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Submitted via www.regulations.gov

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

RE: **Docket Number [ED-2025-OS-0020-0001](#), Priorities, Requirements, Definitions, and Selection Criteria: Evidence-Based Literacy, Education Choice, and Returning Education to the States**

Dear Secretary McMahon:

Education Law Center Pennsylvania (“ELC-PA”) submits this comment in response to the Department of Education (“ED” or Department) Notice of Proposed Rulemaking (NPRM or proposed rules) on Docket Number [ED-2025-OS-0020-0001](#), Priorities, Requirements, Definitions, and Selection Criteria: Evidence-Based Literacy, Education Choice, and Returning Education to the States. ELC-PA supports a Department priority to support public schools using evidence-based literacy instruction but is gravely concerned about the Department’s comments in the NPRM’s press release that suggests social emotional learning, Diversity Equity and Inclusion (DEI) initiatives, and increasing diverse educators are not also important elements in our schools and critical to our students’ success. Additionally, public funds should not be diverted from public schools and public school students when charter schools and private schools have not been shown to provide a better academic outcome. Finally, a Department priority to “return education to the states” ignores the legal and practical reality that states and local governments already control most of K-12 public education. . Accordingly, a return to local control cannot be used as subterfuge to dismantle the important functions of our U.S. Department of Education.

About Education Law Center-PA

ELC-PA is a statewide non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. We advocate on behalf of the most underserved students, including children living in poverty, children of color, children with disabilities, English learners, those who are in the child welfare and juvenile justice systems, LGBTQI+ youth, and students experiencing homelessness.

We work in three strategic areas: enforcing equal access to a quality education, ensuring adequate and fair funding, and dismantling the school-to-prison pipeline. ELC-PA's work includes individual and impact litigation, statewide, local, and individual advocacy, and providing technical assistance to families and students. We participate in partnerships with grassroots community organizations, as well as with local and statewide organizations and agencies. Our advocacy aims to ensure that decisions made by policymakers serve the needs of students who are most marginalized. Over its history, ELC-PA has drafted statewide and federal legislation, regulations, and regulatory guidance. Our comments emanate from ELC-PA's fifty years of on-the-ground experience working to ensure fair and equitable access for all students. ELC-PA urges that any priorities pursued by the Department reflect the varied experiences and intersectionality of students and do not supplant effective, evidence-based practices already in place.

I. Promoting Evidence-Based Literacy is a Worthy Objective, but Effective Schools Also Include Other Critical Elements of Instruction and Student Support

While ELC-PA supports increased funding for and implementation of evidence-based literacy instruction, it is essential that schools provide well-rounded instruction that addresses the full spectrum of students' needs. The Department's May 20, 2025 press release announcing the proposed ED priorities at issue in this NPRM identifies four previous ED priorities this administration is seeking to abandon because they purportedly "advanced a discriminatory diversity, equity, and inclusion (DEI) ideology."¹ On the contrary, social emotional learning, DEI initiatives that promote equitable access to education, and diverse hiring are each key tools for ensuring the success of all students in this country.

¹ Press Release, U.S. Dep't of Educ. Releases Sec'y McMahon's Supplemental Grant Priorities (May 20, 2025).

A. Decades of research demonstrates that social emotional learning improves student outcomes

Social emotional learning (SEL) is not a partisan or ideological tool; rather, it is a process “through which all young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions.”² SEL addresses the “whole child” and enables children to develop the necessary competencies to succeed in primary and postsecondary education, as well as in the labor market and as citizens in our democracy.³

Not only does SEL programming in schools have a consistent, reliable effect on students’ social, emotional, behavioral, and academic outcomes in PreK-12th grade, but the effect is seen across gender, ethnicity and race, income, and other demographic variables. SEL is also a low-cost⁴ intervention that positively impacts teachers and other school staff and leads to improvements in school culture and climate. Across hundreds of studies involving more than 1 million students worldwide, SEL is shown to yield measurable, long-lasting improvements in students’ academic performance.⁵ Effective SEL interventions address five core competencies: self-awareness, self-management, social awareness, relationship skills, and responsible decision making.⁶ Students who participated in interventions that addressed the five competencies increased their academic performance by 11 percentile points compared to their non-participating peers.⁷ Students who participate in SEL at school exhibit increased grades, test scores, attendance, and homework

² *What is the CASEL Framework?*, COLLABORATIVE FOR ACAD., SOC., AND EMOTIONAL LEARNING (CASEL): FUNDAMENTALS OF SEL, <https://casel.org/fundamentals-of-sel/what-is-the-casel-framework/>.

³ Mark T. Greenberg, *Evidence for Social and Emotional Learning in Schools* [Brief], LEARNING POL’Y INST. (March 6, 2023), <https://learningpolicyinstitute.org/product/evidence-social-emotional-learning-schools-brief#:~:text=SEL%20programs%20reduce%20disruptive%20behavior,students'%20cognitive%20and%20academic%20performance.>

⁴ *What Does the Research Say*, COLLABORATIVE FOR ACAD., SOC., AND EMOTIONAL LEARNING (CASEL): FUNDAMENTALS OF SEL, <https://casel.org/fundamentals-of-sel/what-does-the-research-say/> https://www.researchgate.net/publication/272748098_The_Economic_Value_of_Social_and_Emotional_Learning

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

completion (known as “school functioning”), and these positive impacts last for years *after* SEL participation.⁸

When students participate in SEL programs, not only do they demonstrate increased academic achievement, but they also improve their self-efficacy, self-esteem, mindset, perseverance, and optimism.⁹ The social and emotional improvements yielded by SEL contribute to positive lifetime outcomes up to 18 years later, and increase the likelihood that students will graduate high school, complete postsecondary education, and find stable, full-time employment.¹⁰ SEL contributes to decreased emotional distress and fewer externalizing behaviors and discipline problems.¹¹ Students who receive SEL interventions are less stressed, less anxious, and less depressed, and remain so for six months or more after a program ends.¹² A recent study that examined 424 prior SEL studies conducted in the last decade in over 50 countries revealed that SEL programs are best at increasing students’ perceptions of safety and inclusion at school.¹³ SEL can help reduce bullying and aggression, and lead to better student relationships with teachers and peers.¹⁴ SEL interventions support a positive affirming school climate where all children can learn and thrive.

