



June 20, 2025

Submitted via www.regulations.gov

Linda McMahon
Secretary of Education
Department of Education
400 Maryland Avenue SW
Washington, D.C., 20202

Re: Docket ID ED-2025-OS-0020, Proposed Priorities and Definitions—Secretary’s Supplemental Priorities and Definitions on Evidence-Based Literacy, Education Choice, and Returning Education to the States

Dear Secretary McMahon,

As advocates for public school students for over 50 years, we submit these public comments to oppose the Secretary’s Supplemental Priorities on Education Choice and Returning Education to the States (Proposed Priorities 2 & 3), and to explain how these priorities will harm students and families.¹ By promoting private school vouchers and abdicating its mandatory statutory functions in the name of “returning education to the states,” the Department contravenes its vital and longstanding role to promote student achievement and ensure equal access to educational opportunity for all students.

Education Law Center (ELC) is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations.

Education Law Center also directs Public Funds Public Schools (PFPS), a national campaign to ensure public funds for education are used to support and strengthen public schools. PFPS uses policy advocacy, research, and litigation to oppose the diversion of public funds to private educational uses, including all forms of private school vouchers.

Proposed Priority 2 – Expanding Education Choice – will harm students, schools, and states by promoting the diversion of public funds to private entities.

This priority purports to expand educational choice by promoting private school vouchers.

¹ These comments do not address Proposed Priority 1, Promoting Evidence-Based Literacy.

Private school vouchers, however, do not benefit students, families or communities, nor do they help the most vulnerable, highest-need students obtain a better education than they can receive in public schools. There is an ever-mounting body of evidence that vouchers cause great harm, in multiple ways, to those they claim to benefit.²

Students who use vouchers experience worse educational outcomes than their public school peers and in private schools that are subject to few, if any, quality and accountability standards. Modern voucher policies originated from efforts to avoid school integration after the *Brown v. Board of Education* U.S. Supreme Court decision, and they continue to cause racial and economic segregation today, with the majority of vouchers taken by white families and wealthier families.³ Voucher students lose most of their legal protections under special education and civil rights laws, and voucher programs run by private schools using public dollars may and do discriminate against students and employees in ways that are not lawful in public schools. Due to the diversion of public funds to vouchers, public schools have even fewer resources to meet the needs of their students, who represent ninety percent of children across the country. At the same time, high-need students, who are frequently rejected by private schools, are concentrated in public schools that welcome and serve all students, but are often already, and sometimes woefully, underfunded. Since high-need students are more expensive to educate than students with fewer needs for support, their increased concentration in public schools caused by voucher programs increases costs to public schools.

1. Public Schools Provide Educational Options for Students.

It is a myth that public school families lack educational options. First, the overwhelming majority of children across the country attend public schools, and the vast majority of parents are satisfied with their children's education.⁴ Second, there are numerous public school options in addition to a student's neighborhood school, including magnet schools, interdistrict public school choice programs, and charter schools. As with any policy, it is important that these programs are carefully designed and implemented to promote equal access and high-quality educational opportunities.

Because these are all public education options, students utilizing them are entitled to the same civil rights and other protections as in their own district schools. These schools are subject to academic and other quality standards and accountable to state authorities and the public. In general, none of that is true in private education "choice" programs.

Furthermore, many of the options listed in this proposed priority are already available in public schools, such as course-based offerings, career and technical education, and skills-based education.

2. Vouchers Lack Quality and Accountability Standards and Lead to Worse Educational Outcomes.

² See the research collected by Public Funds Public Schools at <https://pfps.org/research/>.

³ See *infra* Section 3(a), Students of Color; Section 5, Vouchers Largely Benefit Wealthy Families.

⁴ Gallup News Service, *Gallup Poll Social Series: Work and Education* (Aug. 2024) (see Question 30), https://news.gallup.com/file/poll/649394/2024_08_28_Education.pdf.

Private school vouchers come in multiple forms, including “Education Savings Account” vouchers and “tax credit” vouchers, both of which are explicitly promoted under this priority. All vouchers pay for a student’s private school tuition with public funds. Education Savings Account vouchers, often called “ESAs,” are public funds deposited into a personal account that can be used to pay for a student’s private school tuition as well as a wide range of other private education expenses, such as tutoring, online coursework, transportation, and even homeschooling. Tax credit scholarship vouchers provide individuals or corporations a tax credit, often 100% or close to it, to send money they would otherwise owe in state taxes to private organizations that hand out vouchers.

Voucher schemes have many different names, such as “hope scholarships” and “freedom accounts” and different mechanisms for diverting funds to private schools. The shapeshifting and renaming of voucher programs is arguably a deliberate strategy by their promoters to obscure their true nature and to try to avoid legal challenges, negative policy connotations, and community opposition. But all vouchers divert public funds to private education uses, with all the attendant harms, and they must be recognized as such.

Laws that establish and govern voucher programs are often notably devoid of meaningful quality or accountability standards.⁵ Most often, laws establishing voucher programs include no curricular or testing requirements, academic standards, teacher certification mandates, or other requirements to ensure participating private schools are providing an adequate education—or really, any education at all—to voucher students. All of this is required of public schools.

Available data reveal that academic outcomes for voucher students are dismal. Study after study shows that vouchers not only fail to improve education outcomes, but they also have a detrimental academic impact on participating students. Studies of voucher programs in Louisiana, Indiana, and Ohio found that students who attended private schools using vouchers performed worse than their public school peers.⁶ In Louisiana, participation in the state’s voucher program “dramatically reduce[d] academic achievement. Attending an LSP-eligible private school lower[ed] math scores by an average of 0.41 standard deviations . . . and reduce[d] reading, science, and social studies scores” as well after one year.⁷ After four years, Louisiana voucher students “performed noticeably worse on state assessments than their control group counterparts,” meaning

⁵ See, e.g., Arianna Prothero and Alex Harwin, *Private School Choice Programs Fall Short on Transparency, Accountability*, Education Week (Feb. 28, 2020), <https://www.edweek.org/policy-politics/private-school-choice-programs-fall-short-on-transparency-accountability/2020/02?r=2000718806>.

⁶ Jonathan N. Mills & Patrick J. Wolf, *The Effects of the Louisiana Scholarship Program on Student Achievement after Four Years*, University of Arkansas, EDRE Working Paper 2019-10 (2019), <https://bpb-us-e1.wpmucdn.com/wordpressua.uark.edu/dist/9/544/files/2019/04/Mills-Wolf-LSP-Achievement-After-4-Years-final-ut3mor.pdf>; Megan Austin, R. Joseph Waddington & Mark Berends, *Voucher Pathways and Student Achievement in Indiana’s Choice Scholarship Program*, The Russell Sage Foundation Journal of the Social Sciences, 20-40 (2019), <https://www.jstor.org/stable/10.7758/rsf.2019.5.3.02>; David Figlio & Kryzstof Karbownik, *Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects*, Thomas B. Fordham Institute (2016), <https://fordhaminstitute.org/ohio/research/evaluation-ohios-edchoice-scholarship-program-selection-competition-and-performance>.

⁷ Atila Abdulkadiroglu, Parag A. Pathak & Christopher R. Walters, *Free to Choose: Can School Choice Reduce Student Achievement?*, American Economic Journal: Applied Economics 10(1):175–206, 176 (2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20160634>.

the negative effects were not likely explained by the temporary adjustment involved in changing schools.⁸

In fact, seven of nine large-scale studies conducted between 2015 and 2019—some spearheaded by voucher advocates—found detrimental effects from voucher programs, while the remaining two showed no statistically significant effects.⁹ The negative educational effects of voucher programs are “on par with what the COVID-19 pandemic did to test scores, and larger than Hurricane Katrina’s impacts on academics in New Orleans.”¹⁰ Policymakers should heed the evidence.¹¹

3. Vouchers Harm Vulnerable Students.

a. *Students of Color*

Vouchers have a racist history and continue to foster school segregation. Voucher programs did not arise in significant numbers until the U.S. Supreme Court invalidated racial segregation in public schools in *Brown v. Board of Education*, and they arose as part of the massive resistance by white citizens to the *Brown* decision.¹² While today’s voucher proponents no longer explicitly espouse segregationist goals or intent, the uncomfortable truth is that today’s private school voucher programs “have their roots in a history of racism and school segregation” as “school vouchers became a popular tool for perpetuating the segregation the Court had ruled unconstitutional.”¹³

Student population data and studies confirm that vouchers continue to exacerbate racial segregation in nearby public schools. Private schools across the country disproportionately serve

⁸ Mills & Wolf, *supra* note 6, at 4.

