IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, Plaintiff, v. U.S. DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her capacity as Secretary of the United States Department of Education, CRAIG W. TRAINOR, in his capacity as Acting Assistant Secretary for Civil Rights, and LINDSEY M. BURKE, in her capacity as Deputy Chief of Staff for Policy and Programs, Defendants.	Case No. 25-cv-8547 (AS)

NOTICE OF CONSENT MOTION OF NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the NAACP Legal Defense and Educational Fund, Inc. ("LDF") respectfully moves for leave to file the attached brief, as *amicus curiae*, in support of Plaintiff's motion for summary judgment. Counsel for Plaintiff and Defendants have advised undersigned counsel that they consent to the filing of this brief.

Proposed *amicus curiae* LDF is the nation's first and foremost civil rights legal organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans, and to break down the barriers that prevent Black people in the United States from realizing their basic civil and human rights.

"There is no governing standard, rule, or statute prescribing the procedure for obtaining leave to file an *amicus* brief in the district court." *Goldstein v. Hochul*, No. 22-cv-8300 (VSB), 2022 WL 22915988, at *1 (S.D.N.Y. Oct. 19, 2022) (citing *Onondaga Indian Nation v. State of*

New York, No. 97-CV-445, 1997 WL 369389, at *2 (S.D.N.Y. June 25, 1997)). "What is clear, however, is that district courts have broad inherent authority to permit or deny an appearance as amicus curiae in a case." *Id*. Courts have found that participation as *amicus curiae* is appropriate when it is timely, *Goldstein*, 2022 WL 22915988, at *1, and "when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide," *SEC v. Ripple Labs, Inc.*, No. 20 CIV. 10832 (AT), 2021 WL 4555352, at *5 (S.D.N.Y. Oct. 4, 2021.).

LDF has significant interest in the issues involved in this matter. LDF won the landmark school desegregation case *Brown v. Board of Education*, 347 U.S. 483 (1954), and has represented Black students as parties in numerous efforts to desegregate schools and ensure equal access to education for Black students. *See, e.g.*, *Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291 (2014); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Missouri v. Jenkins*, 495 U.S. 33 (1990); *Borel v. Sch. Bd. St. Martin Par.*, 44 F.4th 307 (5th Cir. 2022); *Stout v. Jefferson Cnty. Bd. of Educ*., 882 F.3d 988 (11th Cir. 2018); *Lee v. Chambers Cnty. Bd. of Educ*., 693 F. Supp. 3d 1223 (M.D. Ala. 2023); *Pernell v. Fla. Bd. of Governors of the State Univ. Sys*., 641 F. Supp. 3d 1218 (N.D. Fla. 2022); *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020). This includes several recent successful challenges to the federal government's imposition of unlawful restrictions on federal funds as a method of rolling back longstanding civil rights protections for students. *See, e.g.*, *Mid-Atl. Equity Consortium v. U.S. Dep't of Educ*., 793 F. Supp. 3d 166 (D.D.C. 2025); *NAACP v. U.S. Dep't of Educ*., 779 F. Supp. 3d 53 (D.D.C. 2025). LDF has also worked closely with the Magnet Schools Assistance Program ("MSAP"), the program at the heart of this case.

LDF has also participated as *amicus curiae* in several cases addressing the rights of lesbian, gay, bisexual, transgender, and queer individuals in and outside of the education context, including in cases concerning the Title IX issue central to this litigation. *See, e.g.*, *United States v. Skrmetti*, 605 U.S. 495 (2025); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617 (2018); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *United States v. Windsor*, 570 U.S. 744 (2013); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020).

LDF's brief is desirable given LDF's experience and expertise litigating issues pertaining to school desegregation programs, federal attempts to roll back grants and other programs that ensure equal access to education for Black students and other students of color, and federal court jurisdiction to address such questions. LDF is also able to provide "unique information [and] perspective," outlining the legislative intent and history of the MSAP program, recent developments in courts' application of the Tucker Act, and the impact of the MSAP program and NYCPS' guidelines on Black transgender students. *Ripple Labs, Inc.*, 2021 WL 4555352, at *5.

