

The Honorable Kymberly K. Evanson

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, et al.,

Defendants.

NO. 2:25-cv-01228-KKE

PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:
August 5, 2025

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

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

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

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

Moreover, in imposing new priorities, the Department violated its own regulations. Under 34 C.F.R. § 75.253(b), the Department considers only the grantee’s performance when deciding whether to continue a multi-year grant—and there is no indication whatsoever that

1 grantee performance was even a factor in its Non-Continuation Decision. The Non-Continuation
 2 Decision also strips grantees of § 75.253(c)'s requirement that the Department fund multi-year
 3 projects over new grant awards.

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

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

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

21 II. STATEMENT OF FACTS

22 A. Congress Creates and Funds Mental Health Programs in Response to Mass School 23 Shootings

24 On February 14, 2018, a former student shot and killed 14 students and 3 teachers at a
 25 high school in Parkland, Florida. Range Decl., Attach. E at 9. Later that year, Congress created
 26

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

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

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

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

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

24 A few months later, a gunman shot and killed 19 students and 2 teachers at an elementary
 25 school in Uvalde, Texas. *See* Range Decl., Attach. I at 3. The Uvalde tragedy prompted a
 26 bipartisan Congress to dramatically increase the funding levels for the Programs. Specifically,

1 Congress directed the Department to make available an additional \$100 million per year for each
 2 Program for fiscal years 2022 through 2026. Bipartisan Safer Communities Act, Pub. L. No.
 3 117-159, 136 Stat. 1313, 1342 (June 25, 2022).

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

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

14 develop and describe in such applicant’s application the steps such applicant
 15 proposes to take to ensure equitable access to, and equitable participation in, the
 16 project or activity to be conducted with such assistance, by addressing the special
 17 needs of students, teachers, and other program beneficiaries in order to overcome
 18 barriers to equitable participation, including barriers based on gender, race, color,
 19 national origin, disability, and age.

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

22 **B. The Department’s Process for Awarding New Grants Is Separate and Apart from**
 23 **its Process for Awarding Continuing Grants**

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

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

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

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

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

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

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

2. The Department makes continuation awards based on grantee performance

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

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

3 Unlike the process for awarding new grants, grantees do not compete for continuation
4 awards, and the priorities for future years’ grant competitions are not relevant. Multi-year grant
5 recipients do not submit applications that are scored and ranked against other applicants.
6 *Compare* Range Decl., Attach. N at 27-28, *with id.* at 32-33, 46; *see also* 59 Fed. Reg. 30,258,
7 30,259 (June 10, 1994) (announcing “entirely new paradigm” for continuation awards based on
8 “projects’ reporting on results and performance” rather than annual application). Instead, the
9 Department considers “any relevant information regarding grantee performance,” including
10 performance reports, performance measures, and financial data. 34 C.F.R. §§ 75.118, .253(b);
11 Range Decl., Attach. N at 33 (“The program staff uses the information in the performance report
12 in combination with the project’s fiscal and management performance data to determine
13 subsequent funding decisions.”); 59 Fed. Reg. 30,258, 30,259 (June 10, 1994) (“[T]he
14 continuation award decision . . . will be based entirely on the submission of [performance]
15 reports . . . rather than on the submission of a continuation award application.”).

16 Further, the Department “gives priority to continuation awards over new grants.”
17 34 C.F.R. § 75.253(c); Range Decl., Attach. N at 46 (“A grantee does not have to compete with
18 other applicants to receive [a continuation award].”); 45 Fed. Reg. 22,552, 22,559 (Apr. 3, 1980)
19 (explaining that each “continuation award will be judged on the basis of the criteria in [§ 253(a)]
20 and *will not be subject to competition with other applications*”) (emphasis added). The
21 Department has long represented that a denial of continuation award funding is “extremely rare
22 in practice.” *See* 59 Fed. Reg. 30,258, 30,259 (June 10, 1994); *see also* 89 Fed. Reg. 70,300,
23 70,316 (Aug. 29, 2024) (“In general, we do not deny a large number of non-competing
24 continuation awards”).

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

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

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

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

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

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

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

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

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

Once the grants were awarded, grantees accomplishing programmatic goals, improving the mental health of thousands of students and making substantial progress towards Congress’s goal of permanently adding 14,000 additional mental health professionals into high-need

1 schools. *See* Range Decl., Attach. B at 3. The National Association of School Psychologists
 2 found that during the Programs’ first year, grantees served nearly 775,000 K-12 students and
 3 hired nearly 1,300 mental health professionals. *See* Range Decl., Attach. C at 3. These
 4 improvements led to real results: a 50% reduction in suicide risk at high-needs schools, decreases
 5 in absenteeism and behavioral issues, and increases in positive student-staff engagement based
 6 on data from sampled programs. *Id.* Program success is also reflected in the following grant
 7 project examples from Plaintiff States.