⁹ Christopher Lubienski & Joel Malin, *The New Terrain of the School Voucher Wars*, The Hill (Aug. 30, 2019), <https://thehill.com/blogs/congress-blog/education/459400-the-new-terrain-of-the-school-voucher-wars/>.

¹⁰ Josh Cowen, *How School Voucher Programs Hurt Students*, Time (Apr. 19, 2023), <https://time.com/6272666/school-voucher-programs-hurt-students/>.

¹¹ Voucher advocates consistently pick and choose selected studies suggesting neutral to small positive results, but those studies suffer from critical flaws. For example, an analysis by pro-voucher group EdChoice purports to survey the existing literature and concludes most studies show vouchers have positive effects. EdChoice, *The 123s of School Choice: What the Research Says About Private School Choice Programs in America, 2023 Edition* (2023), <https://www.edchoice.org/wp-content/uploads/2023/07/123s-of-School-Choice-WEB-07-10-23.pdf>. But a National Education Policy Center review of EdChoice’s analysis found that it relies on a “flawed approach that obscures important differences in studies and can create a misleading narrative about the research evidence.” Christopher Lubienski, *NEPC Review: The 123s of School Choice: What the Research Says About Private School Choice Programs, 2023 Edition*, National Education Policy Center 3 (Oct. 2023), https://nepc.colorado.edu/sites/default/files/reviews/NR%20Lubienski_0.pdf. Similarly, in 2019, a National Education Policy Review found EdChoice’s *123s of School Choice, 2019 edition*, to constitute a “misrepresentation of what research has been conducted” because it makes exaggerated claims based on studies that are selectively chosen and often not peer reviewed. T. Jameson Brewer, *NEPC Review: The 123s of School Choice: What the Research Says About Private School Choice: 2019 Edition*, National Education Policy Center 8–9, 12 (June 2019), <https://nepc.colorado.edu/sites/default/files/reviews/TTR%20Brewer.pdf>.

¹² See Kern Alexander & M. David Alexander, *American Public School Law* 219 (8th ed. 2012).

¹³ Raymond Pierce, *The Racist History of “School Choice,”* Forbes (May 6, 2021), <https://www.forbes.com/sites/raymondperce/2021/05/06/the-racist-history-of-school-choice/>; see also Steve Suitts, *Overturning Brown: The Segregationist Legacy of the Modern School Choice Movement* (2020).

white students. A 2018 report showed that, nationally, white students were “substantially overrepresented” in private schools, while Hispanic and Black students were underrepresented.¹⁴ In North Carolina, for example, seventy-four percent of private school students are white, compared to forty-five percent of public school students.¹⁵ Illinois is nearly the same: sixty-five versus forty-seven percent.¹⁶ Data from Ohio’s expansion of its voucher program show that the majority of recipients of the expansion vouchers are white.¹⁷ Private school voucher programs funnel public funding to this inequitable system, exacerbating racial segregation of students.

A 2017 report from the Center for American Progress presents Indiana’s voucher program as a “case study” in the segregative effects that persist even in the absence of overt racial motivation: “Indiana’s voucher program increasingly benefits higher-income white students, many of whom are already in private schools, and diverts funding from all other students who remain in the public school system.”¹⁸ Indeed, around sixty percent of Indiana voucher recipients came from white families, and around fifty percent had never attended a public school.¹⁹ Meanwhile, Black students’ participation in Indiana’s program had declined from twenty-four to twelve percent since its inception in 2013.²⁰

A Century Foundation study established that Black students in Louisiana generally relied on vouchers to exit school systems in which they were overrepresented only to attend private schools where the same was true, while white students tended to leave public schools where their race was underrepresented to join schools where it was the opposite.²¹ As a result, “[o]nly a third of all voucher transfers in [the program] resulted in more integrated public and private schools, while the other two-thirds . . . exacerbated segregation in one or both sectors.”²² The study concluded that “voucher programs on balance are more likely to increase school segregation than to decrease it or leave it at status quo.”²³

b. Students with Disabilities

Although some of the earliest voucher programs were targeted to students with disabilities, it has become clear that the end game was universal expansion of voucher eligibility—the

¹⁴ Jongyeon Ee et al., *Private Schools in American Education: A Small Sector Still Lagging in Diversity*, UCLA Civil Rights Project 15 (2018), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/private-schools-in-american-education-a-small-sector-still-lagging-in-diversity/Ee-Orfield-Teitell-Private-School-Report_03012018.pdf.

¹⁵ Public Funds Public Schools, *Private School Dashboard*, <https://pfps.org/private-school-dashboard.html>. Select “State” tab and choose individual state from dropdown menu. Based on survey data from National Center for Education Statistics Private School Universe Survey and Common Core of Data for Public School Students.

¹⁶ *Id.*

¹⁷ Ohio Department of Education, *Scholarship Paid Participants (State)* (2024), <https://reports.education.ohio.gov/report/nonpublic-data-state-scholarship-participants>.

¹⁸ Chris Ford et al., *The Racist Origins of Private School Vouchers*, Center for American Progress 8 (2017), <https://www.americanprogress.org/article/racist-origins-private-school-vouchers/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Halley Potter, *Do Private School Vouchers Pose a Threat to Integration?*, Century Foundation 16 (Mar. 2017), <https://production-tcf.imgix.net/app/uploads/2017/03/22102646/do-private-school-vouchers-pose-a-threat-to-integration.pdf>.

²² *Id.* at 17.

²³ *Id.* at 2.

ostensible goal of helping students with disabilities was a foot in the door for much larger programs that would wreak havoc on state budgets and student wellbeing. The histories of voucher programs in Arizona and Florida are prime examples of that trajectory, starting off with limited voucher programs for students with disabilities that were continuously expanded despite evidence of their negative effects; today, those voucher programs siphon billions of taxpayer dollars to disastrous and unaccountable universal voucher programs.²⁴

Vouchers do not help students with disabilities in any case. Students who use vouchers lose most or all of their state and federal special education rights, and parents are often not aware that these rights have been relinquished. Private schools can and do discriminate against students with disabilities in admissions and discipline practices; they also regularly refuse to provide students the special education services they need to make progress and thrive in school.²⁵

Federal law provides three main sets of statutory protections for students with disabilities. First, the Individuals with Disabilities Education Act (IDEA) ensures public school students receive a free appropriate public education (FAPE), including a detailed individualized education program (IEP) and services delivered by certified special education teachers.²⁶ The IDEA also protects students with disabilities from segregation within the school system by requiring they be educated with their non-disabled peers to the maximum extent appropriate, in what is called the “least restrictive environment” (LRE).²⁷ Additionally, the IDEA protects students from disciplinary action, such as lengthy suspension or expulsion, based on behavior that is caused by their disabilities.²⁸ Finally, the IDEA gives parents access to dispute resolution procedures, such as the right to request a due process hearing, to resolve special education disputes.²⁹

Second, Section 504 of the Rehabilitation Act prohibits disability-based discrimination in programs or activities that receive money from the U.S. Department of Education.³⁰ Section 504 also requires school districts to provide all eligible students with disabilities a FAPE in the LRE,³¹ and it applies to a broader range of students than the IDEA.³² Third, Title II of the Americans with Disabilities Act (ADA) prohibits disability-based discrimination by state and local governments, including public schools, and requires that public schools be physically accessible.³³

²⁴ Samuel E. Abrams & Steven J. Koutsavlis, *The Fiscal Consequences of Private School Vouchers*, Public Funds Public Schools (2023), https://pfps.org/assets/uploads/SPLC_ELC_PFPS_2023Report_Final.pdf; Shar Porier, *ESA Vouchers Have Cost Arizona Taxpayers Nearly \$1 Billion*, Herald Review (Jan. 31, 2024), https://www.myheraldreview.com/news/education/esa-vouchers-have-cost-arizona-taxpayers-nearly-1-billion/article_307f7b90-bed1-11ee-b48c-bb85a66dadc0.html; Leslie Postal, *Florida’s Voucher Plan Could Cost Public Schools Nearly \$4 Billion, Report Says*, Orlando Sentinel (Jan. 24, 2023), <https://www.orlandosentinel.com/2023/01/24/floridas-voucher-plan-could-cost-public-schools-nearly-4-billion-report-says/>.

