IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NATIONAL EDUCATION ASSOCIATION;

LAUREEN AVERY; and

TINA CHEUK.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION;

LINDA McMAHON, in her official capacity as U.S. Secretary of Education;

HAYLEY SANON, in her official capacity as Principal Deputy Assistant Secretary, Office of Elementary and Secondary Education; and

BEATRIZ CEJA, in her official capacity as Deputy Assistant Secretary, Office of English Language Acquisition,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DEMAND FOR JURY TRIAL

Case No. _____

INTRODUCTION

1. This lawsuit challenges the unlawful decisions of the United States Department of Education ("ED" or "the Department"), Secretary Linda McMahon, Principal Deputy Assistant Secretary Hayley Sanon, and Deputy Assistant Secretary Beatriz Ceja (collectively, "Defendants") to abruptly discontinue funding for active National Professional Development ("NPD") grants, causing a nationwide disruption in bilingual educator pipelines and inflicting direct harm on educators and English learner ("EL") students across the country.

2. Congress created the NPD program, codified at 20 U.S.C. § 6861, as a critical federal mechanism to address chronic nationwide shortages of bilingual and English as a Second Language ("ESL") educators trained to meet the needs of EL students. The program provides multi-year funding, up to five years, to universities, school districts, minority-serving institutions, and nonprofit organizations for the express purpose of training and certifying bilingual educators, expanding professional development opportunities, and providing instructional supports for EL students, one of the fastest-growing student populations in the United States.

3. Between 2021 and 2024, ED awarded 107 NPD grants nationwide. Grantees staffed programs, hired coordinators, enrolled teacher candidates, structured bilingual certification cohorts and student-support services, and prepaid tuition—all in reliance on their reasonable expectation of continuation funding under the program. Programs operated in nearly every state, serving hundreds of pre-service and in-service teachers, and thousands of students.

4. In 2025, ED abruptly issued "non-continuation" determinations with minimal or no notice to a subset of programs that expressed speech Defendants disfavored. ED did not apply the transparent criteria for continuation decisions outlined in its own regulations at 34 C.F.R. § 75.253. ED did not examine grantee performance data. ED did not engage in formal rulemaking to justify its departure from established standards. Instead, ED, by its own admission, sought to identify "coded language" associated with "Diversity, Equity, and Inclusion" ("DEI"), executing ideological keyword searches of grant applications to identify disfavored speech, including "equity," "diversity," and "strategic recruitment."

5. On February 17, 2025, ED publicly announced the termination of over $600 million in grants for what it called "divisive ideologies." In numerous non-continuation letters thereafter, ED cited grantees' compliance with previous agency guidance, including language the grantees were *required* to include in their applications, as the basis for termination—nearly all grantees who appealed received summary, one-paragraph denials of their appeals.

6. Defendants' actions have violated Plaintiffs' core First Amendment rights to free expression; destabilized teacher-certification pipelines in at least a dozen states; halted coursework, coaching, and credential pathways for thousands of teachers; and deprived EL students of the qualified educators they need to access legally protected educational opportunities.

7. Plaintiffs are the oldest and largest nationwide professional association of educators; and academic researchers whose careers, research, and professional

development have been directly harmed by ED's non-continuation decisions. They bring this action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq.*, the First Amendment to the United States Constitution, and, through the APA, Title VI of the Civil Rights Act of 1964 ("Title VI") and the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. § 1703(f).

8. Plaintiffs seek a declaratory judgment that Defendants' non-continuation determinations are unlawful, an order vacating those determinations so that ED may make new decisions in accordance with law, and injunctive relief preventing further irreparable harm to bilingual educator pipelines and EL students. Plaintiffs do not claim a contractual right to the continuation of any particular grant award; they seek only that ED comply with the Constitution, the APA, and the substantive statutes that govern the NPD program.

JURISDICTION AND VENUE

9. Plaintiffs bring this action for declaratory and injunctive relief based on Defendants' violations of the APA and the United States Constitution.

10. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law, including the APA, 5 U.S.C. §§ 551 *et seq.*, and the First Amendment to the United States Constitution.

11. The APA authorizes the Court to grant temporary and permanent relief from unlawful agency action. 5 U.S.C. §§ 705-706. This Court also has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28

U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

12. The Court's jurisdiction over Plaintiffs' APA claims is unaffected by the Tucker Act, 28 U.S.C. § 1491(a)(1). Plaintiffs do not seek enforcement of any contractual obligation to pay money. *See Massachusetts v. Nat'l Institutes of Health*, No. 25-1343, 164 F.4th 1, 10-12 (1st Cir. 2026). Rather, Plaintiffs seek vacatur of Defendants' unlawful non-continuation determinations so that the agency may make new decisions in accordance with the law. Grant continuances are not automatic, and vacatur of the challenged determinations does not cause any grant to be renewed. These APA claims belong in district court. *See Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring) (district court has jurisdiction over APA claims challenging policy-level actions related to grants).

13. Nor does the Tucker Act affect the Court's jurisdiction over Plaintiffs' freestanding constitutional claims, which neither involve nor require any waiver of sovereign immunity. *See Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322, 1329 (D.C. Cir. 1996); *see also Thakur v. Trump*, No. 25-4249, 2026 WL 1466303, at *11 (9th Cir. May 26, 2026) (affirming district court jurisdiction over an as-applied challenge to the government's decision to discriminate on the basis of viewpoint in a particular grant funding decision).

14. Venue is proper under 28 U.S.C. § 1391(b) and (e) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and a plaintiff resides in this judicial district.

PARTIES

15. **Plaintiff NEA** is the nation's oldest and largest professional association of educators and represents approximately three million members who work at every level of education—from pre-school to university graduate programs. NEA's members include individuals training to become educators, classroom teachers, education support professionals, higher education faculty and staff, and other current and former educators. NEA has affiliate organizations in every state and in more than 14,000 communities across the nation. NEA's mission is to advocate for education professionals and to ensure that public education prepares every student to succeed in a diverse and interdependent world. To further that mission, NEA and its members have supported and benefited from the implementation of the NPD grant program. The non-continuation of the NPD grants has harmed NEA members, including by forcing members to pay out-of-pocket tuition costs to continue grant-funded training programs; and depriving them of professional development opportunities that would improve their abilities to serve EL students and enhance their job opportunities by becoming ESL or bilingual certified. NEA is headquartered in Washington D.C.

