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Submitted via www.regulations.gov

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

RE: ED-2025-OPE-1042; 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

Dear Under Secretary Kent:

On behalf of the approximately 3 million members of the National Education Association (NEA), we submit the following comments in response to the Department of Education's (ED) proposed rule, *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*, published in the Federal Register on August 20, 2026.

NEA is deeply concerned that this proposed regulation will turn accreditation from an independent professional judgment about academic quality, made by expert peer reviewers, into an instrument of political influence. By doing so, the proposal threatens the very concept of academic freedom that is crucial to groundbreaking research and free thought and removes the requirement of expert peer review for accreditation, thereby eliminating the professional expertise to evaluate. We strongly urge the Department to withdraw this proposed rule in its entirety.

This proposal would extend federal recognition to organizations that have never accredited an institution, while making movement between accrediting organizations nearly automatic, opening the door to institutions opting into different accreditors to lower standards. The Department undertook this rulemaking to implement a presidential executive order, while acknowledging throughout the

Notice of Proposed Rulemaking (NPRM) that the supporting evidence is limited. Using the prospect of Title IV funding consequences, the Department is instituting extremist policies that the Administration attempted to enact in 2025. This proposal is not only a grave threat to the protections that have made American universities the research leaders of the world, but it also threatens core tenets of our democracy.

Academic Freedom and Intellectual Diversity (§§ 602.17(a)(2) and 602.18(b)(4))

NEA strongly opposes the Department's proposal to make accrediting agencies the federal arbiters of academic freedom and of campus viewpoints, as well as First Amendment rights. Academic freedom is not a professional courtesy extended to faculty, but crucial to the ability of universities to educate by ensuring the independence of faculty experts to teach and research within their areas of expertise, even if their views are not shared by politicians or administrators. This proposed regulation would place a federal agency, acting through an accreditor that holds the keys to Title IV eligibility, in the position of judging what faculty may teach and whether a campus offers an acceptable mix of political opinion, directly undermining deeply understood values of academic freedom and shared governance. The Department of Education, under the current Secretary of Education, has frequently spoken about the need for and importance of academic freedom, but the proposed rule would in fact threaten and limit it.

Proposed § 602.17(a)(2) would require accrediting agencies to evaluate whether an institution maintains academic freedom protections for faculty "in teaching, scholarship, and research within the subject matter of a course and research within their academic discipline."¹ Yet, this regulatory proposal actually does more to limit academic freedom than to establish it in the first place.

The proposed regulation's provisions related to academic freedom and intellectual diversity undermine the right of faculty, staff, and their academic institutions. Proposed § 602.17(a)(2)(viii) mandates that accreditors impose intellectual diversity requirements on institutions, and the policing of some undefined notion of academic freedom under Section 602.17(a)(2) threaten rights long recognized under the First Amendment. The U.S. Supreme Court has long held that educators do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."² In particular, at the higher education level, the Supreme Court has expressly carved out protection for faculty speech "related to academic scholarship or classroom instruction from the general rule that public employee job duty speech is not protected by the First Amendment."³ That protection of academic freedom dates back decades to the Court's ruling in *Keyishian v. Board of Regents*, that the First Amendment does not "tolerate laws that cast a pall of orthodoxy over the classroom."⁴ In that foundational case, the Court ruled that the First Amendment prohibited requiring faculty to certify under oath that they were not members of a subversive organization and would not distribute material advising or teaching about the violent overthrow of the government, explaining that:

¹NPRM at 53956

² *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)).

³ *Garcetti v. Ceballos*, 547 U.S. 410, 424-25 (2006).

⁴ 385 U.S. 589, 603-04 (1967).