²⁵ See *infra* Section 4(a), Student with Disabilities.

²⁶ 20 U.S.C. §§ 1401(26)(A), 1412(a)(1), (a)(4), (a)(14)(C), 1414(d).

²⁷ 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 104.34.

²⁸ 20 U.S.C. § 1415(k)(1)(E)–(G); 34 C.F.R. §§ 300.530–.536.

²⁹ 20 U.S.C. §§ 1415(b), (f); 34 C.F.R. § 300.507(a)(1).

³⁰ 34 C.F.R. § 104.4(a).

³¹ 34 C.F.R. §§ 104.33(a), 104.34(a).

³² See 29 U.S.C. §§ 705(20), 794; 34 C.F.R. § 104.3(j).

³³ 42 U.S.C. §§ 12131(1), 12132; 28 C.F.R. § 35.130(a).

When students with disabilities use vouchers to attend private schools, they forego the vast majority of these protections. They lose the right to an individualized education designed to meet the needs of each eligible student with a disability. In other words, a student with a disability who is using a voucher gives up his or her legal right to receive the specific programs and services necessary for that student to make adequate educational progress.³⁴ Additionally, students using vouchers lose protections against unfair discipline and intra-school segregation.³⁵ And parents generally give up their rights under IDEA to receive notification of, provide input on, and seek judicial remedies regarding most changes to their children’s education and services.³⁶

Finally, Title II of the ADA does not apply to private schools. While some private schools are covered by Title III of the ADA, which prohibits discrimination in public accommodations, that statute neither limits private schools’ ability to deny enrollment to students with disabilities nor requires them to provide an appropriate education or services.³⁷ Moreover, Title III does not cover private religious schools at all,³⁸ even though they comprise the majority of private schools nationwide.³⁹ In private religious schools, in the absence of state law protections, students with disabilities are not entitled even to basic ADA accommodations, such as accessible entrances, desks, and toilets.

Parents are often unaware of the loss of these rights. A seminal report by the Government Accountability Office found that “in school year 2016-17, 83 percent of students enrolled [with a voucher] in a [private school] program designed specifically for students with disabilities were in a program that provided either no information about changes in IDEA rights or provided information that [the U.S. Department of Education] confirmed contained inaccuracies about these changes.”⁴⁰ Although some voucher statutes now pay lip service to the idea that parents must be informed of the loss of federal special education rights when they participate in the program, it is unclear whether and how well this is happening. As voucher programs become universal, and safeguards in voucher laws generally decrease, the potential for lack of information or misinformation that can be devastating to families of students with disabilities only increases.

In 2020, ELC and other advocacy groups analyzed the state-collected data on the Arkansas voucher program for students with disabilities, finding “inequitable enrollment statistics, troubling

³⁴ See 20 U.S.C. § 1412(a)(10); 29 U.S.C. § 794(b)(1); National Council on Disability, *Choice & Vouchers—Implications for Students with Disabilities* 59–66 (2018), <https://www.ncd.gov/report/choice-and-vouchers-implications-for-students-with-disabilities/>; Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 Emory L.J. 1037, 1059 (2019).

³⁵ See 20 U.S.C. § 1415(k)(1)(E)–(F); 29 U.S.C. § 794(b)(1); National Council on Disability, *Choice & Vouchers*, *supra* note 34, at 59–66.

³⁶ Raj, *supra* note 34, at 1058–59; U.S. Department of Education, *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* 30 (2011).

³⁷ See 42 U.S.C. §§ 12181–12189.

³⁸ 42 U.S.C. § 12187.

³⁹ See Stephen P. Broughman, Adam Rettig & Jennifer Peterson, *Characteristics of Private Schools in the United States: Results from the 2015–16 Private School Universe Survey 2*, U.S. Department of Education, National Center for Education Statistics (2017), <https://nces.ed.gov/pubs2017/2017073.pdf>.

⁴⁰ U.S. Government Accountability Office, *Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* (2017), <https://www.gao.gov/assets/d1894.pdf>.

data inconsistencies, and little accountability for the public funds spent on the voucher program.”⁴¹ Key findings included:

- Of those for whom data was available, there [were] significant racial disparities: 5% of voucher students were Latinx, 12% were Black, and 78% were white. Students with disabilities in Arkansas public schools, on the other hand, [were] 11% Latinx, 23% Black, and 61% white.
- Due to participating private schools’ inconsistent reporting and data collection standards, the Free or Reduced Price Lunch (FRPL) status of 44% of participating students [was] unreported. Of available data, just 30% of voucher students were eligible for FRPL, while 60% of Arkansas public school students [were] eligible.
- Only three-quarters of participating private schools [were] accredited, while a quarter [were] on some type of path to accreditation. Thus, schools participating in the voucher program [were] receiving taxpayer dollars without completing a rigorous accreditation process, let alone being held to the same accountability and reporting standards as public schools.
- Nearly 20% of voucher students [had] left their private schools, for reasons including dismissal, inability to pay tuition amounts not covered by their voucher, and lack of access to transportation.⁴²

As generally happens with vouchers, the evidence was ignored: Arkansas continued to operate this program and eventually enacted universal vouchers, and other states enacted vouchers specifically for students with disabilities or programs with broader eligibility.

In order to give students with disabilities the high-quality education they deserve and are legally entitled to receive, it is essential for federal, state and local governments to do two things: 1) vigorously protect the legal rights of these students to receive a free appropriate public education that meets their individual needs, and 2) ensure schools have sufficient resources to fulfill those legal rights. Private school vouchers do not help, and only harm, students with disabilities by actively working against both these goals. Vouchers rob students with disabilities of their legal rights and fund private schools that often actively discriminate against them. Vouchers do not provide sufficient funds for a private education that would meet students’ needs, and they divert desperately needed resources away from the public schools that serve most students with disabilities and are the only schools in which their rights are legally guaranteed.

c. Rural Students and Communities

Vouchers harm often under-resourced rural public schools, with no benefit to rural students who generally do not have geographic access to private schools. Roughly one in five students attend schools in rural communities, but because rural public schools enroll fewer students and have smaller school and district operations, they cannot take advantage of the same economies of scale as larger urban and suburban districts, and they have fewer resources to pay for fixed

⁴¹ Public Funds Public Schools, *Public School Advocates Urge Arkansas Legislature to End Broken Voucher Program* (Sept. 10, 2020), <https://pfps.org/public-school-advocates-urge-arkansas-legislature-to-end-broken-voucher-program.html>.

⁴² *Id.*

education costs, such as facility maintenance and transportation.⁴³ When rural districts lose funding due to voucher programs, which can significantly impact education budgets statewide despite little participation from rural students, it becomes much more difficult to provide quality instruction and services to the students who depend upon their rural public schools.

Moreover, public schools are often the backbone of rural communities. They play a pivotal role in social and economic activities. Residents in rural areas depend on their public schools for employment (they are often the largest employer in the community), healthcare and nutrition, and as a place for community gatherings and civic and social engagement.⁴⁴ When rural public schools lose resources or close due to vouchers, the entire community suffers.

