



AMERICAN ATHEISTS

September 21, 2026

Aaron Washington
Office of Postsecondary Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Proposed Rulemaking on Accreditation, Innovation, and Modernization
RIN 1840-AD82

Dear Mr. Washington:

American Atheists, on behalf of its members, supporters, and constituents, writes in opposition to the Department of Education's (the "Department") Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies: Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions Proposed Rule (the "Proposed Rule"), specifically regarding the imposition of new and ambiguous standard regarding religious institutions. The proposed changes, particularly the language governing the application of "academic freedom" standards to institutions with a religious mission, demand that accrediting agencies make theological assessments and open the door to biased decisionmaking in which agencies favor certain religious institutions over others, and over secular institutions, in violation of the Establishment Clause of the First Amendment.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the "wall of separation" between government and religion created by the First Amendment. We strive to create an environment where atheists are accepted as members of our nation's communities and where bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building, and work to end the stigma associated with being an atheist in America.

As an organization that regularly defends the rights of nonreligious students and opposes any effort by the government to give favorable treatment to religious institutions of higher education, American Atheists opposes the Department's attempt to create a mechanism that is ripe for abuse by favoring institutions of higher education that have religious missions that align with the Administration's political objectives.

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The Proposed Rule Requires Accrediting Agencies to Make Theological Assessments in Violation of the Establishment Clause of the First Amendment.

It is axiomatic that, under the U.S. Constitution, the government is not competent to make theological determinations.¹ As the Supreme Court reiterated just last year, “[a] law that differentiates between religions along theological lines is textbook denominational discrimination.”² More specifically, the Supreme Court long ago declared that the government violates the First Amendment when it substitutes its own interpretation of theological matters for that of religious institutions themselves.³

Despite these clear statements of constitutional law, the Department’s Proposed Rule specifically gives accrediting agencies the authority to “evaluate[] whether” the academic freedom policies of a religious institution of higher education “are consistent with the institution’s religious mission and applied consistently to faculty.”⁴ This provision is precisely the sort of government interference in religious matters that the First Amendment “forbids.”⁵

The Proposed Rule Creates a Mechanism for Accrediting Agencies to Favor Certain Religious Institutions Over Others, and Over Secular Institutions, in Violation of the First Amendment.

Not only is the department constitutionally incompetent to “evaluate” whether a religious higher education institution’s academic freedom policies are “consistent” with its religious mission, but granting accrediting agencies the unbridled discretion to make such theological determinations renders the provisions doubly unconstitutional.

The Proposed Rule requires accrediting agencies to “evaluate[] whether [an] institution maintains academic freedom protections that are consistent with the institution’s religious mission and applied consistently to faculty regardless of appointment classification, race, or other immutable characteristics[,]”⁶ yet provides no guidance as to how accrediting agencies are to interpret an institution’s religious mission or, for that matter, the institution’s academic freedom policies. It only requires that agencies’ procedures be “neutral.”⁷

¹ *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 248 (2025); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 763 (2020), Thomas, J., concurring; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196-197 (2012), Thomas, J., concurring; *Lee v. Weisman*, 505 U.S. 577, 607 (1992); *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 7821 (1976).

² *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 248 (2025).

³ *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 7821 (1976).

⁴ Accreditation, Innovation, and Modernization, 91 Fed. Reg. 53940, 54008 (Aug. 20, 2026) (to be codified at 34 C.F.R. § 602.17(a)(2)(iii) and (vii)(A)).

⁵ *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 7821 (1976).

⁶ Accreditation, Innovation, and Modernization, 91 Fed. Reg. 53940, 54008 (Aug. 20, 2026) (to be codified at 34 C.F.R. § 602.17(a)(2)(iii) and (vii)(A)).

⁷ *Id.* at 54009 (to be codified at 34 C.F.R. § 602.18(b)(4)).

Moreover, that vague obligation to maintain neutrality does not apply when the accrediting agencies themselves may have religious missions.⁸

The broad and ambiguous provision giving accrediting agencies the authority base their decisions on the agencies' evaluation of the consistency of an institution's "religious mission" would grant those agencies unbridled discretion to deny accreditation to institutions of higher education based on whether the institution espouses beliefs that align with this Administration's ideological aims. Vest an agency with the unrestrained discretion to grant or deny accreditation on such a basis engenders risks to free expression and inevitably result in censorship.⁹

Conclusion

The Department's proposed changes to the accreditation process display a drastic departure from established constitutional precedent. The introduction of the vague and ideologically driven concept of a "academic freedom," particularly as applied to institutions of higher education with religious missions, demonstrates an attempt to engage in unlawful religious discrimination, seemingly intended to create space for accrediting agencies to favor institutions with religious missions that align with the Administration's political objectives. We urge the Department to withdraw this proposed rule change. Proceeding with this change would damage the credibility of accrediting agencies as well as institutions of higher education, and set a dangerous precedent for governmental overreach into activities protected by the First Amendment.

Sincerely,



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⁸ Id.

⁹ *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988).