B. DEI initiatives are critical tools to ensure all students have equitable opportunities to succeed in public schools

The Department’s negative reference to DEI initiatives in the press release for this NPRM, together with the Department’s February 14, 2025 Dear Colleague Letter (DCL) and March 1, 2025 Frequently Asked Questions (FAQ), evidence a misrepresentation of federal law and harmful discrediting of educators’ efforts to ensure that schools meet the diverse needs of *all* children. Principles of “equity” are enshrined in the major federal education laws that have been passed

⁸ “SEL programs appear to have as great a long-term impact on academic growth as has been found for programs designed specifically to support academic learning.” Joseph L. Mahoney, Joseph A. Durlak, Roger P. Weissberg, *An Update on Social and Emotional Learning Outcome Research*, KAPPAN (Nov. 26, 2018), <https://kappanonline.org/social-emotional-learning-outcome-research-mahoney-durlak-weissberg/>.

⁹ *Research Finds Social and Emotional Learning Procedures Significant Benefits for Students*, YALE SCHOOL OF MEDICINE (July 14, 2023), <https://medicine.yale.edu/news-article/new-research-published-in-child-development-confirms-social-and-emotional-learning-significantly-improves-student-academic-performance-well-being-and-perceptions-of-school-safety/>.

¹⁰ CASEL, *supra* note 4.

¹¹ *Id.*

¹² Yale School of Medicine, *supra* note 9.

¹³ *Id.*

¹⁴ CASEL, *supra* note 4.

since the mid 1960s, including the Elementary and Secondary Education Act (now known as Every Student Succeeds Act), 20 U.S.C. §§ 6301, et seq., the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a, et seq., the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400(a), Section 504 of The Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Equal Education Opportunities Act of 1974, 20 U.S.C. §§ 1701, et seq. At their core, these laws task public schools with meeting the educational needs of all students so they all can fully participate in and benefit from schooling. Implementing measures to ensure that students from all racial and ethnic backgrounds can participate in, and benefit from, public schools is consistent with federal law.

i. The administration misstates the law in an effort to extend the *SFFA* decision beyond its limited scope

In the DCL and FAQ, the Department exaggerates the scope of the U.S. Supreme Court’s decision in *Students for Fair Admissions v. Harvard (SFFA)*¹⁵ in pursuit of its political priority of moving schools away from equitable practices benefiting all students. The Court in *SFFA* held only that colleges’ practice of using racial identity as a formal admissions criterion violated the Fourteenth Amendment’s Equal Protection Clause and Title VI because the admissions policies were not narrowly tailored to achieve the colleges’ interests in obtaining the educational benefits that flow from a racially diverse student body.¹⁶ The decision applies only to the college admissions context. Contrary to the Department’s assertions in the DCL, *SFFA* does not address “hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life” at any education institution.¹⁷ The decision did not in any manner address programs to ensure educational equity.

SFFA is limited to policies that use “racial classifications” and cannot be extended, as the DCL attempts to do,¹⁸ to educational policies that are facially race-neutral. *SFFA* itself recognized that colleges could lawfully consider “an applicant’s discussion of how race affected his or her life,

¹⁵ 601 U.S. 181 (2023) (*hereinafter SFFA*). See e.g., *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, No. CV SAG-25-628, 2025 WL 1191844, at *13 (D. Md. Apr. 24, 2025) (“*AFT*”) (“Again, the government’s insistence that the Letter merely restates schools’ obligations under civil rights law is unpersuasive. Title VI and *SFFA* have never been interpreted to preclude teaching about concepts relating to race.”).

¹⁶ *SFFA*, 600 U.S. at 230.

¹⁷ DCL at 2.

¹⁸ DCL at 2.

be it through discrimination, inspiration, or otherwise.”¹⁹ And lower federal courts have rejected cases asserting the Department’s theory that race-conscious educational policies are unlawful after *SFFA*.²⁰ *SFFA* itself recognized that colleges could lawfully consider “an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”²¹

The Department’s assertion in the DCL that *SFFA* “applies more broadly” to require schools to alter or eliminate all “DEI programs”, a vague term that is not defined, is dishonest and contrary to established law.²² *SFFA* does not impact any of these important areas of school administration and curriculum. Existing law permits policies that recognize race or celebrate diversity, and the Department has no authority to withhold federal funding based on the mere fact that schools implement such policies.²³ The Department’s assertion flouts long-established jurisprudence and directly contradicts the *SFFA* Court’s characterization of the pursuit of diversity-related interests as “worthy” and “commendable.”²⁴ Teaching students about the role of race in history and literature, allowing affinity groups that are open to all students, and proudly promoting a commitment to diversity, equity and inclusion do not involve “racial classifications” and are all measures schools can take consistent with federal law and Supreme Court precedent.²⁵

¹⁹ *SFFA*, 600 U.S. at 230; see also NEA Advisory, at 3-4 n.3.

²⁰ See, e.g., *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for the City of Bos.*, 89 F.4th 46, 61 (1st Cir. 2023) (“[W]e find no reason to conclude that Students for Fair Admissions changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles.”); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 879 (4th Cir. 2023) (applying rational basis review to a race-neutral high school admissions policy where there was insufficient proof of discriminatory intent and disparate impact); *Sargent v. Sch. Dist. of Philadelphia*, No. CV 22-1509, 2024 WL 4476555, at *19 (E.D. Pa. Oct. 11, 2024) (same).

²¹ *SFFA*, 600 U.S. at 230.

²² *AFT*, No. CV SAG-25-628, 2025 WL 1191844, at *17 (“...there is no basis in Title VI or *SFFA* for concluding that discussion of race—in the two ways highlighted in the Letter or otherwise—is ever, or especially always, discrimination. The government cannot proclaim entire categories of classroom content discriminatory to side-step the bounds of its statutory authority) (footnote omitted).

²³ As explained in *AFT*, ED’s DCL constitutes a change in prior law, conflicts with the Department’s own regulations and governing case law and likely violates the First and Fifth Amendment and Administrative Procedures Act. *AFT*, No. CV SAG-25-628, 2025 WL 1191844. See also Nat’l Educ. Assoc., Advisory Regarding U.S. Department of Education’s February 14, 2025 Dear Colleague Letter (2025) (hereinafter “NEA Advisory”), at 4 (listing examples of permissible educational policies related to instruction about racism, cultural celebrations, affinity groups, and mission statements that recognize the importance of diversity).

²⁴ *SFFA*, 600 U.S. at 214-15, 317.

