

**FROM:** Sarah Parshall Perry, Vice President, Defending Education

**TO:** U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start

**RE:** Public Comment in Support of Proposed Rule, “Reducing Federal Burden for Head Start Programs”; Docket No. ACF-2026-0595 | RIN 0970-AD30 (Published August 7, 2026)

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## INTRODUCTION

Defending Education (“DE”) is a national grassroots organization dedicated to securing a high-quality, value-neutral education for every American student. Our organization consists of parents, students, and educators in early childhood, K-12, and higher education programs across the country. Specifically, we have parent members with children currently enrolled in, or previously enrolled in, Head Start and Early Head Start programs. Because the Head Start Program Performance Standards (“PPS”) govern nearly every operational decision a Head Start agency makes, from how many children are assigned to each classroom to how a program documents a family’s eligibility, our members have a direct and substantial interest in the proposed rule (“NPRM”) of the Administration for Children and Families (“ACF”).<sup>1</sup>

DE offers this comment in full support of the proposed rule. Among other things, the NPRM would rescind more than 1,400 onerous and highly detailed regulatory provisions and replace the PPS’s five-part structure, currently spread across 45 C.F.R. parts 1301 through 1305, with a single, consolidated part.<sup>2</sup> The NPRM also defers to state and local law where both already govern, removes federal requirements that have no practicable effect beyond duplicating the Head Start Act, and returns decision-making authority to local programs and parents (authority previously federalized by the 2024 PPS).<sup>3</sup> It also sharpens the Department’s focus on how to determine whether a young child arrives at kindergarten ready to learn, taking into account that child’s health, nutrition, physical activity, language use, and family engagement. Each of these features is commendable. Together, they ensure the PPS is easy for a program director to understand and follow.

Below, we address three features of the proposed rule that warrant the Department’s continued commitment through the final rule stage, and close with three recommendations intended to make the final rule more durable and administrable.

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<sup>1</sup>*Reducing Federal Burden for Head Start Programs*, 91 Fed. Reg. 51,248 (proposed Aug. 7, 2026) (to be codified at 45 C.F.R. pts. 1301–1305).

<sup>2</sup>Proposed Rule, *supra* n.1 (describing the rescission of more than 1,400 regulatory provisions and the consolidation of 45 C.F.R. pts. 1301–1305 into a single part).

<sup>3</sup>*Supporting the Head Start Workforce and Consistent Quality Programming*, 89 Fed. Reg. 67,720 (Aug. 21, 2024); *see also Restoring Flexibility To Support Head Start Program Access*, 91 Fed. Reg. 25,842 (proposed May 12, 2026).

### **The Proposed Rule Returns Authority to States, Local Programs, and Parents.**

The most consequential feature of the NPRM is the simplest: where a state or locality already regulates the Head Start program, the federal government removes its own duplicative regulation. In that way, true power to ensure educational readiness returns to the level that is both constitutionally and administratively sound: states, localities, and, most compellingly, the parents whose children benefit from Head Start in the first place.

Proposed § 1301.05 would require each program to establish and publish both a maximum group size and a ratio of children to staff “consistent with applicable state and local laws and Child Care and Development Fund regulations,” in place of the federally fixed ratios and group-size ceilings currently found at §§ 1302.21(b) and 1302.23(b).<sup>4</sup> The proposed removal of current § 1302.21(d)(2)–(3) would also end Head Start-specific square footage and space-arrangement rules in favor of State and local licensing standards.<sup>5</sup> This is consistent with § 641A(a)(1)(D) of the Head Start Act, which has long directed the Secretary to adopt facilities standards requiring compliance with State and local licensing requirements.<sup>6</sup> For example, Ohio already licenses, inspects, and monitors Head Start classrooms. A second, differently worded Federal standard, in addition to pre-existing state and local requirements, does nothing to ensure a better classroom experience; it simply makes administering that experience more expensive and burdensome.

The same logic supports removing the center-based service-duration mandates at current § 1302.21(c)(2)<sup>7</sup> and the federal suspension-and-expulsion provisions at current § 1302.17.<sup>8</sup> Whether a rural program is better served by a longer day or a longer year, and how a program should respond to a child in crisis, are judgments best made within the bounds of State law by the people who know the child. A national rule and one-size-fits-all approach defies much of the spirit of the Head Start Act itself by divesting state and local authorities of the singular ability to meet their community’s unique needs.

