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Office of Postsecondary Education
U.S. Department of Education

RE: ED-2025-OPE-1042-0002

I write to you on behalf of the American Civil Liberties Union Foundation (“ACLU”) to submit this comment in response to the above-docketed notice concerning the Accreditation, Innovation, and Modernization: Secretary’s Recognition of Accrediting Agencies: Institutional Eligibility under the Higher Education Act, as Amended, Student Assistance General Provisions, which were published in the Federal Register on August 20, 2026.¹ The Proposed Regulations expand the scope of governmental intrusion into accreditation. Federal laws expressly prohibit the Department of Education’s (“ED”) attempt to introduce new accreditation criteria and to limit accreditors’ ability to utilize diversity, equity, and inclusion standards. Further, the Proposed Regulations weaken protections to ensure the quality of institutions and programs. We strongly oppose the Proposed Regulations.

For over 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in the country. With more than seven million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all fifty states, Puerto Rico, and Washington, D.C., for the right of every individual to access opportunity free of discrimination on the basis of race, color, religion, gender, sexual orientation, gender identity or expression, national origin, familial or marital status, status as a recipient of public assistance, or record of arrest or conviction. We have advocated against vague, unlawful policies, packaged as “anti-DEI,” that, in fact, undermine our civil rights and equal opportunity, at the federal, state, and local level.

The ACLU leads litigation challenging attempts to treat diversity, equity, and inclusion (“DEI”)² efforts as unlawful in schools, early childhood education, and research, in each case raising legal shortcomings that ED risks through the current rulemaking as well. In *National Education Ass’n v. U.S. Department of Education*, the ACLU successfully blocked enforcement of the Department’s February 14, 2025 Dear Colleague Letter, which threatened to treat DEI

¹ 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, 91 Fed. Reg. 53940 (proposed Aug 20, 2026) (to be codified at 34 C.F.R. pts. 600, 602, 668) [hereinafter *Proposed Regulations*].

² For purposes of this comment, the term “DEI” refers to diversity, equity, and inclusion efforts as well as diversity, equity, inclusion, and accessibility (“DEIA”) efforts.

efforts as unlawful and to withhold federal funding from schools.³ In *Washington State Ass’n of Head Start & Early Childhood Assistance & Education Program v. Robert F. Kennedy, Jr.*, the ACLU obtained a preliminary injunction against the enforcement of the U.S. Department of Health and Human Services’ (“HHS”) diversity, equity, inclusion, and accessibility (“DEIA”) ban in Head Start early education programs.⁴ The ACLU also represented biomedical researchers in *American Public Health Ass’n v. National Institutes of Health*, in which the district court held that the National Institutes of Health’s (“NIH”) purge of research on disfavored topics and populations—including purported “DEI” research—violated the Administrative Procedures Act.⁵ The ACLU represents researchers in a recent class action challenge to NIH’s policy of blocking grants to censor disfavored views.⁶

I. The Proposed Regulations Open the Accreditation Process to Political Gamesmanship and Jeopardizes Academic Freedom.

“The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’”⁷ Despite the Supreme Court’s unequivocal warning, the Proposed Regulations risk undermining academic freedom in America’s colleges and universities in a way that mirrors previous actions by ED. Attempting to regulate higher education by foreclosing instruction disfavored by the Trump administration has posed legal and policy shortcomings, and ED should heed these lessons to avoid repeating the same mistakes.

In a July 2023 campaign video, President Trump vowed to use the accreditation system as a “secret weapon” to “reclaim” institutions of higher education from his political opponents.⁸ But the freedom and independence of higher education is a pillar of our democracy. Even the appearance that accreditation has become a tool for political opportunism harms its vital function: ensuring the quality of institutions and programs. ED should thus take pains to reaffirm the independence of accreditors, and in turn, of the colleges and universities they review.

Other ED actions highlight the legal infirmities of ED’s approach. On February 14, 2025, ED issued a Dear Colleague Letter which announced that any educational program associated with DEI was a violation of Title VI of the Civil Rights Act of 1964 and targeted instruction

³ *Nat’l Educ. Ass’n v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025) (“NEA”).

⁴ *Wash. State Ass’n of Head Start & Early Childhood Assistance & Educ. Program v. Robert F. Kennedy, Jr.*, 820 F. Supp. 3d 1178 (W.D. Wash. 2026).

