

21 September 2026

Zachary Rogers
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Comments on Proposed Revisions to the Education Department General Administrative Regulations
Docket ID ED–2026–OPEPD–2542 | RIN 1875–AA14

Dear Mr. Rogers:

TESOL International Association (TESOL) respectfully submits these comments in response to the U.S. Department of Education’s notice of proposed rulemaking concerning the Education Department General Administrative Regulations (EDGAR), published at 91 Fed. Reg. 54666 (August 24, 2026).

TESOL is an individual membership organization advancing the expertise of professionals who teach English to speakers of other languages at all levels of education. Its more than 8,000 members include teachers and instructors, teacher educators, researchers, program administrators, coordinators, supervisors, and students working in PreK–12 education, adult education, higher education, and international settings.

TESOL has a direct interest in these regulations as a federal award recipient and an indirect interest because educators, state and local educational agencies, institutions of higher education, nonprofit organizations, and other award recipients use Department funds to provide English learner services, prepare and support educators, conduct and disseminate research, and participate in professional learning. These activities affect English learners of all ages, as well as their families and communities.

TESOL supports the Department’s goals of effective grant administration, responsible stewardship, stronger outcomes, and clear requirements for recipients. Several proposed revisions, however, would introduce uncertainty into grant administration, weaken the connection between funding decisions and documented grantee performance, or reduce the consideration of barriers that directly affect English learners. TESOL therefore urges the Department to revise the proposal so that grantees are evaluated against governing law, published program requirements, approved applications, award terms, and objective evidence of performance.

Summary of Recommendations

- Do not authorize termination of discretionary grants solely “for convenience.” Any termination should rest on statutory authority, material noncompliance, failure to make substantial progress, lack of appropriations, or another objective ground stated in advance, with notice and a meaningful opportunity to respond.
- Retain the limitation in § 75.253 that continuation decisions rely on relevant information regarding grantee performance and retain the priority for continuation awards before new awards are made from funds available for the same program.

- Do not add executive orders as an independent compliance obligation in § 76.700. If executive orders are referenced, clarify that recipients must comply only to the extent an order lawfully applies to them and is implemented through applicable law, regulation, or enforceable award terms.
- Remove the undefined “merit,” “high standards,” “proxies,” and “political views” provisions in §§ 75.500(f), 76.500(f), and parallel § 75.210 factors, or define them narrowly and objectively without displacing existing civil rights laws or lawful efforts to expand opportunity.
- Do not create a competitive preference based on an applicant’s willingness to accept an indirect cost rate below its negotiated rate. At minimum, prevent that preference from outweighing project quality, statutory priorities, need, or expected outcomes.
- Retain meaningful scoring consideration of equitable access, barriers to participation, relevant lived and professional experience, and social and emotional development. Ensure that “target population” expressly includes English learners where consistent with the authorizing statute and competition.
- Use frontloading only when it advances program continuity and is supported by transparent criteria, adequate appropriations, and safeguards against diminished future competitions. Clarify the treatment of interest, cash management, reporting, continuation decisions, and closeout.
- Retain Federal Register publication of discretionary grant notices and priorities, while also using Grants.gov, to preserve a stable, searchable, and broadly accessible public record.
- Preserve transparent, consistent evidence standards and the role of independent review, including the What Works Clearinghouse, while recognizing high-quality evidence suited to English learner populations and multilingual contexts.

Comments on Specific Provisions

Section 75.210 General Selection Criteria

TESOL supports selection criteria that reward strong project design, qualified personnel, meaningful family and community engagement, evidence-informed practice, and measurable outcomes. We also recognize that “target population” can be a workable term when a competition appropriately defines the people whom the authorizing statute and program are intended to serve. The concern is not the terminology alone; it is the cumulative removal or weakening of factors that prompt applicants and reviewers to identify barriers, explain how participants will gain meaningful access, and include relevant expertise in project design and implementation.