8 **1. SBMH**

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

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

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

7 **2. MHSP**

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

19 **Colorado.** The Department awarded the University of Denver, a private institution of
 20 higher education, an MHSP grant beginning on April 1, 2023. Lengsfeld Decl. ¶¶6, 16. Since
 21 then, the University of Denver has enrolled 13 current students from 12 different rural LEAs,
 22 who are now entering their second year of training; partnered with 21 different LEAs in rural
 23 Colorado to support school-based mental health shortages; provided rural Colorado students
 24 with much needed school-based mental health services; provided rural Colorado community
 25 members who have aspired to become school psychologists with access to higher education and
 26 the training to do so; facilitated a rural-focused school psychologist curriculum lens, empowering

1 rural practitioners with the skills necessary to practice within their communities; and funded
 2 approximately nine graduate student employees to support their tuition costs. *Id.* ¶18. By all
 3 accounts, the project has been a highly successful public-private partnership between the State
 4 of Colorado, the University of Denver, Colorado’s public LEAs, and the Department of
 5 Education. *Id.* ¶19.

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

14 **F. The Department Discontinued Certain Program Grants Due to a Purported**
 15 **Conflict with the Trump Administration’s Priorities**

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

20 This letter provides notice that the United States Department of Education has
 21 determined not to continue your federal award, S184xxxxxxx, in its entirety,
 effective at the end of your current grant budget period. *See, inter alia*, 34 C.F.R.
 § 75.253(a)(5) and (f)(1).

22 . . . The Department has undertaken a review of the grants and determined that
 23 the grant specified above provides funding for programs reflect prior
 24 Administration’s priorities and policy preferences and conflict with those of the
 25 current Administration, in that the programs: violate the letter or purpose of
 26 Federal civil rights law; conflict with the Department’s policy of prioritizing
 merit, fairness, and excellence in education; undermine the well-being of the
 students these programs are intended to help; or constitute an inappropriate use
 of federal funds. The grant is therefore inconsistent with, and no longer
 effectuates, the best interest of the Federal Government and will not be continued.

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

4 On that same day, the Department also sent an email to Congress informing it of the Non-
5 Continuation Decision and stating that only “certain recipients” received notices, claiming
6 \$1 billion in savings. Range Decl., Attach. A. The Department claimed that “[t]he prior
7 Administration’s preferences are not legally binding” and told Congress that it planned to “re-
8 envision and re-compete” the funds. *Id.*

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

22
23 ¹ The MHSP priorities for 2023 were: “Competitive Preference Priority 1—Increase the Number of
24 Qualified School-Based Mental Health Services Providers in High-Need LEAs Who Are from Diverse Backgrounds
or from Communities Served by the High-Need LEA”; “Competitive Preference Priority 2—Promote Inclusive
Practices”; and “Competitive Preference Priority 3—Partnerships with [minority serving institutions].” 87 Fed. Reg.
72,976, 72,977-78 (Nov. 28, 2022).

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

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

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

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

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

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

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

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

1 consequences: short- and long-term health problems; lower grades; increased absenteeism,
 2 suspensions, and expulsions; and a higher risk of suicide and drug overdose. *See* Range Decl.,
 3 Attach. C at 6.⁷

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

13 Grantees will also be forced to cut financial assistance for the graduate students who were
 14 receiving specialized training to provide school-based mental health services in high-need
 15 settings throughout Plaintiff States, drying up the pipeline.¹² The sudden loss of funding will
 16 discourage these students and others from pursuing careers as school-based mental health
 17 services providers in Plaintiff States' rural and low-income communities.¹³ Grantees'
 18 relationships with community partners will be irreparably damaged because they can no longer
 19
 20

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

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

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

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

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

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

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

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

3 III. LEGAL STANDARD

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

14 IV. ARGUMENT

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

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

17 Plaintiffs are likely to succeed on the merits of their APA and Spending Clause claims
18 challenging the Non-Continuance Decision. First, Defendants’ Non-Continuation Decision is
19 arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). Second, Defendants’ Non-Continuation
20 Decision is contrary to law because Defendants cannot discontinue grants based on new
21 priorities. *Id.* And third, even if Defendants could consider new priorities when continuing
22 grants, they violated procedural laws by failing to first publish these priorities in the Federal
23 Register. 5 U.S.C. §§ 553, 706(2)(D); 20 U.S.C. §§ 1221e-4, 1232(a)(2), (d). As the
24
25