⁵ *Am. Pub. Health Ass’n v. Nat’l Insts. of Health*, 791 F. Supp. 3d 119 (D. Mass. 2025).

⁶ *Arghavan Salles v. Nat’l Insts. of Health*, No. 26-cv-10510 (N.D. Cal. Sep. 16, 2026).

⁷ *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (quoting *United States v. Assoc. Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943)).

⁸ Donald J. Trump, *Protecting Students from the Radical Left and Marxist Maniacs Infecting Educational Institutions*, at 00:20–30 (YouTube, May 2, 2023), <https://www.youtube.com/watch?v=iK1iAfm8nB4> [<https://perma.cc/YBB9-Y7SB>].

disfavored by the administration.⁹ ED threatened “serious consequences” for schools and educators who did not cease these prohibited practices, including the loss of all federal funding, clawback of previously issued funding, and individual liability.¹⁰ In a Frequently Asked Questions document about the Dear Colleague Letter, ED claimed it had authority to curb “themes in a class discussion” in higher education when students are required to “take certain positions on racially charged issues” or “mandat[ed] courses . . . emphasize and focus on racial stereotypes.”¹¹ As a result of *NEA* and two other lawsuits in different parts of the country, enforcement of the Dear Colleague Letter, including related implementation, was enjoined¹² and ultimately vacated.¹³ As those cases highlighted, ED’s efforts to restrict speech it disliked amounted to “textbook viewpoint discrimination,” violating the First Amendment.¹⁴

Next, President Trump issued Executive Order 14279, Reforming Accreditation to Strengthen Higher Education, on April 28, 2025.¹⁵ The Executive Order ordered ED to “hold[] accreditors accountable . . . including through denial, monitoring, suspension, or termination of accreditation recognition” if they utilized standards related to “diversity, equity, and inclusion,” which the order characterizes as a guise for unlawful discrimination.¹⁶ It also outlined “new principles” of accreditation, that, as discussed *infra* Section III(a)(i)–(ii), exceed ED’s statutory authority.

The Trump administration opened a multipronged investigation against Harvard University and drew accreditation into this effort. The administration threatened to withhold billions of dollars in federal funding unless Harvard agreed to various demands, including “‘hiring a critical mass of new faculty’ and ‘admitting a critical mass of students’ to provide the

⁹ Off. for C.R., U.S. Dep’t of Educ., *Dear Colleague Letter on Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard* (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf> [<https://perma.cc/TEP9-QRVJ>] [hereinafter *Dear Colleague Letter*].

¹⁰ U.S. Dep’t of Educ., *Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and SFFA v. Harvard* 3 (Apr. 3, 2025), <https://www.ed.gov/media/document/reminder-of-legal-obligations-undertaken-exchange-receiving-federal-financial-assistance-and-request-certification-under-title-vi-and-sffa-v-harvard-april-3.pdf> [<https://perma.cc/A8VQ-JRZB>]; see also *Dear Colleague Letter*, *supra* note 9, at 4; Decl. of David W. Samburg, *NEA*, 779 F. Supp. 3d at 149 (Apr. 8, 2025), Dkt. No. 45-1; Email from Off. for C.R. to Local Educ. Agencies on Apr. 3, 2025, *NEA*, 779 F. Supp. 3d at 149 (Apr. 8, 2025), Dkt. No. 45-2.

¹¹ Off. for C.R., U.S. Dep’t of Educ., *Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act* 7 (Feb. 14, 2025), <https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf> [<https://perma.cc/W54R-U26A>].

¹² *NEA*, 779 F. Supp. 3d at 149; *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 584 (D. Md. 2025); *NAACP v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025).

¹³ *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, 796 F. Supp. 3d 66 (D. Md. 2025).

¹⁴ *Id.* at 111 (quoting *NEA*, 779 F. Supp. 3d at 194).

¹⁵ Reforming Accreditation to Strengthen Higher Education, Exec. Order No. 14279, 90 Fed. Reg. 17529 (Apr. 28, 2025) [hereinafter *Reforming Accreditation*].

