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October 6, 2026

Deputy Chief of Staff Adam N. Jones
Immediate Office of the Assistant Secretary
Administration for Children and Families, Department of Health and Human
Services
330 C Street, S.W.
Washington DC, 20201

**RE: Reducing Federal Burden for Head Start Programs, Docket No. ACF–
2026–0595 (RIN: 970-AD30)**

Dear Deputy Chief of Staff Jones:

MALDEF (Mexican American Legal Defense and Educational Fund) submits this comment in response to the Administration for Children and Families’ (ACF) Notice of Proposed Rule Making: Reducing Federal Burden for Head Start Programs (the “NPRM”), which was published in the Federal Register on August 7, 2026. For the following reasons, MALDEF opposes the NPRM and urges ACF to withdraw it.

Founded in 1968, MALDEF is the nation’s leading Latino legal civil rights organization. Described as the “law firm of the Latino community,” MALDEF promotes social change in the areas of education, immigrant rights, employment, voting rights, and freedom from open bias. Accordingly, MALDEF has long supported programs such as Head Start that promote the school readiness and education of Latino children who are limited English proficient.

Since 1965, Head Start has promoted the well-being and education of more than 40 million children from low-income families.¹ Head Start offers children ages 0-5 years old and their families individualized support in early development, health and wellness, and family engagement.² In Fiscal Year 2024, about 38% of the program’s participants identified as Hispanic or Latino.³

The NPRM proposes landmark changes to the Head Start program’s Performance Standards that would purportedly “reduce unnecessary burden and regulatory

¹ *Head Start Program Facts: Fiscal Year 2024*, OFF. OF HEAD START (Aug. 14, 2025), <https://headstart.gov/program-data/article/head-start-program-facts-fiscal-year-2024>.

² *Head Start Services*, ADMIN. FOR CHILD. & FAMS. (Sept. 04, 2026), <https://acf.gov/ohs/programs-services>.

³ *Head Start Program Facts*, *supra* note 1.

duplication” and increase parental and state authority.⁴ However, the NPRM’s proposed removal of 1,400 prescriptive regulations will result in less guidance, reduced protection for students, and decreased budget allotments. For several reasons, ACF lacks the statutory authority to implement its proposed regulations. The NPRM, moreover, is arbitrary and capricious and violates the Administrative Procedure Act (APA). Accordingly, ACF must rescind the NPRM.

I. The Proposed English-Only Mandate Infringes on Statutory Protections for Children and Their Families

The NPRM proposes English-only instruction, which will have ripple effects on other student and family supports. In support of the decision to forgo decades-long regulations promoting bilingualism,⁵ the NPRM cites compliance with non-mandatory Executive Order 14224, *Designating English as the Official Language of the United States*,⁶ and speaks generally of the non-quantifiable benefits knowing English could have on a person – with no sources provided and no analysis of the benefits of bilingualism for students or the necessity of changing decades of established agency priorities.⁷

The NPRM fails to fully consider how the English-only mandate undermines the Head Start Act’s (“The Act”) statutory requirements regarding Limited-English Proficient students and non-English speaking families.

a. The English-Only Mandate Violates Statutory Protections for Limited-English Proficient Students

The Act provides Limited-English Proficient (LEP) students with statutory protections. The statute defines an LEP child through three independent pathways: one, the child is not born in the U.S. or the child’s native language is not English; two, the child is a Native American, Alaska Native, or a native resident of an outlying area, and comes from an environment where a non-English language has significantly affected the child’s English proficiency; and three, the child is migratory, has a native language other than English, and comes from an environment where a non-English language is dominant.⁸ A child who meets any of these pathways under 42 U.S.C. 9832(15)(A) must also have “difficulties in speaking or understanding the English language” that are “sufficient to deny” the child the “ability to successfully achieve in a classroom in which the language of instruction is English” or “the opportunity to participate fully in society.”⁹

The Act authorizes the Secretary to change Head Start’s Performance Standards, but Head Start students must “at a minimum, develop and demonstrate” skills in a range of subjects.¹⁰ The Act further specifies that LEP students must show “meaningful progress” toward English language acquisition, and must also

⁴ 91 Fed. Reg. at 51248.