16. **Plaintiff Laureen Avery** is the former Director of the Northeast Regional Office of UCLA's Center X. She currently serves as the lead administrator for the ExcEL Leadership Academy ("ExcEL Academy"), a nonprofit organization headquartered in Pawtucket, Rhode Island. The ExcEL Academy was initially founded with an NPD grant in 2007 and has received five NPD grants since then. The program received NPD grants totaling $2,924,741 in 2021 and $2,944,015 in 2022.

Both grants were "non-continued" by ED in 2025. Before the funding termination, Ms. Avery managed a tiered network of specialized instructional coaches who provided job-embedded training for hundreds of educators across Rhode Island, Maine, Vermont, New Hampshire, and Washington. Due to ED's sudden withdrawal of funds, this coaching network has been dismantled, leaving only a limited online course component, now managed by a nonprofit organization to provide only that service. Ms. Avery has a direct property and reliance interest in the multi-year funding that was awarded to maintain these professional development pipelines. She suffered a loss of employment as a direct result of the non-continuation. Ms. Avery resides in Rhode Island.

17. **Plaintiff Tina Cheuk, Ph.D.** is an Associate Professor at California Polytechnic State University. She is a Co-Principal Investigator for Project BRILLANTE (Bilingual/Responsive Instruction for Language Learners and New Teachers/Educators), which was awarded an NPD grant in 2024 for $3,342,565 to support 215 bilingual scholars and educators. Dr. Cheuk's research focuses on STEM literacy for EL students and student-parent success. After ED abruptly issued a non-continuation notice for the NPD grant in late 2025, Dr. Cheuk's research was halted, and the BRILLANTE "Grow Your Own" pipeline in rural California collapsed. Dr. Cheuk suffered reputational harm and a salary loss as a direct result of the non-renewal of her grant. Dr. Cheuk is a resident of the State of California.

18. Defendants' non-continuation determinations directly harmed each Plaintiff. These harms, including lost employment, halted research, reputational

injury, dismantled professional networks, and out-of-pocket tuition costs suffered by NEA members, are directly traceable to Defendants' unlawful conduct and are redressable through the relief sought herein.

19. **Defendant United States Department of Education** ("ED") is a federal executive agency that administers the NPD grant program pursuant to 20 U.S.C. § 6861.

20. **Defendant Linda McMahon** is sued in her official capacity as United States Secretary of Education. Secretary McMahon oversees ED and the implementation of the policy priorities used to justify the bulk non-continuation of the NPD grants.

21. **Defendant Hayley Sanon** is sued in her official capacity as the Principal Deputy Assistant Secretary of the Office of Elementary and Secondary Education. Ms. Sanon executed the non-continuation letters and signed the denials of grantees' requests for reconsideration.

22. **Defendant Beatriz Ceja** is sued in her official capacity as Deputy Assistant Secretary for the Office of English Language Acquisition ("OELA"). Ms. Ceja is the senior official within OELA responsible for programmatic functions and communications regarding the 2025 non-continuation determinations.

FACTUAL BACKGROUND

The National Professional Development Program

23. The NPD Program, administered by ED pursuant to 20 U.S.C. § 6861, has, for decades, served as a critical federal mechanism to address nationwide

shortages of bilingual teachers and other educators qualified to teach EL students. Congress designed the program to fund multi-year projects—up to five years—operated by universities, school districts, minority-serving institutions, and nonprofit organizations, providing the stability necessary for long-term teacher-certification pipelines. *See* S. Rep. No. 114-231, 39-40 (2015) (identifying the NPD as a key federal investment in improving instruction for EL students).

24. NPD grants aim to train teachers, certify paraprofessionals, expand professional development opportunities, and provide instructional supports for the growing population of EL students in this country. These grants have historically been awarded with the statutory expectation of continuation funding for subsequent years, contingent on compliance with standard federal requirements and satisfactory program performance, not shifting political priorities.

25. Applications for NPD grants are published periodically in the Federal Register. *See, e.g.*, Applications for New Awards; National Professional Development, 89 Fed. Reg. 17836-02 (Mar. 12, 2024). Each application cycle includes specific priorities, including absolute priorities (mandatory), competitive preference priorities (bonus points), and invitational priorities (no special consideration), as established by ED through notice-and-comment rulemaking. *See* 34 C.F.R. § 75.105(c).

26. Peer reviewers evaluate each eligible application. Grantees bear the chief responsibility of maintaining and submitting annual performance reports for evaluation. 34 C.F.R. § 75.118.

27. After each budget period, ED evaluates whether to continue a multi-year NPD grant. 34 C.F.R. § 75.253. A grantee does not need to reapply for continuation funding. *See* Direct Grant Programs, 59 Fed. Reg. 30258-01, at 30259-30260 (June 10, 1994). Instead, the continuation determination is based on the grantee's performance, including whether the grantee has met project goals, expended funds consistent with its approved application and budget, and met performance targets. 34 C.F.R. § 75.253(a). ED's regulations provide that it "may consider any relevant information regarding grantee performance" when making a continuation award. 34 C.F.R. § 75.253(b).

28. ED may discontinue funding for a grantee who is not making substantial progress toward project goals, fails to submit required reports, no longer meets eligibility requirements, fails to maintain financial and administrative management systems, fails to receive a determination from ED that continuation is in the "best interest" of the federal government, or fails to ensure required data quality. 34 C.F.R. § 75.253(a), (f). The discretion to make a "best interest" determination does not permit ED to ignore the other regulatory criteria listed in 34 C.F.R. § 75.253(a) in issuing a non-continuation determination. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 25 (2018).

29. Historically, ED has not discontinued a large number of multi-year grants. *See* Education Department General Administrative Regulations, 89 Fed. Reg. 70300-01, 70316 (Aug. 29, 2024) ("In general, we do not deny a large number of non-competing continuation awards.").

30. Indeed, the Department has long represented that non-continuation of multi-year grant awards is "extremely rare in practice" and that, when it does occur, "grantees are often aware of the likelihood of the decision well in advance and often cite no concerns if they do not receive a continuation award." *Id.*; Direct Grant Programs, 59 Fed. Reg. 30258, 30259 (June 10, 1994). For decades, and by regulation, the Department has treated continuation awards for multi-year grants as the norm, issuing annual continuation funding based on grantee performance.

31. Under ED regulations, a grantee who receives a non-continuation notice must have the opportunity to submit a request for reconsideration, and the Secretary must consider that request. 34 C.F.R. § 75.253(g)(2); 2 C.F.R. § 200.342. ED has previously contemplated that Department staff would spend multiple hours reviewing such requests. *See* 89 Fed. Reg. 70300-01, 70316.