¹⁶ *Id.* at 17530.

governments preferred balance of viewpoint diversity; ‘reform[ing] and restructuring’ governance;” and “‘shutter[ing] all DEI programs ‘through structural and personnel changes.’”¹⁷ After Harvard rejected the offer, ED notified Harvard’s accreditor of its view that Harvard was in violation of non-discrimination laws and cited the obligation of accreditors to assure compliance or take appropriate action against the institution.¹⁸ Yet a court ruled that the administration’s coercive actions infringed the rights of Harvard’s faculty, noting that the Trump administration “unconstitutionally sought to force Harvard to better manifest the government’s favored worldview. . . . [by] urg[ing] and threaten[ing] Harvard [sic] to hire faculty and make curricula and research choices that better aligned with the government’s preferred viewpoints, to the detriment of professors and researchers with competing views.”¹⁹

Like these prior actions, the Proposed Regulations exceed the federal government’s authority, undermining rather than strengthening higher education as a critical democratic sector.

II. Congress Envisioned a Role for Accreditation that Ensured Quality While Protecting Academic Freedom.

a. Accreditors evaluate the quality of institutions and programs of higher education.

Accreditation of educational institutions and programs began in the late nineteenth century.²⁰ Accreditors “are private, voluntary organizations that are usually funded by the schools or programs they accredit,”²¹ and “[t]heir power to accredit comes not from the federal government, but from their member institutions.”²²

To ensure that schools receiving federal funds perform at a minimal level of quality, the Higher Education Act (“HEA”) of 1965 required institutions of higher education to be accredited by a recognized accreditation agency to be eligible to receive federal student aid funds.²³ Accreditors must receive recognition from ED “as a reliable authority as to the quality of

¹⁷ *Pres. & Fellows of Harvard Coll. v. U.S. Dep’t of Health and Hum. Servs.*, 798 F. Supp. 3d 77, 94 (D. Mass. 2025).

¹⁸ U.S. Dep’t of Educ., *U.S. Departments of Education and Health and Human Services Notify Harvard University’s Accreditor of Harvard’s Title VI Violation* (July 9, 2025), https://www.ed.gov/about/news/press-release/us-departments-of-education-and-health-and-human-services-notify-harvard-universitys-accreditor-of-harvards-title-vi-violation?_sp=354df32e-3543-40af-a426-f5ffdd37b09.1789052764978 [https://perma.cc/45JN-YGSP].

¹⁹ *Pres. & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 125.

²⁰ *Florida v. Sec’y, U.S. Dep’t of Educ.*, 180 F.4th 1340, 1342 (11th Cir. 2026) (citing Alexandra Hegji, Cong. Rsch. Serv., R43826, *An Overview of Accreditation of Higher Education in the United States* 1 (Apr. 12, 2024)).

²¹ *Id.* at 1342.

²² *Id.* at 1346; see also *North Dakota v. N. Cent. Ass’n of Colls. & Secondary Schs.*, 99 F.2d 697, 700 (7th Cir. 1938).

²³ Higher Education Act, Pub. L. No. 89-329, § 435, 79 Stat. 1219, 1248 (1965) (codified as amended in the Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (2008)).

education or training offered.”²⁴ However, accreditation was never intended to be subject to governmental control. ED even acknowledges that “the practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs.”²⁵ While accreditors are required to consistently apply and enforce academic standards, as ED elsewhere acknowledges, they are not intended to “have . . . control over educational institutions or programs.”²⁶

Accreditors determine whether an institution or program “(1) [m]aintains clearly specified educational objectives that are consistent with its mission and appropriate in light of degrees or certificates awarded; (2) [i]s successful in achieving its stated objectives . . . ; and (3) [m]aintains requirements that at least conform to commonly accepted academic standards.”²⁷ They also conduct site visits of institutions or programs to ensure compliance with the agency’s standards and require a self-study process to identify opportunities for improvement and a plan for improvement.²⁸ Accreditors must also ensure that institutions use processes to protect students, including ensuring the quality of distance learning, preserving student privacy, and notifying students of additional charges for identity verification.²⁹ They establish standards that are used to assess the performance of educational institutions and/or programs.³⁰

Upon satisfaction that the standards have been met, the accreditor grants accreditation to the institution or program and monitors to ensure continued compliance.³¹

b. Congress limited ED’s control over higher education.

Protecting against encroachment into academic freedom, Congress unequivocally restricted the scope of ED’s oversight of accreditors. Congress set out a list of ten areas for which accreditors are required to establish standards, including curricula; faculty; and facilities, equipment, and supplies.³² Beyond this, accreditors have the discretion to establish the content of

²⁴ 20 U.S.C. § 1099b(a).