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.... The classroom is peculiarly the ‘marketplace of ideas.’⁵

This respect for academic freedom at the higher education level not only recognizes that access to diverse voices, including expert opinions, is necessary to vibrant higher education institutions but also to our democracy.⁶ Academic freedom necessarily includes “teaching and academic writing that are performed ‘pursuant to the official duties’” of a college or university teacher or professor.⁷ This case law supports the opinions of experts recognizing that “[t]he continuation of academic freedom requires that researchers with expertise—not the federal government—remain the ultimate judges of what is taught and published.”⁸

As detailed below, the provisions requiring “intellectual diversity” and a potentially overly narrow definition of academic freedom under proposed Section 602.17(a)(2) threaten educators’ basic rights under the First Amendment of the U.S. Constitution.⁹ The vague and ambiguous language used to require “intellectual diversity” creates an environment where both the Department and their approved accreditors can threaten the loss of accreditation unless institutions and their faculty fall in line with the proposed requirement that campuses offer a “range of academic perspectives.” This is not an empty threat, given that the Department has already employed this strategy to require that accreditors remove DEI standards.¹⁰ Without guidance on how “intellectual diversity” is defined or evaluated, this regulation could give the federal government the authority to interpret and enforce the

⁵ 385 U.S. at 603.

⁶ See, e.g., Ashutosh Bhagwat, *The Democratic First Amendment*, 110 NW. U.L. REV. 1097, 1102–03 (2016); Robert Post, *Participatory Democracy and Free Speech*, 97 VA. L. REV. 477, 482, 488–89 (2011) (“[T]he best possible explanation of the shape of First Amendment doctrine is the value of democratic self-government.”); Robert A. Dahl, *What Political Institutions Does Large-Scale Democracy Require?*, 120 POL. SCI. Q. 187, 189, 193, 196 (2005); Robert A. Dahl, *THE PAST AND FUTURE OF DEMOCRACY* 11–12, www.circap.org/uploads (1999).

⁷ *Demers v. Austin*, 746 F.3d 402, 411–12 (9th Cir. 2014); *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021). See also *Josephson v. Ganzel*, 115 F.4th 771, 786 (6th Cir. 2024) (First Amendment protection extended to participation on a non-university panel connected to faculty member’s research); *Heim v. Daniel*, 81 F. 4th 212, 226 (2d Cir. 2023); *Adams v. Trs. of Univ. of N.C.-Wilmington*, 640 F.3d 550, 562–63 (4th Cir. 2011); *Porter v. Bd. of Trs. of North Carolina State Univ.*, 72 F.4th 573, 582 (*Garcetti* exclusion of protection does not extend to speech by public university faculty members, acting in their official capacity, that is “related to scholarship or teaching.”); *Buchanan v. Alexander*, 919 F.3d 847, 852–53 (5th Cir. 2019) (“academic freedom is a special concern of the First Amendment”) (cleaned up); *Kilborn v. Amiridis*, 131 F.4th 550, 557 (7th Cir. 2025) (“Every other circuit to decide the issue has recognized that *Garcetti* does not apply to university teaching or scholarship.”).

⁸ Madison Weiss and Sara Partridge, “How University Governing Boards Can Protect the Independence of Colleges and Universities” (Washington: Center for American Progress, 2025), available at <https://www.americanprogress.org/article/how-university-governing-boards-can-protect-the-independence-of-colleges-and-universities/>.

⁹ [Many of the Education Dept.’s Accreditation Ideas May Be Illegal, Experts Say](https://www.highereddive.com/news/education-department-official-warns-2-accreditors-over-dei-standards/815144/).

¹⁰ Natalie Schwartz, “Education Department official warns 2 accreditors over DEI standards,” *Higher Ed Dive*, March 18, 2026, available at <https://www.highereddive.com/news/education-department-official-warns-2-accreditors-over-dei-standards/815144/>.

“intellectual diversity” requirement so as to “destroy the independence that has made American higher education different, and better, than the more regulated systems across the rest of the world,” without preserving “public assurance of academic quality.”¹¹

During the negotiated rulemaking hearings in the Accreditation, Innovation, and Modernization (AIM) Committee, the Department proposed a strict definition of academic freedom. After negotiators dissented, it removed the definition from the regulatory text and reprinted it in the preamble as a “non-binding” model, noting that an agency or institution applying that definition “would meet the requirements of the E.O. and our proposed regulations.”¹² That the NPRM lists language defining what academic freedom is, even while specifically stating that it is “non-binding” and merely a recommendation for accreditors or institutions, is extremely troubling. The preamble is not subject to public comment and is not enforceable against the Department, yet by including the definition in the prologue, the Department has made clear to accrediting agencies which definition of academic freedom will satisfy the Secretary. While removing the definition of academic freedom after concerns were raised by committee members was the correct thing to do, it should be omitted from the rule altogether including from the preamble.

