

September 21, 2026

Nicholas Kent
Under Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2025-OPE-1042

Dear Under Secretary Kent,

Executive Summary

The Foundation for Individual Rights and Expression (FIRE) submits this comment in response to the Department of Education's proposed regulations governing recognition of accrediting agencies. FIRE welcomes the Department's attention to academic freedom, freedom of expression, and intellectual inquiry. Accreditors wield substantial power over institutions of higher education, acting as gatekeepers to more than $100 billion in annual federal student aid. That authority makes it important both that accreditors respect constitutional and institutional speech protections and that federal regulation of accreditation not become a tool for ideological control.

FIRE supports several of the Department's proposals while recommending targeted changes to others:

- **FIRE supports provisions preventing accreditors from interfering with First Amendment compliance.** § 602.15(f) properly recognizes that accreditors must not prevent public institutions from satisfying their constitutional obligations or private institutions from honoring similar speech protections they voluntarily adopt. The Department should, however, delete § 602.15(f)'s exception for religious institutions, which confusingly gives religious institutions less autonomy to adopt robust expressive protections.
- **Faculty evaluation requirements should include safeguards for academic freedom.** FIRE takes no position on tenure itself and does not oppose periodic faculty evaluation or post-tenure review. But §§ 602.17(a)(2)(i), (ii), and (iv) could allow implementation by institutions in ways that weaken protections

against viewpoint-based retaliation. The Department should make clear that evaluations must use articulated standards and fair procedures and that "staffing flexibility" cannot serve as a vehicle for punishing protected expression.

- **The Department should distinguish constitutional obligations at public institutions from voluntarily assumed commitments at private institutions.** FIRE supports strong, viewpoint-neutral academic freedom and First Amendment protections at public universities like those §§ 602.17(a)(2)(iii) and (v) specify. At private universities, however, a federal requirement that every secular institution adopt a federally prescribed academic freedom regime, as required by § 602.17(a)(2)(iii), raises substantial concerns about federal encroachment on institutional autonomy. The better approach is to ensure private institutions faithfully honor the academic freedom protections they voluntarily choose to provide.
- **The Department should eliminate provisions requiring accreditors to interpret religious doctrine.** Several provisions ask accreditors to determine whether a religious institution's academic freedom or intellectual inquiry policies are "consistent with" its religious mission. This is unconstitutional. The First Amendment generally leaves questions of religious doctrine and religious mission to religious institutions themselves. The Department must not enlist federally recognized accreditors to make those determinations.
- **Institutions should promote intellectual diversity by creating and protecting conditions for open inquiry, not by engineering ideological outcomes.** FIRE agrees that meaningful exposure to competing ideas, arguments, methods, and schools of thought is an educational good. But vague requirements to "promote, and appropriately prioritize" intellectual diversity risk encouraging ideological quotas, compelled curricular balance, viewpoint-based personnel decisions, and ideological auditing. The final rule should expressly reject those approaches and clarify its focus on whether institutions provide an environment in which faculty and students can raise, test, and debate ideas without viewpoint-based retaliation.
- **Accreditors should maintain meaningful procedures for third-party complaints.** FIRE has repeatedly encountered accreditors that refuse to consider complaints alleging violations of the accreditor's academic freedom and free expression standards simply because those complaints come from third parties. The Department should clarify §§ 602.23(c)(1) and (l) so that accreditors cannot categorically disregard credible allegations of noncompliance on that basis.

I. Introduction

FIRE is a nonpartisan nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought, with a particular emphasis on our nation's campuses. For more than 25 years, FIRE has defended freedom of expression and academic freedom in higher education through policy and legislative reform, public advocacy, research, and litigation. FIRE also regularly defends students and faculty who face threats to their expressive rights and has repeatedly engaged accreditors when institutions they accredit behave in ways inconsistent with the accreditor's own academic freedom or freedom of expression standards.

Accreditation has a substantial effect on institutional policy. Federally recognized accreditors determine which institutions may participate in federal student aid programs. Their standards therefore influence policies governing faculty, curriculum, institutional governance, academic freedom, and expression. The Department's proposal expressly recognizes that role and would amend § 602.17 to establish more detailed expectations concerning faculty policies, academic freedom, and intellectual diversity.[1] It would also require viewpoint neutrality in accrediting decisions under § 602.18.

FIRE agrees with much of what motivates these proposals. Academic freedom and freedom of expression are already widely recognized as essential components of educational quality. Several major accreditors expressly incorporate them into their standards. Yet FIRE's experience has shown a significant gap between those standards on paper and their enforcement in practice. FIRE has repeatedly alerted accreditors to institutional actions implicating the accreditor's academic freedom and expression standards only to receive no substantive response, a bare acknowledgment, or a refusal to consider a complaint because FIRE is a third party.