The NPRM’s treatment of parents deserves commendation. Proposed § 1301.01 would allow, but no longer require, programs to convene parent committees, and would leave their structure and bylaws to the program and the families it serves, while leaving untouched the governing bodies and policy councils the Act itself requires.<sup>9</sup> Proposed § 1301.06(b) would require programs to engage parents as their children’s primary teachers, including through specific strategies for father engagement, and would add educational material supporting healthy marriage and family formation.<sup>10</sup> These are worthy and necessary inclusions. Federal law and the agencies that enforce it have long treated parents as bystanders in their own children’s upbringing and education. The Supreme Court, by contrast, has described the interest of parents “in the care, custody, and control of their children” as “perhaps the oldest of the fundamental liberty interests recognized by this Court,”<sup>11</sup> and has long presumed that parents “possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.”<sup>12</sup> A rule that treats

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<sup>4</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. § 1301.05); *see* 45 C.F.R. §§ 1302.21(b), 1302.23(b) (2025).

<sup>5</sup>Proposed Rule, *supra* n.1; *see* 45 C.F.R. § 1302.21(d)(2)–(3) (2025).

<sup>6</sup>Head Start Act § 641A(a)(1)(D), 42 U.S.C. § 9836a(a)(1)(D).

<sup>7</sup>45 C.F.R. § 1302.21(c)(2) (2025); Proposed Rule, *supra* n.1.

<sup>8</sup>45 C.F.R. § 1302.17 (2025).

<sup>9</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. § 1301.01); *see* Head Start Act § 642(c)–(d), 42 U.S.C. § 9837(c)–(d).

<sup>10</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. § 1301.06(b)).

<sup>11</sup>*Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.).

<sup>12</sup>*Parham v. J.R.*, 442 U.S. 584, 602 (1979).

parents as decisionmakers rather than data points is consistent with that longstanding presumption and with Executive Order 13132's instruction that agencies should confine federal policymaking to matters of genuinely national scope.<sup>13</sup>

### **The Proposed Rule Eliminates Federal Duplication and Reduces Regulatory Burden.**

ACF candidly acknowledges that the PPS “have grown increasingly detailed and prescriptive, often duplicating or elaborating upon requirements already established in the Head Start Act or other Federal statutes and regulations,” and that this “accumulation of regulatory complexity has shifted program focus on procedural compliance rather than direct service delivery.”<sup>14</sup> The NPRM's response is proportionate. It removes the prescriptive community-assessment and recruitment regimes at current §§ 1302.11 and 1302.13,<sup>15</sup> the fee prohibition at current § 1302.18 that merely restates section 645(b) of the Act,<sup>16</sup> and the highly specific transportation requirements of current part 1303, subpart F.<sup>17</sup>

The resulting cost savings are not theoretical. ACF itself estimates annualized cost reductions of a billion dollars or more.<sup>18</sup> Those are dollars Head Start agencies have previously spent on burdensome regulatory requirements rather than on the children served by the program. Executive Orders 12866 and 13563 direct agencies to select the least burdensome alternative to achieve regulatory objectives and to review existing rules to identify those that are outmoded or unnecessarily burdensome.<sup>19</sup> Executive Order 14192 reinforces that instruction.<sup>20</sup> The NPRM retires more than 1,400 provisions while leaving every statutory duty intact, as those executive orders clearly contemplated.

Deregulation of this kind is also sound as a matter of law. An agency that changes course must show that the new policy is permissible, that there are good reasons for it, and that the agency believes it to be better.<sup>21</sup> ACF has done that work in the NPRM preamble and the regulatory impact analysis. In the wake of *Loper Bright Enterprises v. Raimondo*, an agency's reading of an ambiguous statute no longer commands judicial deference,<sup>22</sup> while *Kisor v. Wilkie* confines deference to an agency's reading of its own regulation to cases of genuine ambiguity surviving the traditional tools of construction.<sup>23</sup> An agency that wants its expectations understood and followed should state them in regulatory text adopted after notice and comment. That makes the NPRM's plain, consolidated drafting valuable beyond its underlying substance. Regulated parties are entitled to “fair warning of the conduct a regulation prohibits or

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<sup>13</sup>Exec. Order No. 13,132, § 2, 64 Fed. Reg. 43,255, 43,255–56 (Aug. 4, 1999).

<sup>14</sup>Proposed Rule, *supra* n.1 (statement of purpose and need).

<sup>15</sup>45 C.F.R. §§ 1302.11, 1302.13 (2025).

