



FOUNDATION
AGAINST
INTOLERANCE
& RACISM

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September 21, 2026

Submitted electronically via www.regulations.gov

Aaron Washington
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Comment of FAIR in Support of Proposed §§ 602.17 and 602.18 — *Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies*,
Docket ID ED–2025–OPE–1042; RIN 1840–AD82; 91 Fed. Reg. 53,940 (Aug. 20, 2026)

Dear Mr. Washington:

The Foundation Against Intolerance & Racism (“FAIR”) respectfully submits this comment in support of the Department’s proposed amendments to 34 CFR §§ 602.17 and 602.18. FAIR is a nonpartisan civil rights organization dedicated to the principle that every person should be treated as an individual and judged on the content of their character, not on race, sex, religion, or point of view. Our work includes filing civil rights complaints with the Department’s Office for Civil Rights, supporting students and faculty who face adverse treatment for lawful expression, and developing educational materials built around multiple perspectives and civil discourse.

We submit our comment because accreditation has become one of the least visible and most consequential instruments of ideological conformity in American education. Accreditors are not only quality reviewers but also federal gatekeepers whose judgments determine access to more than \$100 billion in annual federal student aid. When that authority is used to require institutions to adopt a contested normative framework, a quality-assurance function becomes a licensing power over ideas. FAIR supports the Department’s proposed correction, and offers two clarifications and one structural observation.

I. FAIR supports proposed § 602.18(b)(4).

Proposed § 602.18(b)(4) would require a recognized agency to have “adopted and followed procedures to ensure that agency decisions are neutral with respect to viewpoint and ideology.” FAIR supports this requirement without reservation.

This is a principle that FAIR has long supported. A public institution may not condition a benefit on the surrender of a lawful viewpoint; viewpoint discrimination is “an egregious form of content

discrimination.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The Department should not extend federal recognition and control of federal student aid eligibility to a private intermediary that accomplishes indirectly what the First Amendment forbids the government to do directly. Codifying neutrality as a condition of recognition places the obligation where the leverage actually sits.

FAIR’s civil rights practice shows how that leverage often travels downstream. Requirements that originate in accreditation standards are first reproduced in institutional policy, then again in hiring and promotion criteria, and finally in the expectations placed on individual students and faculty, at which point the people affected have no practical recourse against a standard set several levels above them. Neutrality at the accreditor is the only meaningful intervention that reaches the whole chain.

II. FAIR supports proposed § 602.17(a)(2)(iii)–(viii), and asks that its limits be stated in the rule.

Proposed § 602.17(a)(2) would require agencies to evaluate whether an institution maintains academic freedom protections “applied consistently to faculty regardless of appointment classification, race or other immutable characteristics, viewpoint, or ideology”; policies protecting First Amendment rights at public institutions; and “a policy that is designed to support, promote, and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty.”

FAIR supports these provisions, and in particular supports the Department’s framing of intellectual diversity as a component of educational quality rather than a political objective. We believe this approach is correct. A student who encounters only one account of a contested question is undertrained, whatever the merits of that account. The proposed requirement that agencies consider measures of “student and faculty perceptions on the range of viewpoints and perspectives offered” is a sound way of ensuring that the standard is observable and not merely rhetorical.

The preamble also states that the Department’s “intent is not to prescribe specific institutional policies or override institutional autonomy, but rather to ensure that sufficient consideration is given to ensuring intellectual diversity is present on campus.” FAIR wholeheartedly agrees and respectfully urges the Department to place that limitation in the regulatory text rather than the preamble alone. A rule that requires institutions to maintain and apply a policy is a legitimate process requirement. A rule that requires a particular set of viewpoints among faculty would be a mandate of the same kind the rule is meant to eliminate, but pointed in a different direction. FAIR opposes all ideological mandates as such, not just the ones we disagree with, and a clarifying sentence in § 602.17(a)(2)(viii) would materially strengthen the rule against challenge.

III. Two clarifications the Department invited.

A. The qualifier in § 602.18(b)(4) may swallow the rule.

As drafted, § 602.18(b)(4) requires neutrality with respect to viewpoint and ideology “that are unrelated to its accrediting policies or standards.” Read naturally, that qualifier is circular: an agency wishing to retain an ideological requirement need only keep it written into its standards, at which point the viewpoint is “related to” those standards and the neutrality duty does not reach it.

The provision would then bind only ad hoc bias, which is the easiest form to deny and the rarest form in practice.

