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June 20, 2025

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

Re: Public Comment on 2025-09093, 90 Fed. Reg. 21710 (May 21, 2025), 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,

The undersigned Attorneys General of Massachusetts, Arizona, California, Colorado, Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington (“the States”), submit this comment on the priorities proposed by the U.S. Department of Education on May 21, 2025 for new grants that it may notice for application in the future, under the title, *Proposed Priorities and Definitions-Secretary’s Supplemental Priorities and Definitions on Evidence-Based Literacy, Education Choice, and Returning Education to the States* as required by 20 U.S.C. § 1232 and 34 C.F.R. § 75.105. The most notable aspect of the Proposed Priorities is what they do *not* include – namely, the prior Administration’s commitment to promoting equitable opportunity and inclusion for all students, regardless of race, ethnicity, culture, language, disability status, income level or family background. We urge the Department to modify its Proposed Priorities to continue advancing the six Supplemental Priorities previously published on December 10, 2021, *see* 86 Fed. Reg. 70612, which include promoting equity in student access to educational resources and opportunities.

I. The Elimination of the Prior Supplemental Priorities As ‘Divisive’ and ‘Discriminatory’ is Unwarranted and Risks Exacerbating Existing Harms To Our Schools.

In the Press Release announcing its new priorities, the Department disparaged previously-published Supplemental Priorities for “advanc[ing] a discriminatory diversity, equity, and inclusion (DEI) ideology, [and] infusing many grants programs with divisive race stereotypes”

by doing things like “[e]mbedding DEI in educational subjects and programs such as civics, STEM, and career and technical education; [f]ocusing on diversity amongst educators instead of sound teacher preparation; [and] [p]romoting social emotional learning.”¹ Contrary to the Department’s characterization, the prior Supplemental Priorities were designed to address existing and undeniable inequalities among students and teachers and to ensure equal opportunity for all. Indeed, the Supplemental Priorities are expressly designed to address inequities that limit educational access for many groups of students, including, for example, those with disabilities, in foster care, from military families, or who have caregiving responsibilities. The abandonment of these Supplemental Priorities is a disservice to our nation’s education system. And the politicization and disinformation about diversity, equity, and inclusion is a red herring that draws attention away from the very real differences in access to resources, high quality teachers of all different backgrounds and skills, and supports that are available to students based on where they live or their income levels.²

For instance, Supplemental Priority #3 aimed to “increas[e] the number of diverse educator candidates who have access to an evidence-based comprehensive educator preparation program.” Prioritizing widescale recruitment efforts to attract a larger pool of candidates for teaching positions from a variety of backgrounds will only serve to improve instruction by making sure that diverse, qualified candidates are not overlooked and by increasing the overall number of licensed, qualified teachers.

Likewise, Supplemental Priority #3’s goal of “[i]dentifying and addressing disparities among educator subgroups in graduation rates, passage rates for certification and licensure exams, successful employment, retention, and professional growth” will help improve retention and ease the ongoing and severe shortage of licensed, certified teachers that is plaguing many districts across the country. Indeed, the number of people completing traditional teacher preparation programs has dropped by 35 percent in the last ten years alone.³ U.S. colleges are awarding fewer undergraduate degrees in education, and more teachers are leaving the profession.⁴ Schools across the country struggle to find state-certified teachers. In 2024, more than 400,000 teaching positions in the U.S.—representing about one in eight of all teaching

¹ See Press Release: U.S. Department of Education Releases Secretary McMahon’s Supplemental Grant Priorities (May 20, 2025), available at: <https://www.ed.gov/about/news/press-release/us-department-of-education-releases-secretary-mcmahons-supplemental-grant-priorities>

² The Department’s source cited in support of Proposed Priority #1: Promoting Evidence-Based Literacy confirms that these inequalities persist. See National Center for Education Statistics (NCES) National Assessment of Educational Progress (NAEP), “Performance by Student Group,” https://www.nationsreportcard.gov/reports/reading/2024/g4_8/performance-by-student-group/?grade=8 (showing that, among all students in Grade 8 in 2024, 61% of all economically disadvantaged students scored below the national average, 64% of all Black students scored below the national average, 79% of all students with disabilities scored below the national average, and 84% of all English learners scored below the national average).