<sup>16</sup>45 C.F.R. § 1302.18 (2025); Head Start Act § 645(b), 42 U.S.C. § 9840(b).

<sup>17</sup>45 C.F.R. §§ 1303.70–.75 (2025).

<sup>18</sup>Proposed Rule, *supra* n.1 (regulatory impact analysis).

<sup>19</sup>Exec. Order No. 12,866, § 1(b)(11), 58 Fed. Reg. 51,735, 51,736 (Sept. 30, 1993); Exec. Order No. 13,563, §§ 1(b), 6, 76 Fed. Reg. 3821, 3821–22 (Jan. 18, 2011).

<sup>20</sup>Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Jan. 31, 2025).

<sup>21</sup>*FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); see *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

<sup>22</sup>*Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).

<sup>23</sup>*Kisor v. Wilkie*, 588 U.S. 558, 573–79 (2019).

requires,”<sup>24</sup> and to text clear enough that they “know what is required of them so they may act accordingly.”<sup>25</sup>

Finally, we commend ACF for including an express severability provision and for explaining, provision by provision, that the remainder of part 1301 can operate if any single section is set aside.<sup>26</sup> Severability language like this is inexpensive to draft but invaluable if the rule is challenged.<sup>27</sup>

### **The Proposed Rule Advances the Health, Well-Being, and Educational Outcomes of Children.**

While the NPRM reduces federal prescription nearly everywhere, it does not do so indiscriminately. It strengthens those requirements in precisely the areas where Congress has told the Secretary that federal standards matter most.

Proposed § 1301.04(c) would require “a minimum of 30 minutes of physical activity for every three and a half hours that the child participates in the program,” conducted outdoors when weather permits, and would integrate intentional movement into daily routines. Proposed § 1301.04(b) would structure meals and snacks as learning opportunities and encourage family-style dining.<sup>28</sup> These modest requirements have well-documented developmental returns and fall squarely within the Secretary’s charge in the Head Start Act to set standards governing health and nutritional services and physical development.<sup>29</sup>

Proposed § 1301.04(a) would require education to be conducted in English and require programs to prioritize English instruction for children who do not speak it, with an express accommodation permitting Indian Head Start agencies to use tribal languages tied to heritage preservation.<sup>30</sup> In the Head Start Act, Congress directed the Secretary to adopt school-readiness standards addressing, among other areas, English language acquisition for limited-English-proficient children.<sup>31</sup> Proposed § 1301.04(a) gives that direction effect. Children least likely to acquire a command of English elsewhere are precisely those Head Start exists to serve.

Proposed § 1301.02(c)(4) would end the practice of accepting self-attestation as proof of eligibility.<sup>32</sup> Head Start is a finite benefit for impoverished families, and every slot filled on an undocumented determination of eligibility is a slot denied to a child the Act prioritizes. Tightening documentation is a pro-child integrity measure that reduces risk and mitigates the misuse of funds.

Proposed § 1301.14’s five percent cap on development and administrative costs works toward the same end. It is consistent with levels used in several other HHS programs, and already the operating range for many Head Start programs across the country. Currently, § 644(b) of the Act sets a 15 percent ceiling.<sup>33</sup>

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<sup>24</sup>*Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156 (2012) (cleaned up).

<sup>25</sup>*FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

<sup>26</sup>Proposed Rule, *supra* n.1 (severability) (explaining that if proposed § 1301.14 “is invalidated by a court, all other provisions in 1301 can function independently of 1301.14”).

<sup>27</sup>*Cf. Gavett v. Alexander*, 477 F. Supp. 1035, 1050 n.38 (D.D.C. 1979) (“If the statute contains a severability clause, there is a presumption of severability; if, as here, there is no such clause, it is presumed that the statute is not severable.”).

<sup>28</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. § 1301.04(b)–(c)).

<sup>29</sup>Head Start Act § 641A(a)(1)(A)–(B), 42 U.S.C. § 9836a(a)(1)(A)–(B).

<sup>30</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. §§ 1301.04(a), 1301.17(d)); *see* 45 C.F.R. § 1302.31(b)(2) (2025).

<sup>31</sup>Head Start Act § 641A(a)(1)(B)(i), 42 U.S.C. § 9836a(a)(1)(B)(i).

<sup>32</sup>Proposed Rule, *supra* n.1 (proposed 45 C.F.R. § 1301.02(c)(4)).

