorities (applying to new grant competitions) are simply irrelevant to the continuation determination. *See* 34 C.F.R. § 75.253(c).

Fourth, Plaintiffs' interpretation is supported by the regulatory history. In 1994, the Department removed the non-competitive application process it had originally used for continuation awards. 59 Fed. Reg. 30,258, 30,261 (June 10, 1994). The Department explained that the same § 75.253(a) standards would still apply—***including*** the requirement "that continuation of the project is in the best interests of the Federal Government"—but that performance report requirements would "take on increased importance" because "the continuation award decision . . . will be based entirely on the submission of reports." *Id*. The Department also explained the performance report would "include an evaluation of the grantee's progress in achieving ***the objectives of the approved application***" and "the effectiveness of the project in meeting the purposes of ***the program under which it was funded***." *Id*. (emphasis added).

Fifth, as expressed by the Department, the purpose of 34 C.F.R. § 75.253 would only be served by Plaintiffs' interpretation. Since the very beginning, the Department has strived to "ensure consistent treatment" of continuation decisions, has stated that multi-year grants "will not be subject to competition with other applications" for continuation funding, and has prioritized continuation funding over new grants. 45 Fed. Reg. 22,552, 22,559 (April 3, 1980). "If Congress appropriates sufficient funds," grants that "meet[] the [§ 75.253(a)] criteria will be funded" before new grants. *Id*. The continuation regulation provides applicants advance notice and a fair measure in the Department's decision whether to award a continuance, while ensuring the Department can cut off funding if the grantee's performance raises concerns that the project is no longer in the government's best interest. This purpose of consistency and fairness is not served by allowing the Department to interfere with the grantee's project by changing the rules and imposing new priorities partway through a multi-year grant.

b. Defendants' Non-Continuation Decision violates the regulatory mandate that the Department give priority to continuation awards over new grants

Defendants' discontinuances are also contrary to law because the Secretary failed to give priority to continuation awards over new grants. *See* 34 C.F.R. § 75.253(c) ("Subject to the criteria in paragraphs (a) and (b) of this section, in selecting applications for funding under a program, the Secretary gives priority to continuation awards over new grants."). Defendants have announced they intend to recompete the discontinued Program funds. Range Decl., Attach. A. By forcing discontinued grantees to submit new applications and compete in a new grant competition, rather than allowing them to receive continuation awards for their existing multi-year grants, Defendants have violated this regulatory requirement.

4. Defendants acted without observance of procedure required by law

Defendants' Non-Continuation Decision clearly violates procedural mandates and may therefore be set aside under the APA. *See* 5 U.S.C. § 706(2)(D). Defendants are required to follow the APA's notice-and-comment rulemaking procedure when changing priorities for grant programs. *See* 20 U.S.C. §§ 1221e-4; 1232(a)(2), (d). Consistent with their statutory obligations, Defendants underwent the notice-and-comment rulemaking process when they changed the SBMH and MHSP program priorities in 2022. *See* 87 Fed. Reg. 47,152 (Aug. 2, 2022) (SBMH proposed priorities); 87 Fed. Reg. 60,092 (Oct. 4, 2022) (SBMH final priorities); 87 Fed. Reg. 47,159 (Aug. 2, 2022) (MHSP proposed priorities); 87 Fed. Reg. 60,083 (Oct. 4, 2022) (MHSP final priorities); *see also* Range Decl., Attach. P at 5 ("The priorities are being established in accordance with . . . 20 U.S.C. 1232(d)(1)."). However, the priorities referenced in the Non-Continuation Decision notices were not published before the Department applied them as a basis to discontinue Program grants. As just discussed, Defendants cannot discontinue these grants based on changed priorities, but even if they could, they may not do so without following the

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proper procedures. As the Non-Continuation Decision used unpublished priorities contrary to procedures required by law, it must be set aside. 5 U.S.C. § 706(2)(D).