²⁵ See generally Legal Defense Fund, Lawyers’ Committee for Civil Rights Under Law, Asian Americans Advancing Justice – AAJC, American Civil Liberties Union, LatinoJustice PRLDEF, and Asian American Legal Defense and Educational Fund, Affirmative Action in Higher Education: The Racial Justice Landscape After the *SFFA* Cases (Oct. 2, 2023), available at https://assets.aclu.org/live/uploads/2023/10/2023_09_29-Report.pdf.

ii. Many initiatives that promote racial equity remain lawful and enhance student achievement and wellbeing

Racial equity initiatives in education are not inherently discriminatory and serve as necessary and valuable complements to the Department’s proposed prioritization of literacy. By dismissing legal efforts to promote and foster diversity as “divisive ideologies and unproven strategies,” the Department seeks to undermine the legitimate time-honored work of educators to ensure that schools meet the diverse needs of all children. An “established body of research affirms” that “a culturally responsive and racially inclusive education benefits all students—and is the most effective pedagogical approach.”²⁶ Culturally inclusive education is not only associated with enhanced critical thinking skills, improved GPAs, test scores, and attendance rates, it prepares students for citizenship and participation in the global marketplace.²⁷

Schools do not violate the Equal Protection Clause and Title VI by implementing a racially inclusive pedagogical approach, but by failing to protect students from race-based discrimination or harassment that can expose districts to liability under state and federal law. Likewise, restricting discussion of topics related to diversity, equity and inclusion raises serious First Amendment concerns.²⁸ At their core, these laws task public schools with meeting the educational needs of all students so they all can fully participate in and benefit from schooling. Implementing measures to ensure that students from all racial and ethnic backgrounds can participate in, and benefit from, public schools is consistent with federal law.

C. Diverse educators are linked to positive student outcomes

The Department’s press release asserts that “[f]ocusing on diversity amongst educators” comes at the expense of sound teacher preparation. However, research shows that staffing classrooms with teachers that share their students’ ethnicity or race *is* sound teacher preparation. A recent study “reaffirms that teachers of color are linked to positive academic, social-emotional, and behavioral student outcomes and finds that these effects are driven, at least in part, by mindsets

²⁶ See NEA Advisory, at 3 (“[D]ozens of research studies have established that a culturally responsive curriculum benefits all students.”).

²⁷ *Id.*

²⁸ *AFT*, No. CV SAG-25-628, 2025 WL 1191844, at *22 (finding that DCL regulates “specific forms of speech of a particular viewpoint by declaring them discriminatory, and therefore unlawful,”). See *Loc. 8027 v. Edelblut*, No. 21-CV-1077-PB, 2024 WL 2722254, at *17 (D.N.H. May 28, 2024) (concluding that state statutes prohibiting teaching banned concepts are unconstitutionally vague and risk chilling teachers’ speech).

and practices aligned to what's known as culturally responsive teaching.”²⁹ Culturally responsive teaching comprises practices “that are very much components of good instruction,” like holding students to high expectations, building relationships with students and families, and providing varied supports.³⁰

Efforts to promote evidence-based literacy instruction will be less effective for students of all races if the value of diverse educators is underestimated. White students and students of color alike experience the positive outcomes associated with learning from a teacher of color.³¹ Upper elementary students randomly assigned to a teacher of color were better at completing tasks and scored higher on end-of-year math and English/language arts tests.³² Research shows that white teachers may be likely to provide more praise and less criticism for work done by white students than the same quality work done by Black students.³³ Recruiting and retaining more teachers of color can help expand culturally responsive teaching practices among the mostly white teacher workforce. Although white teachers are less likely to implement culturally responsive pedagogy into their classrooms, professional development and collaboration with diverse educators can train them “to engage in these practices that benefit students.”³⁴

The dearth of diverse educators is felt acutely in states like Pennsylvania, where only 6% of teachers are people of color, while 37% of students are people of color.³⁵ In 2020-2021, nearly half of public schools in Pennsylvania employed no teachers of color.³⁶ The alleged prior “focus” on diverse hiring asserted by the Department has yielded modest gains—between 2013-2014 and 2020-2021, Pennsylvania increased its percentage of teachers of color by just 0.8%.³⁷ In contrast,

²⁹ Madeline Will, *Teachers of Color Are Linked to Social-Emotional, Academic Gains for all Students*, EDUCATIONWEEK: TEACHING (Feb. 8, 2022), <https://www.edweek.org/teaching-learning/teachers-of-color-are-linked-to-social-emotional-academic-gains-for-all-students/2022/02> (citing David Blazar, *Teachers of Color, Culturally Responsive Teaching, and Student Outcomes: Experimental Evidence from the Random Assignment of Teachers to Classes* (Annenberg Inst. at Brown Univ., EdWorkingPaper:21-501), <https://edworkingpapers.com/sites/default/files/ai21-501.pdf> [https://doi.org/10.26300/jym0-wz02])).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Leana Cabral, Mary Eddins, David Lapp, Saxon Nelson, *The Need for More Teachers of Color*, 15 (April 23, 2022), RESEARCH FOR ACTION, <https://www.researchforaction.org/wp-content/uploads/2022/04/RFA-TheNeedforMoreTeachersofColor.pdf>.

³⁶ *Id.* at 11.

³⁷ *Id.* at 13.

the percentage of white teachers in Pennsylvania schools is 93.8%, which is nearly 50% greater than the population of white students (63.4%).³⁸ Meanwhile, in cities like Philadelphia, there were almost 1,200 fewer Black teachers employed in 2020-2021 than 20 years prior.³⁹ The majority of Pennsylvania’s teachers of color are employed in Philadelphia County’s district and charter schools, even though students of color in Philadelphia County represent only one quarter of students of color in the state.⁴⁰

Fewer teachers of color will mean diminished outcomes for all students. The success of newly prioritized evidence-based literacy objectives depends on a simultaneous push for classroom leadership that more closely reflects the real composition of classrooms in Pennsylvania and throughout the country.

II. “Education Choice” Must Not Be Used to Divert Public Funds From Public Schools and Public School Students

A. Research shows private schools and public charters do not provide better academic experience than traditional public schools

The Department’s priorities purport to “address this year’s dismal reading and math scores,” but the record is clear that private vouchers are not the answer. According to a 2019 study of Louisiana voucher programs conducted by researchers at the University of Arkansas, students using vouchers to attend private schools “performed noticeably worse on state assessments than their [public school] control group counterparts.”⁴¹ That same study showed especially negative assessment results in math, and another study found that Louisiana voucher program participation did not improve college enrollment rates. In Washington, D.C., a three-year review of the District’s voucher program showed “no statistically significant effect on student achievement in reading or math.”⁴² A 2018 study of the Indiana Choice Scholarship Program found that students who

³⁸ *Id.* at 15.

³⁹ *Id.* at 25.

⁴⁰ *Id.* at 11.

⁴¹ Press Release, *supra* note 1; Jonathan N. Mills & Patrick J. Wolf, *The Effects of the Louisiana Scholarship Program on Student Achievement After Four Years* 4 (Univ. of Arkansas, Dep’t of Educ. Reform Working Paper 2019-10, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3376230.