4. Vouchers Can – and Do – Fund Schools that Actively Discriminate.

The government should protect students from discrimination, not fund it. Vouchers directly fund private schools, which lack the accountability that public schools have with regard to admission and enrollment policies, and thus are free to discriminate on a variety of grounds, including based on disability, English language proficiency, sex, sexual orientation, gender identity, and religion. Even if these students use vouchers to attend private schools, they do not receive the same civil rights protections that they would have in public schools.

a. Students with Disabilities

The loss of legal rights for students with disabilities who use vouchers to attend private schools is not theoretical. Many private schools, including those eligible to receive vouchers in states with voucher programs, have policies that explicitly discriminate against or disadvantage students with disabilities. Here are a few of the numerous examples throughout the country of private schools with such policies:

- Our Lady of Perpetual Help School in Tennessee states, “Our Lady is not able to meet the needs of every learner. . . . In the event that we cannot meet your child’s needs, every effort will be given to assist in transitioning to another school or program.”⁴⁵
- All Saints Catholic School in Florida states that “any student with a disability does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school under the Individuals with Disabilities Education Act (IDEA)”⁴⁶

⁴³ Jesse Levin, et al., *Do schools in rural and nonrural districts allocate resources differently? An analysis of spending and staffing patterns in the West Region states*, (Issues & Answers Report, REL 2011–No. 099), U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory West (2011), <https://files.eric.ed.gov/fulltext/ED515211.pdf>.

⁴⁴ Mara Casey Ticken, *School closures can hit rural communities hard*, The Conversation (Jan. 9, 2020), <https://theconversation.com/school-closures-can-hit-rural-communities-hard-128837>; Emily Norman, *Keep Rural Schools Open: Position and Policy*, Online Journal of Rural Research & Policy 17:3 (2022), <https://newprairiepress.org/cgi/viewcontent.cgi?article=1112&context=ojrrp>.

⁴⁵ Our Lady of Perpetual Help, *2024-2025 Student and Parent Handbook* 34 (last visited March 8, 2025), [https://assets.speakcdn.com/assets/2983/olph_cdom_handbook_2024-2025_final_draftdocx_\(1\).pdf](https://assets.speakcdn.com/assets/2983/olph_cdom_handbook_2024-2025_final_draftdocx_(1).pdf).

⁴⁶ All Saints Catholic School, *2024-2025 Student/Parent Handbook* 27 (last visited March 8, 2025), <https://allsaintscatholicsschool.net/wp-content/uploads/2025/01/2024-2025-Parent-Handbook-Final.pdf>.

- Emmanuel Christian School in West Virginia states: “ECS is not permitted to accept or retain students who. . .exhibit definite learning or behavioral disabilities.”⁴⁷

As these examples demonstrate, some private schools have admissions or other criteria that explicitly preclude students with disabilities from attending, while others make clear they will not provide special education services or accommodations to students with disabilities.

b. English Learners

Federal laws including the Equal Educational Opportunities Act (EEOA) require public schools to remove barriers that “impede equal participation by [English learner (EL)] students in [their] instructional programs.”⁴⁸ State educational agencies and public school districts are legally obligated to identify ELs who may need language assistance; sufficiently staff and support such programs; guarantee equal opportunities to participate in all curricular and extracurricular activities; avoid unnecessary segregation; monitor and evaluate students’ progress; and appropriately communicate with parents who do not speak English, among other requirements.⁴⁹ But, the EEOA applies only to states and their public schools, and Title VI of the Civil Rights Act applies only to recipients of federal funding.⁵⁰ As of 2019, the majority of state voucher programs provided *no* protection for students against discrimination based on language proficiency.⁵¹ Private schools are not obligated to enroll all voucher students who apply, and voucher schools may elect not to provide language assistance services; for example, two thirds of private schools participating in Washington, D.C.’s voucher program in 2017 did not provide language assistance services for students or families whose spoken language at home is not English.⁵²

c. LGBTQ+ Students and Families

Federal law protects LGBTQ+ students enrolled in public schools against discrimination based on sexual orientation and gender identity, but this does not apply to private schools unless

⁴⁷ Emmanuel Christian School, *Student Handbook* 6 (last visited March 8, 2025),

<https://www.emmanuelcatholic.org/handbook>.

⁴⁸ 20 U.S.C. § 1703(f). *See also* *Lau v. Nichols*, 414 U.S. 563, 566–68 (1974) (upholding regulations under Title VI of the Civil Rights Act that required public schools to take “affirmative steps” to address ELs’ educational needs).

⁴⁹ U.S. Dep’t of Justice Civil Rights Div. & U.S. Dep’t of Educ. Office for Civil Rights, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents* 8-9 (Jan. 7, 2015), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

⁵⁰ Julie F. Mead & Suzanne E. Eckes, *How School Privatization Opens the Door for Discrimination*, National Education Policy Center 10 (Dec. 2018), <https://nepc.colorado.edu/publication/privatization>.

⁵¹ Bayliss Fiddiman & Jessica Yin, *The Danger Private School Voucher Programs Pose to Civil Rights*, Center for American Progress 3, 9–11 (May 13, 2019), <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/05/Vouchers-and-Civil-Rights2.pdf>.

⁵² *See* Tony Hana, *How School Vouchers Affect English Learners*, New America (July 24, 2017), <https://www.newamerica.org/education-policy/edcentral/how-school-vouchers-affect-english-learners/>; *see also* Mandy McLaren & Emma Brown, *Trump Wants to Spend Millions More on School Vouchers. But What’s Happened to the Millions Already Spent?*, Washington Post (July 15, 2017), https://www.washingtonpost.com/local/education/trump-wants-to-spend-millions-more-on-school-vouchers-but-whats-happened-to-the-millions-already-spent/2017/07/15/ab6002a8-6267-11e7-84a1-a26b75ad39fe_story.html.

they receive federal financial assistance.⁵³ Even with the receipt of federal dollars, private schools run by religious organizations may be exempt from Title IX’s sex-discrimination prohibition.⁵⁴ Many private schools enforce explicit anti-LGBTQ+ policies, and many state laws expressly allow voucher schools to base admissions decisions on criteria consistent with the schools’ religious tenets, which often include opposition to homosexuality.⁵⁵ As a result, many private schools receiving voucher funds openly discriminate against LGBTQ+ students and families.⁵⁶

d. Religious Minority Students and Families

A host of federal protections prevent public schools from discriminating against or violating the free speech rights of students because of their religion, but no such requirements apply to private schools.⁵⁷ To the contrary, private schools can, and do, “discriminate against students in the enrollment process (particularly in regard to religion),” and “restrict student speech” regarding religious beliefs different from those espoused by the school.⁵⁸ A large majority of private schools nationally are affiliated with a subset of denominations of the Christian faith. Thus, religious minority students may face discrimination or restrictions on their speech or expression if they are admitted.

5. Vouchers Largely Benefit Wealthy Families.

Vouchers frequently do not cover the full cost of private school tuition, let alone the expense of other essentials that are provided for free in public schools.⁵⁹ Whereas public schools provide services and resources, such as transportation, books, and free or reduced-price meals, these and other key resources must often be purchased separately by families using vouchers to attend private schools. Thus, vouchers simply shift the cost of many core educational resources to families or put them out of reach for all but the wealthiest. This reality is magnified for students

⁵³ See 20 U.S.C. §§ 1681–1688; *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021) (to be codified at 34 C.F.R. ch. 1); see also *Bostock v. Clayton County*, 140 S. Ct. 1731, 1741–42 (2020).

⁵⁴ See 20 U.S.C. § 1681(a)(3).