FIRE likewise agrees with the Department that intellectual diversity—exposure to a variety of ideas and viewpoints—is an important component of effective pedagogy and a liberal arts education. A university cannot fulfill its academic mission if students and faculty are deterred from challenging prevailing views, testing controversial

[1] We note that 20 U.S.C.A. § 1099b(o) requires the Secretary to establish regulations for recognizing accreditors but prohibits the Secretary from "promulgat[ing] any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5)." Yet § 602.17(a)(2) of the proposed regulations describes what an accrediting agency must evaluate when applying its standards regarding faculty, even though "faculty" is among the topics listed under subsection (a)(5). Some have accordingly argued that these regulations are statutorily barred. The Department argues that subsection (o) "means that the Secretary may establish recognition criteria governing whether an accrediting agency functions as a reliable authority under Section 496, while leaving to accrediting agencies the responsibility for developing and applying their own substantive accreditation standards." Because FIRE's chief focus lies in academic freedom and free speech, this comment focuses on the substance of the proposed regulations and does not attempt to resolve the dispute.

hypotheses, debating contested questions, or shielded from particular viewpoints. The Department similarly explains that engaging differing perspectives can sharpen critical thinking and encourage meaningful discussion among students and faculty.

But intellectual diversity is difficult to translate into regulation without creating its own threats to academic freedom. An accreditor or government agency charged with ensuring that a college maintains the "right" ideological mix can quickly move from protecting open inquiry to prescribing particular results. FIRE therefore urged the Department earlier this year—in our response to its Request for Information for its Accreditation Handbook[2]—to understand intellectual diversity as a set of institutional conditions that enable open inquiry, rather than an outcomes-based demand for particular ideological representation. That approach encourages more speech and protects academic freedom without requiring government officials or accreditors to decide which viewpoints deserve representation or what constitutes an ideologically "balanced" academic program.

The Department itself recognizes the importance of these limits. The proposal's preamble states that it is not intended to prescribe particular institutional policies or override institutional autonomy. It also explains that accreditors are not intended to become arbiters of constitutional law or civil rights disputes. But some of the Department's proposals to require accreditors to adopt particular policies undercut those important assurances. The final regulatory text should preserve them.

FIRE accordingly offers the following comment on those provisions most directly implicating freedom of speech, academic freedom, and institutional autonomy.

II. Analysis

A. Section 602.15(f): Accreditors should not restrict institutions from complying with the First Amendment or adopting comparable protections.

FIRE supports the Department's proposal to ensure that accreditors do not restrict public institutions from fulfilling their First Amendment obligations. Federally recognized accreditors wield tremendous power over institutions by acting as gatekeepers to billions of dollars in federal funding. The government must ensure that these gatekeepers are not wielding their authority in a way that prevents public institutions from complying with core constitutional obligations.

FIRE also supports the Department's proposal to ensure that accreditors do not maintain standards that prohibit private universities from voluntarily adopting similar speech-protective policies. Although private universities are not state actors

[2] *Foundation for Individual Rights and Expression, Comment on Request for Information: Updates to the Accreditation Handbook*, Regulations.gov (Jan. 26, 2026), https://www.regulations.gov/comment/ED-2025-OPE-1009-0052.

subject to the First Amendment, they are free to adopt these standards in order to ensure robust, wide-open campus debate. The government—and gatekeepers to federal funds—should welcome this decision, not stand in its way.

However, we are concerned with the proposal's carveout for institutions that have a religious mission. As written, this provision perversely guarantees *the least* amount of institutional autonomy to religious universities. An accreditor would be barred from restricting a *secular* private university's First Amendment-compliant policies, while remaining free to restrict such policies at a *religious* university.

Although some religious institutions choose to limit their academic freedom policies on religious grounds, others choose to adopt robust protections. In fact, many institutions specifically cite their religious beliefs as the basis of these protections. For example, the Association of Catholic Colleges and Universities explained in an amicus brief to the D.C. Circuit Court of Appeals:

> "A Catholic university," in the words of *Ex corde Ecclesiae*, "is a place of research, where scholars scrutinize reality with the methods proper to each academic discipline, and so contribute to the treasury of human knowledge." *Ex corde Ecclesiae* ¶ 15. Academic freedom is an "essential component" of this religious identity. *Application* art. 2(2). Catholic colleges and universities must therefore "take steps to ensure that all professors are accorded 'a lawful freedom of inquiry and of thought, and of freedom to express their minds humbly and courageously about those matters in which they enjoy competence.' " *Id.*[3]

It is not the place of the government, nor that of a government-recognized accreditor, to question a religious institution's interpretation of its own doctrine and how that doctrine applies to academic freedom.[4] Accordingly, we suggest deleting the religious exception in § 602.15(f) to safeguard institutional autonomy and prevent accreditors from erecting roadblocks to free and open inquiry.

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[3] Brief for *Amicus Curiae* Association of Catholic Colleges and Universities in Support of Petitioner, *Duquesne Univ. of the Holy Spirit v. Nat'l Lab. Rels. Bd.*, 2018 WL 3323899, at *16.

[4] *See, e.g., Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1263 (10th Cir. 2008) (noting state scrutiny of whether the university's "stated commitment to academic freedom could be squared with [its] statement of religious beliefs" constitutes "intrusion into religious affairs"); *Duquesne Univ. of the Holy Spirit v. Nat'l Lab. Rels. Bd.*, 947 F.3d 824, 835 (D.C. Cir. 2020) (criticizing a federal agency's refusal "to accept that faculty members might contribute to a school's religious mission by exercising their academic freedom, even though many religious schools understand the work of their faculty to be religious in just this way.").