English learners are not a monolithic population. Their access to educational programs may be affected by English proficiency, age, disability, interrupted formal education, migration or refugee experience, geographic isolation, economic disadvantage, or limited access to qualified educators. A facially uniform project can therefore produce unequal access or weak results if its design does not account for language-related barriers. Section 427 of the General Education Provisions Act continues to require applicants to describe steps to ensure equitable access and participation. Removing the required scoring factor concerning the quality and sufficiency of those strategies would reduce the incentive for applicants to provide a rigorous response and would limit reviewers’ ability to distinguish a meaningful plan from a cursory assurance.

TESOL recommends retaining a scored factor addressing the quality and sufficiency of strategies for equitable and adequate access and participation, including barriers based on language, national origin, migration, disability, economic disadvantage, and rural location. If the Department retains the term “target

population,” it should clarify in notices and reviewer guidance that the term includes the population identified by the governing statute and may include English learners, adult English learners, immigrant and refugee learners, and educators serving those populations.

TESOL also urges the Department to retain consideration of personnel who have relevant professional or personal experience with the population served. Effective English learner programs require specialized knowledge of language development, second-language acquisition, valid assessment, family engagement, and the interaction between language proficiency and access to grade-level or career content. Relevant experience is a project qualification; it need not be treated as a demographic preference.

The proposed deletion of “social, emotional” development from § 75.210(c)(2)(xvii) is also concerning. Academic achievement and social and emotional development are not mutually exclusive. Some English learners have experienced forced migration, conflict, family separation, interrupted schooling, or other trauma, while others face the ordinary social demands of learning in a new language and educational system. Projects should be permitted to address those needs when germane to the program. TESOL recommends retaining the existing reference or revising the factor to encompass academic development and other student needs that materially affect educational participation and outcomes.

Finally, TESOL opposes adding selection factors that reward applicants for adopting undefined conceptions of “merit,” “high standards,” or prohibited “proxies.” Reviewers should score the quality of the proposed project and its compliance with applicable law, not an applicant’s embrace of a policy formulation whose meaning is uncertain. The Department should remove these factors or replace them with a neutral factor assessing compliance with applicable federal nondiscrimination law.

Section 75.228 Preference for Lower Indirect Cost Rates

TESOL appreciates the Department’s interest in directing the greatest possible share of federal funds toward program activities and outcomes. TESOL itself has experience operating with constrained indirect cost recovery. Nevertheless, a competitive preference for applicants that voluntarily charge less than their federally negotiated indirect cost rate could distort merit review and disadvantage institutions that lack unrestricted funds to subsidize federal projects.

Indirect costs support functions that are necessary to responsible grant administration, including accounting, human resources, information technology, facilities, procurement, data security, legal compliance, and audit readiness. Smaller nonprofit organizations, regional institutions, community colleges, and public entities may be less able than well-resourced applicants to absorb these costs. The proposed preference could therefore favor applicants based on their capacity to subsidize the government rather than the quality, need, or likely impact of their projects.

TESOL recommends withdrawing proposed § 75.228. If the Department proceeds, it should (1) use the preference only where authorized and appropriate to the specific program; (2) limit the number of preference points so that an inferior project cannot overtake a materially stronger application; (3) exempt applicants using the de minimis rate or a restricted rate required by statute; (4) assess likely effects on small entities and under-resourced institutions; and (5) make clear that declining to waive a negotiated rate will not be treated negatively outside the published preference.

Section 75.252 Frontloading of Multiyear Awards

TESOL does not oppose frontloading categorically. In appropriate circumstances, obligating available funds for future budget periods may improve continuity and reduce uncertainty. But frontloading shifts appropriated resources into current obligations and may reduce funds available for future competitions or continuation awards. It may also create additional cash-management, accounting, audit, and closeout responsibilities for recipients, particularly if funds are obligated in advance but may be drawn only for costs attributable to later budget periods.

The final rule should therefore establish transparent criteria for when frontloading is appropriate; state that frontloading does not authorize premature drawdown or expenditure; explain how unobligated balances, interest, reporting, continuation review, and termination will be handled; and assess effects on the number and size of future awards. The Department should also clarify that a frontloaded award creates no broader termination authority than a conventionally funded award.