⁵ *Head Start History*, OFF. OF HEAD START (Aug. 31, 2026), <https://headstart.gov/about-us/article/head-start-history> (indicating bilingual and bicultural programming began in 1977).

⁶ Designating English as the Official Language of the United States, Exec. Order No. 14224, 90 Fed. Reg. 11363 (Mar. 6, 2025) (“Agency heads are not required to amend, remove, or otherwise stop the production of documents, products, or other services prepared or offered in languages other than English.”).

⁷ See 91 Fed. Reg. at 51311 (describing the benefits of knowing English without reference to language studies).

⁸ 42 U.S.C. § 9832(15)(A).

⁹ *Id.* § 9832(15)(B).

¹⁰ 42 U.S.C. § 9836a(a)(1)(B).

be taught the full range of subjects prescribed for non-LEP students, in a manner that is “culturally and linguistically appropriate.”¹¹

The Act further limits the Secretary’s authority to modify the Performance Standards by requiring “that any such revisions . . . will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social or other services required to be provided under such standard as in effect on December 12, 2007.”¹² One such standard requires programs to provide an environment “of acceptance that supports and respects gender, culture, language, ethnicity, and family composition.”¹³

The proposed English-only mandate conflicts with statutory protections. The NPRM states that the proposed changes will “minimize non-essential multilingual services”—which presupposes some multilingual services are essential, but fails to define or describe them—and will eliminate the requirement that staff in the classroom or on a home visit speak the non-English language spoken by the majority of the class.¹⁴ It will also require removing books and teaching materials that contain non-English content.¹⁵

Not only is removing these supports not required by Executive Order 14224, but these changes also cannot be squared with the statutory mandate to ensure LEP students make meaningful progress in a way that is “culturally and linguistically appropriate.”¹⁶ Further, removing additional support systems for LEP students necessarily results in a “reduction in quality, scope, or type[] of . . . services required,”¹⁷ such as accepting an LEP student’s home language. While ACF claims that Head Start programs will still be required to comply with LEP student language requirements,¹⁸ the agency offers no guidance as to how that is possible. Accordingly, the English-only mandate will, at a minimum, provide programs with discretion to violate the Act.

b. The English-Only Mandate Violates the Statutory Requirement to Provide Non-English-Speaking Families Meaningful Engagement in Their Child’s Education

Congress intended for the Act to promote parental involvement. Under the Act, Head Start programs must facilitate activities that support parents becoming “full partners” in their child’s education.¹⁹ The Act requires outreach to all parents and community members, including parents of LEP students, by utilizing strategies that are “understandable” and “in a language the parents can understand.”²⁰ Parental involvement is explicitly listed as one of the required service categories in the Head Start performance standards. Therefore, the Secretary must ensure changes to performance standards do not reduce the quality or scope of parental involvement.²¹

¹¹ *Id.* § 9836a(a)(1)(B)(x).

¹² *Id.* § 9836a(a)(2)(C).

¹³ 45 C.F.R. § 1304.21(a)(1)(iii) (2007)

¹⁴ 91 Fed. Reg. at 51274.

¹⁵ *Id.* at 51287.

¹⁶ 42 U.S.C. § 9836a(a)(1)(B)(x).

¹⁷ *Id.* § 9836a(a)(2)(C).

¹⁸ 91 Fed. Reg. at 51265.

¹⁹ 42 U.S.C. § 9837(b)(3).

²⁰ *Id.* § 9837(b)(11).

²¹ *See supra* note 12.

The NPRM will eliminate essential hiring requirements for non-English-speaking families to communicate with program staff and engage with the program. Proposed removals include requirements that staff speak specific languages, have familiarity with the cultural backgrounds of families served, and that at least one classroom staff member or home visitor speak the non-English language spoken by the majority of participants.²² The NPRM acknowledges, as it must, that “reduced language capacity may negatively affect communication with non-English-speaking families and weaken family engagement.”²³ As a solution, it points to web-based translation tools as a mitigation measure, but offers no evidence on how online translation services can support building relationships or adequately replace communication with non-English-speaking families.²⁴ This is one example of how ACF’s proposed English mandate will affect negatively the Act’s requirement of parental involvement.