³ Mary Ellen Flannery, *Missing: Future Teachers in Colleges of Education*, neaToday (Mar. 29, 2022), <https://tinyurl.com/5n74smvx>

⁴ *Id.*

positions nationwide—were vacant or were filled by uncertified teachers.⁵ “Increasing the number of diverse educator candidates who have access to an evidence-based comprehensive educator preparation program” and “the number of teachers with certification or dual certification in a shortage area” while “addressing disparities among educator subgroups in graduation rates, passage rates ...[and] retention” should all be priorities that the Department maintains going forward to address this ongoing teacher shortage.

Similarly, Supplemental Priority #2’s goal of “promot[ing] educational equity and adequacy in resources and opportunity for underserved students” is one that should be noncontroversial. “Expanding access to high-quality early learning ... by removing barriers through implementation of programs that are inclusive with regard to race, ethnicity, culture, language, and disability status” only helps to ensure that the school community provides the support needed for students to develop their skills, regardless of their backgrounds. “Using technology” to create “personalized student learning” and to “extend learning time” beyond the school day are one of many possible ways to promote opportunity for underserved students or students who are struggling academically or have learning disabilities.

The critical takeaway is that properly developed and implemented diversity, equity, and inclusion initiatives are actually crucial in helping to *prevent* unlawful discrimination.

When schools embed the values of diversity, equity, inclusion, and accessibility within their organizational culture, they reduce biases, boost student and teacher morale, foster collaboration, and remove barriers to opportunities for all students. It is important to note that initiatives promoting diversity, equity, inclusion, accessibility, and different perspectives and experiences are not the same as the type of affirmative action at issue in *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); diversity, equity, and inclusion initiatives do not involve providing preferences to individuals based on race when making zero-sum decisions.

Instead, diversity, equity, and inclusion best practices focus on ensuring that schools can recruit, hire, and retain the most qualified teachers and school leaders. These diversity, equity, and inclusion best practices help school communities to provide the support needed for students and teachers to continue their development and meet their full potential. Such initiatives also require schools to pay attention to the (intentional and unintentional) impact their policies and practices have on different groups of students to ensure that no student or group of students is left behind, excluded, or denied equal opportunity and access because of, for example, their race, ethnicity, culture, sex, language, income level, family background, or disability status.

⁵ Learning Policy Institute, *State Teacher Shortages 2024 Update 1* (July 31, 2024), <https://tinyurl.com/58phtwf4>

II. The Elimination of the Prior Supplemental Priorities Increases the Risk of Schools Violating Numerous Federal Laws.

The Secretary has failed to demonstrate how any of the Department’s prior Supplemental Priorities resulted in any “divisive” or “discriminatory” conduct. On the contrary, the elimination of Supplemental Priorities that embrace fostering a diverse, inclusive, and equitable education system runs the risk of *violating* federal law.⁶

Indeed, multiple federal statutes require schools to engage in actions that support diversity, equity, and inclusion. For example, Title VI explicitly prohibits schools from “exclud[ing] from participation” any student on the basis of race, color, or national origin, thereby requiring inclusion. 42 U.S.C. § 2000d. And the Every Student Succeeds Act (“ESSA”), which establishes the formula for Title I grants, requires as a condition for receiving such funds, that educational institutions implement a number of practices relating to “diversity,” “equity”, or “inclusion.” *See, e.g.*, 20 U.S.C. § 6311(b) (requiring inclusion of English Language Learners); *id.* § 6311(c)(2)(B) (requiring measurement of academic indicators for children with disabilities, students from major racial and ethnic groups, and English learners).⁷ Similarly, the Individuals with Disabilities Education Act of 1975 (“IDEA”), requires, as a condition for receiving federal funds, the provision of specially designed instruction and an individualized education program, provided at no cost to parents, that meets the needs of a child with a disability. *See* 20 U.S.C. § 1412(a). It also requires that schools “make positive efforts to employ and advance in employment qualified individuals with disabilities...” 20 U.S.C. § 1405. Thus, the IDEA requires schools take action to ensure inclusion and accommodation of students with disabilities. As the Department’s own website recognizes, “implementation of inclusive education practices” helps ensure that “children with disabilities have access to learning environments that meet their individual needs” and “is critical” to “promoting student achievement and preparation for global