LDF's brief is timely. Consistent with Federal Rule of Appellate Procedure 29, LDF moves for consent to file its brief seven days after the principal brief of the party LDF supports.

For the above reasons, LDF respectfully requests that the Court grant this motion and deem the attached brief filed.

Dated: December 23, 2025
New York, New York

Respectfully submitted,

/s/
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
Rachel Kleinman
Katrina Feldkamp
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 965-2200

Avatara Smith-Carrington
Emahunn Campbell
700 14 Street NW, Suite 600
Washington, DC 20005
(202) 682-1300

Counsel for Amici Curiae
NAACP Legal Defense &
Educational Fund, Inc.

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BRIEF OF *AMICUS CURIAE* NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.
Rachel Kleinman
Katrina Feldkamp
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 965-2200

Avatara Smith-Carrington
Emahunn Campbell
700 14 Street NW, Suite 600
Washington, DC 20005
(202) 682-1300

Counsel for Amicus Curiae
NAACP Legal Defense &
Educational Fund, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* the NAACP Legal Defense and Educational Fund, Inc. (LDF) submits the following statement of disclosure: LDF is a nonprofit 501(c)(3) corporation. It is not a publicly held corporation that issues stock, nor does it have any parent companies, subsidiaries or affiliates that have issued shares to the public.

Date: December 23, 2025
New York, New York

/s/ *Rachel M. Kleinman*
Rachel M. Kleinman
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.

Attorney for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*

The NAACP Legal Defense and Educational Fund, Inc. ("LDF")[1] is the nation's first civil rights legal organization. LDF's mission is to achieve racial justice and ensure the full, fair, and free exercise of constitutional and statutory rights for Black people and other people of color. LDF. Since *Brown v. Board of Education*, 347 U.S. 483 (1954), LDF has been at the forefront of efforts to desegregate schools and achieve equal education for Black students, including by challenging unlawful federal attempts to roll back civil rights protections and programs. *See, e.g.*, *Mid-Atl. Equity Consortium v. U.S. Dep't of Educ.*, 793 F. Supp. 3d 166 (D.D.C. 2025); *NAACP v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025).

[1] LDF ("Amicus") submits this brief with the consent of all Parties. *See* Fed. R. App. Proc. 29(a)(2). Amicus affirms that no party or counsel for any party authored this brief in whole or in part and that no one other than Amicus or their counsel contributed any money intended to fund the preparation or submission of this brief.

INTRODUCTION

Amicus writes to advise the Court of the history of the Magnet Schools Assistance Program ("MSAP"), the limitations Congress has placed on the U.S. Department of Education's ("Department") ability to non-continue MSAP grants, and this Court's jurisdiction to vacate a finding upon which the Department relies, without proper procedure, to non-continue a grant.

"Magnet schools" are public schools "designed to promote integration by drawing students away from their neighborhoods and private schools through distinctive curricula and high quality." *Missouri v. Jenkins*, 495 U.S. 33, 40 n.6 (1990) (citation omitted). Congress established MSAP to empower school districts to build magnet schools and advance desegregation. 20 U.S.C. § 7231(a)(4) (2015). Since 1984, MSAP grants have funded magnet schools across the country, including nineteen New York City Public Schools ("NYCPS") magnet schools. Recognizing the sustained work needed to build magnet schools, Congress has, over time, reduced the requirements for year-to-year grant continuation; limited the Department's ability to non-continue grants for reasons unrelated to performance or finances; and established procedures that the Department must follow before non-continuing a grant, including for civil rights violations.