Despite promising to usher changes that will “strengthen[] opportunities for families to make meaningful decisions,”²⁵ the proposed regulations reduce the scope and quality of parental involvement for parents with limited English, in violation of 42 U.S.C. § 9836a(a)(2)(C). While NPRM claims statutory compliance, the English-only mandate will inevitably lead to statutory violations.

II. Proposed Changes Violate the APA

The APA prohibits agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.”²⁶ Agency action is deemed to be arbitrary and capricious when the agency “relied on factors which Congress has not intended it to consider . . . [or] offered an explanation for its decision that runs counter to the evidence before the agency.”²⁷ Agency action must “articulate a satisfactory explanation for [its] action[s] including a ‘rational connection between the facts found and the choices made.’”²⁸ A failure “to provide even the minimal level of analysis” renders agency action arbitrary and capricious.²⁹ Furthermore, when an agency changes its position on “longstanding policies,” the agency must account for “serious reliance interests” and provide a reasoned explanation for “disregarding facts and circumstances” of the prior policy.³⁰ Unexplained inconsistencies in policies are deemed to be arbitrary and capricious.³¹

a. English-Only Mandate Abandons Years of Policy Without Justification or Accurate Estimate of Costs

As noted, the NPRM’s decision to abandon bilingualism is made without any justification beyond the cited Executive Order and non-quantifiable data on the general benefits of knowing English, without any analysis of whether abandoning longstanding requirements would help or hinder the acquisition of English fluency.³² In doing so, ACF provided perfunctory analysis about the additional costs and burdens that will fall on providers to comply. The NPRM estimates a one-time cost of \$2,500 for 18,767 impacted

²² See 91 Fed. Reg. at 51314, 51274.

²³ *Id.* at 51314.

²⁴ See *id.*

²⁵ *Id.* at 51249.

²⁶ 5 U.S.C. § 706(2)(A).

²⁷ *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

²⁸ *Id.* (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

²⁹ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

³⁰ *Id.* at 221-22.

³¹ *Id.* at 222.

³² See *supra* note 6-7; see also *Encino Motorcars*, 579 U.S. at 221 (“ . . . the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy.”) (internal citations omitted).

classrooms to replace books and teaching aids containing non-English content, without explaining how it arrived at this estimate.³³ ACF also provides unexplained estimates of additional costs for retraining staff and recruiting teachers.³⁴ The ACF acknowledges that the English-only mandate “may result in additional costs or burden[s] not described” for any classroom with a majority of dual language learners and/or non-English speakers.³⁵

The NPRM does not satisfy the APA’s requirement that an agency must provide a reasoned explanation for changing a longstanding policy. Although the proposal will eliminate language-access and cultural-competence requirements that have been in place for decades, ACF offers no reasoned justification for abandoning these policies or adopting an English-only mandate. Nor does the NPRM acknowledge—let alone grapple with—the “serious reliance interests”³⁶ of Head Start programs serving large numbers of dual-language learners and families who speak languages other than English. By imposing additional, uncalculated compliance costs on grantees without explaining why these burdens are warranted, ACF fails to provide the required reasoned analysis. The NPRM’s explanation is therefore unsatisfactory and inadequate under the APA.

b. Reducing the Administrative Cap from Fifteen Percent to Five Percent is Arbitrary and Capricious and a Violation of the APA

The proposed regulation reduces the administrative cap from 15% to 5%. The Act authorizes the Secretary to set a specific administrative percentage cost cap not to exceed 15%.³⁷ The NPRM offers two explanations for the decision to lower the cap: (1) there are four identified programs within HHS that operate at a 5% administrative cap,³⁸ and (2) 3.7% of current Head Start programs operate at or under 5%.³⁹

The ACF’s justification to reduce the rate relies, in part, on a comparison with other HHS programs. There is no statutory warrant for the Secretary to consider the administrative costs of other HHS programs when establishing the administrative cap.⁴⁰ The NPRM provides no justification for why it chose the four included programs out of the “more than 100 programs” HHS administers,⁴¹ or whether the identified programs perform similar functions to Head Start. Without an explanation, the comparison between programs does not show why a 5% cap is relevant, let alone appropriate, for Head Start.

The NPRM provided data showing that most programs’ administrative costs are well over 5%. Across all Head Start programs, 3.7% operate at 5% or less on administrative costs, 7.9% operate between 5% and

³³ 91 Fed. Reg. at 51287.