⁵⁵ See Kevin G. Welner & Preston C. Green, *Private School Vouchers: Legal Challenges and Civil Rights Protections*, UCLA Civil Rights Project 8 (2018), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/private-school-vouchers-legal-challenges-and-civil-rights-protections/Welner-Green-JT_022818-for-post.pdf; Adam Mengler, *Public Dollars, Private Discrimination: Protecting LGBT Students from School Voucher Discrimination*, 87 Fordham L. Rev. 1251, 1264 (2018) (quoting Ariz. Rev. Stat. § 15-2404 (2018)).

⁵⁶ See, e.g., Leslie Postal & Annie Martin, *Anti-LGBT Florida Schools Getting School Vouchers*, Orlando Sentinel (Jan. 23, 2020), <https://www.orlandosentinel.com/2020/01/23/anti-lgbt-florida-schools-getting-school-vouchers/>; Brian Gordon, *NC Religious Schools with Anti-LGBTQ Policies Receive Top Opportunity Scholarship Dollars*, Citizen Times (Aug. 27, 2020), <https://www.citizen-times.com/story/news/local/2020/08/27/nc-private-school-vouchers-help-fund-anti-lgbtq-policies-face-lawsuit/3359423001/>.

⁵⁷ See 42 U.S.C. §§ 2000c–c-9, 2000d–d-7; Cynthia Brougher, Cong. Rsch. Serv., R42626, *Religious Discrimination in Public Schools: A Legal Analysis* 5 (July 25, 2021); *Johnson v. Pinkerton Acad.*, 861 F.2d 335, 337 (1st Cir. 1988).

⁵⁸ Derek W. Black, *Preferencing Educational Choice: The Constitutional Limits*, 103 Cornell L. Rev. 1359, 1390 (2018).

⁵⁹ See, e.g., Meghan Casey Whittaker, *The Average Voucher Doesn’t Cover Full Cost of Private School*, NCLD Data Analysis Shows, Understood (Nov. 21, 2017).

with disabilities, whose education often costs several times more than that of a student without disabilities. Few voucher programs provide more than \$10,000 per student, and often far less, but sources report that private school tuition for a student with disabilities can range from \$40,000 to \$100,000 per year.⁶⁰

Empirical evidence bears out these effects. Data from multiple states show that the majority of vouchers are used by families who were already sending their children to private schools without the help of a voucher.⁶¹ And these tend to be more affluent families, not the low-income families that voucher proponents or programs purport to serve. In Arizona, a 2023 analysis showed that most education savings account voucher recipients “live in areas with median incomes ranging from \$81,000 to \$178,000,” whereas “[j]ust 5 percent come from ZIP codes where the median income is under \$49,000.”⁶² If states continue removing eligibility criteria, such as family income limits and prior public school enrollment requirements, and moving toward universal voucher programs, these effects will only increase.

6. Voucher Programs Divert Funding and Resources from Already Underfunded Public Schools.

Many public schools around the nation face chronic and severe underfunding.⁶³ Diverting much needed funding from public education to pay for private school vouchers exacerbates that lack of resources. For example, a 2017 study of Wisconsin’s voucher program found that its expansion posed “a significant fiscal threat to public schools.”⁶⁴ Meanwhile, many voucher programs have expanded from small “experiments” to multi-billion-dollar boondoggles. A report examining voucher programs in seven states found that, from fiscal years 2008 through 2019, each state dramatically increased expenditures of public funds on voucher programs, with growth in Georgia reaching 883 percent.⁶⁵

The threat to public education and state budgets posed has increased dramatically as more than a dozen states have made their voucher programs universal. The cost of universal vouchers in Arizona has far exceeded initial estimates and is now putting intense strain on the state budget.⁶⁶

⁶⁰ Selene Almazan & Denise Stile Marshall, *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, Council of Parent Attorneys & Advocates 16 (2016),

https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/Policy_Docs/COPAA_Voucher_paper_final_R6.pdf.

⁶¹ Josh Cowen, *School Vouchers: There Is No Upside*, Albert Shanker Institute (Feb. 21, 2023), <https://www.shankerinstitute.org/blog/school-vouchers-there-no-upside> (“Despite supporter rhetoric that voucher schemes are about new opportunities, the reality is 70-80 percent of kids in states like Arizona, Missouri, and Wisconsin were already in private school before taxpayers picked up the tab.”).

⁶² Tim Walker, ‘No Accountability’: *Vouchers Wreak Havoc on States*, NEA Today (Feb. 2, 2024), <https://www.nea.org/nea-today/all-news-articles/no-accountability-vouchers-wreak-havoc-states>.

⁶³ See, e.g., Danielle Farrie & Robert Kim, *Making the Grade: How Fair is School Funding in Your State?*, Education Law Center (2024), <https://edlawcenter.org/wp-content/uploads/2024/12/Making-the-Grade-2024.pdf>.

⁶⁴ Ellie Bruecker, *Assessing The Fiscal Impact of Wisconsin’s Statewide Voucher Program* 4-5, National Education Policy Center (2017), https://nepc.colorado.edu/sites/default/files/publications/PM%20Bruecker%20Funding_0.pdf.

⁶⁵ Abrams & Koutsavlis, *supra* note 24.

⁶⁶ Eli Hager, *School Vouchers Were Supposed to Save Taxpayer Money. Instead They Blew A Massive Hole in Arizona’s Budget*, ProPublica (July 16, 2024), <https://www.propublica.org/article/arizona-school-vouchers-budget-meltdown>.

A 2021 policy brief estimated that universal vouchers could increase the total public cost of education by 11-33%, amounting to \$66-\$203 billion per year.⁶⁷

At the same time that they divert funding from public education, voucher programs concentrate higher-need students, such as students with disabilities, in public schools. Reasons include those explained above: many private schools refuse to serve these students, and public schools are the only schools in which they retain their special education and civil rights. Often, students who took a voucher but did not receive the promised benefits return to public schools, but the funds that had already been diverted to the private school via a voucher do not return with them. In the meantime, the loss of those funds may have led the public school to make difficult cuts to programs and services. Thus, voucher programs leave public schools—which welcome all students and serve the vast majority of them—with fewer resources to serve a higher-need student population. In fact, particularly in states with universal vouchers, these programs are threatening the very existence of neighborhood public schools.⁶⁸ When neighborhood schools close, students and their communities face devastating educational, social, and civic effects.⁶⁹

Private school voucher programs divert funding from educational methods we know help students. A robust body of peer-reviewed studies across the nation provides compelling evidence that increasing public school spending improves academic and life outcomes for students, including more years of completed education, higher wages, and reduced incidence of adult poverty.⁷⁰ These effects are more pronounced for students from low-income families.⁷¹ In contrast, the evidence clearly shows that vouchers do not promote equal access to educational opportunity, and they are certainly not a solution to the challenges facing our schools and our nation.

Finally, private school vouchers are part of a broader assault on public education designed to privatize one of the most important common goods underpinning our democracy. And as such, they have no place in federal policy that instead must continue to encourage, support and resource the public schools that serve the vast majority of American students and ensure that these schools provide a high quality, equitable, non-discriminatory, and available education for children across the country.

⁶⁷ Robert Shand & Henry M. Levin, *Estimating a Price Tag for School Vouchers*, National Education Policy Center (2021), <https://nepc.colorado.edu/publication/voucher-costs>.

⁶⁸ See, e.g., Amelia Ferrell Knisely, *Morrissey pushes school choice; lawmakers face ‘balancing act’ as counties lose public schools*, West Virginia Watch (Feb. 12, 2025), <https://westvirginiawatch.com/2025/02/12/morrissey-pushes-school-choice-lawmakers-face-balancing-act-as-counties-lose-public-schools/>.

⁶⁹ See e.g., Advancement Project, *Action Kit: Stop Public School Closures* (2024), https://advancementproject.org/wp-content/uploads/2024/05/AP-SchoolClosureActionKit_FINAL.pdf; Public Funds Public Schools & Advancement Project, *Save Neighborhood Schools – Say No to Private School Vouchers!* (Apr. 2025), https://pfps.org/assets/uploads/Save_Neighborhood_Schools___Say_No_to_Private_School_Vouchers___FINAL_.pdf.