Federal law requires the Department and the U.S. Secretary of Education (the "Secretary") to provide notice and a hearing before determining that a recipient of funds, including MSAP grants, has violated Title IX of the Education Amendments of 1972. 20 U.S.C. § 1681. Yet the Department bypassed required procedures to coerce NYCPS into prohibiting transgender students from using facilities or participating in extracurricular activities consistent with their gender identity. Specifically, the Department issued a "finding" that Plaintiff's Guidelines to Support Transgender and Gender-Expansive Students ("Guidelines") violate Title IX and subsequently non-continued NYCPS' MSAP grants. But no court has read Title IX to *prevent* school districts from allowing students to use sex-separated facilities based on their

gender identity.[2] In response, NYCPS brings an Administrative Procedure Act ("APA") challenge to the Department's unlawful Title IX finding and subsequent refusal to certify its MSAP grants without proper procedure or justification. NYCPS' APA claims fall comfortably within the scope and purpose of the APA, which facilitates judicial review of administrative actions, including findings upon which the government relies to non-continue federal funds. NYCPS's claims are, in contrast, ill-suited for resolution under the Tucker Act, which directs claims against the government sounding in contract to a specialized court authorized to award only money damages.

Accordingly, this Court should conclude that it has jurisdiction to hear NYCPS' claims. *See Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (2025) [hereinafter *NIH*].

ARGUMENT

I. Congress Determined that the MSAP Program Is in the Government's Best Interest.

Congress established MSAP in recognition that it is "in the best interests of the United States" to support efforts "to foster meaningful interaction among students of different racial and ethnic backgrounds" through magnet programs. 20 U.S.C. § 7231(a)(4). Authorized in 1984 as a two-year grant with annual application requirements,[3] Congress expanded MSAP grants to five years over time.[4] This expansion provides for and "reflect[s] the time necessary to startup a

[2] Some courts have concluded that Title IX does not require school districts to allow students to use facilities consistent with their gender identity. *See Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 815 (11th Cir. 2022) (en banc). But reading Title IX *not* to require districts to provide access is far different from reading Title IX to *require* restricting that access. *Cf. Roe v. Critchfield*, 137 F.4th 912, 926–28 (9th Cir. 2025) (declining to decide whether Title IX permits districts to limit students' access to sex-separated facilities on the basis of their assigned sex at birth, but concluding that "Title IX does not 'so clearly' prohibit" such restrictions) (citation omitted).

[3] Pub. L. No. 98-377, 98 Stat. 1267 (1984), available at https://www.congress.gov/98/statute/STATUTE-98/STATUTE-98-Pg1267.pdf.

[4] *See* NCLB, Pub. L. No. 107–110, tit. V, § 501, 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 7231h); Every Student Succeeds Act (ESSA), Pub. L. No. 114-95, 129 Stat. 1802 (2015) (codified at 20 U.S.C. § 7231h).

successful magnet."[5] Recipients are thus authorized to use a larger portion of MSAP funding for magnet planning during their grant's early years. 20 U.S.C. § 7231h(b). As the grant progresses, recipients devote greater funds to operating and sustaining the magnets. *Id*.

Congress requires the Secretary to seek assurances about recipients' compliance with anti-discrimination laws. ESSA, Pub. L. No. 114-95, tit. IV, part D, § 4405(b)(2)(C)(i)–(iii) (2015) (codified at 20 U.S.C. § 7213d(b)). In 1984, Congress authorized the Secretary to seek these assurances annually. Pub. L. No. 98-377, Sec. 707(b), 98 Stat. 1267 (1984). But in 1994, Department regulations eliminated the annual requirement to resubmit assurances. 59 Fed. Reg. 30,259 (June 10, 1994). Instead, the regulations required year-to-year continuation determinations to be based upon performance reports. 34 C.F.R. § 75.253. Congress subsequently modified the MSAP statute to remove "annual" from the assurances requirement. Pub. L. No. 107-110, § 5305, 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 7231d(b). The Secretary may seek assurances *prior to* awarding the five-year grant. *Id*. § 7231d(c). Once a grant is awarded though, continuation decisions are governed by the General Education Provisions Act ("GEPA"). 34 C.F.R. § 75.253(a)(5); *see infra* Section II.B. And interruption of a grant for alleged failure to comply with Title IX's anti-discrimination provisions is governed by Title IX's procedures. *See infra* Section II.A.