B. Section 602.17(a)(2): Application of faculty-related accreditation standards

(a) Sections 602.17(a)(2)(i), (ii), and (iv): Faculty evaluation and instructional staffing

FIRE does not oppose requiring accreditors to evaluate whether institutions regularly review faculty performance or maintain sufficient flexibility in instructional staffing. We write only to note that these provisions may implicate tenure. And while FIRE takes no position on whether tenure itself should exist, we recognize that it offers valuable security against punishments for protected expression. Accordingly, any provisions with the potential to modify it should be clear and include safeguards for academic freedom.

For example, institutions and agencies may interpret § 602.17(a)(2)(i-ii) to require post-tenure review, given that these provisions address whether faculty—not just untenured faculty—are "regularly evaluated" and receive performance evaluations "on a periodic basis." Such reviews are not necessarily harmful but are not immune to abuse.[5] Therefore, we suggest clarifying that evaluations should be conducted using clear standards articulated in advance and channeled through procedures that guard against arbitrary decision making.

Similarly, the language in § 602.17(a)(2)(iv) regarding "flexibility in instructional staffing" may disincentivize institutions from offering tenure, given that tenure inherently restricts such flexibility by limiting valid grounds for termination. We suggest clarifying that this provision is not designed to weaken tenure as a tool for safeguarding academic freedom, but rather is designed to ensure that institutions have viewpoint-neutral policies in place to respond to material changes like those listed in the provision.

(b) Section 602.17(a)(2)(iii): Academic freedom protections

Section 602.17(a)(2)(iii) requires accreditors to evaluate whether institutions maintain academic freedom protections that are clearly articulated and consistently applied regardless of viewpoint or ideology. FIRE supports this provision as applied to

[5] *University of Oklahoma: Plot to Punish Professor for Political Beliefs, Whistleblowing*, FIRE, https://www.fire.org/cases/university-oklahoma-plot-punish-professor-political-beliefs-whistleblowing (describing incorporation of professor's letters to a newspaper into performance reviews); Brief of *Amicus Curiae* Foundation for Individual Rights & Expression in Support of Plaintiff-Appellant and Reversal, *Porter v. Bd. of Trs. of N.C. State Univ.*, 2022 WL 4131493, at *25 (describing Porter's allegation that administrators retaliated against his protected speech by creating deficiencies to be used in post-tenure review); Jack Stripling, *Window on College's Troubled Soul*, Inside Higher Ed (Aug. 30, 2009), https://www.insidehighered.com/news/2009/08/31/window-colleges-troubled-soul (professor with historically strong reviews receiving a poor review after filing suit against university alleging retaliation for his criticism of it).

public universities, which are constitutionally prohibited from retaliating against faculty on the basis of their viewpoints.[6]

The provision is more complicated as applied to private institutions. Many private colleges voluntarily promise robust academic freedom,[7] and many accreditors already require academic freedom as a condition of accreditation.[8] FIRE has long urged both institutions and accreditors to take those commitments seriously. But a federal regulation that effectively *requires* every secular private institution to maintain viewpoint-neutral academic freedom protections is different from holding a private institution to commitments it *voluntarily* undertakes.

That's a meaningful distinction. Private institutions possess expressive and associational interests protected by the First Amendment.[9] Some private colleges are organized around particular academic, philosophical, or institutional missions. Those institutions may choose to provide extensive academic freedom while reserving some authority to ensure that faculty activity remains consistent with the institution's stated mission. That institutional autonomy is protected by the First Amendment. A federal funding condition that eliminates that discretion raises serious First Amendment concerns.

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[6] *See, e.g.*, *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957) ("The essentiality of freedom in the community of American universities is almost self-evident"); *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (declaring academic freedom "a special concern of the First Amendment"); *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021) ("professors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship"); *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019) ("'classroom discussion' is protected activity); *Demers v. Austin*, 746 F.3d 402, 412 (9th Cir. 2014) ("We conclude that *Garcetti* does not — indeed, consistent with the First Amendment, cannot — apply to teaching and academic writing"); *Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 563 (4th Cir. 2011) (holding that *Garcetti* should not be applied to the classroom speech "in the public university setting.").

[7] *See, e.g.*, *Academic Freedom at Johns Hopkins*, Johns Hopkins University, https://provost.jhu.edu/wp-content/uploads/2017/08/AcademicFreedomatJohnsHopkins.pdf ("Our university is committed to the steadfast protection of the right to academic freedom"); *Academic Freedom*, New York University, https://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook/the-faculty/other-faculty-policies/academic-freedom.html?challenge=d06e90d7-4d8f-4b88-9d8c-10b73beb60f1 ("Faculty are entitled to full freedom in research [. . .] Faculty are entitled to freedom in the classroom in discussing their subject").

[8] *See, e.g.*, *Standards for Accreditation and Requirements of Affiliation | Fourteenth Edition*, Middle States Commission on Higher Education (July 1, 2023), https://www.msche.org/standards/fourteenth-edition/ (requiring "a commitment to academic freedom, intellectual freedom, freedom of expression"); *Criteria for Accreditation*, Higher Learning Commission, https://www.hlcommission.org/accreditation/policies/criteria/ ("The institution supports academic freedom and freedom of expression in the pursuit of knowledge as integral to high-quality teaching, learning and research"); *NWCCU 2020 Standards*, Northwest Commission on Colleges and Universities, https://nwccu.org/standards/ ("the institution adheres to the principles of academic freedom").