⁷⁰ C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question* 9 (Nat’l Bureau of Econ. Rsch., Working Paper No. 25368, 2018), <http://www.nber.org/papers/w25368>.

⁷¹ *Id.* at 6.

Proposed Priority 3 – Returning Education to the States – Undermines the Department’s Role in Ensuring Equal Access to Educational Opportunity for All Students.

This priority’s call for “returning education to the states” ignores the critical role the federal government and the U.S. Department of Education (Department) play in ensuring the ability of states to deliver a high-quality education to every student. The Department is charged by Congress with advancing educational opportunity and quality by implementing the nation’s federal education laws in all fifty states and in hundreds of thousands of schools, colleges and universities. Despite Congress’s clear directives to the Department, the Trump Administration continues to take drastic, escalating steps to incapacitate the Department, including the cancellation of \$1.5 billion in grants and contracts for the performance of core functions and the mass layoffs of half its workforce. These actions are unconstitutional and violate Congress’s directives in creating the Department and assigning it specific duties and appropriations.

Moreover, the notion of “returning education to the states” under this priority erroneously distorts the relationship between the federal government and state education systems. States and local school districts currently oversee day-to-day educational operations—including selecting school curricula, hiring staff, and establishing graduation requirements—and also provide up to 90% of funding for public schools. The federal government then fills the gaps for states with necessary funding, research, evaluation, data collection, and civil rights enforcement to ensure all students have equal access to education. Eviscerating these essential functions, under the guise of “returning education to the states,” will both hinder state ability to oversee and provide education and interfere with students’ right to an equal education.

Finally, the Trump Administration repeatedly claims that the Department has yielded few benefits for students and families since its inception in 1979.⁷² This is categorically false. Over the past four decades, access to educational opportunities has significantly improved as a result of the Department’s efforts: more students have graduated from high school and completed some form of postsecondary education; students with disabilities experienced increased access to special education and related services; underfunded school districts received critical funding for teachers, educational materials, and facilities; and enforcement of federal civil rights laws prevented discrimination against vulnerable student populations. To say otherwise ignores these facts.

1. The U.S. Department of Education plays a critical role supporting states, school districts, and students.

The Department provides significant support to states and districts in their efforts to deliver a high-quality education to all students. The Department not only ensures key funding for early childhood education, K-12 education, career and technical and adult education, and postsecondary education, it also provides guidance and technical assistance to state and local governments. The Department conducts and supports evaluation, research, and data collection on education trends, conditions, and needs. It ensures accountability in the use of federal funds. And, critically, it enforces federal civil rights laws to guarantee equal educational opportunity in American public

⁷² See Exec. Order No. 14242, 90 Fed. Reg. 13679 (2025); Proposed Priorities and Definitions-Secretary’s Supplemental Priorities and Definitions on Evidence-Based Literacy, Education Choice, and Returning Education to the States, 90 Fed. Reg. 21710 (2025).

schools. These functions are important to the states, to the 14,000 school districts and 5,000 institutions of higher education within the states, and to millions of students and families across the nation. The Department must continue to fulfill these mandatory functions.

a. Ensuring federal funds support students and families

Federal funding is critical to support states, school districts, and the most vulnerable students and families. U.S. schools rely on property taxes for their funding, which puts students growing up in communities with less property wealth at a disadvantage. Importantly, federal dollars help balance these disparities. First, federal K-12 education funding plays an essential role by allocating resources to districts serving high-need students. The Department distributes targeted funds for low-income and neglected or at-risk students (Title I); English learners (Title III); rural populations (Title V); American Indians, Native Hawaiians, and Alaska Natives (Title VI); students residing on Indian lands, military bases, low-rent housing properties, or other federal properties (Title VII); homeless students (Title IX); and students with disabilities (IDEA). It is not a stretch to say that cutting federal funds would negatively impact hundreds of thousands of students and families in every school district in the United States.⁷³

Second, federal funding helps provide educational opportunity for students, especially the most vulnerable, in states with less property wealth to provide for education.⁷⁴ Viewed as a whole, the current federal K-12 funding scheme reflects an overarching goal to ensure equal educational opportunity, consistent with multiple federal statutes.⁷⁵ Notably, public opinion polling has shown support for greater, not less, federal investment in key areas, including workforce preparation, teacher recruitment and retention, student mental health, and helping students who have fallen behind.⁷⁶

Any attempt to dismantle the Department would disrupt much of the critical funding that supports essential programs and enables all students to have equal access to education. The Department utilizes formulas to disperse funds to the states and ensure that schools are receiving federal funds proportional to their needs. This priority would implicate the funding from the following programs:

- The Elementary and Secondary Education Act (ESEA), 20 U.S.C. §§ 6301–7981, which is the main source of federal financial assistance for elementary and secondary education. In FY24, the ESEA provided \$28.9 billion in funding through over 35 grant

⁷³ Winner, J., *What the assault on public education means for kids with disabilities*. The New Yorker (Feb. 13, 2025), <https://www.newyorker.com/news/the-lede/what-the-assault-on-public-education-means-for-kids-with-disabilities>; Floyd, K., Granville, P., Hinds, C., & Potter, H., *How gutting the U.S. Department of Education Would Hurt Students and Their Families*. The Century Foundation (Feb 12, 2025), <https://tcf.org/content/commentary/how-gutting-the-u-s-department-of-education-would-hurt-students-and-their-families/>.

⁷⁴ See data from the Urban Institute. School funding: *Do poor kids get their fair share?*, <https://apps.urban.org/features/school-funding-do-poor-kids-get-fair-share/>.

⁷⁵ These include the Elementary and Secondary Education Act of 1965, the Individuals with Disabilities Education Act (IDEA), the Equal Educational Opportunities Act of 1974 (EEOA), the McKinney-Vento Homeless Assistance Act, the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

⁷⁶ PDK International. (2024). *The 56th annual PDK Poll: Federal focus on education initiatives wins broad public support*. <https://pdkpoll.org/2024-poll-results/>.

programs.⁷⁷

- The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–82, which provides federal funding for early intervention and special education programs to states that provide a free and appropriate public education to all students with disabilities. In FY24, IDEA awarded \$15.5 billion to states and school districts through five formula and competitive grant programs. In FY24, an estimated 7.5 million children with disabilities received services under IDEA.⁷⁸
- The Higher Education Act of 1965 (HEA), 20 U.S.C. §§ 1001 to 1161aa-1, which authorizes financial aid programs that award 9.9 million students pursuing postsecondary education and training about \$120.8 billion in assistance.⁷⁹
- The Carl D. Perkins Career and Technical Education Act (Perkins V), 20 U.S.C. §§ 2301–414, which provides grant funding (about \$1.46 billion in FY 2024) to states and institutions to support career and technical education programs for secondary and postsecondary students.⁸⁰

Moreover, much of the federal funding, such as Title I, IDEA and Title III, includes restrictions on the use of funds and reporting requirements that ensure that allocated funds are directed to the students for which they are intended. These requirements attached to Title funding are necessary because state and local education funding is often not equitably allocated to students with higher needs. For example, the evidence is clear that poverty has a profound impact on students' lives and their access to opportunities to learn.⁸¹ Consequently, schools serving low-income students require additional resources to help students mitigate the effects of poverty on learning.⁸² Yet, forty percent of states have either flat or regressive school funding systems, where states fail to allocate more funding to higher poverty districts.⁸³ Federal funding and oversight help to reverse this inequity. Similarly, the requirements embedded in IDEA and Title III ensure students with disabilities and multilingual learners receive the additional resources they need to learn successfully.

Any proposal to allocate federal funds to states and/or localities that removes requirements to target funding to particular populations of students, for example in the form block grants, undermines the purpose of federal funding: to ensure that typically underserved students receive the resources they need.