In 1964, to restrict agencies' termination of funds as a tool to achieve civil rights compliance, Congress prohibited agencies from terminating or non-continuing funds except upon notice of a civil rights violation and an opportunity for a hearing. 42 U.S.C. § 2000d-1. An agency may not exercise this authority until it "has determined that compliance cannot be secured by voluntary means." *Id*. In short, agencies' power to non-continue federal funds for alleged

[5] S. Rep. No. 114-231, at 46 (2016).

violations is a last resort to achieve civil rights compliance. The Department recognized this in 1980 when it adopted regulations specifying that the authority to non-continue grants is not a basis "to determine compliance with civil rights." 45 Fed. Reg. 22,548 (Apr. 3, 1980). The design of the MSAP grant and GEPA's due process protections are consistent with Congress' intent.

II. The Department Failed to Comply with Required Procedures.

The Department's authority to non-continue federal financial assistance is governed by both Title IX and 34 C.F.R. § 75.253, the Department's financial assistance regulatory framework.

A. The Department's Reliance on Title IX as the Basis for Non-Continuation Constituted Enforcement Action Under Title IX.

Although the Department invokes Title IX as its basis for non-continuing NYCPS' grants, ECF No. 6-1 at 1 (Discontinuation Letter), it failed to adhere to the Congressionally-mandated statutory procedures agencies must use before terminating or non-continuing a grant for alleged Title IX violations.

Title IX prohibits discrimination that "on the basis of sex" in "any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The statute's only enforcement mechanism, 20 U.S.C. § 1682, empowers federal agencies to withdraw funds from recipients that are out of compliance by either: 1) terminating or non-continuing assistance "to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement," or 2) "any other means authorized by law." In the latter context, however, no such action shall be taken until a written report is "file[d] with the committees of the House and Senate having legislative jurisdiction over the program" and "thirty days have elapsed after the filing of such report." 20 U.S.C. § 1682.

The Department disregarded these procedures. Instead, it sent a letter claiming that the Department's Office for Civil Rights "identified a civil rights compliance issue" related to

NYCPS' Guidelines and refused to certify NYCPS' MSAP grants despite providing no express finding on the record, opportunity for a hearing, or report to Congress. ECF No. 6-1 at 1. Further, none of the subsequent communications from the Department followed the procedures outlined in Title IX. *See* ECF No. 6-3 (reiterating that NYCPS' failure to implement the Department's demands "will result in a denial of reconsideration, and [the] decision not to certify [Plaintiff's] grant under 20 U.S.C. § 7231d(c) and non-continue its MSAP grant under 34 C.F.R. § 75.253(a)(5) will stand"); *see also* ECF No. 6-4 (denying NYCPS' request for reconsideration because of "the ongoing civil rights concerns" previously identified by the Department).

Put simply, the Department contravened Congress' express intention by non-continuing NYCPS' MSAP grants without following statutorily mandated procedures. *See generally*, *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 357 (1986) (clarifying that "an agency literally has no power to act . . . unless and until Congress confers power upon it"); *see also Maine v. U.S. Dep't of Agric.*, 778 F. Supp. 3d 200, 232 (D. Me. 2025) (finding that "prior to freezing a portion of [Maine]'s Title IX funds, the Federal Defendants acted 'without observance of procedure required by law,' so as to be in violation of the APA").

B. The Department Ignored Its Own Federal Financial Assistance Regulatory Framework in Non-Continuing NYCPS' MSAP Grants.

The Department also failed to comply with its own financial assistance regulatory framework, 34 C.F.R. § 75.253, which restricts the Secretary's authority to non-continue awards. As outlined in 34 C.F.R. § 75.253, "the Secretary may decide not to make a continuation award if (1) [a] grantee fails to meet any of the requirements in [34 C.F.R. § 75.253(a)]." Section 75.253(a) provides that for a grant to be continued, the grantee must "[d]emonstrate that it has made substantial progress in achieving [t]he goals and objectives of the project; and [t]he performance targets in the grantee's approved application." A grantee is also required to submit certain reports,

§ 75.253(a)(2); "continue to meet applicable eligibility requirements," § 75.253(a)(3); maintain certain "financial and administrative management systems," § 75.253(a)(4); and "[r]eceive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government," § 75.253(a)(5).