32. Between 2021 and 2024, ED awarded 107 NPD grants nationwide. Grantees staffed programs, hired coordinators, enrolled teacher candidates, and implemented bilingual certification cohorts and student-support services. Programs operated in nearly every state, serving hundreds of in-service teachers and thousands of students. Grants included stipends for participants, micro-credential coursework, coaching networks, and technological infrastructure. Many grantees prepaid tuition or structured programs around the assumption of continued federal funding based on continuing to meet and report on program requirements.

ED's Published Selection Criteria and Application Process

33. ED selected NPD grantees through a rigorous, competitive process governed by published priorities. Each NPD competition cycle was announced in the Federal Register with absolute, competitive preference, and invitational priorities established through notice-and-comment rulemaking. 34 C.F.R. § 75.105; *see e.g.*, 89 Fed. Reg. 17836-02, 17837-17838. Applicants were required to address these published priorities, and peer reviewers scored applications accordingly.

34. The 2021, 2022, and 2024 NPD competitions each included priorities directing applicants to develop bilingual education programs, improve instruction for EL students, and recruit diverse cohorts of educators to serve high-need schools. Grantees were selected precisely because their proposed activities aligned with these agency-published priorities. ED's subsequent termination of grants for containing language responsive to these same priorities represents a reversal of the agency's own published standards without any intervening rulemaking.

35. The General Education Provisions Act ("GEPA") explicitly mandates that ED's rules, guidelines, or requirements affecting the provision of federal financial assistance must undergo the APA's formal notice-and-comment process. 20 U.S.C. § 1232(a). Furthermore, 20 U.S.C. § 1232(d) strips ED of the standard APA grant exemption found in 5 U.S.C. § 553(a)(2). Because the NPD program is an established statutory framework, Defendants were legally required to utilize notice-and-comment rulemaking before implementing a sweeping, system-wide shift in

grant continuation criteria. *See Am. Ass'n of Colleges for Tchr. Educ. v. McMahon*, 770 F. Supp. 3d 822, 835 (D. Md. 2025).

Defendants' 2025 Non-Continuation Determinations

36. In 2025, ED issued non-continuation determinations for approximately 28 of the 107 active grants. These terminations were abrupt and issued with minimal or no notice.

37. ED's non-continuation determinations were part of a broader, systemic effort by the Trump Administration to eliminate funding for programs associated with "Diversity, Equity, and Inclusion." On February 17, 2025, ED publicly announced the termination of over $600 million in grants used for what it termed "divisive ideologies." *See* U.S. Dep't of Educ., *U.S. Department of Education Cuts Over $600 Million in Divisive Teacher Training Grants* (Feb. 17, 2025).

38. This ideological targeting of disfavored speech was executed through mechanical keyword searches of grant applications for terms such as "equity" and "diversity." ED publicly admitted to conducting a "comprehensive review" to identify "coded language" that it disfavored. *See* U.S. Dep't of Educ., *U.S. Department of Education Takes Action to Eliminate DEI* (Jan. 23, 2025).

39. ED did not apply the transparent criteria for continuation decisions outlined in 34 C.F.R. § 75.253(a)(1)-(4). Instead, ED claimed it based the non-continuation solely on a "best interest" determination under § 75.253(a)(5), while ignoring whether grantees met performance targets, maintained eligibility, or appropriately managed their financial systems.

40. In each non-continuation letter reviewed, ED cited language from a grantee's *initial application* for grant funding to justify termination, rather than the grantee's performance. ED did not cite "any relevant information regarding grantee performance" as required by 34 C.F.R. § 75.253(b). ED did not provide scoring sheets or administrative records supporting the terminations.

41. Upon information and belief, ED may have used a Large Language Model or other artificial intelligence tool to evaluate NPD applications and identify grants containing language Defendants classify as "social justice" language to highlight for termination. This theory is highly plausible given the Defendants' stated rationales for termination, which reflect pattern-matching on terminology rather than substantive analysis. Defendants have never provided a clear definition of the "social justice" speech they disfavor.

42. For example, in the non-continuation letter for UCLA's ExcEL grant, ED highlighted a course entitled "Ensuring Professionalism Through a Multi-Cultural Lens" that asked, "What are the emerging pedagogical and social justice issues affecting engagement and readiness to learn for English Learners?" The agency summarily stated that, based on the inclusion of this course, continuation was "not in the best interest of the Federal Government," but offered no analysis or rationale for why the course conflicted with the federal government's best interests.

43. Similarly, in the non-continuation letter for Cal Poly's Project BRILLANTE, ED cited language stating that the evaluation team would "ensure that coursework and trainings implement culturally-responsive, bilingual pedagogy that

centers the experiences and needs of bilingual students of color." Defendants did not even attempt to explain why such coursework would not be in the federal government's best interest, beyond their disapproval of the speech itself.

44. In numerous termination letters, ED faulted grantees only for complying with mandatory standards the agency itself previously required, including: (a) the requirement that grantees staff diverse project personnel, which was included in the 2021, 2022, and 2024 application calls; and (b) language about "equity" included in their GEPA forms, which all prospective grant applicants are required to complete.

45. Nearly all grantees who submitted requests for reconsideration received summary, one-paragraph denials. At least one grantee received only a one-sentence email indicating that its appeal was denied. This summary treatment does not comply with the regulatory mandate that the Secretary "consider" each request for reconsideration. 34 C.F.R. § 75.253(g)(1) and (2).

46. By terminating these grants after only one to three year(s) without a valid performance-based reason, ED effectively rewrote the 5-year statutory design for the NPD program that Congress mandated.

47. In the spring of 2025, all staff at the Office of English Language Acquisition ("OELA"), save one, were fired. This single remaining staff member handled communications for all terminations, creating sector-wide confusion among grantees, state agencies, congressional offices, and advocacy organizations.

48. By "streamlining" the non-continuation process via a September 2025 webpage update to target grants inconsistent with "current priorities," ED issued a de facto legislative rule without the mandatory notice-and-comment rulemaking required by 5 U.S.C. § 553; *see* U.S. Dep't. Educ., *Department Grant Discontinuation and Termination Processes* (last revised September 8, 2025) https://www.ed.gov/grants-and-programs/manage-your-grant/department-grant-discontinuation-and-termination-processes. This website-driven policy change, issued without public participation, summarily stripped grantees of their regulatory right to a reasoned appeal.