³⁴ *Id.*

³⁵ *Id.* at 51288; *see also* 91 Fed. Reg. at 51311 (noting examples of programs likely to be hardest hit, like Puerto Rico and Seasonal Migrant communities)

³⁶ *Encino Motorcars*, 579 U.S. at 221-22.

³⁷ *See* 42 U.S.C. § 9838(b).

³⁸ *See* 91 Fed. Reg. at 51299 (citing four HHS programs operating at a 5% administrative cap: the Child Care and Development Fund (CCDF), the Substance Use Prevention and Treatment Block Grant (SAPT), the Community Mental Health Services Block Grant (MHBG), and the Community Services Block Grant (CSBG)).

³⁹ *Id.* at 51298.

⁴⁰ *See* 42 U.S.C. § 9839(b).

⁴¹ *Programs and Services*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/programs/index/html> (last visited Sept. 30, 2026) (“HHS administers more than 100 programs across its operating divisions.”).

7.5%, and 19.8% operate between 7.5% and 10%.⁴² Thus, 61.1% of programs currently operate with administrative costs above 10%.

Because ACF does not explain why it compared Head Start to other HHS programs, and because ACF chose an administrative cap that runs counter to the evidence of where the overwhelming majority of programs operate, the decision is arbitrary and capricious under the APA.

c. Removal of the Student-to-Teacher Ratio Without an Adequate Explanation is Arbitrary and Capricious and Violates the APA

The NPRM proposes to repeal regulatory prescribed student-to-teacher ratios and group sizes.⁴³ Instead of following federal requirements, programs will be required to establish a group size and ratio that is in accordance with state or local laws.⁴⁴ The NPRM notes that ACF adopted federal standards to promote child safety, support teacher supervision, and “foster high-quality learning environments.”⁴⁵ The NPRM further notes that HHS acknowledges the benefits of small groups and lower ratios,⁴⁶ but without explanation, it ultimately prioritizes higher program capacities and local flexibility.⁴⁷ Despite acknowledging the value of current regulations, the NPRM fails to explain how eliminating standards on group ratios and sizes will keep children safe and preserve education quality. It provides no justification for placing more emphasis on higher program capacity and local flexibility.⁴⁸ The lack of a rational explanation for the change renders the reasoning inadequate under the APA.

d. Lifting the Prohibition on Expulsion and Limitation on Suspensions Without an Adequate Explanation is Arbitrary and Capricious and Violates the APA

The NPRM proposes eliminating Performance Standard § 1302.17, which limits suspensions and prohibits expulsions in Head Start. To support its decision, the NPRM claims rescission is warranted because: (1) “a growing number of states” have requirements or laws addressing suspension and expulsion since Head Start added the regulations in 2016, and (2) removing the federal requirement gives states greater flexibility to respond to local behavioral concerns.⁴⁹ The NRPM notes that ACF’s actions should not be seen as an endorsement of the practices,⁵⁰ but “*assumes* programs will resort [to such practices] *sparingly*, in line with the current practice.”⁵¹

The NPRM fails to support its reasoning. The NPRM does not indicate how many states have licensing requirements or laws addressing suspension and expulsion for children ages 0-5.⁵² It fails to define or

⁴² 91 Fed. Reg. at 51298.

⁴³ *See id.* at 51266-67.

⁴⁴ *Id.* at 51266.

⁴⁵ *Id.* at 51267.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 51265.

⁵⁰ *Id.*

⁵¹ *Id.* at 51309 (emphasis added).

⁵² *But see* SHANTEL MEEK ET AL., CHILD.’S EQUITY PROJ., HARSH PUNISHMENT AND EXCLUSIONARY DISCIPLINE IN THE EARLY YEARS: DATA, RESEARCH, AND A POLICY COMPARISON BETWEEN HEAD START AND STATES 13 (2026), <https://cep.asu.edu/sites/g/files/litvpz916/files/2026-09/Harsh%20and%20Exclusionary%20Discipline%20%287%29.pdf> (noting that a 2024 review “found that 32 states required programs to have an expulsion policy in licensing, 12 required programs to have a suspension policy . . . only 6 states required early childhood mental health consultation in their licensing rules”).