²⁵ *History and Context of Accreditation in the United States*, U.S. Dep’t of Educ., <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/college-accreditation/overview-of-accreditation-united-states/history-and-context-of-accreditation-united-states> [<https://perma.cc/P4GX-GRTL>] [hereinafter *History of Accreditation*] (last visited Sep. 20, 2026).

²⁶ *Id.*; 20 U.S.C. § 1099b(a)(4)(A).

²⁷ 34 C.F.R. § 602.17(a)(1)–(3) (2020).

²⁸ *Id.* § 602.17(b)–(c), (e).

²⁹ *Id.* § 602.17(h).

³⁰ *History of Accreditation*, *supra* note 25.

³¹ *Id.*

³² 20 U.S.C. § 1099b(a)(5) (requiring accreditors to set standards for “(A) success with respect to student achievement . . . ; (B) curricula; (C) faculty; (D) facilities, equipment, and supplies; (E) fiscal and administrative capacity as appropriate to the specified scale of operations; (F) student support services; (G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising; (H) measures of program length and the objectives of the degrees or credentials offered; (I) record of student complaints received by, or

the standards, and to develop new standards. ED may not add criteria for accreditation, proscribe standards, or attempt to further specify the content of standards:

Nothing in this chapter shall be construed to permit the Secretary [of ED] to establish criteria for accreditors or associations that are not required by this section. Nothing in this chapter shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary [of ED] to establish any criteria that specifies, defines, or prescribes the standards that accreditors or associations shall use to assess any institution's success with respect to student achievement.³³

ED acknowledged these restrictions as recently as August 2025. “Congress made clear in the HEA that, while the Department is tasked with determining which private accreditors should be recognized under the HEA as reliable authorities as to the quality of education offered by an institution, setting substantive accreditation criteria is not a federal task.”³⁴

Similarly, the Department of Education Organization Act clarified that ED may not dictate academic instruction and it may not control accreditors:

No provision of a program administered by the Secretary [of ED] or by any other officer of the Department [of ED] shall be construed to authorize the Secretary [of ED] or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.³⁵

Finally, the General Education and Provisions Act expands these prohibitions on control of academic instruction to “any department, agency, officer, or employee of the United States.”³⁶

available to, the agency or association; and (J) record of compliance with its program responsibilities . . . based on the most recent student loan default data provided by the Secretary [of ED], the results of financial or compliance audits, program reviews, and such other information as the Secretary [of ED] may provide to the agency or association”).

³³ *Id.* § 1099b(g).

³⁴ Brief for Appellees at 8, *Florida*, 180 F.4th at 1340 (Aug. 26, 2025), Dkt. No. 53.

³⁵ 20 U.S.C. § 3403(b).

³⁶ *Id.* § 1232a (“No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.”).

III. The Proposed Regulations Would Illegally Overhaul Accreditation.

- a. Added requirements seek to reshape the substance of accreditors' review in ways expressly prohibited by federal law.**
 - i. The Proposed Regulations would expand the scope of accreditation review beyond ED's authority.**

The Proposed Regulations create new accreditation criteria by redefining the required standards. For example, current regulations require standards pertaining to faculty, but consistent with the HEA,³⁷ they do not enumerate specific criteria that accreditors must require an institution or program to meet. The Proposed Regulations attempt to shoehorn in additional criteria not enumerated by Congress. For example, accreditors would also be required to conduct a cost/benefit analysis of institutional activities as part of the facilities, equipment, supplies, and student support services standards.³⁸ Similarly, the Proposed Regulations add new criteria to the faculty standard, including policies related to academic freedom,³⁹ intellectual diversity,⁴⁰ scholarly integrity,⁴¹ the First Amendment,⁴² and civil rights.⁴³

The Proposed Regulations don't identify objective guidelines to assess the sufficiency of the new criteria. For example, they do not clarify how accreditors would know that the articulation of the academic freedom policy is sufficiently clear. The Proposed Regulations neither define "intellectual diversity," a phrase that is not generally recognized, nor offer objective guidelines to determine what conduct would be interpreted to "support," "promote," or "appropriately prioritize it." Absent fair notice of the meaning of the Proposed Regulations, accreditation review can be reduced from an indicator of institutional quality to a mere ideological test.