Harm to Plaintiffs, Educators, and EL Students

49. The non-continuations had immediate and substantial effects, harming Plaintiffs and the educators and students served by NPD programs. Programs such as UCLA's ExcEL Academy, which trained hundreds of in-service teachers across multiple states, including Rhode Island, New Hampshire, Vermont, Maine, and Washington, lost funding mid-project. Teachers lost access to credentialing coursework, coaching networks, and certification pathways. Districts lost critical pipelines for bilingual and ESL-certified personnel. The non-continuations have inflicted a structural blow to the bilingual and ESL educator workforce. For decades, the NPD program has been the primary federal response to a chronic, worsening national shortage of ESL and bilingual educators. EL students have lost, and will continue to lose, access to equal educational opportunities, "which begins with teachers who are well prepared and supported and have the language, skills,

knowledge, and cultural competencies to serve EL students." 89 Fed. Reg. 17836-02, 17837 (Mar. 12, 2024).

50. Plaintiff NEA has thousands of members across multiple school districts and schools who benefited from NPD grants. ED's abrupt non-continuations have directly harmed some members, including those who enrolled in grant-supported training and certification programs with the understanding that tuition would be free. When the grants were non-continued, members faced the choice of paying thousands of dollars in out-of-pocket tuition costs to complete ESL teaching credential requirements or withdrawing prematurely due to financial constraints. At least two members paid thousands of dollars out of pocket to complete the remaining credits, whereas others dropped out midway through their programs.

51. NEA, through its local affiliate, Manchester Education Association, represents educators in the Manchester School District in New Hampshire who have been directly harmed by the non-continuation of the NPD grant supporting the ExcEL Academy. One NEA member in the district, a high school art teacher, enrolled in the ExcEL Academy in 2023 so she could learn skills to better serve the many new EL students at her school while still teaching to rigorous curricular standards. She planned to use the credits she accrued through ExcEL Academy to earn an ESL certification, which would not only enable her to serve EL students better but also enhance her job prospects within the district. The ExcEL Academy training included 12 "micro-credential" training modules, and she earned a $250 bonus for each training module she completed. The NPD grant also funded her participation in

meetings with a group of fellow art teachers to discuss how best to apply the ExcEL Academy training in their classrooms, and she earned $125 for each hour-long meeting she attended, at a cap of 10 meetings a year (or $1,250). When the NPD grant supporting ExcEL Academy abruptly ended, she was nearly halfway through the 12-credit program and—because of the skills she had obtained to that point—had successfully implemented several improvements to her EL student curriculum. She was feeling more confident in tailoring instruction and otherwise meeting the needs of newly-enrolled EL students, and she heard other teachers participating in ExcEL Academy express similar sentiments. Prior to the ExcEL Academy, she and other teachers in the program had received little to no relevant training designed to help teachers work with new EL students and other EL students in various stages of English language acquisition. As a result of the grant non-continuation, she can no longer spend dedicated professional development time in the ExcEL Academy training program or the associated arts-focused meetings. This means she has lost the opportunity to earn additional skills necessary to serve EL students, as well as the chance to earn additional grant-funded pay through completing micro-credentials and participating in practice group meetings. Because the NPD grant non-continuation meant she would have to pay out-of-pocket tuition costs to obtain the needed credits, she was forced to set aside her plan to seek an ESL certification indefinitely.

52. Another NEA member in the Manchester School District, a middle school science teacher who also participated in ExcEL Academy, planned to obtain

her ESL certification so that she could work more effectively with her ESL co-teacher and help ELs and other students learn the curriculum. Nearly one-third of her students are EL, and she wanted to improve her ability to teach those students. She felt that the skills she would learn in ExcEL Academy would benefit all of her students, not just ELs, and the Manchester School District encouraged teacher participation in the program. She and many district colleagues were drawn to ExcEL Academy because it was free, offered a $250 bonus for each micro-credential completed, and provided many user-friendly resources. She had completed 5 of 12 credits toward her certification and had already noticed improvements in her EL students' comprehension when the NPD grant supporting ExcEL Academy was abruptly non-continued. She has not completed the second half of modules to obtain her ESL certification because it would require her to pay out-of-pocket tuition costs. Her inability to continue her ExcEL Academy training has resulted in the loss of essential EL skill training, development, and ultimately, certification.

53. NEA, through its local affiliate, Mukilteo Education Association, represents educators in the Mukilteo School District in Washington, including members who have been directly harmed by the non-continuation of the NPD grant supporting the ExcEL Academy. One NEA member in the Mukilteo School District, an elementary school teacher, enrolled in ExcEL Academy because she wanted to obtain an ESL endorsement to better support the large refugee population of EL students at her school. She chose ExcEL Academy because tuition was free and each completed training module earned her a $250 bonus. The three courses she was able

to complete before the NPD grant to ExcEL Academy was non-continued yielded immediate benefits for her and her EL students. But because of the grant's non-continuation, she will not be able to finish the full program and will have to stop at the 6-credit halfway point. Thus, she is not able to pursue her ESL endorsement as planned because she would have to pay out-of-pocket tuition costs to do so.

54. Another NEA member in the Mukilteo School District, a K–12 classroom teacher at Endeavor Elementary School, is a participant in the ExcEL Academy and has a vested interest in completing her ESL endorsement. Having relied on the federal promise of a fully funded scholarship, she now faces an out-of-pocket tuition cliff to finish her certification—an injury caused directly by ED's mid-cycle termination of the ExcEL grant. Because of the non-continuation, she is unable to pursue her certification as planned due to these sudden out-of-pocket costs.

55. NEA, through its local affiliate, Sioux City Education Association, represents educators in the Sioux City Community School District in Iowa, some of whom have been harmed by the non-continuation of the NPD grant to Morningside University. One NEA member who had been a general education elementary school teacher for approximately 25 years decided that she wanted to become an ESL teacher with an ESL certification, given the increasing number of EL students in her class. She applied for and accepted her current position as an elementary ESL teacher on the condition that she would convert her provisional ESL license into a full certification through Morningside University's grant-supported program. When the NPD grant to Morningside University was abruptly non-continued in 2025, the NEA

member was only halfway through completion. Because her job required full ESL certification, she was forced to pay out-of-pocket approximately $3,400 for the remaining credits.

56. Similarly, another NEA member in the Sioux City Community School District, also an elementary school teacher, became interested in learning EL teaching strategies because of the significant percentage of EL students in her class. Hoping eventually to become an ESL teacher, she applied to Morningside University's program because the NPD grant made tuition free and the program would not only help her support her students but also lead to a salary increase. She was three-fourths of the way through obtaining the required credits when the NPD grant was non-continued and was therefore forced to pay approximately $3,285 for the remaining credits.