The Department’s effort to further chill academic freedom with language in the preamble that restricts material germane or unrelated to a course are also deeply problematic. Higher education has long recognized a norm against introducing material unrelated to the course.¹³ A discussion of what is germane and what is not is a matter of professional judgment, assessed by colleagues who know the discipline and topic, and are thus accurate judges of what material is relevant. The Department’s language includes a federal compliance criterion. It carries no persistence requirement, no explicit protection for controversial subject matter, no definition of germaneness, no standard of proof, and no procedural protection for an instructor whose teaching is questioned. Although it claims to not require that agencies or institutions apply the definition, an accrediting agency whose own recognition is at stake would have every incentive to apply the definition and, as explained further below, to do so on behalf of an agency that need not include a single educator.

Proposed § 602.17(a)(2)(viii) language even goes further. It would require an accreditation agency to establish a policy designed to “support, promote, and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty,” and one that “measures student and faculty perceptions on the range of viewpoints and perspectives offered by the institution or program.”¹⁴ Whatever the language about inquiry and debate suggests, the language would require an agency to create a metric to measure “intellectual diversity” without providing a definition. Putting aside our grave concerns with any metric purporting to measure “intellectual diversity,” campus opinion

¹¹Bob Shireman, *Don’t Try to Regulate Independent Thought*,” Substack, May 6, 2026, available at <https://bobshireman714146.substack.com/p/dont-try-to-regulate-independent>; Zakiya Smith-Ellis, *What Georgia Taught Us About Independent Accreditation – and Why We May Need to Learn It Again*,” Substack, May 7, 2026, available at <https://zakiyaellis.substack.com/what-georgia-taught-us-about-independent>.

¹²NPRM at 53958.

¹³ American Association of University Professors & Association of American Colleges, 1940 Statement of Principles on Academic Freedom and Tenure, with 1970 Interpretive Comments, <https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/1940-statement-principles-academic>

¹⁴NPRM at 53956–57

regarding the political balance of a faculty member or curriculum would become an input to accreditation, and accreditation remains the gateway to more than \$100 billion in federal student aid each year.¹⁵

Almost every institution requires Title IV funding to survive, and the risk of losing it through the loss of accreditation is fundamentally detrimental to continuing operation. It is right to expect that future institutional action would minimize that risk by changing their policies and procedures internally, especially if an accreditor creates a metric or process for measuring viewpoint diversity on which they are evaluated. To collect this, an institution may create a survey to collect scores reported by academic unit, and a department that scores poorly may face negative repercussions on staff or content when next reviewed. At the institution level, the resulting pressures may result in different hiring decisions, course offerings, or research funding, effectively chilling academic freedom. Faculty whose views are considered fringe or extreme by administration but not by peers may not receive reappointment or tenure. Every decision about curriculum or hiring could be measured in accordance with the new federal metric and measured by the accreditor rather than by the relevant department or faculty. For the faculty member at the end of that chain, the effect is compelled speech. The proposed rule establishes no methodology, no benchmark, no threshold, and no stated consequence for an unfavorable score. Terms like "intellectual diversity" are not even defined. Vague standards of this kind leave room for interpretation that threatens academic freedom when applied in a manner inconsistent with the principles of higher education.