Frontloading does not resolve TESOL's concern with termination for convenience. Even if funds have been obligated, an unexpected termination can strand personnel commitments, contracts, participant services, and partnerships. Conversely, if the Department can readily recover or deobligate frontloaded amounts, the purported continuity benefit is diminished. Clear, objective termination standards remain necessary in either case.

Section 75.253 Continuation of a Multiyear Project

TESOL urges the Department to retain the existing limitation that continuation determinations consider relevant information "regarding grantee performance." A multiyear award induces recipients and partners to hire personnel, enter agreements, develop curricula and research plans, recruit participants, and organize services around an approved project. Continuation funding should therefore turn on appropriations, statutory requirements, award conditions, and documented performance, not changing policy preferences unrelated to the recipient's compliance or progress.

The Department should also retain the existing priority for continuation awards before using funds available for the same program to make new awards. That priority promotes sound planning, protects participants from abrupt service disruption, and respects the competitive process through which an existing grantee was selected. If the Department needs flexibility, it can preserve a narrow exception for inadequate appropriations, material noncompliance, failure to make substantial progress, or another objective condition identified in the notice and award.

TESOL further recommends preserving meaningful notice and review. A decision not to continue a multiyear award can have the same practical effect as a termination. Labeling that action as something other than a "withholding" should not eliminate review where the General Education Provisions Act or another statute provides procedural protections.

Sections 75.500 and 76.500 Merit and Political Views

Recipients already must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and other applicable laws. TESOL supports compliance with these protections. The proposed additions are unnecessary and introduce undefined terms, such as "merit," "high standards," "proxies," and "political views", that do not provide recipients with adequate notice of the conduct required or prohibited.

The reference to “proxies” is especially uncertain. Neutral criteria such as English proficiency, first-generation status, geography, income, or prior educational opportunity may correlate with protected characteristics yet be directly relevant to a program’s lawful purpose. English learner status itself often overlaps with national-origin considerations, but schools and grantees must be able to identify language needs and provide appropriate services. The final rule should not suggest that the use of language proficiency or other neutral, program-relevant criteria is unlawful merely because of correlation.

The prohibition on compelled statements concerning undefined “political views” presents similar problems. Without a definition and limiting standard, recipients may not know whether the provision reaches ordinary statements concerning professional ethics, academic freedom, nondiscrimination obligations, pedagogical approach, or fidelity to an approved project. TESOL recommends removing proposed paragraph (f). At minimum, the Department should replace it with language tied directly to applicable constitutional and statutory obligations and clarify that it does not prohibit lawful, job-related assurances of professional competence, nondiscrimination, or compliance with award requirements.

Section 75.901 Suspension and Termination

TESOL opposes proposed § 75.901(a)(2), which would authorize termination “[f]or convenience of the Secretary or pass-through entity.” Grants are assistance instruments through which Congress and agencies advance public purposes. Recipients reasonably rely on an award, its approved scope, and its stated conditions. A standard allowing termination without an objective, award-related reason would weaken predictability, discourage capable applicants, increase contingency costs, disrupt services, and impair the partnerships on which education grants depend.

This concern is acute in English language education. A terminated award may interrupt educator preparation cohorts, adult English classes, family-engagement activities, research involving longitudinal data, or services delivered through schools and community partners. The consequences fall not only on the recipient but also on learners, educators, and communities that did not control the disputed policy decision.

TESOL recommends deleting “for convenience” as a ground for termination. The regulation should instead identify objective grounds, including material noncompliance, failure to make substantial progress after appropriate technical assistance or corrective action, loss of statutory authority or appropriations, mutual agreement, recipient request, or a specific condition disclosed in the notice and award. Except where immediate action is required to protect health, safety, or federal funds, recipients should receive written reasons, access to the evidence relied upon, a reasonable opportunity to respond or cure, and meaningful administrative review. Any termination decision should also include an orderly transition and closeout plan designed to minimize harm to participants.