57. NEA, through its local affiliate, Brockton Education Association, represents educators in the Brockton Public Schools ("BPS") in Massachusetts, a beneficiary of the 2024 NPD grant to the University of Massachusetts at Lowell ("UMass") that was non-continued in 2025.

58. Because BPS is facing a critical shortage of bilingual educators, its Director of Bilingual Education, an NEA member, worked with UMass to create a pipeline program funded by the NPD grant with the goal of increasing bilingual educators in BPS. The program included pathways for educators, including multiple NEA members, to obtain their bilingual education endorsement in the State of Massachusetts. It also included pathways for paraprofessionals, community members

with teaching degrees in other countries, and high school students to obtain teaching certificates and bilingual education endorsements. As a result of the NPD grant's non-continuation, the pipeline program has been halted, and NEA members in the program are no longer receiving the support they were relying on, including access to tuition-free undergraduate and graduate courses and free test preparation services. Additionally, the non-continuation of the NPD grant has made the role of Director of Bilingual Education in BPS more difficult and stressful given that BPS was relying on the NPD-granted funded pipeline program to address its shortage of qualified bilingual educators. This shortage has weighed heavily on NEA member-educators throughout BPS in a variety of classroom settings given the challenges of educating EL students of varying English language proficiencies who are not receiving language development instruction from trained and certified bilingual and ESL teachers.

59. Plaintiff Avery's coaching network has been entirely dismantled. She lost her employment. Plaintiff Avery's administration of the ExcEL program at UCLA Center X exemplifies the "Reliance Interests" ignored by Defendants. Since its inception in 2007, ExcEL has functioned as a proven model for excellence. By terminating grants funding her work mid-cycle, Defendants effectively demolished a tiered network of specialized instructional coaches and peer mentors.

60. By withdrawing federal scholarship funding, Defendants have forced in-service teachers, who are already statistically underpaid, to face a $6,000 out-of-pocket tuition cliff to finish their training. The termination eliminated stipends that served as essential motivators for overworked teachers to complete the intensive,

portfolio-based curriculum. The harm extends to state agencies and rural collaboratives that lack the independent resources to replace federal funding. Partners, including the Lewiston Public Schools (Maine), the Vermont Agency of Education, and the Vermont Rural Education Collaborative, have been left without a primary mechanism for qualifying their staff to meet the needs of growing EL populations.

61. At the time of the non-continuation, Plaintiff Avery and UCLA were in the fourth year of a six-year Randomized Control Trial. This rigorous scientific study, designed to identify specific teacher behaviors that improve EL outcomes, has been halted mid-project. The loss of this longitudinal data is an irreparable injury to the field of linguistic research and to Plaintiff Avery's professional legacy.

62. As a direct and proximate result of the noncontinuation of the 2021 and 2022 NPD grants, Plaintiff Avery suffered a total loss of her employment at UCLA Center X. The coaching and mentoring network she spent nearly two decades building has been dismantled, leaving only a residual online component that cannot fulfill the program's original mission. The discontinuation of a large federal grant creates the appearance that Plaintiff Avery and her colleagues failed to perform their grant duties satisfactorily.

63. Plaintiff Cheuk's research has been halted. The BRILLANTE "Grow Your Own" pipeline in rural California has collapsed. She has suffered a loss of salary and reputational harm from having a multi-million-dollar federal grant terminated in its first year of implementation. The discontinuation of a large federal grant

creates the appearance that Plaintiff Cheuk and her colleagues failed to perform their grant duties satisfactorily. This jeopardizes Plaintiff Cheuk's plans to seek early promotion to a full professor by eliminating a substantial source of research and weakening her credibility. The abrupt nature of the discontinuation right after the very first stages of implementation severely compromised the relationships and partnerships Plaintiff Cheuk worked to cultivate with Local Educational Agencies. These trusted partnerships are essential for Plaintiff Cheuk's continued research and development in her area of expertise. The discontinuation has also functioned to chill Plaintiff Cheuk's protected speech by censoring her teaching curriculum and pedagogy. Plaintiff Cheuk is left in the impossible position of having to evaluate whether curriculum or speech related to ELs could subject her to the scrutiny of the federal government.

64. The impact of Defendants' unlawful non-continuation decisions extends beyond Plaintiffs and directly harms EL students. These students rely on qualified bilingual and ESL educators to access language instruction and legally protected educational opportunities. In both rural and urban districts, the termination of NPD programs threatens to increase class sizes, reduce instructional supports, and diminish access to specialized programs for EL students.

65. Additional consequences include destabilization of university partnerships, erosion of community-based instructional services, and the collapse of teacher networks cultivated through multi-year programming. The broader implications for bilingual teacher pipelines remain underreported, as families and

educators have expressed concern about speaking publicly due to their reliance on federal funding.

LEGAL FRAMEWORK

The Administrative Procedure Act

66. Congress enacted the Administrative Procedure Act to ensure fairness and stability in agency action by mandating reasoned decisionmaking and to guard against agencies' pursuit of a political agenda without adherence to legal process. *See United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950) (describing the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices"); *see also N.C. Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 772 (4th Cir. 2012) (Wilkinson, J., concurring) (noting that the APA prohibits policy change based on "political winds and currents" without adherence to "law and legal process").

67. To effectuate these goals, the APA imposes both substantive and procedural constraints on final agency action. *See Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.,* 778 F. Supp. 3d 440, 469 (D.R.I. 2025) (citing *Multicultural Media, Telecom & Internet Council v. Fed. Commc'ns Comm'n*, 873 F.3d 932, 936 (D.C. Cir. 2017)).

68. A final agency action is a decision that both (1) marks the "consummation" of an agency's decisionmaking process, and (2) determines the "rights or obligations" of a party, or is a decision "from which legal consequences will

flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations and internal quotation marks omitted)

69. The APA requires courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

70. "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024); 5 U.S.C. § 706 (courts must "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning . . . of the terms of an agency action").

71. "[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." *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 568 (2025) (citations and internal quotation marks omitted).

72. Accordingly, in taking final agency action, an agency must "examine the relevant data and articulate a satisfactory explanation for its action," *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, "including a rational connection between the facts found and the choice made." 463 U.S. 29, 30, 43 (1983) (quotations and internal citations omitted).

73. An agency must provide a "reasoned explanation" for a "change" in an "existing position." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016). If an agency fails to engage in "reasoned decisionmaking," its actions are arbitrary and capricious. *State Farm* 463 U.S. 29, 52 (1983). Under this standard, an agency action is unlawful if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* at 43. Furthermore, an agency acts arbitrarily and capriciously when it fails to examine the relevant data, fail to articulate a "rational connection between the facts found and the choice made," *id.*, or fails to consider relevant reliance interests. *Encino*, 579 U.S. at 222 (citations omitted).