The Department's claim that NYCPS' MSAP grant "is no longer in the best interest of the Federal Government" is procedurally deficient under 34 C.F.R. § 75.253(a)(5). ECF No. 6-1 at 3. *First*, the Department failed to produce records showing that it considered NYCPS' performance as part of the administrative record underlying its decision. Pl.'s Mem. of Law in Supp. of Mot. for Summ. J. 24–25, ECF No. 52 [hereinafter Pl.'s MSJ] ("[T]he complete absence in the Administrative Record of any of the five NYCPS APRs submitted to the Department in May 2025, and of any grant-related fiscal or performance data makes clear that the Department failed to consider grantee performance at all in making the continuation decision."). *Second*, the Department's use of boilerplate language in the Discontinuation Letter provides no factual findings supporting the Department's conclusion that NYCPS' grant "is no longer in the best interest of the Federal Government." ECF No. 6-1 at 3; *see also SEC v. Chenery Corp.*, 332 U.S. 194, 196–97 (1947) (noting that "[i]f the administrative action is to be tested by the basis upon which it purports to rest, ...[i]t will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive").

The Department's determination whether continuation is in the best interest of the Federal Government is reviewable by this Court. A decision is "committed to agency discretion" and is excepted from APA review in only two circumstances. 5 U.S.C. § 701(a). Neither applies here. *First*, a decision is committed to agency discretion when the law governing the decision does not

provide a clear standard for judicial review. *See, e.g.*, *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), *abrogated by Califano v. Sanders*, 430 U.S. 99 (1977). Here, however, Congress has specified the standard governing the Department's determination. *See* 34 C.F.R. § 75.253(a)(5). Second, a decision is committed to agency discretion when the action is of the sort normally left to agencies. *See, e.g.*, *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 642–43 (D.C. Cir. 2020). Not so here, where Congress instituted multiple procedures restricting the Department's authority to terminate funds.

Ultimately, Defendants failed to articulate how NYCPS' alleged violation of Title IX—without specifying any supporting facts and without any opportunity for a hearing—aligns with Congress' recognition that it is in "the best interest[] of the United States . . . to continue to desegregate and diversify schools by supporting magnet schools." 20 U.S.C. §§ 7231(a)(4)(A), (b), (b)(3).

III. The Court's Jurisdiction to Award the Relief NYCPS Seeks is Not Precluded by the Tucker Act.

The Department claims that the Tucker Act deprives this Court of jurisdiction over NYCPS' claims because "they are in essence contract claims that can only be brought in the Court of Federal Claims." Defs.' Mem. of Law in Supp. of Mot. to Dismiss 10, ECF No. 24 (citation omitted). This contention is unsupported.

The Tucker Act waives the government's immunity from actions "founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). It grants the Court of Federal Claims exclusive jurisdiction over contract actions seeking more than $10,000 in damages. *See Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). But the Tucker Act should not be construed "so broad[ly] as to deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the

government." *Id.*; *see also Up State Fed. Credit Union v. Walker*, 198 F.3d 372, 375 (2d Cir. 1999). NYCPS presents such a claim.

NYCPS' chief complaint is not that the Department failed to pay MSAP funds. Instead, NYCPS alleges that the Department issued a "finding" that its Guidelines violate Title IX in contravention of required procedures. *See* ECF No. 29 at 1; *supra* Section II.A.[6] NYCPS seeks to vacate this procedural deficiency. Pl.'s MSJ 18–19. Controlling precedent establishes that jurisdiction over such a claim—which neither sounds in contract nor seeks money damages—properly lies with this Court.