explain how it measures “sparingly,” even though it uses the word to justify removing the regulation. Last, the NPRM fails to explain how removing the regulation will keep children safe in those states lacking protections equivalent to § 1302.17. Accordingly, the NPRM fails to provide a “minimum level of analysis,”⁵³ rendering the action arbitrary and capricious under the APA.

e. Removing the Option to Self-Attest Lacks Any Reasoning and is Therefore Arbitrary and Capricious Under the APA

The NPRM proposes removing the ability of families lacking documentation of income to self-attest their income for program eligibility. Instead, families will be required to provide tax forms, pay stubs, or “other proof of income.”⁵⁴ The NPRM justifies removing the attestation option in order to “strengthen[] program integrity.”⁵⁵ However, it offers no evidence that self-attestation has undermined integrity or resulted in improper enrollment. The NPRM cites monitoring data showing that 7.6% of reviewed files relied on self-attestation, yet it expressly acknowledges that it cannot determine whether any of these attestations were false or involved intentional violations of eligibility requirements.⁵⁶ Despite this admission, the NPRM improperly treats the 7.6% usage rate as a basis for presuming that 8% of participants may be improperly enrolled through self-attestation. Because the NPRM provides no evidence that the existing approach has caused harm, its justification is inadequate under the APA, which requires that agency action meet a “minimum level of analysis.”⁵⁷ This makes the ACF’s action arbitrary and capricious.

f. Removal of the Robust Mental Health Supports Relies on Arbitrary Cost-Saving Data and Therefore Does Not Satisfy the APA

The NPRM’s proposed removal of the Performance Standard in 45 C.F.R. part 1302, subpart D relies heavily on aggregate cost-saving estimates that are unsupported and inadequately explained, in violation of the APA. The NPRM justifies eliminating the comprehensive mental-health framework primarily on the basis of projected taxpayer savings,⁵⁸ citing \$41.7 million in health contractual services and \$180.9 million in health and mental-health personnel costs, for a combined estimate of \$222.6 million.⁵⁹ Although the NPRM references a 2024 estimate of \$64 million for mental-health consultations,⁶⁰ it acknowledges that it cannot disaggregate costs for “nutrition and health consultants,”⁶¹ leaving unclear what portion of the aggregate figure relates to mental-health services. The NPRM then presents 25%, 50%, and 75% reduction scenarios without explaining what services will be cut or how these percentages were derived. Because the NPRM relies on non-disaggregated cost data and provides no reasoned explanation for how these figures justify eliminating a longstanding performance standard, its rationale is inadequate under the APA.

The NPRM’s reliance on cost-saving projections and deference to state laws is insufficient under the APA. An agency may not justify a major policy change by pointing to administrative costs alone, particularly where longstanding reliance interests are at stake.⁶² The NPRM fails to explain how eliminating the

⁵³ *Encino Motorcars*, 579 U.S. at 221.

⁵⁴ 91 Fed. Reg. at 51318 (to be codified at 45 C.F.R. § 1301.02(c)(1)).

⁵⁵ 91 Fed. Reg. at 51307.

⁵⁶ *Id.*

⁵⁷ *Encino Motorcars*, 579 U.S. at 221.

⁵⁸ See 91 Fed. Reg. at 51293.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *Judulang v. Holder*, 565 U.S. 42, 63-64 (2011).

mental-health performance standard will affect the availability or quality of mental-health services for children and families. Its budget-saving calculations assume, without explanation, that programs will continue to comply with the Act and retain staff to support mental health, even as the NPRM removes the regulatory framework requiring such staff.⁶³ Because the NPRM does not connect its factual assertions to the policy choices it makes, it fails to provide the required reasoned explanation and is therefore arbitrary and capricious under the APA.

III. Conclusion

Through the proposed rule, the Head Start program will be unable to meet its purpose of supporting children and their development. For the myriad reasons discussed above, and because of the disproportionate harm it will cause to the Latino community, MALDEF urges ACF to withdraw the NPRM in its entirety. Please feel free to contact us with any questions or concerns about these comments at 202-293-2828 or jvaladez@maldef.org.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline Valadez". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Jacqueline Valadez

Law Fellow

⁶³ See 91 Fed. Reg. at 51293.