74. Specifically, "when an agency rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020) (quoting *State Farm*, 463 U.S. at 51) (failure to consider less extreme alternative to program shutdown was arbitrary and capricious).

75. Likewise, the APA requires agencies changing course "to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Regents of the Univ. of Cal.*, 591 U.S. at 33.

76. Agencies are required to provide "genuine justifications for important decisions" so that their reasons "can be scrutinized by courts and the interested public." *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019). Accordingly, an agency may not rely on pretextual justifications for its actions because "[a]ccepting contrived reasons would defeat the purpose [of APA review]." *Id.*

77. Section 702 of the APA waives the sovereign immunity of the United States for claims seeking relief other than money damages, such as injunctive or declaratory relief in the federal district courts. 5 U.S.C. § 702.

First Amendment to the United States Constitution

78. The First Amendment prohibits the federal government from "regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). "Discrimination against speech because of this message is presumed to be unconstitutional." *Id.* at 828.

79. While the government may, in some circumstances, attach conditions to federal funding that "affect the recipient's exercise of its First Amendment rights," there are limits. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013). The government may not leverage government funding to "aim at the suppression of dangerous ideas." *NEA v. Finley*, 524 U.S. 569, 587 (1998) (citation modified). Relatedly, "compelling a grant recipient to adopt a particular belief as a condition of funding" is also impermissible. *Agency for Int'l Dev.*, 570 U.S. at 218.

80. As a result, the government may not "leverage its power to award subsidies . . . into a penalty on disfavored viewpoints." *Thakur v. Trump*, No. 25-4249, 2026 WL 1466303 at *9 (9th Cir. May 26, 2026) (quoting *Finley*, 524 U.S. at 587). In the grant-making context, the government may not reject "a whole class of projects" based on "viewpoint alone," or use federal funding to "impose a disproportionate burden calculated to drive certain ideas or viewpoints from the marketplace." *Rhode Island Latino Arts v. Nat'l Endowment for the Arts*, 777 F. Supp. 3d. 87, 107 (D.R.I. Apr. 3, 2025) (quoting *Finley*, 524 U.S. at 587) (internal citations omitted)

81. Speech restrictions aimed at suppressing views the government disfavors violate the First Amendment even if they "apply only to activities paid for by the federal government" and not "the recipients' private activity." *S.F. AIDS Found. v. Trump*, 786 F. Supp. 3d 1184, 1218 (N.D. Cal. 2025). This impermissible "withholding [of] subsidies for a censorious purpose—aiming to suppress" what the government views as "dangerous ideas"—violates the First Amendment. *Id.* at 1220; *see also R.I. Latino Arts*, 777 F. Supp. 3d at 97, 109-110 (noting that government cannot "use subsidies to suppress 'dangerous ideas'" and concluding that barring funding art programs that "promote gender ideology" was "a clear First Amendment violation") (quoting *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 548 (1983)).

82. And the doctrine of unconstitutional conditions generally provides that the government may not condition the receipt of a benefit upon a person giving up his, her, or their constitutional right. *See President & Fellows of Harvard Coll. v.*

United States Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 124 (D. Mass. 2025) (U.S. government imposed unconstitutional conditions on "Harvard's receipt of federal funding" by "conditioning Harvard's federal funding, . . . on Harvard's realigning its campus to better reflect a viewpoint favored by the government.").

Title VI and Anti-Discrimination Principles

83. Title VI of the Civil Rights Act of 1964 provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The Supreme Court has long recognized that national-origin discrimination includes denying educational benefits to students who are unable to access instruction because of language barriers. *Lau v. Nichols*, 414 U.S. 563 (1974). Title VI informs the substantive limits on agency discretion under the APA, establishing the statutory framework within which ED must operate.

The Equal Educational Opportunities Act

84. The EEOA provides that "[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin" through "the failure by an educational agency to take appropriate action to overcome language barriers." 20 U.S.C. § 1703(f). Under *Castañeda v. Pickard*, 648 F.2d 989, 1009–10 (5th Cir. 1981), effective implementation requires "practices, resources, and personnel necessary to transform the theory into reality."

85. By dismantling the primary federal mechanism for bilingual teacher certification, ED has actively created a barrier to equal educational opportunity and obstructed state and local agencies' ability to fulfill their EEOA obligations. The EEOA's saving clause, 20 U.S.C. § 6847, prevents ED from using administrative "non-continuation" of grants to undermine federal civil rights protections.

CLAIMS FOR RELIEF

COUNT I
Violation of the First Amendment to the United States Constitution
Content and Viewpoint Discrimination

86. The allegations of the preceding paragraphs are incorporated herein by reference.

87. The First Amendment provides that the federal government "shall make no law . . . abridging the freedom of speech." U.S. CONST. amend. I.

88. The First Amendment prohibits the federal government from "regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829. "Discrimination against speech because of this message is presumed to be unconstitutional." *Id.* at 828.

89. The government may not "leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints." *Finley*, 524 U.S. at 587. Defendants terminated these grants expressly because ED searched for grant applications they believed promoted DEI or social justice related issues. When the government terminates grants for that reason, its action is aimed at suppressing

speech and unconditionally discriminates based on viewpoint. *See Thakur*, 2026 WL 1466303 at *9-11.

90. While the federal government has broad discretion in choosing which programs to fund, it cannot condition the receipt of a benefit upon a person's surrender of constitutional rights. *See Philip Morris v. Reilly*, 312 F.3d 24, 46 (1st Cir. 2002). This Unconstitutional Conditions Doctrine is at the heart of the free-speech protections afforded by the First Amendment.

91. Defendants' termination of grants to disadvantage or suppress particular political and ideological viewpoints they disfavor "is the product of invidious viewpoint discrimination." *Finley*, 524 U.S. at 587. In an effort to drive views out of the marketplace of ideas, Defendants terminated many grants based on the recipients' (presumed) viewpoints, as reflected in the subject matter of their grant applications.

92. The facts here establish that the federal government unequivocally engaged in viewpoint discrimination when it terminated the NPD grants. This is most evident in the non-continuation letters' citations to language in grant applications reflecting Defendants' belief that the non-continued grants were focused on diversity, equity, or inclusion or advanced "social justice," all ideas the Trump administration views as dangerous. The non-continuation notices make plain that Defendants believe that the content of Plaintiffs' speech conflicts with the Trump administration's views, and Plaintiffs' grants were non-continued at least in part for this reason. The First Amendment does not tolerate such viewpoint discrimination. The non-

continuation letters were also devoid of any individualized performance analysis. ED has openly described programs supporting concepts of diversity, equity, and inclusion as "dangerous, demeaning, and immoral"—thereby advancing a specific viewpoint—while penalizing grantees who hold a different viewpoint by canceling their grants. This is precisely the kind of invidious viewpoint discrimination that the Supreme Court has held presents First Amendment concerns even in the context of federal subsidies. *See Finley*, 524 U.S. at 587.