5. Defendants retroactively imposed new conditions on awarded Program grants in violation of the Spending Clause

Federal courts possess the power in equity to grant injunctive relief "with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). The Spending Clause of the U.S. Constitution, art. I, § 8, cl. 1, provides that Congress—not the Executive—"shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." "Though Congress's power to legislate under the spending power is broad, it does not include surprising participating States with post acceptance or 'retroactive' conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981). States must have fair notice, so they may "voluntarily and knowingly" accept conditions attached to federal spending. *See id.* at 17, 25; *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 583-84 (2012); *City of Los Angeles v. Barr*, 929 F.3d 1163, 1175, n.6 (9th Cir. 2019) (applying Spending Clause constraints to "middleman agencies" charged with administering funds). States "cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain.'" *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst*, 451 U.S. at 17). Thus, "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst*, 451 U.S. at 17. Defendants' Non-Continuation Decision imposes new conditions that fail these requirements in three ways.

First, the new priorities announced in the notices of "merit, fairness, and excellence in education" are impermissibly ambiguous. Gustafson Decl., Attach. E; *see Pennhurst*, 451 U.S. at 17. These terms are so broad they are rife with vagueness and ambiguity. Because Defendants have yet to publish or define these new priorities, giving the opportunity to the public to give comment and receive answers from Defendants, it is impossible to discern their meaning. Nor

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have Defendants provided any clarifying guidance defining more precisely what is meant by these terms. Accordingly, the Non-Continuation Decision, which implements these new priorities, "is fatally ambiguous because it fails to clarify what conduct is proscribed." *See San Francisco Unified Sch. Dist. v. AmeriCorps*, 25-CV-02425-EMC, 2025 WL 1713360, at *18 (N.D. Cal. 2025) (quotation omitted).

Second, Defendants seek to retroactively impose their new priorities. To give grantees sufficient notice of the applicable conditions for these awards, the Department had published priorities, requirements, and definitions in the Federal Register. *See, e.g.*, 87 Fed. Reg. 47,159, 47,164-65 (Aug. 2, 2022); *see also* Range Decl., Attach. P at 8-9 (referencing priorities in application package). The new priorities announced in the Non-Continuation Decision notices are retroactive conditions which the Department has—without explanation—determined Plaintiffs cannot meet. Gustafson Decl., Attach. E.

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

B. Grantees in Plaintiff States Will Suffer Irreparable Harm Without Preliminary Relief

Irreparable harm is "harm for which there is no adequate legal remedy, such as an award for damages." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). Defendants' Non-Continuation Decision has caused Plaintiffs irreparable harm because Defendants' plan to recompete these limited funds will deprive Plaintiffs of the opportunity for relief. In addition, Defendants' actions harm public health and safety throughout Plaintiff States, and shutter critical mental health programs—harming organizational missions in the process.

If this Court does not grant preliminary relief, and the Department proceeds with recompeting and obligating funds to other grantees, the discontinued grantees will *never* be able to obtain relief. *Cf. Ambach v. Bell*, 686 F.2d 974, 986 (D.C. Cir. 1982) ("Once the chapter 1 funds are distributed to the States and obligated, they cannot be recouped. It will be impossible in the absence of a preliminary injunction to award the plaintiffs the relief they request if they should eventually prevail on the merits."); *Population Inst. v. McPherson*, 797 F.2d 1062, 1081 (D.C. Cir. 1986) (noting that "if the government in the instant case is permitted to *distribute* the $10 million to other organizations, the appeal will become moot").

As these Programs address an epidemic in school violence and mental health illness in our youth, this Court may easily find that the Non-Continuation Decision harms public health and safety. *See State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1074 (N.D. Cal. 2018) (finding irreparable harm from agency rule that "will have irreparable consequences for public health") (citation omitted); *Sierra Club v. U.S. Dep't of Agric., Rural Utils. Serv*., 841 F. Supp. 2d 349, 358 (D.D.C. 2012) (threats to public health establish irreparable harm).