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

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

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

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

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

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

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

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

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

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

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

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

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

14 *Second*, Defendants executed a major change in policy without any notice or concrete
 15 explanation and without considering the impacts or reliance interests. As the Supreme Court
 16 recently reiterated, “[t]he change-in-position doctrine” prevents agencies from “mislead[ing]
 17 regulated entities.” *FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 917 (2025) (quoting
 18 *Encino Motorcars v. Navarro*, 579 U.S. 211, 221-22 (2016)). “Under that doctrine, ‘[a]gencies
 19 are free to change their existing policies as long as they provide a reasoned explanation for the
 20 change,’ ‘display awareness that [they are] changing position,’ and ‘consider serious reliance
 21 interests.’” *Id.* (quoting *Encino Motorcars*, 579 U.S. at 221-22). What the agency must not do is
 22 depart from its prior position *sub silentio*. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502,
 23 515 (2009). Here, Defendants’ notices obliquely reference the Department’s change in priorities
 24 and policy preferences without identifying or explaining this changed position, or how they
 25 allegedly conflicted with the prior Administration’s priorities and policy preferences. *See, e.g.*,
 26 Gustafson Decl., Attach. E.

1 *Third*, Defendants’ Non-Continuation Decision also failed to account for the substantial
 2 reliance interests of discontinued grantees. “When an agency changes course, . . . it must be
 3 cognizant that longstanding policies may have engendered serious reliance interests that must be
 4 taken into account.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*,
 5 591 U.S. 1, 30 (2020) (internal quotation marks and citation omitted). The agency must also
 6 consider alternatives to its change in position that are “within the ambit of existing [policy].” *Id.*
 7 Grantees structured their projects and budgets with the understanding that Defendants would
 8 make annual continuation awards based on grantees’ project performance. *See, e.g.*, Dishongh
 9 Decl. ¶13; Feuerborn Decl. ¶15; Nelson Decl. ¶13; Stuber Decl. ¶20; Knight-Teague Decl. ¶22;
 10 Frey Decl. ¶11; Amoussou Decl. ¶11-12. This reliance is supported by, among other things:

- 11 • Defendants’ history and practice of making continuation award decisions based
 12 on grantee performance under these and other grant programs. *See* 59 Fed. Reg.
 13 30,258, 30,259 (June 10, 1994) (instituting performance reports as the basis for
 14 continuation decision rather than applications); Lengsfeld Decl. ¶23; Mocarski
 15 Decl. ¶15; Barton Decl. ¶19;
- 16 • Defendants’ regulations expressly requiring Defendants to state an “intention to
 17 make continuation awards to fund the remainder of the project period” upon
 18 approval of multi-year grants, 34 C.F.R. § 75.251(b)(2), consider any information
 19 relevant to grantee’s performance, 34 C.F.R. § 75.253(b), and assign priority to
 20 “continuation awards over new grants,” 34 C.F.R. § 75.253(c); and
- 21 • Defendants’ guidance document explaining to prospective grantees, “The
 22 program staff uses the information in the performance report in combination with
 23 the project’s fiscal management performance data to determine subsequent
 24 funding decisions.” Range Decl., Attach. N at 33.

25 Believing that discontinuances would be based on criteria within their control—i.e. their
 26 performance—grantees invested time and resources that will be lost based on improper criteria

1 outside their control. 34 C.F.R. § 75.253(b); *see e.g.* Feuerborn Decl. ¶20; Matuszewicz ¶19.

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

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

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

1 In sum, Defendants failed to engage in any “reasoned decision making” whatsoever and
 2 the Department’s Non-Continuation Decision was arbitrary and capricious. *See Michigan*,
 3 576 U.S. at 750; *Encino Motorcars*, 579 U.S. at 222 (“[A] reasoned explanation is needed for
 4 disregarding facts and circumstances that underlay or were engendered by the prior policy.”).

5 **3. Defendants’ actions were contrary to law**

6 The Department’s regulations require the Department to use a fair and transparent
 7 process when awarding and assessing grants for continuation. But under the Department’s
 8 interpretation of its continuation regulation, 34 C.F.R. §75.253, it can change the rules of the
 9 game midstream, torpedoing multi-year, multi-million-dollar projects that were selected through
 10 a competitive peer-reviewed process. *See supra* §§ II.B-D. Not so. The Department’s Non-
 11 Continuation Decision should be set aside because it violates Defendants’ grant regulations by
 12 (1) considering information (i.e., an alleged conflict with new priorities) that is not relevant to
 13 grantee’s performance (based partly on priorities established prior to grantees’ applications) and
 14 (2) failing to prioritize continuation awards over new grants. *See* 5 U.S.C. § 706(2)(A); 34 C.F.R.
 15 § 75.253(b), (c).