Further, federal funding often comes with the requirement that it supplement, not supplant, state and local funding, and that states maintain a certain level of effort. Any proposal that would remove these requirements is a clear incentive for states to reduce school funding effort and will likely result in reduced school funding overall.

⁷⁷ See U.S. Dep't of Educ, *FY 2024 Congressional Action* 1–4 (2024), <https://bit.ly/3DNQVHC>.

⁷⁸ NCES, U.S. Dep't of Educ., *Students with Disabilities* (May 2024), <https://bit.ly/4kXTZS2>.

⁷⁹ FSA, U.S. Dep't of Educ., *FY2024 Annual Report* 15 (2024), <https://bit.ly/4hLZ0dE>.

⁸⁰ U.S. Dep't of Educ, *FY 2024 Congressional Action*, *supra* note 77, at 4.

⁸¹ Mary McKillip & Theresa Luhm, *Investing Additional Resources in Schools Serving Low-Income Students: Evidence for Advocates*, Education Law Center (Apr. 2020), https://edlawcenter.org/assets/files/pdfs/publications/Investing_in_Students_Policy_Bri.pdf.

⁸² *Id.*

⁸³ Farrie & Kim, *supra* note 63, at 15.

Quality research consistently demonstrates that increasing school funding leads to improved student achievement and other positive outcomes. Studies conducted across the nation provide “compelling evidence that there is a positive causal relationship” between increased spending and the academic and life outcomes of students, including higher educational attainment, increased earnings, and a reduction in adult poverty.⁸⁴ Moreover, the positive effects of increased school spending are more pronounced for students from low-income families.⁸⁵ For example, a study of school finance reform in California found that a \$1,000 per-pupil increase for three consecutive years led to a full grade-level of improvement in math and reading achievement across all grades.⁸⁶ A study in Texas found that a 10% increase in spending led to improved reading and math scores, reduced dropout rates, and improved graduation rates. These gains accrued in later grades with greater exposure to funding increases and were largely concentrated in poorer districts.⁸⁷

Research also shows that spending *cuts* have resulted in lower test scores, lower college attendance rates, and larger achievement gaps by poverty level and race.⁸⁸ Moreover, a study of state funding reductions in Kansas between 2010 and 2018 showed that funding cuts had more severe negative effects on achievement in rural districts.⁸⁹

While more federal funding is not, by itself, a magic solution for the challenges we face in public education, depriving public schools of critical federal funding would have immediate and long-term negative consequences for millions of students and communities across the country, especially in the case of funding that is targeted to the highest-need students. Over the last decade, the federal government has provided a relatively small share of funding for public schools, but what it does provide is vital, especially for schools, districts, and states with large numbers of students living in poverty, students with disabilities, and other underserved students.

b. Conducting research and evaluation

A crucial role of the Department, under the Education Sciences Reform Act (ESRA), is to “compile statistics, develop products, and conduct research, evaluations, and wide dissemination activities in areas of demonstrated national need” related to education.⁹⁰ The Department may choose to carry out these functions directly or indirectly but must delegate ESRA implementation and mandatory research activities to the Institute of Education Sciences (IES).⁹¹

⁸⁴ Kirabo Jackson, *supra* note 70, at 9.

⁸⁵ *Id.* at 6.

⁸⁶ Johnson, R., *School funding effectiveness: Evidence from California’s local control funding formula*, Learning Policy Institute (Aug. 2023), <https://doi.org/10.54300/529.194>.

⁸⁷ Daniel Kreisman & Matthew P. Steinberg, *The effect of increased funding on student achievement: Evidence from Texas’s small district adjustment*. *Journal of Public Economics* 118-41 (2019), <https://doi.org/10.1016/j.jpubeco.2019.04.003>.

⁸⁸ Jackson, C.K., Wigger, C., & Xiong, H., *Do school spending cuts matter? Evidence from the Great Recession*. *American Economic Journal: Economic Policy*, 13 (2), 304-35 (2021), <https://www.aeaweb.org/articles?id=10.1257/pol.20180674>.

⁸⁹ Rauscher, E., *Does Money Matter More in the Country? Education Funding Reductions and Achievement in Kansas, 2010–2018*. *AERA Open*, 6(4), 1-38 (2020).

⁹⁰ 20 U.S.C. § 9511(b)(2); *see also id.* § 9512.

⁹¹ *Id.* §§ 9512–13.

IES carries out program evaluations and assessments required by statutes other than ESRA, including IDEA and ESEA.⁹² IES datasets are essential to the Department’s ability to carry out its program responsibilities including grant allocation as Congress mandated.⁹³ IES’s work is also invaluable to education policymakers, administrators, educators, advocates, and researchers, who have accessed IES’s resources database more than 33,000 times in the past year.⁹⁴ For example, IES publishes and collects basic information on public elementary and secondary schools and school districts in the Common Core of Data, a comprehensive, annual national dataset that provides directory information and data on student enrollment, staff, locale, finances, and graduation rates, among other metrics, for every public PK-12 school and school district in the country. There is no other dataset of similar scope available to the education community. Researchers, advocates, and practitioners use these resources to access new publications, data, best practices guides, and professional development tools that allow them to disseminate, evaluate, and apply evidence-based methods in their daily work.

c. Enforcing civil rights laws

One of the Department’s overriding missions is “to ensure equal access for all Americans to educational opportunities of a high quality” regardless of “race, creed, color, national origin, or sex.”⁹⁵ Congress charged the Office for Civil Rights (OCR) with enforcing the civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, or age in federally funded education programs.⁹⁶ To fulfill these duties, regulations require OCR to “make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply.”⁹⁷

OCR’s enforcement activities are essential to Congress’s objective to advance educational opportunity. Between January 2021 and December 2024, OCR received 71,385 complaints alleging unlawful discrimination (including nearly 23,000 new complaints in 2024) and resolved 56,383 complaints involving disability discrimination, 3,871 complaints of bullying or harassment based on race, and 3,366 complaints related to sex-based harassment.⁹⁸

The OCR process provides a free and confidential forum for students, families, staff, and community members to communicate concerns about potentially discriminatory policies and practices in their school, district, or college. Because OCR investigations take place at no charge, it offers crucial advocacy services for students and families who cannot afford legal representation. When OCR finds evidence of systemic unlawful discrimination, it can require a school district or college to implement system-wide remedies and monitor compliance. OCR resolution agreements

⁹² 20 U.S.C. §§ 1464(a)–(d), 7981(b), (d); Nat’l Ctr. for Educ. Evaluation, IES, U.S. Dep’t of Educ., *Evaluations* (2025), <https://bit.ly/4hE2gYF>.

⁹³ See IES, U.S. Dep’t of Educ., *Common Core of Data Files* (2025), <https://nces.ed.gov/ccd/files.asp>.

⁹⁴ Educ. Resources Info Ctr., IES, U.S. Dep’t of Educ., *U.S. Dep’t of Educ.: Publisher Report* (Mar. 11, 2025), <https://bit.ly/4hE2z5L>.

⁹⁵ 20 U.S.C. § 3401(2).

⁹⁶ *Id.* §§ 3413(a), 3441(a)(3). OCR also enforces the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905.

⁹⁷ 34 C.F.R. § 100.7(c); see *id.* §§ 104.61, 106.81, 110.30–33; 28 C.F.R. § 35.171.

⁹⁸ OCR, U.S. Dep’t of Educ., *Protecting Civil Rights: Highlights of Activities, Office for Civil Rights 2021–2025*, at 5, 12, 14, 19 (2025), <https://bit.ly/3DRCq5y>; Collin Binkley, *Education Department Layoffs Gut Its Civil Rights Office, Leaving Discrimination Cases in Limbo*, Associated Press (Mar. 12, 2025), <https://bit.ly/3DZH14k>.

thus provide both individual and systemic redress.

d. Protecting equal educational access for students with disabilities

This priority undermines the Department’s ability to implement its mandatory duties under IDEA, the main federal statute related to special education and early intervention services for children with disabilities from birth through age 21.⁹⁹ An estimated 7.5 million children with disabilities ages 3 to 21—15% of all elementary and secondary school students—receive services under IDEA.¹⁰⁰ The Department supports these services by disbursing IDEA funds (\$15.5 billion in FY24 alone¹⁰¹) to states and school districts, monitoring their IDEA compliance and providing essential technical assistance.