⁴² Ann Webber ET AL., WASHINGTON, DC: NAT’L CTR. FOR EDUC. EVALUATION AND REG’L ASSISTANCE, INST. OF EDUC. SCI., U.S. DEP’T OF EDUC., *EVALUATION OF THE DC OPPORTUNITY SCHOLARSHIP PROGRAM: IMPACTS THREE YEARS AFTER STUDENTS APPLIED* 4 (NCEE 2019-4006) (2019), <https://ies.ed.gov/ncee/pubs/20194006/>

transferred from public to private schools using vouchers did not improve their language arts achievement, and on average, lost 3-4 percentile points in mathematics.⁴³ These students took four years to show improvements but even then did not surpass their public school counterparts in academic performance.

Charter schools also fail to outperform traditional public schools despite having considerable advantages like selective enrollment, instruction focused on teaching to standardized tests, and less transparency that allows for pushing out students with challenging academic and behavior problems. In the “most rigorous and most expensive study of charter school performance” commissioned by the Department itself, charter schools were found to have no overall positive effect.⁴⁴

The Department’s announced priorities include “[e]fforts to expand or replicate existing charter schools that have a record of improving students’ academic achievement,” but even where data show that charter schools appear to outperform public schools, it is likely because charters do not serve the full population of students like public district schools do. Public district schools are required to accept students regardless of space, grade or time of the year, while charters tend to serve far fewer students with disabilities and English Learners (EL), and they often do not “backfill” when students leave, or take older students. A national study showed that only 4.4% of the students in charter schools operated by education management companies were classified as EL.⁴⁵ Charter schools nationally also serve far fewer students with disabilities, and the students with disabilities who do enroll in charter schools often have less severe disabilities that are not as costly to address as those of students in public schools.⁴⁶

Too often, charter schools use their lower standards of transparency and accountability to maintain only the students they want and use various illegal methods to oust their most “problematic” students who then return to public district schools that are required to accept all

⁴³Megan Austin, Mark Berends & R. Joseph Waddington, *Indiana’s Choice Scholarship: Participation & Impact on Achievement* (Summary), Univ. of Cal., The Civ. Rts. Project (March 5, 2018), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/indiana2019s-choice-scholarship-participation-impact-on-achievement>

⁴⁴ *Do Charter Schools Get Better Academic Results than Public Schools?*, NETWORK FOR PUBLIC EDUCATION: NPE TOOLKIT: SCHOOL PRIVATIZATION EXPLAINED, <https://networkforpubliceducation.org/wp-content/uploads/2019/01/Do-charter-schools-get-better-academic-results-than-public-schools-f.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

students.⁴⁷ For example, KIPP, one of the most acclaimed charter networks in the country, has substantially higher levels of attrition than its local district counterparts.⁴⁸ In a national study, 40% of KIPP’s African American male students left between grades 6 and 8, and overall, a higher proportion of African American students than any other ethnic groups leave KIPP schools.⁴⁹

In Pennsylvania, the charter sector, on the whole, has and continues to serve disproportionately fewer of Pennsylvania’s vulnerable students than traditional public schools.⁵⁰ Notably, Pennsylvania’s charter schools rank among the lowest in the nation in academic performance.⁵¹ Economic disadvantage is one proxy for vulnerable students, but there are other proxies as well, including: students with disabilities, English Learners, students experiencing homelessness, and students in the dependency and delinquency systems. For instance, data from the PolicyLab at the Children’s Hospital of Philadelphia suggests that the traditional public schools in the School District of Philadelphia serve much greater concentrations of students in “deep” poverty as compared to Philadelphia’s charter sector.⁵² Vulnerable students require different kinds of services—and resources—to meet their unique challenges. Notably, based on a comprehensive review of the most recent School Performance Profiles (“SPPs”) and PennData, it is not at all apparent that Pennsylvania’s charter sector is performing any better than traditional public schools even while serving fewer of our most vulnerable student groups.⁵³

B. Private school vouchers divert public funds for private education

Publicly funded private school voucher programs are siphoning money away from our public schools that serve the vast majority of students.⁵⁴ Out of the seven states with long histories

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Alex M. Dutton, Maura McInerney & Michaela Ward, *Inequities in Pennsylvania’s Charter Sector: Segregation by Disability*, EDUCATION LAW CENTER (Feb. 2017), <https://www.elc-pa.org/wp-content/uploads/2017/02/ELC-Analysis-Inequities-in-PA-Charter-Schools-Segregation-by-Disability.pdf>.

⁵¹ Pennsylvania ranked 6th from the bottom. The Nation’s Charter Report Card, EdNext [Standards, Testing, and Accountability Vol. 24, No. 1](https://www.educationnext.org/nations-charter-report-card-first-ever-state-ranking-charter-student-performance-naep/) (Spring 2025) available at <https://www.educationnext.org/nations-charter-report-card-first-ever-state-ranking-charter-student-performance-naep/>.

⁵² Sophia Hwang, ET AL., *Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia* 15, POLICYLAB, CHILDREN’S HOSPITAL OF PHILADELPHIA (June 2014), available at http://www.projectturn.net/docs/supporting_needs.pdf.

⁵³ For example, in the 2014-15 school year, the statewide average score for district public schools on the SPP issued by the Pennsylvania Department of Education (“PDE”) was 77.1 while the average SPP for charter schools was 65.7. See Pennsylvania School Performance Profile, available at <http://paschoolperformance.org/>.

⁵⁴ Samuel E. Abrams & Steven J. Koutsavlis, PFPS Report: *The Fiscal Consequences of Private School Vouchers 4*, PUBLIC FUNDS PUBLIC SCHOOLS, EDUCATION LAW CENTER, SOUTHERN POVERTY LAW CENTER (March 2023), https://pfps.org/assets/uploads/SPLC_ELC_PFPS_2023Report_Final.pdf.

of operating such voucher programs,⁵⁵ almost all of them are diverting hundreds of millions of dollars from public schools to voucher programs.⁵⁶ In Georgia, between 2008 and 2019 voucher spending increased 883%, and spending continues to grow in many states.⁵⁷ In the decade following the Great Recession, public schools across the U.S. lost nearly \$600 billion dollars through state disinvestment, while state spending on vouchers increased considerably during that same period.⁵⁸

i. Private school voucher programs lack accountability which leads to corruption and waste