[9] *See, e.g., Stand With US Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 13 (1st Cir. 2025) (recognizing "MIT's freedom to encourage, rather than suppress, a vigorous exchange of ideas").

The Department can avoid those questions while still meaningfully protecting academic freedom. It should follow the approach it takes in § 602.17(a)(2)(v): Require public institutions to comply with constitutional requirements and require accreditors to evaluate whether private institutions honor the protections they voluntarily guarantee. That outcome would also align with FIRE's earlier recommendation that accreditors look beyond aspirational policy language and assess whether institutions actually follow their academic freedom and free expression commitments in practice.

(c) Section 602.17(a)(2)(iii): The religious-mission provision impermissibly requires inquiry into religious doctrine.

The last sentence of § 602.17(a)(2)(iii) threatens institutional autonomy at religious institutions and poses significant constitutional issues under the Religion Clauses of the First Amendment. It requires accreditors to evaluate whether a religious institution's academic freedom protections are "consistent with the institution's religious mission." Essentially, accreditors must determine whether a religious institution is properly implementing its own religious doctrine with regard to academic freedom.

This runs afoul of the First Amendment, which protects "the right of churches and other religious institutions to decide matters "of faith and doctrine" without government intrusion.[10] Courts apply this doctrine to educational institutions,[11] and universities are no exception.[12]

The U.S. Court of Appeals for the Tenth Circuit applied these constitutional limitations to similar regulation in Colorado. The scheme stipulated that before students could use state scholarships at a private university, the state had to evaluate (among other things) whether the university governing board's policies and decisions "reflect[ed]" a particular religion,[13] and whether the university had "a strong

[10] *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 186 (2012)). The Court grounded this protection on each Religion Clause: "State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Id.*

[11] See *id.* at 754–56 (highlighting "the close connection that religious institutions draw between their central purpose and educating the young in the faith.").

[12] *See, e.g., Colo. Christian Univ. v. Weaver*, 534 F.3d at 1261 (holding unconstitutional a state funding scheme in part because it required "trolling through a person's or institution's religious beliefs"); *Univ. of Great Falls v. N.L.R.B.*, 278 F.3d 1335, 1341 (D.C. Cir. 2002) (noting "constitutional concerns" with a federal agency's "intrusive inquiry" into the "'religious mission' of the university."); *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.").

[13] *Id.* at 1263.

commitment to principles of academic freedom."[14] The court declared the first condition unconstitutional because it required the state to ask "whether a university's educational policy on a given issue has 'the image or likeness of a particular religion'."[15] The court identified a similar problem with the academic freedom condition if it required the state to look beyond the university's own description of its policies. It explained that state scrutiny of whether the university's "stated commitment to academic freedom could be squared with [its] statement of religious beliefs" would present an "intrusion into religious affairs."[16]

The U.S. Court of Appeals for the District of Columbia Circuit reinforced these principles in 2020. The court rejected the National Labor Relations Board's assertion of jurisdiction over a Catholic university's adjunct faculty, emphasizing that this required the Board to assess the institution's religious mission and the adjunct faculty's "centrality" to that mission.[17] The court specifically criticized the Board's use of the school's academic freedom commitment as evidence of the employees' non-religious status. It explained that this move "impermissibly sided with a particular view of religious functions" and threatened to "embroil the government in line-drawing and second-guessing regarding matters about which it has neither competence nor legitimacy."[18] The court further criticized the Board's refusal "to accept that faculty members might contribute to a school's religious mission by exercising their academic freedom, even though many religious schools understand the work of their faculty to be religious in just this way."[19]

In sum, the government may not determine whether a religious institution is protecting academic freedom in a manner consistent with the institution's religious mission, and then condition access to federal funds on that determination. Doing so requires unconstitutionally "trolling" through religious beliefs.[20]

This constitutional problem is not solved by the accreditor acting on the government's behalf. Most importantly, § 602.17(a)(2)(iii) specifically commands this inquiry, leaving no question it originates with state action. Additionally, the Supreme Court has long held that the government generally cannot enlist a third-party to do what it is

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[14] *Id*. at 1266.

[15] *Id*. at 1263.

[16] *Id*. at 1266.

[17] *Duquesne Univ. of the Holy Spirit v. Nat'l Lab. Rels. Bd.*, 947 F.3d at 836–37.

[18] *Id*. at 835 (citing *Colo. Christian Univ.*, 534 F.3d at 1264–65).

[19] *Id*.

[20] *See, e.g., Univ. of Great Falls v. N.L.R.B.*, 278 F.3d at 1345 ("To probe further into the University's beliefs is to needlessly engage in the 'trolling' that *Amos*, *Smith*, *Mitchell*, and *Catholic Bishop* itself sought to avoid"); *see supra* note 12.

barred from doing directly.[21] But that's exactly what § 602.17(a)(2)(iii) does. It *requires* accreditors—acting under government instruction as gatekeepers to federal funds—to perform a task prohibited by the constitution.

To avoid this unconstitutional intrusion[22] and preserve institutional autonomy, we suggest deleting the last sentence of § 602.17(a)(2)(iii).