⁶ This Comment Letter does not focus on the Department’s three new Proposed Priorities. To the extent these Priorities are interpreted or applied in a manner that runs afoul of federal law or the Constitution, the States preserve all rights to challenge such conduct and provide notice here. The Department of course cannot impose priorities or otherwise act in a manner that would supersede or be inconsistent with federal law, as established by Congress or contrary to its Constitutional obligations. *See, e.g.*, 57 Fed. Reg. 30,328 (July 8, 1992) (“The Secretary ensures that the establishment of any priorities are in furtherance of, and not contrary to, congressional intent.”). To the extent that the Proposed Priorities incorporate the Administration’s goal of dismantling the U.S. Department of Education, *see* Press Release: Statement on President Trump’s Executive Order to Return Power Over Education to States and Local Communities (March 20, 2025), available at <https://www.ed.gov/about/news/press-release/statement-president-trumps-executive-order-return-power-over-education-states-and-local-communities>, we the undersigned have separately challenged the Administration’s actions as unlawful and unconstitutional, *see New York v. McMahon*, No. CV 25-10601-MJJ, 2025 WL 1463009 (D. Mass. May 22, 2025) (appeal filed) (granting preliminary injunction).

⁷ U.S. Dep’t of Educ., *Every Student Succeeds Act (ESSA)*, <https://www.ed.gov/laws-and-policy/laws-preschool-grade-12-education/every-student-succeeds-act-essa> (last reviewed Apr. 24, 2025) (ESSA “[a]dvances equity by upholding critical protections for America’s disadvantaged and high-need students”).

competitiveness.”⁸ Indeed, IDEA was signed into law for the purpose of ensuring inclusion “in response to systemic exclusion of students with disabilities from public schools, which only educated one in five students with disabilities at that time.”⁹

There is nothing divisive or discriminatory about trying to include everyone and ensure that all students and prospective teachers have an opportunity to succeed. By jettisoning the prior Supplemental Priorities, the Department runs the risk of violating longstanding legal commitments to various forms of diversity, equity, and inclusion. Such action will likely harm student performance and exacerbate the existing teacher shortage. The goals set forth in the Supplemental Priorities remain critical to the success of our schools.

III. Conclusion

For the foregoing reasons, the States urge you to modify the Proposed Priorities to include the prior Supplemental Priorities and to bring them into conformity with governing law and with the foregoing principles.

Sincerely,



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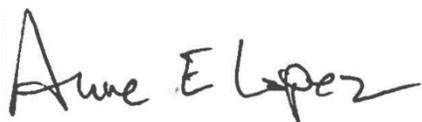
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⁸ U.S. Dep’t of Educ., Building and Sustaining Inclusive Educational Practices (Jan. 17, 2025), <https://sites.ed.gov/idea/idea-files/building-and-sustaining-inclusive-educational-practices-january-2025/> (reviewed June 12, 2025).

⁹ *Id.*



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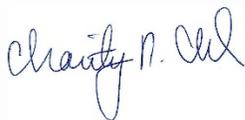
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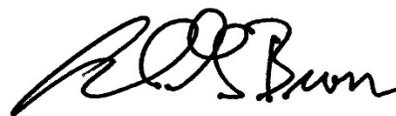
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