Voucher programs are not held to the same standards to ensure transparency and accountability as public schools.⁵⁹ Without oversight of teacher licensing standards, criminal background check requirements for employees, building safety codes, or even state and national test results, fraud and mismanagement thrive. Of 29 states surveyed by the EdWeek Research Center in 2020, fewer than half required that teachers serving private voucher schools have a bachelor's degree. In 2017, an investigation of Florida's private school program revealed similar lax hiring practices, along with falsification of fire safety and health records.⁶⁰

In Pennsylvania, more than half a billion dollars are budgeted each year for tax credit voucher programs under state law;⁶¹ this program fails to target low-income students, diverts money to schools that discriminate, and does nothing to improve student achievement.⁶² The Education Income Tax Credit and Opportunity Scholarship Tax credit programs divert tax dollars

⁵⁵ These states are Arizona, Florida, Georgia, Indiana, Louisiana, Ohio, and Wisconsin. Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Danielle Farrie & David G. Sciarra, *\$600 Billion Lost: State Disinvestment in Education Following the Great Recession*, EDUCATION LAW CENTER (2021), [edlawcenter.org/assets/\\$600%20Billion/\\$600%20Billion%20Lost.pdf](https://edlawcenter.org/assets/$600%20Billion/$600%20Billion%20Lost.pdf).

⁵⁹ Arianna Prothero & Alex Harwin, *Private School Choice Programs Fall Short on Transparency, Accountability*, EDUCATIONWEEK: SCHOOL CHOICE & CHARTERS (Feb. 28, 2020), <https://www.edweek.org/ew/articles/2020/02/28/private-school-choice-programs-fall-short-on.html?r=2000718806>.

⁶⁰ Leslie Postal, Beth Kassab & Annie Martin, *Florida Private Schools Get Nearly \$1 Billion in State Scholarships with Little Oversight, Sentinel Finds*, ORLANDO SENTINEL (Oct. 18, 2017), <https://www.orlandosentinel.com/2017/10/17/florida-private-schools-get-nearly-1-billion-in-state-scholarships-with-little-oversight-sentinel-finds/>

⁶¹ 24 P.S. Section 20-2001-B, et seq.,

⁶² Education Voters of Pennsylvania, *Pennsylvania's Educational Improvement Tax Credit (EITC) and Opportunity Scholarship Tax Credit (OSTC) School Voucher Programs*, <https://edvoterspa.org/wp-content/uploads/2024/09/EITCOSTC.pdf>.

to private organizations free from public scrutiny. The organizations taking these funds have no public budgets, no public check registers, no public meetings, no standardized tests and are not subject to Sunshine laws or right-to-know laws. Moreover, voucher scholarship organizations can keep 10% of the funding they receive without reporting how it is used to the Pennsylvania Department of Community and Economic Development.⁶³ That means over \$50 million is taken each year from taxpayers with almost no accountability for its use. Pennsylvanians also have no way of knowing who benefits from the money that is actually given to students via vouchers. Pennsylvania's income limit is roughly 500% of the federal poverty level, higher than any state with a similar program that has an income limit.⁶⁴ Instead of benefiting low-income students, vouchers may be subsidizing tuition payments for well-off families whose children were already enrolled in private or religious schools.

C. Private school vouchers do not protect against discrimination

Although school vouchers have evolved from their original use as a tool to preserve segregation, research shows that voucher programs still promote de facto segregation today.⁶⁵ Public schools are required to serve all children, but private schools accepting vouchers are not subject to many of the anti-discrimination laws that protect students with disabilities, LGBTQ+ students, and other vulnerable groups.⁶⁶ Private schools that accept vouchers often discriminate against students with disabilities, English learners and other students, refusing to serve them.⁶⁷ With regard to students with disabilities in particular, private schools often exclude them⁶⁸ and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Chris Ford, Stephenie Johnson & Lisette Partelow, *The Racist Origins of Private School Vouchers*, CTR. FOR AMERICAN PROGRESS (Jul. 12, 2017), <https://www.americanprogress.org/article/racist-origins-private-school-vouchers/>

⁶⁶ *Id.*

⁶⁷ For example, a 2018 policy brief from the National Education Policy Center found that private school vouchers and other privatization programs open the door for discrimination because private schools are free to determine what programs to offer, they can attract some populations while excluding others. *How School Privatization Opens the Door for Discrimination*, Mead, Julie F., Eckes, Suzanne (Dec. 2018) available at https://nepc.colorado.edu/sites/default/files/publications/PB%20Mead-Eckes%20Privatization_4.pdf

⁶⁸ For example, a 2016 report by the Council of Parent Attorneys and Advocates found that while private schools may accept students with disabilities, they often expel them for behavioral or other reasons, and moreover, even private school vouchers for special education students "typically fail to include all students with disabilities." *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, Almazan, Selene and Stile Marshall, Denise (June 2016) available at https://cdn.ymaws.com/www.copaa.org/resource/resmgr/2016_Conference/COPAA_Voucher_paper_final_R6.pdf.

routinely do not inform parents that their child’s disabilities will not be addressed.⁶⁹ Many private schools have histories of discriminatory practices like selective admission and hiring based on these categories. States that require private voucher schools to admit students regardless of either sexual orientation or religion number in the single digits.⁷⁰

Schools like the Dayspring Christian Academy (DCA) in Pennsylvania have published policies that outline their discriminatory enrollment practices.⁷¹ DCA “retains the right to refuse enrollment to or to expel any student who professes to be homosexual/bisexual/ transgender or is a practicing homosexual/bisexual/transgender, as well as any student who condones, supports, or otherwise promotes such practices (Leviticus 20:13, Romans 1:27).”⁷² Calvary Christian Academy (CCA) in Philadelphia, another recipient of tax dollars through vouchers, engages in blatant and explicitly discrimination against students. CCA’s policies state that “individual differences in lifestyle that deny, ignore, or reject biblical standards represent diversity in rebellion to God’s standards and hence, are unacceptable for the families of CCA.”⁷³ Schools that engage in discriminatory practices based on religious teachings should be disqualified from receiving any public tax dollars and it is a mistake to prioritize funding these programs through vouchers over comprehensive, contemporary, and effective public education.

III. “Returning Education to the States” Is a Misnomer to Distract from the Destruction of Important Functions of the U.S. Department of Education

A. States and local governments already control curriculum and standards for K12 schools

The Department’s purported priority of “returning education to the states” neglects to acknowledge that states and local governments already control curriculum and standards for public

⁶⁹ A 2017 report by the Government Accountability Office found that parents are often uninformed that students’ special education rights are significantly diminished or eliminated when they use private school vouchers. The report concluded that in the 2016-17 school year, 83 percent of students enrolled in a voucher program designed specifically for students with disabilities were in a program that provided either no information about changes in federal protections and right or were provided information with information that the U.S. Department of Education confirmed contained inaccuracies about the changes. See GAO Report, *Private School Choice Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* (Nov. 2017) available at <https://www.gao.gov/assets/gao-18-94.pdf>.