Section 76.700 Compliance with Executive Orders

TESOL recommends that the Department not add executive orders as an independent category of recipient obligation. States and subgrantees should be able to determine their responsibilities from the Constitution, statutes, duly promulgated regulations, approved state plans and applications, and enforceable award terms. Executive orders direct the operations of the Executive Branch and may change, be revoked, be enjoined, or be held unlawful. Listing them without qualification would create a moving compliance target for formula programs established by Congress.

If the Department retains the reference, the final rule should state that a recipient must comply only with provisions of an executive order that lawfully and expressly apply to that recipient and have been implemented through an applicable statute, valid regulation, or enforceable term incorporated into the award after appropriate notice. The rule should also provide that a recipient will not be found out of compliance based solely on an Executive order that conflicts with a statute, exceeds lawful authority, has been stayed or enjoined, or was not part of the governing conditions when relevant obligations were undertaken.

Additional Areas for Department Consideration

Publication of Grant Notices and Priorities

TESOL urges the Department to retain Federal Register publication while also using Grants.gov. The Federal Register provides an authoritative, stable, searchable record of agency action and alerts stakeholders who monitor education policy but may not be registered for a particular Grants.gov category. Dual publication improves access for small organizations, new applicants, and professional associations that help disseminate opportunities to the field. Administrative savings should be weighed against reduced notice, transparency, and public accountability.

Evidence Definitions and Independent Review

TESOL supports clearer evidence definitions and the responsible use of strong, moderate, and promising evidence. The Department should preserve transparent and consistent standards and the value of independent review, including the What Works Clearinghouse, rather than leave applicants and reviewers uncertain about whether the same study will be assessed differently across competitions.

Evidence requirements should also account for the realities of English learner research. Valid studies must identify language proficiency, educational setting, age, program model, and other features that affect whether findings transfer to a different population. The Department should encourage disaggregated reporting and valid, reliable outcome measures for multilingual participants. It should also recognize promising evidence and well-designed evidence-building where a specialized population, emerging intervention, or small program makes a large experimental study impracticable.

Clarity for English Learner Services and Lawful Access Measures

Across the final rule, the Department should make clear that identifying English learners, assessing language proficiency, providing language instruction and appropriate accommodations, communicating with families in languages they understand, preparing qualified educators, and using culturally and linguistically responsive practices are not prohibited preferences or proxies. These activities may be required or supported by Title VI of the Civil Rights Act, the Equal Educational Opportunities Act, the Elementary and Secondary Education Act, approved grant objectives, and other applicable authorities. Regulatory language should not chill lawful services intended to provide meaningful access.

Data and Analysis Needed for the Final Rule

Before finalizing the rule, TESOL encourages the Department to analyze and disclose: (1) the frequency and grounds for discontinuing or terminating Department grants; (2) the effects of such actions on participants and recipient costs; (3) how an indirect-cost preference would affect small entities, community colleges, rural entities, and nonprofit organizations; (4) the likely effect of frontloading on future competitions and

continuation awards; and (5) whether removing scored access factors changes the distribution or quality of funded projects serving English learners and other populations facing barriers. A record addressing these practical effects would improve the Department's ability to select workable, durable approaches.

Conclusion

TESOL appreciates the Department's effort to update EDGAR and its invitation for public comment. We share the goals of strong outcomes, responsible use of public funds, and clear accountability. Those goals are best served by stable rules, objective performance standards, transparent notice, and meaningful consideration of the learners and communities whom federal education programs are intended to serve.

TESOL respectfully asks the Department to revise the proposed rule consistent with the recommendations above. In particular, the final rule should preserve the connection between grant decisions and documented performance; avoid termination without objective cause; remove undefined standards that duplicate or blur existing law; maintain meaningful review of access barriers; and protect fair competition among applicants with different levels of institutional resources.

TESOL may be reached by contacting Jeff Hutcheson, Director of Public Affairs, at jhutcheson@tesol.org.

Respectfully submitted,

TESOL International Association