Adding criteria to accreditation standards aggregates ED's control over higher education. The Proposed Regulations give ED additional leverage to deny accreditors recognition if they do not enforce these provisions in a way that is palatable to the administration. The Proposed Regulations add conditions that must be satisfied for accreditation, leaving institutions and programs with few options outside of compliance with the administration's interpretation of these criteria because they need federal student financial aid. Notably, a court found similar conditions involving restrictions on the faculty, curricula, and research to be "unconstitutional coercion" against Harvard's faculty because they further the administration's worldview and required faculty "to alter their speech to save Harvard's funding."⁴⁴

³⁷ *Id.* § 1099b(g).

³⁸ *Proposed Regulations*, *supra* note 1, 91 Fed. Reg. at 53956 (to be codified at 34 C.F.R. § 602.17(a)(3)(i)–(ii)).

³⁹ *Id.* (to be codified at 34 C.F.R. § 602.17(a)(2)(iii)–(viii)).

⁴⁰ *Id.* (to be codified at 34 C.F.R. § 602.17(a)(2)(viii)).

⁴¹ *Id.* (to be codified at 34 C.F.R. § 602.17(a)(2)(iv)).

⁴² *Id.* (to be codified at 34 C.F.R. § 602.15 (f)).

⁴³ *Id.* (to be codified at 34 C.F.R. § 602.17(a)(2)(vii)).

⁴⁴ *Pres. & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 125.

The expanded criteria in the Proposed Regulations should be withdrawn because they are contrary to federal law. The HEA forecloses ED’s attempt to establish new accreditation criteria or to “define” or “proscribe” accreditation standards.⁴⁵ The Proposed Regulations are also impermissible under the Department of Education Organization Act and the General Education and Provisions Act because they attempt to give ED, a federal agency, control over academic instruction and accreditors that was never authorized by law.⁴⁶ These laws prohibit the Proposed Regulations that impose new accreditation criteria, as well as those that attempt to shield institutions from accountability by accreditors.⁴⁷

ii. The Proposed Regulations would improperly constrain the authority of accreditors to develop standards, including standards that reflect the profession’s recognition of the importance of diversity, equity, and inclusion.

The Proposed Regulations impermissibly restrict the standards accreditors can use and invite ongoing agency oversight of accreditation standards, a role clearly proscribed by the HEA.⁴⁸ The Proposed regulations prohibit accreditors from utilizing any standard that would “require violation of federal or state law, including preferences on the basis of race”⁴⁹ and “Title VI and IX and preferences based on race, color, national origin, or sex in admissions, hiring, and the selection of contracts.”⁵⁰

These provisions impose restrictions not enumerated by Congress and are thus categorically prohibited by the HEA. Beyond this, the terms of the Executive Order, which the Proposed Regulations purport to implement, suggest ED will enforce these provisions beyond the scope and meaning of Title VI and Title IX as established by court precedent. As prior actions have made clear, this approach exceeds constitutional bounds. For example, the now-vacated Dear Colleague Letter cited Title VI as its authority to prohibit teaching and other practices that ED disfavors, but three courts held that the ED’s approach violated the First Amendment.⁵¹

Additionally, the July 29, 2025 “Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination” issued by the U.S. Department of Justice (“2025 DOJ Guidance”)

⁴⁵ 20 U.S.C. § 3403(b).

⁴⁶ *Id.* §§ 1232a, 3403(b).

⁴⁷ *Proposed Regulations*, *supra* note 1, 91 Fed. Reg. at 53958–59 (to be codified at 34 C.F.R. § 602.17(g)), 53963–64 (to be codified at 34 C.F.R. § 602.23(h)), 53968–69 (to be codified at 34 C.F.R. § 602.28(d)).

⁴⁸ 20 U.S.C. § 1099b(g).

⁴⁹ *Proposed Regulations*, *supra* note 1, 91 Fed. Reg. at 53957 (to be codified at 34 C.F.R. § 602.17(g)).

⁵⁰ *Id.* at 53963 (to be codified at 34 C.F.R. § 602.23(h)).