Likewise, the Non-Continuation Decision causes harm even before the grant funding ends on December 31, 2025. *Planned Parenthood of Greater Washington & N. Idaho v. U.S. Dep't of Health & Hum. Servs.,* 328 F. Supp. 3d 1133, 1150 (E.D. Wash. 2018) (finding irreparable harm three months before grant termination became effective because "Plaintiffs based their programs, budgeting, staffing, and partnerships with communities on th[e] understanding" of grant's five-year term); *see also* n.3, *supra* (listing immediate harmful effects of the Non-Continuation Decision on grantees). As detailed in Statement of Facts, Section II.G, *supra*, and accompanying declarations, there can be no doubt that the Non-Continuance Decision is causing serious and irreparable harm to mental health and educational programs, school districts, and the health and safety of children throughout Plaintiff States.

In many rural and low-income communities, schools are the only place children can access the mental health services they need. Range Decl., Attach. C at 4; *see also* n.6, *supra*.

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When students have access to mental health clinicians in schools, rates of suicide, substance abuse, behavioral issues, anxiety, and depression decrease. Range Decl., Attach. C at 7; *see also* n.7, *supra*. Additionally, schools see improvements in student academic performance, students' emotional and behavioral outcomes, student-staff engagement, and the school's general social climate when mental health services are available. Range Decl., Attach. C at 6.[15] Said one school psychotherapist hired by a SBMH funded grant, "It is amazing how teaching just one student healthy communication skills and self-compassion can transform the dynamics of an entire family or friend group." Gustafson Decl. ¶16. Discontinuing these Programs constitutes irreparable harm to the health and safety of the students currently being served by grant-funded mental health providers.

Grantees in Plaintiff States are experiencing immediate harm, some tangible and some less quantifiable. For one education service district in Washington, the Non-Continuation Decision will force them to lay off all 19 school-based mental health providers hired thanks to a SBMH grant, leaving 800 students without services. *Id.* ¶¶23, 31-32. Another MHSP grantee's university partner is currently in the middle of becoming accredited as a Master's in Social Work program and the abrupt end of funding will likely derail their accreditation, impacting the grantee's ability to build the mental health workforce in its region. Nelson Decl. ¶¶19, 24. And the Day Health Institute at the Metropolitan State University of Denver reports that the Non-Continuation Decision has caused them to lose hundreds of hours put into creating their program, made only more difficult "[i]n a time of high workloads and understaffing." Matuszewicz Decl. ¶19. Yet another loss MSU Denver describes is the ability to rely on the integrity and continuity of the grant's awarding agency. *Id.*

Threats to an organization's mission and the very existence of programs constitute irreparable harm. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (finding

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[15] *See also*, *e.g.*, Ciriza Decl. ¶19; DeOrian Decl. ¶12; Welter Decl. ¶18; Gilge Decl. ¶18; Gustafson Decl. ¶22; Kida Decl. ¶¶27-28.

irreparable harm where "organizational plaintiffs have shown ongoing harms to their organizational missions"); *Planned Parenthood of Greater Washington & N. Idaho,* 328 F. Supp. 3d at 1150 (finding early termination of multi-year grant caused irreparable harm "to the youth [Plaintiffs] serve, their staff, the communities, and Plaintiffs' reputation within those communities"); *Los Altos Boots v. Bonta*, 562 F. Supp. 3d 1036, 1047 (E.D. Cal. 2021). Here, the educational and mental health missions of the grantee's will be harmed.[16] The simple fact is that grantees do not have the resources to make up for the loss in funding and have already begun shuttering programs once intended to carry through to the next school year, and laying off personnel. *See* Stuber Decl. ¶34 (noting the discontinuance has already resulted in layoffs and furloughs); Nelson Decl. ¶¶19, 23 (noting the discontinuance has already resulted in reductions in force, demotions, and a significant reduction in the number of interns hired); Feuerborn Decl. ¶20 (noting the discontinuance has forced the program to terminate the Project Coordinator role and four Graduate Research Assistants); *see also* n.8, *supra*. Critically, because the staff cuts that grantees are already making include highly trained and specialized employees who developed key relationships with students and who will be difficult to hire back, this loss of staff itself is irreparable harm—one that, even if discontinued grantees were to apply for and receive new grants in a future grant competition, grantees will never be able to recover. *See Los Altos Boots*, 562 F. Supp. 3d at 1047 (loss of employees with "specialized skills" constitutes irreparable harm); *see also* n.12, *supra*.