⁷⁰ Prothero & Harwin, *supra* note 59.

⁷¹ Education Voters of Pennsylvania, *Pennsylvania Voucher Schools Use Tax Dollars to Advance Discrimination* 3 (Dec. 2023), https://edvoterspa.org/wp-content/uploads/2023/12/EDVO_VOUCHER_REPORT_Dec2023.pdf.

⁷² *Id.*

⁷³ *Id.* at 6.

K-12 schools. The federal government, by design and more importantly by law, plays no role in the development of local curricula or related policies. Where the Department does play a role, is in the provision of technical assistance, the enforcement of civil rights law, and the distribution of funding that targets particular student needs. School curriculum and instruction are already the responsibility of state and local authorities, not the federal government.⁷⁴ Indeed, federal statutes, including the Department of Education Organization Act, Every Student Succeeds Act, and General Education Provisions Act,⁷⁵ prohibit the Department from “exercis[ing] any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system . . . or over the selection or content of library resources, textbooks or other instructional materials.”⁷⁶

Dismantling and potentially eliminating the Department will result in significant cuts to federal funding, particularly for our most underfunded schools; a lack of federal oversight and enforcement of federal education laws; and an erosion of federal civil rights protections. The federal role in education has traditionally been as an “emergency response system” that fills gaps as needs arise.⁷⁷ Indeed, according to the Department’s website, 92% of funds for elementary and secondary education come from non-federal sources, leaving only 8% to be funded between ED and other federal agencies.⁷⁸ ED should continue “targeting its funds where they can do the most good” by addressing the considerable disparities in educational outcomes for our most vulnerable student populations.

For 130 years, ED has emphasized “getting information on what works in education to teachers and education policymakers.”⁷⁹ The Department’s “official mission” is “to promote student achievement and preparation for global competitiveness by fostering education excellence and ensuring equal access.” The equal access component of its mission was spurred by the anti-

⁷⁴ U.S. Dep’t of Educ., *Federal Role in Education* (last reviewed March 2, 2025), <https://www.ed.gov/about/ed-overview/federal-role-in-education> (“Education is primarily a State and local responsibility in the United States.”).

⁷⁵ *NEA Advisory* (citing the Department of Education Organization Act of 1979, 20 U.S.C. §§ 3401, et seq.; Every Student Succeeds Act (“ESSA”), 20 U.S.C. §§ 6301 et seq; and General Education Provisions Act, 20 U.S.C. §§ 1221, et seq.).

⁷⁶ *Id.* at 2 (quoting 20 U.S.C. § 3403 and noting that these limits are reiterated throughout the ESSA); *see also, e.g., Milliken v. Bradley*, 418 U.S. 717, 742 (1974); *United States v. Lopez*, 514 U.S. 549, 566 (1995).

⁷⁷ U.S. Dep’t of Educ., *supra* note 74.

⁷⁸ *Id.*

⁷⁹ *Id.*

poverty and civil rights laws of the 1960s and 1970s, which “made civil rights enforcement a *fundamental* and long-lasting focus of the Department of Education.”⁸⁰ We urge the Department to maintain its pursuit of the “twin goals of access and excellence through the administration of programs that cover every area of education.” Our nation’s students rely on the oversight provided by ED to guarantee a meaningful education no matter their background, abilities, or state of residence.

B. Dismantling the Department of Education will have profound negative effects on Pennsylvania’s students

i. Students of color

In Pennsylvania, families rely on the Department to distribute a total of \$1.6 billion in federal funds to our schools, plus \$6 billion in higher education financial aid. These funds are absolutely essential in the fight to advance educational equity in our state. Due to systemic and structural racism and individual racial bias, Black and Brown students disproportionately attend Pennsylvania’s most underfunded schools⁸¹ and are most likely to attend Title I schools with high concentrations of students experiencing poverty.⁸² Due to racism, Black and Brown students are disproportionately represented in nearly every category of students who rely on federal funding: They are more likely to experience homelessness,⁸³ be immigrant students, be identified as students with disabilities,⁸⁴ and be referred to the foster care⁸⁵ or juvenile justice system.⁸⁶ Black and brown students are also subject to racial discrimination⁸⁷ in school, including bullying and

⁸⁰ *Id.* (emphasis added).

⁸¹ Testimony of Matthew G. Kelly 5 (Sept. 12, 2023), Basic Educ. Funding Comm’n, <https://pubintlaw.org/wp-content/uploads/2023/09/Kelly-BEF-written-testimony-final.pdf>.

⁸² Kirsten Kainz, *Early Academic Gaps and Title I Programming in High Poverty, High Minority Schools*, 47 EARLY CHILDHOOD RSCH. Q. 159 (2nd Quarter 2019), <https://www.sciencedirect.com/science/article/abs/pii/S0885200618301443?via%3Dihub>.

⁸³ Joanne Jung, J.J. Cutuli, & Joe Willard, *Childhood Homelessness in Pennsylvania*, NEMOURS CHILDREN’S HEALTH SYSTEM, PEOPLE’S EMERGENCY CENTER (Oct. 2022), <https://www.phila.gov/media/20221117095314/Childhood-Homelessness-in-Pennsylvania.pdf>.

⁸⁴ Krisa Franzetta, *Examining Overrepresentation in Special Education Amongst African Americans Diagnosed with Emotional Disturbance in the State of Pennsylvania* (2022) (Doctoral dissertation, Duquesne University) (on file electronically with the Duquesne Scholarship Collection Electronic Theses and Dissertations database).

⁸⁵ PENNSYLVANIA DEP’T OF HUM. SERV., RACIAL EQUITY REPORT 2021, <https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/about/documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf>.

⁸⁶ THE PENNSYLVANIA JUVENILE TASK FORCE, REPORT & RECOMMENDATIONS (June 2021), https://www.senatorbaker.com/wp-content/uploads/sites/28/2021/06/PA-Juvenile-Justice-Task-Force-Report-and-Recommendations_FINAL.pdf.