(d) The Department should revise its proposed academic freedom definition.

The preamble of the proposed rule includes a definition of academic freedom that the Department believes would meet the requirements of its proposed regulations. This definition recognizes some essential aspects of academic freedom—most importantly, the broad freedoms to research, publish, and teach. However, it provides too much discretion for administrators at public universities to maintain or impose a campus orthodoxy. For example, the definition does not explain what academic freedom protects faculty *from*; it includes provisions that protect classroom expression while failing to address other faculty activity, including scholarship and research; and it does not explicitly protect faculty who criticize their institutions. We propose language in our redline below that would address these gaps.

Additionally, some language is well intentioned but sufficiently vague or unqualified to invite mischief. For example, some of the definition's protections are limited to situations in which faculty speech is "germane to the subject." In general, this is an appropriate and longstanding limitation on academic freedom. However, the proposal's current language is unqualified and leaves room for abuse by administrators

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[21] *See, e.g., Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 190 (2024) ("a government official cannot do indirectly what she is barred from doing directly"); *Skinner v. Ry. Lab. Executives' Ass'n*, 489 U.S. 602, 614 (1989) ("the [Fourth] Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government"); *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (quoting *Lee v. Macon County Board of Education*, 267 F. Supp. 458, 475–76 (MD Ala.1967) ("(i)t is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.").

[22] This provision may also present issues under the Religious Freedom Restoration Act, which prohibits "substantially burden[ing] a person's exercise of religion" unless that burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C.A. § 2000bb-1. *See Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 717–18 (1981) (applying the Free Exercise framework that RFRA sought to restore and explaining: "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial".).

Additionally, this provision may require accreditors to undertake the same kind of inquiry that the ecclesiastical-abstention doctrine prohibits courts from undertaking. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. at 187 (citing *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696 (1976) for the proposition that civil tribunals may not second-guess religious institutions' determinations concerning matters of faith and discipline).

seeking a pretext to target dissenting views. Even a brief, offhand comment at the beginning or end of class might be sufficient to allow for punishment. State legislators aiming to protect academic freedom within its proper confines have recognized this risk. In Tennessee, for example, the legislature included qualifying language in its "germaneness" limitation.[23] We suggest the same language in our redline.

Similarly, we agree with the first prong of subsection (3) that the definition should not be interpreted to prevent institutions from pursuing intellectual diversity. However, the second and third prongs—regarding exposing *students* to "balanced presentation" and "a range of scholarly viewpoints"—are vague and invite regulation of campus discussions. Administrators could seize on this language to police such discussions for their preferred ideological balance.[24] Our redline thus deletes the second and third prongs and explicitly requires that relevant institutional policies be lawful.

Given that some institutions are likely to adopt the Department's proposed definition, we suggest the following amended language to prevent institutional abuse or workarounds:

> Academic Freedom:
>
> (1) Means the freedom of faculty, without fear of direct or indirect retaliation by the institution, to:
>
> > (i) conduct research, publish ~~their~~ findings, ~~and~~ teach, ~~without undue interference~~ and ~~engage in~~ discuss~~ion of~~ any matter germane to the subject, broadly construed, of the course being taught or the field being researched; ~~and~~
> >
> > (ii) speak and write as private citizens on matters of public concern ~~in their personal capacity~~, provided that such activities are lawful and comply with lawful applicable institutional rules and policies, and that faculty do not represent their views as those of the institution~~.~~; and
> >
> > (iii) contribute to intramural discussions regarding issues relevant to the institution, including by criticizing the institution and its agents,

[23] Tenn. Code Ann. § 49-7-2405 ("no faculty will face adverse employment action for classroom speech, unless it is not *reasonably* germane to the subject matter of the class *as broadly construed*, and *comprises a substantial portion* of classroom instruction") (emphasis added).

[24] *Catholic University: Administration Vetoes Antisemitism Event for Not Presenting "Both Sides"*, FIRE, https://www.fire.org/cases/catholic-university-administration-vetoes-antisemitism-event-not-presenting-both-sides; *University of Kansas Professor Reinstated After Four Month Investigation Into Classroom Speech*, FIRE, https://www.fire.org/cases/university-kansas-professor-reinstated-after-four-month-investigation-classroom-speech (documenting four-month investigation into professor after students complained about her views and handling of a discussion concerning race in higher education).

provided that such activities are lawful and comply with lawful applicable institutional rules and policies.

(2) Does not include the freedom during classroom instruction to introduce, or solicit discussion of, material that is not reasonably germane to the subject of the course being taught, broadly construed, and that comprises a substantial portion of classroom instruction.

(3) Nothing in this definition shall be construed to prohibit institutions or accrediting agencies from adopting and enforcing lawful policies reasonably designed to promote intellectual diversity, ~~the exposure of students to a range of scholarly viewpoints, or the balanced presentation of competing perspectives,~~ so long as such policies do not infringe the core protections of academic freedom described in this section.

C. Section 602.17(a)(2)(v): First Amendment protections

FIRE supports proposed § 602.17(a)(2)(v). It requires accreditors evaluating public institutions to consider whether they maintain consistently applied policies protecting First Amendment rights, while instructing accreditors to similarly evaluate private institutions that voluntarily guarantee comparable protections.