93. While the government has broad discretion in allocating subsidies, that discretion is not absolute. The Supreme Court has cautioned that the government may not "leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints," nor may it "ai[m] at the suppression of dangerous ideas." *Finley*, 524 U.S. at 587 (internal quotation marks omitted) (quoting *Regan,* 461 U.S. at 550). Here, ED has done precisely that. By issuing non-continuation letters devoid of individualized performance analysis and instead targeting grants that utilized terminology ED publicly disparaged as dangerous and immoral, ED has moved beyond mere hortatory guidance. It has manipulated the grant process to exert a coercive effect, effectively driving specific pedagogical viewpoints out of the marketplace of professional development. This transformation of a competitive grant into a penalty for disfavored speech constitutes a clear violation of the First Amendment as applied to these Plaintiffs.

94. In terminating the NPD grants, ED effectively censored academics for developing teaching paradigms, curricula, courses, and pedagogies with which ED

disagreed. Such state-sponsored retaliation against disfavored academic thought is a textbook example of impermissible viewpoint discrimination prohibited by the First Amendment.

95. Accordingly, Defendants' actions are not in accordance with the law and are contrary to Plaintiffs' Constitutional rights.

96. To prevent Defendants' continuing violation of the First Amendment, the non-continuation determinations must be vacated, and Defendants must be enjoined from making future grant-continuation decisions based on viewpoint discrimination.

COUNT II
Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious — Failure to Apply Relevant Legal Standards

97. The allegations of the preceding paragraphs are incorporated herein by reference.

98. ED's non-continuation of the NPD grants was arbitrary and capricious because the agency failed to examine the relevant data and apply the relevant legal standards for continuation decisions.

99. ED disregarded the criteria outlined in 34 C.F.R. § 75.253(a)(1)-(4) and focused solely on an alleged "best interest" determination under § 75.253(a)(5). The non-continuation letters provided no analysis of whether grantees met performance targets, maintained eligibility, or appropriately managed their financial systems.

100. These omissions are especially glaring given that at least some grantees who received non-continuation letters reported that their grant performance exceeded the metrics established by ED. ED's failure to consider and apply the

criteria in 34 C.F.R. § 75.253(a)(1)-(4) indicates that ED "entirely failed to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43.

101. ED acted arbitrarily and capriciously by re-evaluating grantees' initial applications for disfavored terminology rather than evaluating grantees' performance as required by regulation. There is no "application" process to solicit a continuation award. 59 Fed. Reg. at 30259. Continuation decisions must be "based entirely on the submission of reports," not the content of initial applications. *Id.* ED's reliance upon initial applications rather than performance to justify termination was contrary to the regulatory standard.

102. ED provided only vague, conclusory statements that application activities "may" conflict with the current administration's priorities without any rational connection to the criteria in 34 C.F.R. § 75.253(a)–(b). *See Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) ("[C]onclusory statements will not do; an agency's statement must be one of reasoning.") (citations and internal quotations omitted).

103. ED's non-continuation of the NPD grants was arbitrary and capricious, and its determinations must be vacated and remanded for new decisions in accordance with the law.

COUNT III
Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious — Failure to Consider Reliance Interests

104. The allegations of the preceding paragraphs are incorporated herein by reference.

105. The Supreme Court has recognized that when an agency implements a policy change that rests upon factual findings contradicting its prior policy or when the agency's prior policy has "engendered serious reliance interests," those considerations must be "taken into account." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

106. ED failed to consider the serious reliance interests engendered by the awarded NPD grants. By nature, NPD is a multi-year grant program with components that build over time. The non-continuation letters disrupted the delivery of courses, the provision of coaches, scholarships for pre-service teachers, research on effective methodologies, and qualified-teacher pipelines to high-need school districts.

107. Under *Regents*, a failure to even discuss reliance interests constitutes a *per se* APA violation. 591 U.S. at 32 ("Making that difficult decision was the agency's job, but the agency failed to do it."). Here, ED did not merely fail to weigh these interests—it failed to acknowledge them at all.

COUNT IV
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
Arbitrary and Capricious — Inconsistent Treatment and Failure to Provide Fair Notice

108. The allegations of the preceding paragraphs are incorporated herein by reference.

109. ED did not act consistently by uniformly terminating all grants that involved programs that "may" conflict with the administration's priorities. Instead, ED selectively targeted programs whose grant applications contained language Defendants disfavored, while continuing to fund similarly situated grantees. An

agency's inconsistent treatment of similarly situated parties constitutes arbitrary and capricious conduct under the APA. *See Distrigas of Mass. Corp. v. Fed. Power Comm'n*, 517 F.2d 761, 765–66 (1st Cir. 1975).

110. Furthermore, ED failed to provide grantees with fair notice of any change in administrative priorities. ED faulted grantees for complying with (a) the application published in the Federal Register and (b) forms ED previously required applicants to complete. When the Trump administration took office, no notice was given to grantees that their compliance with past guidance would *become grounds* for termination rather than continued funding.

COUNT V
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)
In Excess of Statutory Authority

111. The allegations of the preceding paragraphs are incorporated herein by reference.

112. ED has a statutory duty to award multi-year NPD grants. 20 U.S.C. § 6861. Once awarded, ED's own regulations allow it to non-continue a grant only in limited circumstances. 34 C.F.R. § 75.253(f). ED acted beyond its statutory authority by terminating grants.

113. ED further acted in excess of its statutory authority by dictating impermissible pedagogical and curricular principles Plaintiffs' courses. By statute, ED has no authority to dictate schools' curricular requirements. 20 U.S.C. § 3403(b); *see Am. Fed'n of Tchrs. v. Dep't of Educ.*, 796 F. Supp. 3d 66, 111 (D. Md. 2025) ("The government cannot proclaim entire categories of classroom content discriminatory to

side-step the bounds of its statutory authority."). In at least three non-continuation letters, ED cited grantees' courses and teaching pedagogy as the basis for termination without alleging any violation of federal law.