A. NYCPS' Claims Are Not at Their Essence Contract Claims.

To determine whether the Tucker Act controls, courts use a two-pronged inquiry considering (1) "the source of the rights upon which the plaintiff bases its claims," and (2) "the type of relief sought." *Up State Fed. Credit Union*, 198 F.3d at 375 (quoting *Megapulse*, 672 F.2d at 968). Neither supports the conclusion that NYCPS' claims are at their essence contract claims.

1. NYCPS' Rights Arise from Statute, Not Contract.

The source of NYCPS' rights is statutory, not contractual. NYCPS seeks to enforce its procedural rights under Title IX. *See* Pl.'s MSJ 18–19.

NYCPS does not challenge the Department's actions on the basis of grant terms. Nor could it. The Department neither cites grant terms in its Discontinuation Letter nor cites, in its administrative record, any metrics governed by the terms of NYCPS' grant. Compl. 20, ECF. No. 1. The Department's noncontinuation is based instead on its conclusion, without proper procedure or justification that NYCPS' Guidelines violate Title IX. *Supra* Section II.A. Claims related to NYCPS' procedural rights can hardly be said to arise from contract, as it is Congress—not

[6] Should the court find that GEPA applies here, the Department also failed to comply with GEPA procedures. *See supra* Section II.B.

NYCPS' agreement—that established the procedures that control here. The Tucker Act does not, therefore, apply.

2. *Plaintiff Seeks Vacatur of an Agency Finding—Relief that Federal Courts Can and Do Provide.*

This Court's jurisdiction is reinforced by the relief NYCPS seeks. NYCPS does not claim money damages—the "specific sums already calculated, past due, and designed to compensate for completed labors" that are governed by the Tucker Act. *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 327 (2020). Instead, it seeks "prospective, nonmonetary relief to clarify future obligations": whether the Department may act on a Title IX "finding" that it reached without following Congressionally-mandated procedures. *Id*. In short, "the true nature of the action" is the Department's failure to abide by required procedures, and it is that action that determines jurisdiction. *Nat'l Ctr. for Mfg. Scis. v. United States*, 114 F.3d 196, 199 (Fed. Cir. 1997) (cleaned up).

Bowen v. Massachusetts is particularly instructive. 487 U.S. 879 (1988). There, the Supreme Court held that, although the APA bars a district court from reviewing actions seeking money damages, the court is not barred from enjoining an agency from refusing to reimburse expenditures. *See id.* at 893, 900, 910. "The State's suit . . . is not a suit seeking money in *compensation* for the damage sustained by the failure of the Federal Government to pay as mandated; rather, it is a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money." *Id.* at 900 (emphasis in original).

So too here. NYCPS seeks prospective relief to enforce the procedure the Department must use before issuing a Title IX finding. Although vacatur of the unlawful finding may lead to a continuation of funding, such vacatur is distinct from an order to disburse funds. A disbursement of funds would be "a mere by-product of th[e] court's primary function of reviewing the

Secretary's interpretation of federal law." *Id.* at 910. The Supreme Court recently reaffirmed *Bowen*'s application to administrative actions that are distinct from, albeit related to, disbursement. *See Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025) (under *Bowen*, "a district court's jurisdiction is not barred by the possibility that an order setting aside an agency's action may result in the disbursement of funds") (cleaned up).

Courts have likewise upheld federal courts' jurisdiction to review APA claims for prospective relief, even where the challenged action impacts future government payments. *See, e.g.*, *Nat'l Ctr. for Mfg. Scis.*, 114 F.3d at 201–02 (concluding that an action where the plaintiff "anticipate[d] the need for injunctive relief" related to the future "disposition of appropriated funds" was improperly transferred to the Court of Federal Claims); *Katz v. Cisneros*, 16 F.3d 1204, 1208–09 (Fed. Cir. 1994) (affirming federal court jurisdiction to review an agency's "interpretation of law" which controls the "future" disbursement of funds where plaintiff sought prospective relief and the interpretation impacted the parties' "ongoing relationship"). Similarly, NYCPS seeks prospective vacatur of the Department's finding based on the unlawfulness of the underlying procedures. Moreover, the Department's finding will impact the ongoing relationship between NYCPS and the Department, which extends beyond the MSAP grants. *See Me. Cmty. Health Options*, 590 U.S. at 327 (a "complex ongoing relationship" between the parties "ma[kes] it important that a district court adjudicate future disputes").