Public colleges and universities are constitutionally required to respect First Amendment rights.[25] Private institutions generally are not, but they are free to make comparable promises to students and faculty. Once they do so, those promises should be meaningful and provide students and faculty opportunities to contest institutional actions that violate their stated policies. Accreditation standards can appropriately consider whether institutions actually honor their policies.

FIRE therefore supports this provision, subject to one minor textual change. We suggest replacing "policies that protect the First Amendment" with "policies that uphold rights protected by the First Amendment." This appropriately reframes the relationship between students, institutions, and the First Amendment. Institutional policies do not "protect" the First Amendment themselves; they comply with the rights it guarantees.

This provision also provides a useful model for the Department's treatment of academic freedom elsewhere in § 602.17. The Department can impose constitutional expectations on public institutions while requiring private institutions to clearly disclose to students and faculty and consistently apply the expressive protections they voluntarily choose to adopt.

[25] *See supra* note 6.

D. Section 602.17(a)(2)(vii): Academic freedom and freedom of inquiry

Paragraph (vii) overlaps substantially with paragraph (iii). Subparagraph (A) repeats the requirement that institutions maintain clearly articulated academic freedom protections applied without regard to viewpoint or ideology. For the reasons explained above, FIRE supports that requirement as applied to public institutions but urges the Department to use an institutional policy-based approach for private institutions. The requirement that accreditors determine whether a religious institution's protections are "consistent with the institution's religious mission" also presents the same constitutional problem discussed above and should be removed.

Subparagraph (B), however, includes particularly valuable language. It directs attention toward academic freedom and freedom of inquiry in teaching, scholarship, and research, including the "conditions under which a range of academic perspectives may be expressed and examined without adverse action based on lawful viewpoints unrelated to professional or academic competence." That framing closely tracks the approach FIRE urged in its January comment: Intellectual diversity should be understood in terms of the institutional conditions that permit open inquiry, rather than mandates for particular ideological representation.

FIRE therefore supports the basic approach of subparagraph (B). We recommend, however, that the Department strengthen its germaneness language in the same manner described above. Faculty academic freedom in teaching should extend to expression reasonably germane to the subject matter of a course, broadly construed. Institutions retain legitimate authority to address expression that is not reasonably germane and that displaces a substantial portion of classroom instruction, but the regulation should not encourage administrators to scrutinize isolated remarks or reasonable pedagogical choices.

Subparagraph (C) also requires clarification. It provides that, "[i]n the case of a private institution," accreditors evaluate protections "if established" by the institution. That language appears to recognize that a private institution may decide whether to establish those protections at all. But subparagraphs (A) and (B), like paragraph (iii), appear to make the same protections mandatory for every secular private institution. The resulting ambiguity is confusing and should be resolved in favor of private institutions' autonomy to make their own pedagogical choices.

There also appears to be a small technical error in subparagraph (C). It refers to the "same or similar protections as those described *in subsections (i) and (ii) above*," but the relevant subsections are labeled as (A) and (B). The earlier subsections (i) and (ii) of § 602.17(a)(2) concern faculty qualifications and performance evaluations, neither of which are addressed in subsection (vii).

The Department should make clear throughout paragraph (vii) that public institutions must comply with applicable First Amendment and academic freedom obligations, while private institutions must clearly state and consistently honor the academic freedom protections they establish. That approach protects faculty against bait-and-switch policies without unnecessarily displacing private institutional autonomy.

E. Section 602.17(a)(2)(viii): Intellectual diversity

FIRE agrees with the Department that intellectual diversity is important to quality higher education. As FIRE explained in its January comment, intellectual diversity, understood as meaningful exposure to competing ideas, arguments, methods, and schools of thought, is a real educational good. A university cannot truly fulfill its mission if students and faculty are deterred from challenging prevailing views, testing controversial hypotheses, or debating contested questions.

The Department makes a similar point in the preamble. It explains that exposure to a diversity of thought can improve critical thinking, encourage students to express their own views, and promote meaningful discussion among students and faculty. FIRE agrees.

But proposed § 602.17(a)(2)(viii) goes beyond protecting the conditions in which intellectual diversity develops. It requires accreditors to require institutions to have a policy designed to "promote, and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty" and to measure student and faculty perceptions of the "range of viewpoints and perspectives" offered by an institution or program.

The phrases "promote" and "appropriately prioritize" are undefined, and their vagueness poses problems. What does it actually mean for an institution to "appropriately prioritize" intellectual diversity? It's anybody's guess, and some accreditors and institutions may overread the provision to require particular levels of ideological representation. The Department says it does not intend to prescribe institutional policies or override institutional autonomy. But the regulatory language could be misinterpreted in ways that do precisely that.

Intellectual diversity is especially fraught when treated as a measurable outcome. If an accreditor determines that an institution or department lacks sufficient ideological diversity, what follows? Institutions could reasonably infer that compliance requires terminating faculty because their political or ideological views are overrepresented. Administrators could pressure departments to alter curricula to achieve a preferred "balance" or micromanage class discussions. Faculty could face discipline, contract nonrenewal, or other adverse action because their viewpoints do not sufficiently contribute to a diverse department. And controversial disciplines, especially in the

humanities and social sciences, could face greater scrutiny when government officials disagree with their perceived philosophical orientation.