FAIR recommends that the Department either strike the qualifier or revise the paragraph to make clear that the neutrality obligation runs to the content of the agency’s standards themselves — for example, “neutral with respect to viewpoint and ideology, including in the adoption and content of the agency’s accrediting policies and standards.” Relatedly, proposed § 602.16(f) permits an agency to establish “any additional lawful accreditation standards.” FAIR requests that the Department confirm in the final rule that a standard requiring an institution, its faculty, or its students to affirm a contested viewpoint as a condition of accreditation is not a “lawful” standard within the meaning of § 602.16(f).

B. The religious-mission exception should turn on stated mission, not on doctrinal assessment.

The proposed rule exempts agencies with a religious mission from § 602.18(b)(4), and exempts institutions with a religious mission from portions of § 602.17(a)(2). FAIR supports both exceptions, which are consistent with section 496(a)(4)(A) of the HEA and with the Religion Clauses. FAIR asks the Department to clarify two points in the final rule.

First, the Department should confirm that the exception is triggered by the religious mission as the agency or institution itself articulates it and that an accreditor’s role is limited to assessing whether policies are consistent with that stated mission. Accreditors should not be placed in the position of evaluating the sincerity, orthodoxy, or sufficiency of religious belief, as this is an inquiry the Constitution does not permit and that no accreditor is competent to conduct.

Second, the two exceptions are differently scoped — one attaches to the agency, the other to the institution — and the rule does not say how they interact. The Department should state expressly whether a religiously affiliated institution accredited by a non-religious agency retains the § 602.17(a)(2) exception, as we assume it does. Absent that clarification, agencies will resolve the ambiguity inconsistently, which is precisely the outcome § 602.18 exists to prevent.

IV. Neutrality on paper requires independence and competition in fact.

A neutrality rule binds an accreditor only to the extent the accreditor has something to lose. Where a single agency is the sole recognized gatekeeper for an entire profession, the institutions it accredits have no alternative, no exit, and therefore no leverage. As a result, the agency’s only real accountability is to the Department, and only at recognition intervals.

Recent events in legal education illustrate this point. The American Bar Association’s accreditation standard requiring law schools to “demonstrate by concrete action a commitment to diversity and inclusion” remained in force for years through sustained criticism and significant intervening changes in antidiscrimination law. The ABA’s Council repealed that standard on September 8, 2026, weeks after the Department recommended in August 2026 that the Council’s federal recognition be withdrawn. Whatever view one takes of the underlying standard, this sequence speaks volumes: the correction followed external pressure on the accreditor’s own recognition, not

internal review. A monopoly accreditor faces little pressure to self-correct until its own recognition is in question.

FAIR also supports the conflict-of-interest controls proposed at § 602.15(e), which would bar an accrediting agency from sharing resources with, or soliciting feedback from, an affiliated trade association or professional organization, and would also prevent members of the standards-setting body from voting as members of the decision-making body. An accreditor housed inside an advocacy association cannot be neutral in fact unless it is independent in structure.

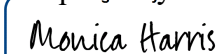
FAIR likewise supports the competition-enhancing provisions elsewhere in this NPRM: the codification at § 602.13 that recognition confers no antitrust immunity; the removal of geographic-scope restrictions at §§ 602.11 and 602.12; the amendments to § 600.11 permitting institutions to change accreditors, or hold more than one, on a showing of reasonable cause; and the Department's resumption of recognition of new agencies. We urge the Department to treat them as integral to §§ 602.17 and 602.18 rather than as separate reforms. We further request that the Department take affirmative steps to recognize additional accrediting agencies in fields currently served by a single recognized accreditor, including for J.D. programs. Viewpoint neutrality becomes self-enforcing only when an institution subject to an ideological requirement has options for accreditation.

V. Conclusion.

FAIR strongly supports proposed §§ 602.17 and 602.18 and urges the Department to adopt them, with the clarifications described above: regulatory text confirming that § 602.17(a)(2)(viii) imposes a policy obligation rather than a compositional one; revision of § 602.18(b)(4) so that the neutrality duty reaches the agency's own standards; and clarification of the scope and interaction of the religious-mission exceptions. Taken together with the Department's conflict-of-interest and competition provisions, these amendments would restore accreditation to its proper function, assure educational quality, and remove accreditation as an instrument for imposing orthodoxy on the institutions and individuals it governs.

We appreciate the opportunity to comment and welcome the chance to provide further information.

Respectfully submitted,

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