3. *Denying This Court's Jurisdiction Would Deprive Plaintiff of an Adequate Forum and Harm Vulnerable Students.*

Depriving this Court of jurisdiction would deprive NYCPS of an adequate forum. NYCPS cannot obtain the relief it seeks in the Court of Federal Claims. As the Supreme Court noted in *Bowen*, "[t]he Claims Court does not have the general equitable powers of a district court to grant prospective relief." 487 U.S. at 905. And while the Claims Court may issue remedial damages,

Maine Community Health Options, 590 U.S. at 327, a money judgment alone will not "always be an adequate substitute for prospective relief," particularly where there is a "complex ongoing relationship between the parties." *Bowen*, 487 U.S. at 905.

Given NYCPS' statutory right to proper procedure before being issued a Title IX finding and the Court of Federal Claims' inability to provide adequate relief, jurisdiction in this Court is proper. Denying this Court's jurisdiction inflicts significant consequences on NYCPS' over one million students. Without an adequate forum, NYCPS must choose between protecting magnet school students impacted by the Department's Title IX finding and protecting transgender students, particularly Black transgender students, served by the Guidelines. Indeed, LGBTQ students experience a high risk of depression, anxiety, and suicide, in part because of the intense discrimination they face.[7] For example, 46% of Black LGBTQ youth experience discrimination because of their gender identity.[8] Without the Guidelines, NYCPS students will experience greater discrimination of this sort.

B. The Supreme Court's Recent Decisions Confirm this Court's Jurisdiction.

The Supreme Court's recent decision in *NIH* supports the propriety of this Court's jurisdiction.

1. The Supreme Court Held that Agency Action Not Grounded in Contract is Subject to District Court Review.

In *NIH*, Justice Barrett's controlling concurrence affirmed longstanding precedent that "the District Court is the right forum [to] challenge guidance," including "agency guidance discuss[ing]

[7] Nathaniel Frank et al., What We Know Project, *Research Brief Documents the Shockingly Disproportionate Harms Discrimination Inflicts on LGBTQ People of Color* 1, Ctr. for Study of Inequality at Cornell Univ. (June 16, 2021), https://www.nclrights.org/wp-content/uploads/2021/06/LGBTQ_Discrimination_PR.pdf.

[8] R. Nath et al., *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People* 16, Trevor Project (2024), https://www.thetrevorproject.org/survey-2024/assets/static/TTP_2024_National_Survey.pdf.

internal policies related to grants." 145 S. Ct. at 2660–61 (Barrett, J., concurring in the partial grant of the application for stay) (collecting examples of plaintiffs seeking APA vacatur of internal guidance). While four other concurring justices declined to stay the lower court's order to vacate the guidance, 145 S. Ct. at 2658, this majority did not endorse a single rationale for its decision to decline the stay. In cases without a majority rationale, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (cleaned up). In *NIH*, those grounds belong to Justice Barrett, who declined to stay the lower court's order to the extent it vacated the guidance. 145 S. Ct. at 2660–61. She concluded that a challenge to internal guidance defining agency funding priorities does not constitute "a claim 'founded . . . upon' contract" simply because that guidance "discusses internal policies related to grants." *Id* at 2661 (citation omitted). She also concluded that a challenge to internal guidance is separable from a challenge to resulting grant terminations because the "claims are legally distinct." *Id*.

2. The Department's Finding that NYCPS Violated Title IX Is, Like the Guidance in NIH, Agency Action Not Founded Upon Contract.