114. Finally, ED acted in excess of its statutory authority by misrepresenting the bounds of federal civil rights law and using those misrepresentations to justify non-continuation. ED has repeatedly cited the possibility that a grantee's proposed activities "may conflict with Federal civil rights law" without specifying which law was allegedly violated. *See Am. Fed'n of Tchrs.*, 796 F. Supp. 3d at 106 ("[The administration] is not entitled to misrepresent the law's boundaries."). ED's own regulations acknowledge that a recipient of federal funding "may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available[.]" 34 C.F.R. § 100.5(i).

COUNT VI
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D)
Agency Action Without Observance of Procedure Required by Law

115. The allegations of the preceding paragraphs are incorporated herein by reference.

116. Under the APA, notice-and-comment rulemaking is required when an agency implements a rule that serves as a "statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy[.]" 5 U.S.C. § 551.

117. The NPD grant priorities published in the Federal Register have the "force and effect of law." *See Am. Ass'n of Colleges for Tchr. Educ. v. McMahon*, 770 F.

Supp. 3d 822, 855 (D. Md. 2025) (holding that administrative priorities must undergo notice-and-comment rulemaking). Under the General Education Provisions Act, 20 U.S.C. § 1232(d), ED is not exempt from notice-and-comment procedures simply because the rulemaking concerns a federal grant.

118. ED justified the non-continuation of multiple grants because grantees' applications proposed activities that "may conflict with the Department's policy of prioritizing merit, fairness, and excellence in education." By using this new policy to override the criteria in 34 C.F.R. § 75.253, ED created a *de facto* rule without the required notice-and-comment procedures. All the priorities ED outlined in the 2021, 2022, and 2024 NPD grant applications remain in effect, unamended by the current administration. To the extent there has been any policy change, it has not undergone the required rulemaking.

COUNT VII
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)
Not in Accordance with Law — Title VI and the EEOA

119. The allegations of the preceding paragraphs are incorporated herein by reference.

120. ED's non-continuation determinations are "not in accordance with law" because they violate the substantive mandates of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f). While ED is the actor alleged to have engaged in discriminatory conduct, rather than a recipient of federal funds, Title VI informs the substantive limits on

ED's discretion and establishes the statutory framework within which it must operate.

121. NPD grants are specifically designed to address chronic shortages of bilingual educators and ensure that EL students receive meaningful access to education. The abrupt discontinuation of these grants harms students with limited English proficiency—a population whose language characteristics are closely tied to national origin and who have long been recognized as protected under the Title VI regulatory framework. *See Lau v. Nichols*, 414 U.S. 563, 566-68 (1974) (holding that federally funded school districts must take affirmative steps to rectify language barriers that foreclose national-origin minority children from effective participation).

122. ED's actions harm EL students, depart from normal procedures, and rely on ideologically driven rationales that are in fact pretextual justifications. ED's specific citation of grantees' intent to recruit and serve students from protected populations as a basis for non-continuation demonstrates that ED penalized grantees for seeking to serve the very populations the NPD program was designed to support.

123. Furthermore, ED's attempt to characterize these terminations as "priorities-based" discontinuations under 2 C.F.R. § 200.340 cannot circumvent the mandatory procedural safeguards of Title VI. *See President & Fellows of Harvard Coll. v. HHS*, 798 F. Supp. 3d 77, 127 (D. Mass. 2025) (an agency may not utilize general grant-termination regulations to "wholly nullify[] an explicit statutory scheme" like Title VI). Because ED's decisionmaking was explicitly driven by its purported concerns over "DEI" and "strategic recruitment"—matters squarely within

the ambit of national-origin and racial protections—ED was required to provide a notice of noncompliance, a hearing on the record, and a report to Congress. 42 U.S.C. § 2000d-1. Its failure to do so renders the terminations *ultra vires* and void.

124. The EEOA mandates that states and educational agencies take "appropriate action to overcome language barriers." 20 U.S.C. § 1703(f). Under *Castañeda v. Pickard*, effective implementation requires the "practices, resources and personnel necessary to transform the theory into reality." 648 F.2d 989, 1009–10 (5th Cir. 1981). By terminating the NPD grants, ED has removed the primary federal mechanism for developing qualified bilingual teachers, thereby actively obstructing state and local agencies' ability to comply with their EEOA obligations. The EEOA saving clause, 20 U.S.C. § 6847, prohibits ED from using funding-related actions to undermine civil rights protections.

125. Accordingly, ED's non-continuation determinations must be declared unlawful and set aside as "not in accordance with law." 5 U.S.C. § 706(2)(A), (C).

COUNT VIII
Ultra Vires Agency Action

126. The allegations of the preceding paragraphs are incorporated herein by reference.

127. ED's non-continuation determinations exceeded the agency's lawful authority and were *ultra vires*. Federal agencies possess only those powers delegated to them by Congress. An action taken outside the scope of delegated authority is void *ab initio*, regardless of whether the APA provides an additional avenue for relief.

128. Congress authorized ED to administer the NPD program pursuant to 20 U.S.C. § 6861 and to make continuation determinations based on the regulatory criteria in 34 C.F.R. § 75.253. Nothing in the statute or its implementing regulations authorizes ED to terminate grants based on ideological keyword searches of previously approved applications, or to override the published selection criteria without notice-and-comment rulemaking.

129. ED's actions constitute a structural rewriting of the NPD program's statutory framework, transforming a performance-based continuation system into a viewpoint-based screening mechanism, without any congressional authorization. This exceeds the bounds of any authority delegated to ED and renders the non-continuation determinations *ultra vires* and void.

PRAYER FOR RELIEF

For the reasons set forth above, Plaintiffs respectfully request that this Court:

A. Issue a declaratory judgment that Defendants' non-continuation determinations for the NPD grants violate the Administrative Procedure Act, 5 U.S.C. § 706, and the First Amendment to the United States Constitution;

B. Pursuant to 5 U.S.C. § 706 of the Administrative Procedure Act, hold unlawful and set aside Defendants' non-continuation determinations for the approximately 28 NPD grants discontinued in 2025;

C. Order Defendants to make new continuation determinations in accordance with the criteria outlined in 34 C.F.R. § 75.253, based on grantee performance rather than ideological keyword searches;

D. Issue injunctive relief enjoining Defendants from making future grant-continuation decisions on the basis of viewpoint discrimination or ideological content screening;

E. Retain jurisdiction over this matter to ensure compliance with the above relief;

F. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, in accordance with 28 U.S.C. § 2412; and

G. Grant such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 (b), Plaintiffs demand a jury trial on all issues triable of right by a jury.

Respectfully submitted,

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*Pro Hac Vice *motions forthcoming*

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