⁵¹ *NEA*, 779 F. Supp. 3d at 193–96; *Am. Fed’n of Tchrs.*, 796 F. Supp. 3d at 111–14; *NAACP*, 779 F. Supp. 3d at 61–62.

characterizes DEI programs as “discriminatory.”⁵² It also provides examples of practices that it declared “may violate applicable Federal antidiscrimination laws,” including Title VI and Title IX. However, this list includes “‘overcoming obstacles’ narratives, or ‘diversity statements,’” which have been cited approvingly by the Supreme Court.⁵³ The use of such tools was specifically identified by the Supreme Court in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* as a potentially permissible admissions practice: “as all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”⁵⁴ One court has even described the 2025 DOJ Guidance as “inconsistent with Supreme Court precedent that has consistently declined to find constitutionally suspect the adoption of race-neutral criteria out of a desire to improve racial diversity and inclusion.”⁵⁵ The court went on to find that this “demonstrates that Plaintiffs are at the mercy of Defendants’ interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts.”⁵⁶

ED has already threatened to withdraw recognition of accreditors who have DEI standards. It sent letters warning two accreditors who suspended their DEI standards that they could receive adverse actions if they failed to abolish the standards.⁵⁷ Additionally, ED threatened to revoke recognition of the American Bar Association (“ABA”), the sole accreditor for *juris doctorate* programs, because it did not rescind a diversity and inclusion standard.⁵⁸ The ABA adopted a standard in 1981 that required law schools to demonstrate their commitment to diversity and inclusion by “concrete action.”⁵⁹ Executive Order 14279 specifically targeted the

⁵² U.S. Dep’t of Just., *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* 1 (July 29, 2025), <https://www.justice.gov/ag/media/1409486/dl> [<https://perma.cc/8H9X-GUBE>].

⁵³ *Id.* at 5.

⁵⁴ *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023).

⁵⁵ *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1249 (W.D. Wash. 2025) (quotation and citations omitted).

⁵⁶ *Id.*

⁵⁷ Josh Moody, *Kent Warns Accreditors Over DEI*, Inside Higher Ed (Mar. 18, 2026), <https://www.insidehighered.com/news/governance/accreditation/2026/03/18/kent-warns-accreditors-over-dei> [<https://perma.cc/TJ9U-B9GH>].

⁵⁸ Ben Unglesbee, *Education Department takes first step to strip ABA of accreditation authority*, Higher Ed Dive (Aug. 24, 2026), <https://www.highereddive.com/news/education-department-takes-first-step-to-strip-aba-of-accreditation-authori/828656/> [<https://perma.cc/3ZAU-GBVU>]; U.S. Dep’t of Educ., *U.S. Department of Education Staff Report to the Senior Department Official on Recognition Compliance Issues* (Sep. 23, 2026), https://d12v9rtnomnebu.cloudfront.net/paychek/ABA_FinalStaffReport.pdf?_sp=354df32e-3543-40af-a426-f5ffdd37b09.1789056113440 [<https://perma.cc/64C3-RXPZ>] [hereinafter *ED Recognition Compliance Issues*]; Am. Bar Ass’n, *Council-Approved Law Schools*, https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools/ [<https://perma.cc/AG3Z-Z4DX>] (last visited Sep. 20, 2026).

⁵⁹ Am. Bar Ass’n, *supra* note 58; Vimal Patel, *American Bar Association Ends D.E.I. Standards Under Trump Pressure*, N.Y. Times (Sep. 8, 2026), <https://www.nytimes.com/2026/09/08/us/american-bar-association-dei-standards-end.html> [<https://perma.cc/PQ5N-PAEB>].

ABA diversity standard and called for it to be “permanently eradicated.”⁶⁰ After ED recommended withdrawal of the ABA’s recognition in August 2026,⁶¹ the ABA voted to rescind the standard in September 2026.⁶²

The Proposed Regulations would permit ED to continually subject accrediting agency standards to its own evolving interpretations of federal civil rights laws, and further still, to its interpretation of state laws. In turn, to obtain accreditation, schools would be subject to these same standards.

b. Other proposed regulations weaken accreditors’ traditional role of ensuring quality of institutions and programs.

The HEA requires each accrediting agency to demonstrate that they have the requisite ability and experience,⁶³ yet the Proposed Regulations gut protections that ensure quality in accreditation. They make it easier for new accreditors to obtain recognition from ED without evidence that they are a reliable authority on the quality of institutions or programs. The current regulations require new accreditors to conduct accrediting activities for at least two years before seeking recognition.⁶⁴ They also command accreditors to maintain requirements that conform to commonly accepted academic standards⁶⁵ and to conduct accrediting activities through peer review by subject matter experts.⁶⁶ These requirements are consistent with the nature of accreditors as outgrowths of academia, whose power and authority comes from those member institutions themselves.

