

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

March 21, 2023

Dr. Nasser Paydar  
Assistant. Secretary for Postsecondary Education  
U.S. Dept. of Education, Office of Postsecondary Education  
LBJ Building, 400 Maryland Avenue, S.W.  
Washington, DC 20202

Re: Comment in support of proposed rule entitled Direct Grant Programs,  
State-Administered Formula Grant Programs

RIN #: 1840-AD72

Dear Asst. Secretary Paydar:

I am submitting a comment on behalf of the Freedom From Religion Foundation (FFRF) in strong support of this proposed rule, which rescinds harmful Trump-era regulations related to religious student groups on college campuses. FFRF is a national nonprofit organization with more than 40,000 members across the country, including members in all 50 states and the District of Columbia. FFRF works to protect the constitutional separation between state and church, and educates about nontheism.

Currently, 34 C.F.R. §§ 75.500(d) and 76.500(d)<sup>1</sup> prohibit colleges that receive Department funds from denying any benefits to religious student groups based on the group's "beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs." This is deeply problematic because it amounts to a license to discriminate, so long as the discrimination has an asserted religious justification.

We applaud the Department's proposal to rescind 34 C.F.R. §§ 75.500(d) and 76.500(d).

The current regulations go far beyond what is required to protect the First Amendment rights of religious students on campus. In fact, the current rule is so

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<sup>1</sup> Enacted pursuant to Executive Order 13864 (Mar. 21, 2019).

unnecessarily expansive that it tramples on the rights of third parties by prohibiting colleges from enforcing reasonable standards that exist to protect students from discrimination.

Blanket religious exemptions are unjustified and create a two-tiered system, where secular groups must follow all university policies, while comparable religious groups are immune from repercussions for violating those same policies so long as they assert a sincerely held religious belief. It is unsurprising that the current rule has created confusion and has fueled discrimination on campuses around the country.

The First Amendment provides adequate protections for religious student groups that are legitimately targeted or treated unfairly because of their sincerely held religious beliefs. Absent a bona fide First Amendment violation, religious student groups should be required to follow the same neutral, generally applicable rules as secular student groups. Rescinding these provisions restores the balance that colleges must strike between protecting the religious liberty of student groups and protecting the rights of other students.

College campuses famously provide young adults with an expansive variety of perspectives, stretching the empathy and awareness of future community leaders. Discrimination stifles this endeavor, which is why many colleges have an “all-comers” policy, meaning that student groups may not reject students from membership or leadership positions based on the applicant’s race, religion, sex, sexual orientation, gender identity, or other protected characteristics.

In a vile distortion of this inclusive goal, the current rule is based on the fantasy that all-comers policies discriminate against religious student groups. This is false, as all-comers policies invariably apply to all student groups equally. Rather than preventing discrimination, the current rule merely exempts religious groups from anti-discrimination policies, directly undermining its own supposed purpose.

The current rule conflicts with the 2010 Supreme Court case, *Christian Legal Society v. Martinez*, 561 U.S. 661, which confirmed that exempting religious student groups from an all-comers policy amounted to “preferential, not equal, treatment.” The Free Exercise Clause does not require this preferential treatment, and the Department has no basis to require it. The current rule also conflicts with broader anti-discrimination laws, such as Title IX, which prohibits colleges from discriminating based on protected characteristics. The current rule effectively forces colleges to violate Title IX, which has led to understandable confusion.

Removing this unjustified religious exemption to anti-discrimination policies is particularly appropriate given the fact that college students are less religious than ever. Non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 35 percent of Americans are non-Christians, and this includes the more than three-in-ten adult Americans (29 percent) who now identify as religiously unaffiliated.<sup>2</sup> Among Gen Z, at least 34 percent are religiously unaffiliated.<sup>3</sup> A recent survey found that 21 percent of Americans born after 1999 are not just unaffiliated, but identify as atheist or agnostic.<sup>4</sup> On increasingly pluralistic campuses, it is crucial that colleges be allowed to enforce clear rules that apply equally to all student groups.

Thank you for your efforts to allow colleges to protect their students and to create an environment that is as conducive to effective learning as possible. FFRF strongly urges the Department to finalize this proposed rule as it is currently written.

Sincerely,



Ryan D. Jayne  
Senior Policy Counsel

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<sup>2</sup> About Three-in-Ten U.S. Adults are Now Religiously Unaffiliated Pew Research Center (Dec. 14, 2021), [www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](https://www.pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

<sup>3</sup> Gen Z and the Future of Faith in America, Survey Center on American Life: <https://www.americansurveycenter.org/research/generation-z-future-of-faith/>

<sup>4</sup> *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), [www.barna.com/research/atheism-doubles-among-generation-z/](https://www.barna.com/research/atheism-doubles-among-generation-z/).