Those results would undermine academic freedom rather than strengthen it. FIRE therefore urges the Department to carry into the regulatory text the more speech-protective approach it has articulated elsewhere. Intellectual diversity should refer to institutional conditions that permit ideas to be raised, debated, tested, and criticized without viewpoint-based retaliation. It should not mean prescribed ideological representation.

The Department should expressly clarify that § 602.17(a)(2)(viii) does not require ideological quotas or targets in faculty hiring; viewpoint-based hiring, promotion, tenure, or termination decisions; compelled curricular "balance"; ideological audits of academic departments; or accreditor judgments about the substantive correctness of a discipline, methodology, or scholarly viewpoint.

The proposed requirement to measure student and faculty perceptions deserves particular caution. Surveys of whether students and faculty believe they can freely express dissenting views may provide useful information about institutional climate. FIRE itself regularly uses survey research to understand campus speech environments.[26] That said, we have cautioned against using campus climate surveys for purposes they are not well suited to serve.[27] Perception data can provide valuable insight into whether students and faculty feel comfortable expressing dissenting views, but it is an imperfect proxy for whether an institution actually protects intellectual diversity or complies with its legal and policy obligations. The Department therefore should clarify that it does not require, nor encourage accreditors to require, institutions to achieve particular survey results or treat unfavorable responses as evidence of noncompliance. Doing so risks turning a useful diagnostic tool into an outcomes-based measure of intellectual diversity, inviting accreditors to penalize institutions because respondents perceive the campus as insufficiently ideologically diverse.

To the extent § 602.17(a)(2)(viii)'s requirement that institutions "measure[] student and faculty perceptions" contemplates surveys or similar instruments, the Department should clarify that those measures are informational only and cannot themselves establish that an institution has failed to satisfy the standard.

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[26] *How We Rank Colleges on Free Speech*, FIRE, https://rankings.fire.org/methodology ("This year nearly 63,000 students at 262 schools shared their experiences with and attitudes towards free speech on campus.").

[27] Ryne Weiss, *Princeton president misunderstands FIRE data — and campus free speech*, FIRE (Oct. 31, 2025), https://www.fire.org/news/princeton-president-misunderstands-fire-data-and-campus-free-speech.

The Department should also preserve room for legitimate specialization. Universities and academic departments frequently organize around particular missions, disciplines, methodologies, or intellectual traditions. Accreditation has long evaluated institutions in light of their missions, and proposed § 602.18 retains that principle. A seminary, a military college, a "Great Books" program, a conservatory, or a specialized academic department need not mirror the ideological composition of higher education as a whole to provide a serious education. Intellectual diversity requirements should not push institutions toward sector-wide homogenization.

Finally, the provision directs religious institutions to maintain intellectual inquiry and student learning elements "consistent with the institution's religious mission." To the extent this requires an accreditor to determine what a religious institution's mission properly demands, it raises the same concerns with the religion clauses discussed above. The Department should permit religious institutions to define their own missions and academic commitments rather than requiring accreditors to interpret religious doctrine on their behalf.

F. Section 602.18(b)(4): Accrediting decisions should be viewpoint neutral while respecting institutional mission

FIRE supports the proposed addition of § 602.18(b)(4), which requires an accrediting agency to adopt and follow procedures ensuring that its decisions are neutral with respect to viewpoint and ideology unrelated to its accreditation policies or standards. Accreditors are quality-assurance bodies. Their decisions should not turn on whether accreditor officials approve of an institution's political or ideological orientation.

This requirement is particularly important when read alongside existing § 602.18(a), which requires agencies to consistently apply standards that "respect the stated mission of the institution, including religious mission." The proposed rule retains that language. The two provisions should work together. An accreditors' viewpoint neutrality does not mean every institution must itself embody the same set of viewpoints or adopt an ideologically neutral mission. It means the accreditor should apply legitimate quality standards without rewarding favored institutions or punishing disfavored ones because of viewpoint.

That principle should also guide implementation of § 602.17's academic freedom and intellectual diversity provisions. An accreditor should ensure public institutions respect applicable constitutional rights and may appropriately examine whether private institutions honor the commitments they make. But the accreditor should not use "intellectual diversity" to erase distinctive institutional missions or to impose ideological uniformity across higher education.

The proposed exception for an accrediting agency with a religious mission is sensible for the same reason. A religious accreditor may itself have an expressive or religious

mission relevant to the standards it applies. That is importantly different from § 602.15(f)'s exception, which allows an accreditor to restrict protections a religious institution has voluntarily chosen to provide.

G. Sections 602.23(c)(1) and 602.23(l): Third-party complaints

FIRE supports the Department's effort to improve the mechanisms through which students, faculty, and staff may communicate accreditation concerns directly to accrediting agencies. Proposed § 602.23(l) requires an agency to establish at least one structured mechanism for those constituencies to raise concerns about the agency's standards or an institution's compliance with them. The rule offers several possible mechanisms, including meetings during site visits, confidential interviews or focus groups, and independently administered surveys.

But the proposal does not address a recurring problem FIRE identified in our January comment: Some accreditors categorically refuse to consider complaints submitted by third parties, even when those complaints allege conduct directly implicating the accreditor's standards for academic freedom or free expression.