Congress gave the Department exclusive authority to implement IDEA and directed the Department to create “within [OSERS] . . . , an Office of Special Education Programs [OSEP]” to act as “the principal agency” responsible for IDEA.¹⁰² OSEP administers IDEA’s grant programs, including Part B-611’s formula grants for states “to provide special education and related services to children with disabilities.”¹⁰³ Most of these funds go from the states to school districts to pay excess and high special education costs, develop and provide early intervention services, and defray certain administrative costs.¹⁰⁴ Part B’s formula grant program provides similar support for special education and related services for children aged 3 to 5.¹⁰⁵ Every state and the District of Columbia depends on Part B grants to pay the salaries and benefits of special educators, specialized instructional support personnel, and education support professionals.¹⁰⁶

The Department also provides critical technical assistance for IDEA compliance. To receive Part B funds, states must provide all students with a free appropriate public education (FAPE); develop and review IEPs for each child with a disability; provide procedures to challenge a school district’s failure to provide services; and ensure that school districts recruit, hire, train, and retain skilled, qualified personnel to serve children with disabilities.¹⁰⁷ IDEA also directs that “[t]he Secretary shall . . . furnish technical assistance” to the states.¹⁰⁸ Technical assistance provided, shared, or coordinated by OSERS staff is essential to bringing and keeping districts in compliance. The Department conducts mandatory monitoring activities to ensure compliance and make “needs assistance” determinations, including on-site verification visits and review of state performance plans and reports.¹⁰⁹ If a school district fails to meet the FAPE requirement, IDEA gives parents the right to seek recourse through statutorily mandated dispute resolution processes administered at the state level.¹¹⁰ OSEP is also responsible for ensuring that states comply with

⁹⁹ 20 U.S.C. § 1401(9).

¹⁰⁰ NCES, U.S. Dep’t of Educ., *Students with Disabilities* (May 2024), <https://bit.ly/4kXTZS2>.

¹⁰¹ U.S. Dep’t of Educ., *Fiscal Year 2024 Agency Financial Report* 38, 128 (2024), <https://bit.ly/3DR2NbK>.

¹⁰² 20 U.S.C. §§ 1402(a), 1406.

¹⁰³ *Id.* § 1411(a)(1).

¹⁰⁴ *Id.* §§ 1411(f), 1413(a), (f).

¹⁰⁵ *Id.* § 1419(a).

¹⁰⁶ NEA, *Federal Education Funding for Selected Programs by State and Program* (Feb. 10, 2025), <https://bit.ly/3Rkxnxu>.

¹⁰⁷ 20 U.S.C. §§ 1412(a)(4), (6), (14); 1415.

¹⁰⁸ *Id.* § 1417(a).

¹⁰⁹ *See id.* § 1416.

¹¹⁰ *See id.* § 1415(e)–(j); 34 C.F.R. §§ 300.151–.153, 300.506–.518.

these requirements. By undermining the Department’s ability to fulfill these IDEA responsibilities, this priority places students, families, and schools that rely on IDEA resources and enforcement at risk.

2. This priority upends the relationship between the federal government and state education systems by improperly diminishing the role of the Department of Education.

In creating the Department and delegating mandatory programs and responsibilities to it, Congress struck a considered balance between state and local control of education and support and oversight from the federal government to expand and improve educational access. This balance both “promote[s] improvements in the quality and usefulness of education” and “strengthen[s] the Federal commitment to ensuring access to equal educational opportunity for every individual,”¹¹¹ from pre-kindergarten through adult education.

a. States already control their education systems.

Although the federal government plays a significant role in ensuring equal access to equal education opportunities for students (as discussed above), states and local school districts currently control day-to-day educational operations—including setting school curricula, hiring staff, and establishing graduation requirements. Moreover, on average over the past decade, states and local districts have provided more than 90% of the funding for public schools. Every state has a constitutional provision mandating the establishment of a public education system. Pursuant to these state constitutional mandates, each state regulates, administers, and employs financing mechanisms to operate its public schools.

The federal government is in fact prohibited from interfering with state autonomy over curriculum. No federal department, agency, officer, or employee can direct, supervise, or control the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.¹¹² In addition, the federal government is prohibited from selecting library resources, textbooks, or other instructional materials for schools.¹¹³

b. A critical role of the Department is to monitor and oversee state compliance with federal mandates across the breadth of educational civil rights issues.

Recipients of federal funds, including public schools and districts, must comply with federal antidiscrimination laws. Several civil rights statutes condition the receipt of federal financial assistance on recipients’ compliance with the prohibition of discrimination in federally funded programs or activities. These statutes include Title VI of the Civil Rights Act of 1964 (prohibiting discrimination based on race and national origin), Title IX of the Education Amendments of 1972 (prohibiting sex-based discrimination), and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (prohibiting discrimination based on disability). By receiving federal funds, schools agree to comply with these civil rights laws.

¹¹¹ 20 U.S.C. § 3402(1), (4).

¹¹² 20 U.S.C. § 1232a.

¹¹³ *Id.*

Indeed, the Department was created to ensure state and local compliance with these mandates, and thus the elimination of the Department not only imperils compliance with federal law but harms the very students these laws were meant to protect.

c. The Department lacks authority to cease its statutorily-mandated functions.

This priority refers to the Department’s “transition[] toward closure” to support “returning education to the states.” However, the Department cannot close without Congress’s approval. Thus, by “returning education to the states,” the Department will abdicate its statutorily-mandated duties and, in so doing, will irrevocably harm students, families, educators, PK-12 and postsecondary education, and communities across the United States.

3. Since its inception, the U.S. Department of Education has helped millions of students access equal educational opportunities.

The Department has successfully increased access to educational opportunities and meaningfully closed equity gaps for more than forty-six years, benefitting millions of students along the way.

Educational outcomes, for example, have improved since the Department was established. Between 1980—the year after the formation of the Department—and 2020, high school graduation rates for Black students increased from 51% to 81%, reducing the graduation-rate gap between Black students and their white peers from 21% in 1980 to 9% in 2020. Similarly, the high school graduation rates for Hispanic students rose from 45% to 83%, shrinking the graduation-rate gap with white students from 27% in 1980 to just 7% in 2020.¹¹⁴

Vulnerable student populations have also significantly benefitted from the Department’s efforts. In 1970, U.S. schools educated only one in five children with a disability. By the 2022-23 school year, more than 8 million students ages 3 through 21 received special education and related services in public schools and over two-thirds now learn with their non-disabled peers for at least 80% of the school day.¹¹⁵ Schools serving large numbers of economically disadvantaged students received additional funding under Title I of ESEA to hire teachers and staff, construct facilities, and purchase materials that would otherwise be unaffordable. And the Department’s federal student aid office, pursuant to Title IV of the HEA, made access to postsecondary education a life-changing possibility for all students, regardless of income.

These priorities represent an unprecedented attack on public education. If effectuated, they will hurt public school students across the nation by diverting public funds to wasteful, discriminatory private school vouchers, and by undermining the Department’s critical role in public education. We oppose the Department’s adoption of these harmful priorities.

¹¹⁴ NCES, Digest of Education Statistics, tbls. 104.10 and 219.46, <https://bit.ly/4iEtrUp>.

¹¹⁵ OSEP, U.S. Dep’t of Educ., A History of the Individuals with Disabilities Education Act (Feb. 16, 2024), <https://bit.ly/4ig4e2w>.

Respectfully,

A handwritten signature in dark ink, appearing to read "Robert Kim". The signature is fluid and cursive, with the first name "Robert" and last name "Kim" clearly distinguishable.

Robert Kim, Esq.
Executive Director
Education Law Center