⁸⁷ Izraelle I. McKinnon et al., *Experiences of Racism in School and Associations with Mental Health, Suicide Risk, and Substance Use Among High School Students – Youth Risk Behavior Survey, United States, 2023*, 73(4) CTR. FOR

harassment,⁸⁸ and will be deeply impacted by the absence of enforcement of federal civil rights laws. Without data (like that collected through the Civil Rights Data Collection Office for Civil Rights) and federal oversight, state and local agencies will not be held accountable for racial disparities in discipline and inequitable school resources.

ii. Students living in poverty

Students living in poverty are also especially reliant on federal funding to ensure they receive a fair, equitable and high-quality education. Title I Part A of the Every Student Succeeds Act (ESSA) provides supplemental funding to approximately 63% of public schools nationally,⁸⁹ and Pennsylvania schools receive over \$700 million in Title I funds. This money is used by districts and schools to upgrade the entire curriculum, help specific children by providing early intervention services, fund before-school and after-school programs, summer programs, hire additional teachers and staff, provide technology and professional development and training for teachers and school staff, as well as other vital services for students. Without Title I funding, students will experience significantly worsened teacher and staff shortages, removal of crucial academic programs, and a lack of instructional support and curriculum tools relied upon by teachers to provide effective comprehensive education.

iii. Students with disabilities

Students with disabilities benefit from the estimated \$525 million in federal funding that supports special education programs in schools across the states. The Department also provides essential guidance and accountability to effectively implement individualized education programs and defend parents' rights.⁹⁰ The Department has the ultimate responsibility for ensuring that individual school districts and charter schools comply with special education laws, which it

DISEASE CONTROL MORBIDITY AND MORTALITY WKLY. REP. 31 (Oct. 10, 2024), <https://www.cdc.gov/mmwr/volumes/73/su/su7304a4.htm>.

⁸⁸ Mariah Xu et al., *Racial and Ethnic Differences in Bullying: Review and Implications for Intervention*, 50 *Aggression and Violent Behavior: A Rev. J.* (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7453877/>

⁸⁹ National Center for Education Statistics. (2023). Table 401.70. Appropriations for Title I and selected other programs under the Every Student Succeeds Act of 2015, by program and state or jurisdiction: Fiscal years 2021 and 2022 [Data table]. In *Digest of education statistics*. U.S. Department of Education, Institute of Education Sciences. Retrieved May 30, 2024, from https://nces.ed.gov/programs/digest/d22/tables/dt22_401.70.asp.

⁹⁰ See generally, U.S. Dep't of Educ., Policy Letters and Policy Support Documents, <https://sites.ed.gov/idea/policy-letters-policy-support-documents/>

achieves in part by investigating complaints of disability-based discrimination.⁹¹ Funds from the Individuals with Disabilities Education Act help provide critical early intervention⁹² services, including free services to nearly 120,000 young children⁹³ in Pennsylvania who experience delays in growth and development from birth to 5 years old, to help them develop skills for school success and lifelong wellbeing. Without ED oversight and assistance, there will be fewer special education teachers and support staff in classrooms, less inclusive classroom environments, no means to challenge delays in obtaining an evaluation, failure to provide the supports and services mandated in IEPs, and a shifting of financial burden to families who will need to pay for services and interventions out of pocket.

iv. Students experiencing homelessness

Students experiencing homelessness need the critical and comprehensive protections provided by the McKinney-Vento Act to ensure their equal access to learning. Due to intersecting systemic and resource-based inequities, students experiencing homelessness in Pennsylvania are disproportionately Black and Brown students,⁹⁴ English learners, students with disabilities, and students at the intersections of these identities. Between McKinney-Vento and Title I funding, ED supports over 46,700⁹⁵ students in Pennsylvania that rely on eight regional coordinators⁹⁶ with significant expertise supporting the growing number⁹⁷ of students experiencing homelessness. Without federal funding, Pennsylvania could lose these coordinators that provide technical assistance, training, and guidance to the local McKinney-Vento liaisons serving all 779 local

⁹¹ U.S. Dep't of Educ., Off. for Civ. Rts., Report to the President and Secretary of Education Under Section 203(b)(1) of the Department of Education Organization Act, FY 2024, Washington, DC, 20202, <https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf>.

⁹² Pa. Dep't of Educ., Programs and Services, Instruction: Early Intervention, <https://www.pa.gov/agencies/education/programs-and-services/instruction/early-learning/early-intervention.html>.

⁹³ The Annie E. Casey Foundation, Statistics on Children, Youth and Families, Early Intervention – Number of Children Receiving Services in Pennsylvania (2014-2024), <https://datacenter.aecf.org/data/tables/2667-early-intervention--number-of-children-receiving-services#detailed/2/any/false/2619,2547,2108,2051,1771,1740,1639,1600,1536,1460/214,8427,8428/10969>

⁹⁴ Jung, Cutuli & Willard, *supra* note 83 at 2.

⁹⁵ Pa. Dep't of Educ., Education for Children and Youth Experiencing Homelessness Program 2022-23 State Evaluation Report (May 2024), <https://www.pa.gov/content/dam/copapwp-pagov/en/education/documents/instruction/homeless-education/reports/2022-23%20ecyeh%20evaluation%20report.pdf>.

⁹⁶ Pa. Education for Children and Youth Experiencing Homelessness Site Contact – Regional Contacts (March 2023), <https://resources.finalsite.net/images/v1678733294/sfsdk12paus/ikoswtrmhwlvyfbyj79/Website-PAECYEHDirectory.pdf>

⁹⁷ Pa. Dep't of Educ., *supra* note 95.

education agencies⁹⁸ in Pennsylvania. If the Department is dismantled, students experiencing homelessness are less likely to be identified and served, have school stability with transportation provided, and stay in school.

v. Students in foster care and the juvenile justice system

Students in foster care have important rights under ESSA for which the Department provides guidance and accountability to ensure students have school stability and equal access to learning. The Department provides essential funding to schools through Title I to support transportation to facilitate school stability for students in foster care. The Department's Title I Part D funding provides critical support, including literacy and math programs, to students in foster care and the juvenile justice system. Approximately 30-50% of youth in foster care are receiving special education services because of a disability. These students often experience barriers to receiving special education services; they rely on IDEA funding as well as federal oversight and enforcement of their rights. Due to persistent racism in the child welfare system and juvenile justice system, students in both systems are disproportionately Black and Brown, who will be harmed by the loss of targeted funding, administrative guidance, and federal accountability to uphold their rights. Students in the foster care and juvenile justice systems are highly mobile and need appropriate supports to stay on track to graduate. Lack of federal funding and accountability will result in less school stability, the absence of needed remedial supports, and potentially the absence of "points of contact" or liaisons at the local level who are important advocates for children in schools.

vi. Students in underfunded rural schools

Students in underfunded school districts in rural counties across Pennsylvania are at significant risk of losing important federal resources as they face unique school funding challenges due to smaller enrollment sizes, stranded costs, increased transportation and technology needs, and staffing shortages. Many rural districts in Pennsylvania receive federal funds under the Rural Education Achievement Program (REAP). REAP consists of two programs: the Small Rural School Achievement Program and the Rural and Low-Income School Program. Funds can be used