<sup>33</sup>Head Start Act § 644(b), 42 U.S.C. § 9839(b).

Proposed § 1301.14 would bring administrative spending well below that level and redirect the difference to needed services. ACF projects that the rule’s reinvestment effects could support approximately 116,516 additional Head Start Preschool slots and 45,578 additional Early Head Start slots by 2031.<sup>34</sup> If even a fraction of that estimate is realized, this rule will have done more to expand access to Head Start than any regulatory action in a generation without expending a single dollar in new appropriations.

## **RECOMMENDED CLARIFICATIONS AND IMPLEMENTATION GUIDANCE**

While DE enthusiastically supports the proposed rule, we offer the following recommendations to strengthen it and to reduce the likelihood of avoidable disputes during implementation.

### **Ensure that deference to State law never leaves a program without a published standard.**

Proposed § 1301.05 ties group size and ratios to “applicable” State and local law. Some programs, however, operate in settings that State licensing law exempts or does not reach. These include license-exempt school-based and faith-based settings, programs on tribal land, and programs in federal facilities. The final rule should state expressly that where no state or local standard applies, the program must adopt, publish, and adhere to its own written maximum group size and ratio, and that the published figures are enforceable as a term of the award. The Department should also clarify how the cross-reference to Child Care and Development Fund regulations operates where CCDF standards and state licensing standards diverge.

### **Address section 641A(a)(2)(C)(ii) of the Act expressly in the final rule.**

Section 641A(a)(2)(C)(ii) provides that revisions to the PPS may 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 standards as in effect on December 12, 2007.”<sup>35</sup> DE believes the proposed rule satisfies that provision by removing regulatory prescription about how services are delivered and documented, not the services themselves. In several respects—physical activity, nutrition, and eligibility integrity, among others—the NPRM even strengthens that provision. However, the preamble does not say so, and because the Department will *not* receive judicial deference on that question, the final rule should include a reasoned explanation of why each rescission is consistent with the Head Start Act’s 2007 statutory baseline. That explanation costs the Department little now while foreclosing a potential line of statutory attack.

### **Publish a list of rescinded provisions and align the effective date with the program year.**

ACF has invited comment on implementation timing.<sup>36</sup> Two steps would materially reduce confusion. First, and concurrently with the final rule, the Department should publish a list of each rescinded regulatory provision and the statutory obligation, if any, that continues to bind grantees. This would prevent a recipient from mistaking the removal of § 1302.11 of the PPS for repeal of the Act’s community-assessment requirement, and ensure that monitoring under § 641A(c) is conducted solely against the new regulatory text.<sup>37</sup> Second, the final rule should take effect at the beginning of a program

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<sup>34</sup>Proposed Rule, *supra* n.1 (regulatory impact analysis).

<sup>35</sup>Head Start Act § 641A(a)(2)(C)(ii), 42 U.S.C. § 9836a(a)(2)(C)(ii).

<sup>36</sup>Proposed Rule, *supra* n.1 (requesting comment on implementation timing).

<sup>37</sup>Head Start Act § 641A(c), 42 U.S.C. § 9836a(c); *see also* 45 C.F.R. pt. 1304, subpt. F (2025).

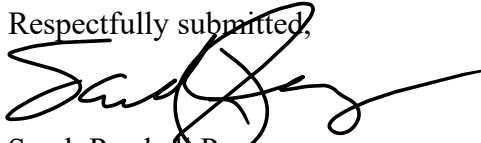
year, with at least one full program year between publication and applicability, so grantees are not obliged to restructure staffing, licensing arrangements, and family eligibility in the middle of a school year.

## CONCLUSION

The Department's NPRM does what deregulatory rulemaking ought to do. It removes federal requirements that duplicate state law and the Head Start Act. It returns decision-making authority to the states, local programs, and parents closest to the communities served by the Head Start program. It preserves and strengthens health, nutrition, physical activity, and eligibility protections Congress has identified as federal childhood priorities. In the end, it redirects more than a billion dollars each year from paperwork and regulatory obligations to the children who will directly benefit from Head Start programs across the country, all without spending a single additional taxpayer dollar.

DE respectfully urges the Department to finalize the proposed rule with the clarifications and implementation guidance described above, so that programs, states, parents, and the children they serve can proceed with the certainty federal law demands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sarah Parshah Perry', with a long horizontal flourish extending to the right.

Sarah Parshah Perry  
Vice President  
Defending Education