Here, NYCPS seeks to "vacate unlawful agency policies underlying [Defendants'] terminations." Pl.'s Mem. of Law in Opp'n to Defs.' Mot. to Dismiss 21, ECF No. 29. Like the internal guidance at issue in *NIH*, the Department's Title IX finding is not an action founded upon contract, 145 S. Ct. at 2661, but an upstream, statutory determination with forward-looking implications for NYCPS' MSAP grant. *NIH* therefore supports this Court's jurisdiction to vacate the Department's finding for procedural deficiencies.

In declining to stay the lower court's order to vacate the guidance at issue in *NIH*, Justice Barrett considered "[b]oth logic and law." 145 S. Ct. at 2661. First, as to logic, Justice Barrett concluded that "[v]acating the guidance does not reinstate terminated grants" because, if it did,

"the District Court would have needed only to vacate the guidance itself." *Id.* Here, too, vacating the Title IX finding would not automatically restore funding.

The facts here demonstrate as much. "As a result of the[] findings," Defendants non-continued NYCPS' MSAP grant. ECF No. 6-1 at 3. That the Title IX finding informed the Department's non-continuation decision "does not transform a challenge to that [finding] into a claim 'founded . . . upon' contract that only the CFC can hear." *NIH*, 145 S. Ct. at 2661. Vacatur of that finding on procedural grounds "has prospective and generally applicable implications beyond the reinstatement of specific grants" and therefore "falls well within" this Court's jurisdiction. *Id*. at 2662–63 (Roberts, C.J., concurring in part and dissenting in part).

This reading is further reinforced by Justice Barrett's second consideration: the legal difference between the guidance and resulting grant terminations. Her opinion affirmed that the district court was the correct forum to challenge the guidance because that guidance was legally distinct from decisions or adjudications made under it. *Id*. at 2661 (*citing Am. Pub. Health Ass'n v. Nat'l Insts. of Health*, 145 F.4th 39, 50 (1st Cir. 2025)). So too here. Because the Title IX finding is legally distinct from the Department's subsequent non-continuation of NYCPS' grants, this Court can properly exercise jurisdiction.

Other courts read *NIH* to affirm district court jurisdiction to review agency guidance, including policies related to funding decisions. *See, e.g.*, *Am. Ass'n of Physics Tchrs., Inc. v. Nat'l Sci. Found*., No. 25-cv-1923 (JMC), 2025 WL 2615054 at *11 (D.D.C. Sept. 10, 2025) (*NIH* does not bar plaintiffs' APA challenge to agency guidance); *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 WL 2721390 at *6 (N.D. Cal. Sept. 23, 2025) (relying on *NIH* to find jurisdiction to review policies and guidance conditioning funding on unlawful requirements), *appeal filed* (9th

Cir. Nov. 24, 2025); *Planned Parenthood of Greater N.Y. v. HHS*, No. 25-2453, 2025 WL 2840318, at *13 (D.D.C. Oct. 7, 2025) (same).

CONCLUSION

For the above reasons, this Court should conclude that it has jurisdiction to review NYCPS' claims.

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New York, New York

Respectfully submitted,

/s/ Rachel M. Kleinman
NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.
Rachel M. Kleinman
Katrina Feldkamp
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 965-2200

Avatara Smith-Carrington
Emahunn Campbell
700 14 Street NW, Suite 600
Washington, DC 20005
(202) 682-1300

Counsel for Amicus Curiae
NAACP Legal Defense &
Educational Fund, Inc.

CERTIFICATE OF COMPLIANCE

I, Rachel M. Kleinman, counsel for *amicus curiae* NAACP Legal Defense and Educational Fund, Inc. and a member of the Bar of this Court, certify, pursuant to Local Civil Rule 7.1, that the attached Brief is complies with the word-count limitations, the body is printed in twelve-point type, the footnotes are printed in ten-point type, and the Brief contains 4,371 words.

Date: December 23, 2025
New York, New York

/s/ *Rachel M. Kleinman*
Rachel M. Kleinman
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.

Attorney for Amicus Curiae