⁹⁸ Educ. for Children and Youth Experiencing Homelessness, Liaisons (directory), <https://ecyehpennsylvania.center-school.org/liaisons/>.

to improve academic achievement, enhance teacher quality and recruitment, purchase technology and curricula, and improve language instruction for multilingual learners. The Education Department is necessary to facilitate these grants and review the formula grant allocation procedures to determine eligibility. Replacing these funds would be difficult for many small, under-resourced rural districts in PA. These districts have limited ability to raise additional local revenue and rely on every dollar of state and federal funding.

vii. Early education and young learners

The Department uses its expertise to distribute vital Title I program funds to schools that serve more than 1.5 million preschool students nationally,⁹⁹ targeting schools that serve children experiencing poverty to ensure their access to high-quality preschool programs.¹⁰⁰ Elementary school recipients of Title I funds coordinate with Head Start¹⁰¹ programs, which annually serve more than 778,000 children and pregnant individuals experiencing poverty nationally, to ensure continuity of education programming and increased academic pre-readiness skills.¹⁰² The Department provides funding and accountability to early intervention and special education programs that support more than 1 million children with developmental delays and disabilities

viii. Multilingual learners /English learners and immigrant students

Multilingual students or English learners need effective English language instruction to access learning. Nearly 100,000 English learners are enrolled in Pennsylvania public schools¹⁰³, most of whom attend underfunded schools.¹⁰⁴ Title III provides essential federal funding to educate English learners. These funds help children learn English, meet state academic standards, support

⁹⁹ First Five Years Fund, Summary of Recent Rule to Improve Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF) (March 14, 2024), <https://www.ffyf.org/2024/03/14/summary-of-recent-rule-to-improve-child-care-access-affordability-and-stability-in-the-child-care-and-development-fund-ccdf/>.

¹⁰⁰ U.S. DEP'T OF EDUC. & U.S. DEP'T OF HEALTH AND HUM. SERV., GUIDANCE ON THE HEAD START PROGRAM PERFORMANCE STANDARDS REQUIRED UNDER TITLE I, PART A OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT (Dec. 2024), <https://www.ed.gov/media/document/ti-hspps-guidance-108853.pdf>.

¹⁰¹ *Id.*

¹⁰² Kristie Kauerz & Julia Coffman, *Framework for Planning, Implementing and Evaluating P-3 Approaches*, NAT'L P-3 CTR. (2019), <https://nationalp-3center.org/wp-content/uploads/2019/10/P-3-Framework.pdf>.

¹⁰³ Pa. Dep't of Educ., Data and Reporting: Enrollment, <https://www.pa.gov/agencies/education/data-and-reporting/enrollment.html>.

¹⁰⁴ David Lapp & Anna Shaw-Amoah, *Pennsylvania School Funding and School Staffing Disparities*, RSCH. FOR ACTION, PA. CLEARINGHOUSE FOR EDUC. RSCH. (May 2023), <https://www.researchforaction.org/wp-content/uploads/2023/06/Pennsylvania-School-Funding-and-School-Staffing-Disparities-6-1-2023.pdf>.

language instruction, and support professional development for teachers.¹⁰⁵ Title III reporting requirements ensure the collection of valuable data on English learner instruction and assessment and the effectiveness of programming to inform classroom instruction.¹⁰⁶ Other federal data, including the Civil Rights Data Collection, promotes accountability.

The Department also provides training and guidance to state and local education agencies on the education of English learners. However, the Office of English Language Acquisition, which offers toolkits and other resources to assist schools in supporting English learners, recently lost all staff due to layoffs. Funding from the Migrant Education Program under Title I Part C (MEP) also provides needed programming for migrant students. Nationally, as of January 2024, 267,643 children ages 3-21 were eligible for this funding.¹⁰⁷ The purpose of the MEP is to ensure that migrant children have access to high-quality education and to remove barriers that migrant children face due to high mobility. English learners are overrepresented in schools with high poverty rates. They benefit from Title I funds and from IDEA funding for students with disabilities. In 2021, some 830,000 ELs — over 15% — were identified as students with disabilities.¹⁰⁸

English learners have relied on the Office of Civil Rights to ensure that schools do not discriminate against them and their families. Without ED, there will be no Office of English Language Acquisition, guidance or oversight of language instruction, fewer English as a Second Language teachers, and less effective programming for English learners. There will also be less professional development for all teachers and administrators, and less funding for needed improvements to English language curricula, outreach to families, and concurrent enrollment programs to help ensure postsecondary success. Migrant children will face increased barriers when they change school districts and receive fewer supports to graduate from high school. Even slight changes to the current federal funding and oversight practices will have major impacts on multilingual learners and immigrant students in all states.

¹⁰⁵ English Language Acquisition, Language Enhancement, and Academic Achievement Act, 20 U.S.C. § 6812.

¹⁰⁶ U.S. DEP'T OF EDUC. OFF. OF ELEMENTARY AND SECONDARY EDUC., GUIDE TO COLLECTING AND REPORTING TITLE III DATA (March 2023), <https://www.ed.gov/sites/ed/files/2023/03/guide-to-collecting-and-reporting-title-iii-data.pdf>.

¹⁰⁷ Migrant Educ. Program (MEP) National Profile for Performance Period 2022-2023, https://results.ed.gov/resources/profile_2223.

¹⁰⁸ Nat'l Ctr. for Educ. Stat., English Learners in Public Schools, Condition of Education, U.S. DEP'T OF EDUC., INST. OF EDUC. SCI., Retrieved [06/18/2025], from <https://nces.ed.gov/programs/coe/indicator/cgf/english-learners-in-public-schools>.

III. Conclusion

ELC-PA strongly urges the Administration to reconsider NPRM on Docket Number [ED-2025-OS-0020-0001](#), *Priorities, Requirements, Definitions, and Selection Criteria: Evidence-Based Literacy, Education Choice, and Returning Education to the States*. While ELC-PA supports the priority of using evidence-based literacy instruction, the Department's proposed abandonment of social emotional learning, DEI initiatives, and support for diverse educators will directly undermine student success. Additionally, public funds should not be diverted from public school students to private schools and public charter schools which have not been shown to provide better academic outcomes. Finally, the Department's efforts to dismantle and defund the important functions of our U.S. Department of Education under the guise of "returning education to the states" will devastate K-12 public education.

Thank you for considering these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristina Moon", with a stylized, flowing script.

Maura McInerney, Legal Director
Kristina Moon, Senior Attorney
EDUCATION LAW CENTER-PA