In addition to cutting staff, affected grantees have already had to make adjustments to their programs and are feeling the immediate consequences. *See* n.4, *supra.* MHSP grantee University of Washington Tacoma reported the loss of funding is negatively impacting the program's ability to recruit students and has limited the number of students the program was able to admit—with students declining acceptance because of the uncertainty in funding. Feuerborn Dec. ¶19. The discontinuance has strained program relationships with graduate

[16] *See e.g.*, Eklund Decl. ¶23; Piazza Decl. ¶19; Gilge Decl. ¶24; Sanders Decl. ¶26; Garcia-Diaz ¶25.

students as well as district and community partners. *See, e.g.,* Matuszewicz ¶19 (causing community agencies to "question if it is 'worth the effort' to collaborate only to have the project discontinued without cause"); Feuerborn Decl. ¶21 (the discontinuance has "created frustration, skepticism, and confusion" with community partners); Piazza Decl. ¶18; Rimkunas Decl. ¶¶20, 25; Parr Decl. ¶16; Lengsfeld Decl. ¶33. For all these reasons, even if the Department were to recompete Program funds and affected grantees were to receive a new grant award, the harm would already be done.

Simply put, Defendants' Non-Continuation Decision is causing substantial immediate irreparable harm.

C. The Balance of Equities Tips in the States' Favor and an Injunction Is in the Public Interest

The final two *Winter* factors—the balance of the equities and the public interest—merge when the government is a party. *Wolford v. Lopez*, 116 F.4th 959, 976 (9th Cir. 2024). Here, both factors tip sharply in Plaintiffs' favor. The threat of harm to Plaintiffs' mental healthcare infrastructure in public schools far outweighs the Federal Government's interests in ending programmatic mental health care funding in schools. *See Jaffee v. Redmond*, 518 U.S. 1, 11 (1996) ("The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance."); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1181 (9th Cir. 2021) (promoting the health and safety of students constitutes a public interest). The balance of equities supports a preliminary injunction, and the Court should preserve the status quo until the case can be decided on the merits.

Whatever interest the federal government may have in cutting off mental health care services to students attending some of our States' most rural and low-income schools during the pendency of this case is negligible compared to Plaintiffs' irreparable harm. In contrast to the irreparable harms faced by Plaintiffs' schools and students, a preliminary injunction would not harm the Federal Government at all but merely maintain the status quo by requiring the

Department to administer appropriated funds as directed by Congress until the Court can properly review the merits of this case. *Planned Parenthood of Greater Washington & N. Idaho,* 328 F. Supp. 3d at 1150 (finding public interests weigh in favor of continued grant funding to "prevent harm to the community . . . and prevent loss of data regarding the effectiveness of [grant-funded program]"). The Programs have successfully served students since the first Trump Administration. Indeed, Congress has already funded the Programs for fiscal year 2026. Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313, 1342 (June 25, 2022). Defendants' interest in discontinuing funding for vital mental health school-based programs in some states but not others does not outweigh the public's interest in providing all students the mental health services they need. The balance of harms and the public interest weigh decidedly in the States' favor.

D. Grantees in Plaintiff States Are Entitled to Preliminary Relief

Considering the serious and irreparable harm resulting from Defendants' unlawful actions, grantees in Plaintiff States are entitled to a preliminary injunction to preserve the *status quo ad litem*—not just the situation before Plaintiff States filed the instant matter, but "the last uncontested status which preceded the pending controversy." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024). Accordingly, Plaintiffs respectfully request that Defendants be enjoined (1) from implementing or enforcing through any means the Non-Continuation Decision, including recompeting Program funds; and (2) from reinstituting the Non-Continuation Decision based on the same or similar reasons, including denying a continuation award based on performance issues, if any, caused by the Department's Non-Continuation Decision and its disruptive effects.

V. CONCLUSION

For these reasons, Plaintiffs respectfully request a preliminary injunction order as this case proceeds.

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DATED this 8th day of July 2025.

I certify that this memorandum contains 11,142 words, and that a motion to file overlength brief has been filed concurrently, in compliance with the Local Civil Rules.

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