16 **a. The Department violated 34 C.F.R. § 75.253(b) by discontinuing** 17 **Program grants based on new priorities**

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

22 In order to receive a continuation award, a grantee must meet the requirements of
 23 34 C.F.R. § 75.253(a). The parties dispute whether the Department may consider new priorities
 24 when evaluating the fifth requirement that grantees, “Receive a determination from the Secretary
 25 that continuation of the project is in the best interest of the Federal Government.” 34 C.F.R.
 26

1 § 75.253(a)(5); *see, e.g.*, Range Decl., Attach. A. Under 34 C.F.R. § 75.253(b), the Department
2 may not.

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

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

13 *First*, the plain text of the regulation cabins the information that the Department “may
14 consider” when “determining whether the grantee has met the [§ 75.253(a)] requirements.”
15 34 C.F.R. § 75.253(b). Specifically, the regulation only permits the Department to consider
16 “relevant information regarding grantee performance”:

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

21 34 C.F.R. § 75.253(b) (emphasis added). Because “best interest” is one of “the requirements
22 described in paragraph (a) of this section,” the § 75.253(b) limitation applies, and the Department
23 may only consider “grantee performance” when determining whether continuing a multi-year
24 grant is in the federal government’s best interest.

25 The Department might argue that “may” should be read permissively and, therefore,
26 § 75.253(b) does not limit what it can consider. But “[d]epending on the context, ‘may’ can be

1 limiting, meaning ‘*may only*.’” *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42
 2 F.4th 1024, 1034-35 (9th Cir. 2022) (emphasis added). The “natural meaning” of § 75.253(b) is
 3 that the Department “may only” consider the “specified” information when determining whether
 4 the grantee has met the § 75.253(a) requirements. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543
 5 U.S. 157, 166 (2004). To read otherwise would “render part of the [regulation] entirely
 6 superfluous.” *Id.*

7 The Department might also argue that it can consider new priorities under “any other
 8 relevant information.” But new priorities cannot be read into the second sentence because they
 9 do not fit the common attributes of the performance-related items in the list. *See, e.g., Silvers v.*
 10 *Sony Pictures Ent., Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (explaining doctrine of *expressio*
 11 *unius est exclusio alterius*); *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252
 12 (2024) (“[C]ourts interpret a ‘general or collective term’ at the end of a list of specific items in
 13 light of any ‘common attribute[s]’ shared by the specific items.”) (quote omitted). Quite the
 14 opposite—because priorities are set at the outset of a grant competition, and grantees design,
 15 propose, and execute their projects based on those priorities, it would be nonsensical to evaluate
 16 a grantee’s performance using a different set of priorities.

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

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

26 . . .

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

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

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

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

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

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

1 served by allowing the Department to interfere with the grantee's project by changing the rules
2 and imposing new priorities partway through a multi-year grant.

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

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

13 **4. Defendants acted without observance of procedure required by law**

14 Defendants' Non-Continuation Decision clearly violates procedural mandates and may
15 therefore be set aside under the APA. *See* 5 U.S.C. § 706(2)(D). Defendants are required to
16 follow the APA's notice-and-comment rulemaking procedure when changing priorities for grant
17 programs. *See* 20 U.S.C. §§ 1221e-4; 1232(a)(2), (d). Consistent with their statutory obligations,
18 Defendants underwent the notice-and-comment rulemaking process when they changed the
19 SBMH and MHSP program priorities in 2022. *See* 87 Fed. Reg. 47,152 (Aug. 2, 2022) (SBMH
20 proposed priorities); 87 Fed. Reg. 60,092 (Oct. 4, 2022) (SBMH final priorities); 87 Fed. Reg.
21 47,159 (Aug. 2, 2022) (MHSP proposed priorities); 87 Fed. Reg. 60,083 (Oct. 4, 2022) (MHSP
22 final priorities); *see also* Range Decl., Attach. P at 5 ("The priorities are being established in
23 accordance with . . . 20 U.S.C. 1232(d)(1)."). However, the priorities referenced in the Non-
24 Continuation Decision notices were not published before the Department applied them as a basis
25 to discontinue Program grants. As just discussed, Defendants cannot discontinue these grants
26 based on changed priorities, but even if they could, they may not do so without following the