The Proposed Regulations would completely eliminate these requirements,⁶⁷ opening the door for recognition of unqualified accreditors. Coupled with the new requirements, these eliminations shift the source of accreditors’ authority from that of an autonomous governing body with roots in the academic community to an arm of ED with unprecedented reach into higher education institutions. At the same time, its role also shifts from a focus on the quality of systems and structures that enable a school to advance its mission, to weighing the value and permissibility of a school’s operations in their entirety. In untethering the standards from common academic standards and subject matter experts, these reviews are left to the whims of a political agency.

⁶⁰ *Reforming Accreditation*, *supra* note 15, 90 Fed. Reg. at 17529.

⁶¹ Unglesbee, *supra* note 58; *ED Recognition Compliance Issues*, *supra* note 58.

⁶² Patel, *supra* note 59.

⁶³ 20 U.S.C. § 1099b.

⁶⁴ 34 C.F.R. § 602.12(a)(2) (2020).

⁶⁵ *Id.* § 602.17(a)(3).

⁶⁶ *Proposed Regulations*, *supra* note 1, 91 Fed. Reg. at 53947–48 (to be codified at 34 C.F.R. § 602.3).

⁶⁷ *Id.* at 53948 (to be codified at 34 C.F.R. § 602.3), 53951 (to be codified at 34 C.F.R. § 602.12), 53955 (to be codified at 34 C.F.R. § 602.16–17), 54008 (to be codified at 34 C.F.R. § 602.17).

Further straying from Congressional authority, the Proposed Regulations weaken accountability and transparency for institutions and programs. They make it easier for institutions to shop around for accreditors, instead of improving quality, by minimizing the process to switch accreditors and permitting accreditation by more than one agency.⁶⁸ The Proposed Regulations also incentivize political overreach into higher education by insulating institutional governance of public institutions from review by accreditors.⁶⁹

Accreditors have previously stood as a bulwark against political objectives when they conflict with the standards informed by academic expertise. For example, the accreditor overseeing Florida's state universities has previously warned against the adoption of state political actors' selection of university leadership, raising concerns about experience and qualifications.⁷⁰ The State of Florida attempted to circumvent adverse action by arguing that accreditation is unconstitutional.⁷¹ In *Florida v. Secretary, U.S. Department of Education*, the Eleventh Circuit Court of Appeals explained that accreditors "do not rely on any delegation of government power" and are not government actors.⁷² Instead, "private educational accreditors preexisted the [HEA]. Their power to accredit comes not from the federal government, but from their member institutions who voluntarily submit to their authority and by laws."⁷³ The Proposed Regulations would substantially undermine, if not eliminate, the ability for accreditors to provide this role in supporting the independence of higher education.

Finally, whereas the current regulations only require review following an adverse action by another recognized accrediting agency, the Proposed Regulations would expand mandatory review to include an adverse action by any state or federal agency.⁷⁴ This change would put an institution or program's accreditation, and federal student financial aid funding, on the line any time a state or federal agency disagrees an action they have taken. Putting accreditation at jeopardy, even in instances unrelated to the quality of academic instruction, increases the odds that an institution or program will comply with the agency's demands, even when a defense may have been meritorious.

IV. Recommendation

Academic freedom, a "special concern of the First Amendment,"⁷⁵ protects classroom instruction and scholarship from the government interference through accreditors. The Supreme Court has repeatedly cautioned against attempts to "cast a pall of orthodoxy over the classroom,"

⁶⁸ *Id.* at 53946–47 (to be codified at 34 C.F.R. § 600.11(a)–(b)).

⁶⁹ *Id.* at 53963–64 (to be codified at 34 C.F.R. § 602.23(h)).

⁷⁰ *Florida*, 180 F.4th at 1343.

⁷¹ *Id.* at 1344.

⁷² *Id.* at 1346–47.

⁷³ *Id.* at 1346 (internal citations omitted).

⁷⁴ *Proposed Regulations*, *supra* note 1, 91 Fed. Reg. at 53968–69 (to be codified at 34 C.F.R. § 602.28(d)).

⁷⁵ *Keyishian*, 385 U.S. at 603.



specifically noting that “[t]he classroom is peculiarly the marketplace of ideas.”⁷⁶ Recognizing the higher education’s “vital role in a democracy,” the Supreme Court declared, “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”⁷⁷ The Proposed Regulations cross this line.

We urge ED withdraw the Proposed Regulations.

Sincerely,

/s/ Leah M. Watson

Leah M. Watson

⁷⁶ *Id.*

⁷⁷ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).