FIRE has repeatedly encountered this problem. When Hamline University declined to renew an art history instructor after she displayed medieval artwork depicting Muhammad in an art history course, FIRE complained to the Higher Learning Commission under its requirement that accredited institutions be committed to academic freedom and freedom of expression.[28] The Commission rejected FIRE's complaint because it did not accept third-party complaints. At Emerson College, FIRE alerted the New England Commission of Higher Education to a series of restrictions on student expression contrary to standards requiring the free pursuit and dissemination of knowledge.[29] The Commission declined to address FIRE's complaint in part because it would not address "individual grievances."

Other complaints have received little more response. FIRE notified the Middle States Commission on Higher Education of several instances in which New York University targeted pro-Palestinian expression despite Middle States' requirement that institutions demonstrate a commitment to academic freedom, intellectual freedom, and freedom of expression.[30] The Commission eventually stated that NYU had

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[28] *Hamline University: Art History Instructor Dismissed for Showing Class Medieval Islamic Artwork Depicting Muhammad*, FIRE, https://www.fire.org/cases/hamline-university-art-history-instructor-dismissed-showing-class-medieval-islamic-artwork.

[29] *Emerson College: Conservative Student Group Investigated for Distributing "China Kinda Sus" Stickers*, FIRE, https://www.fire.org/cases/emerson-college-conservative-student-group-investigated-distributing-china-kinda-sus-stickers.

[30] Graham Piro, *Letter to Middle States Commission on Higher Education*, FIRE (Sep. 26, 2024), https://www.fire.org/sites/default/files/2024/09/Accreditor%20Complaint%20to%20MSCHE%2C%20NYU%2C%20September%2026%2C%202024.pdf.

satisfactorily demonstrated compliance and closed the matter, providing little public indication of how it applied the relevant standard.

These examples reveal a significant enforcement gap. Strong academic freedom standards accomplish little if an accreditor will not meaningfully consider credible evidence that an institution has violated them, or make clear its position on whether the institution did so.

§ 602.23(c)(1) already requires an accreditor to review "any complaint it receives" against an accredited or preaccredited institution or program when the complaint relates to the agency's standards or procedures. The proposal further requires the institution to receive an opportunity to respond before the accreditor completes its review. Yet accreditor practice demonstrates that the phrase "any complaint" has not prevented agencies from categorically refusing third-party submissions.

The Department should therefore make explicit what the current language already appears to contemplate. § 602.23(c)(1) should clarify that an accreditor may not refuse to review a complaint solely because it was submitted by a third party. At minimum, an agency should accept a complaint submitted by counsel or an advocacy organization on behalf of an affected student or faculty member with that individual's authorization. And where a third party presents credible evidence of systemic noncompliance with an accreditation standard, the identity of the complainant should not immunize the underlying conduct from review.

§ 602.23(l) should likewise include a structured means for receiving such information. Nothing requires an accreditor to become a general-purpose tribunal for every campus controversy. An accreditor may reasonably determine that a particular dispute does not implicate its standards or reflects an isolated event rather than institutional noncompliance. But that judgment should follow consideration of the substance of the complaint, not a categorical rule against considering complaints from certain parties.

The Department should also consider requiring agencies to provide complainants with a substantive response. § 602.23(c)(1) requires review and follow-up action where necessary, but it does not require the accreditor to explain to the complainant whether the matter implicated an accreditation standard or why the agency closed the matter. A brief explanation would substantially improve transparency without transforming accreditation proceedings into litigation or requiring disclosure of confidential information.

III. Conclusion

FIRE welcomes the Department's renewed attention to the role that academic freedom, freedom of expression, and open inquiry play in educational quality. Accreditors should not pressure public institutions to violate the First Amendment,

prevent private institutions from honoring speech protections they voluntarily adopt, or make accreditation decisions based on ideological favoritism. The proposed rules make meaningful progress on each of those fronts.

The final regulations should also recognize the limits of accreditation as a tool for promoting expressive values. Academic freedom is strengthened when institutions protect faculty from viewpoint-based retaliation. Intellectual diversity is strengthened when students and faculty may question prevailing views, test contested propositions, and engage seriously with competing ideas. Neither goal is advanced by empowering government officials or accreditors to decide which viewpoints an institution ought to employ, which disciplines are ideologically acceptable, or how an institution should interpret its own religious commitments.

FIRE therefore urges the Department to revise the proposed regulations so that its academic freedom and intellectual diversity provisions protect the conditions for open inquiry while respecting the distinct constitutional position of private institutions, institutional mission and specialization, and the autonomy of religious institutions. As FIRE explained in its earlier comment, the federal government must not become the arbiter of which ideas count as sufficiently "diverse," nor should accreditors be drawn into ideological disputes within academic disciplines.

Finally, these protections must be capable of meaningful enforcement. FIRE's experience demonstrates that even strong accreditor standards can become little more than aspirational language when credible complaints are turned away without substantive review. Clarifying that accreditor complaint procedures must reach appropriate third-party submissions would make the Department's proposed protections considerably more effective.

FIRE appreciates the opportunity to comment on the proposed regulations.

Respectfully submitted,





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