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

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

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

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

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

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

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

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

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

1 If this Court does not grant preliminary relief, and the Department proceeds with
 2 recompeting and obligating funds to other grantees, the discontinued grantees will *never* be able
 3 to obtain relief. *Cf. Ambach v. Bell*, 686 F.2d 974, 986 (D.C. Cir. 1982) (“Once the chapter 1
 4 funds are distributed to the States and obligated, they cannot be recouped. It will be impossible
 5 in the absence of a preliminary injunction to award the plaintiffs the relief they request if they
 6 should eventually prevail on the merits.”); *Population Inst. v. McPherson*, 797 F.2d 1062, 1081
 7 (D.C. Cir. 1986) (noting that “if the government in the instant case is permitted to *distribute* the
 8 \$10 million to other organizations, the appeal will become moot”).

9 As these Programs address an epidemic in school violence and mental health illness in
 10 our youth, this Court may easily find that the Non-Continuation Decision harms public health
 11 and safety. *See State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1074 (N.D. Cal. 2018)
 12 (finding irreparable harm from agency rule that “will have irreparable consequences for public
 13 health”) (citation omitted); *Sierra Club v. U.S. Dep’t of Agric., Rural Utils. Serv.*, 841 F. Supp.
 14 2d 349, 358 (D.D.C. 2012) (threats to public health establish irreparable harm).

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

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

1 When students have access to mental health clinicians in schools, rates of suicide, substance
 2 abuse, behavioral issues, anxiety, and depression decrease. Range Decl., Attach. C at 7; *see also*
 3 n.7, *supra*. Additionally, schools see improvements in student academic performance, students'
 4 emotional and behavioral outcomes, student-staff engagement, and the school's general social
 5 climate when mental health services are available. Range Decl., Attach. C at 6.¹⁵ Said one school
 6 psychotherapist hired by a SBMH funded grant, "It is amazing how teaching just one student
 7 healthy communication skills and self-compassion can transform the dynamics of an entire
 8 family or friend group." Gustafson Decl. ¶16. Discontinuing these Programs constitutes
 9 irreparable harm to the health and safety of the students currently being served by grant-funded
 10 mental health providers.

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

23 Threats to an organization's mission and the very existence of programs constitute
 24 irreparable harm. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (finding
 25

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

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

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

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

1 students as well as district and community partners. *See, e.g.*, Matuszewicz ¶19 (causing
 2 community agencies to “question if it is ‘worth the effort’ to collaborate only to have the project
 3 discontinued without cause”); Feuerborn Decl. ¶21 (the discontinuance has “created frustration,
 4 skepticism, and confusion” with community partners); Piazza Decl. ¶18; Rimkunas Decl. ¶¶20,
 5 25; Parr Decl. ¶16; Lengsfeld Decl. ¶33. For all these reasons, even if the Department were to
 6 recompute Program funds and affected grantees were to receive a new grant award, the harm
 7 would already be done.

8 Simply put, Defendants’ Non-Continuation Decision is causing substantial immediate
 9 irreparable harm.

10 **C. The Balance of Equities Tips in the States’ Favor and an Injunction Is in the**
 11 **Public Interest**

12 The final two *Winter* factors—the balance of the equities and the public interest—merge
 13 when the government is a party. *Wolford v. Lopez*, 116 F.4th 959, 976 (9th Cir. 2024). Here,
 14 both factors tip sharply in Plaintiffs’ favor. The threat of harm to Plaintiffs’ mental healthcare
 15 infrastructure in public schools far outweighs the Federal Government’s interests in ending
 16 programmatic mental health care funding in schools. *See Jaffee v. Redmond*, 518 U.S. 1, 11
 17 (1996) (“The mental health of our citizenry, no less than its physical health, is a public good of
 18 transcendent importance.”); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1181 (9th Cir.
 19 2021) (promoting the health and safety of students constitutes a public interest). The balance of
 20 equities supports a preliminary injunction, and the Court should preserve the status quo until the
 21 case can be decided on the merits.

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

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

12 **D. Grantees in Plaintiff States Are Entitled to Preliminary Relief**

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

23 **V. CONCLUSION**

24 For these reasons, Plaintiffs respectfully request a preliminary injunction order as this
 25 case proceeds.
 26

1 DATED this 8th day of July 2025.

2
3 I certify that this memorandum contains 11,142
4 words, and that a motion to file overlength brief
5 has been filed concurrently, in compliance with
6 the Local Civil Rules.

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