Proposed § 602.18(b)(4) compounds the problem by requiring that agency decisions be "neutral with respect to viewpoint and ideology," while providing a specific exception that an accrediting agency with a religious mission need not be neutral with respect to viewpoints.¹⁶ The exception here creates different evaluation metrics for schools that may be within the same cohort, depending on if they are a religiously controlled institution or not. The proposed rule would also have accrediting agencies confirm that public institutions' policies "comport with the First Amendment, as interpreted by Federal courts," while the preamble maintains that these references are "not intended to make accrediting agencies the arbiters of constitutional law,"¹⁷ yet accreditors' policies could lead to direct action against First Amendment protections afforded to faculty.

It is worth noting an internal contradiction the Department should resolve regardless of what it does with the remainder of the section. The rule would require academic freedom protections to be applied "regardless of appointment classification," but the same subparagraph requires institutions to maintain "sufficient flexibility in instructional staffing policies and procedures to respond to persistent, material changes in student demand, program viability, or financial conditions."¹⁸ Academic freedom without corresponding job security is a protection in name only. About 68% of faculty members at U.S. colleges and universities held contingent appointments in fall 2023, and nearly half were employed part time.¹⁹ For contingent faculty that have no guarantee of continued

¹⁵NPRM at 53940

¹⁶NPRM at 53959

¹⁷NPRM at 53958; see also NPRM at 53954

¹⁸NPRM at 53956

¹⁹<https://www.aaup.org/academe/issues/spring-2025/data-snapshot-tenure-and-contingency-us-higher-education->

employment from one course to the next, the end result might not take the form of internal discipline but in the form of a course that does not appear on the following term's schedule. This is not something an accrediting agency will observe, but the downstream impact of this regulation would nevertheless still be there.

We urge the Department to withdraw § 602.17(a)(2)(viii) and § 602.18(b)(4) in their entirety, to strike the germaneness limitation, the disciplinary limitation on research, and the instructional staffing flexibility clause from § 602.17(a)(2), to remove any preferential treatment for institutions or agencies that adopt the preamble's model definition, and to provide that non-renewal of courses, reduction in assignment, and denial of course assignment constitute adverse action for this section.

Restrictions on DEIA and Disaggregated Data (§§ 602.17(g) and 602.23(h))

NEA opposes proposals that restrict Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives or the use of disaggregated data. Proposed § 602.17(g) provides that an agency may not maintain standards that "encourage, direct, or otherwise require institutions or programs to violate Federal or State law, including by having policies that provide any preferences on the basis of race." Additionally, proposed § 602.23(h) would prohibit an accrediting agency from maintaining policies that violate federal or state law, and Executive Order 14279 directs the Department to require that institutions use program-level outcome data "without reference to race, ethnicity, or sex." The preamble is even more candid about what the Department has in mind, proposing "a prohibition of preferential treatment based on protected characteristics, such as race-based scholarships or programs," and asserting that "merit must be prioritized over race, color, national origin, or sex."²⁰

The proposed regulations would force accreditors to align their institutional review with the current administration's enforcement priorities and inaccurate interpretation of legal standards applicable to institutional programs and practices that advance diversity, equity, inclusion, and accessibility. In fact, this already occurred when the Department pressured accreditors of Harvard and Columbia universities to withdraw their accreditation based on unproven but alleged violations of federal civil rights laws,²¹ and the Department has already moved to withdraw recognition of the American Bar Association (ABA)'s accreditation recognition based on the administration's criticism of the ABA's accrediting council's criteria related to fostering diversity in legal education.²²

The proposed regulation's pronouncements on accreditation standards related to diversity, equity, inclusion, and accessibility raise serious legal concerns similar to those presented in the Department's February 14, 2025, [Dear Colleague Letter](#) to educational institutions. Three federal courts found this letter likely to be unlawful in whole or in part, and one court permanently vacated

[fall-2023](#)

²⁰NPRM at 53956; NPRM at 53964

²¹ [U.S. Departments of Education and Health and Human Services Notify Harvard University's Accreditor of Harvard's Title VI Violation](#) | U.S. Department of Education; [U.S. Department of Education Notifies Columbia University's Accreditor of Columbia's Title VI Violation](#) | U.S. Department of Education.

²² [ABA faces DOJ wrath over law school diversity requirements](#) | Higher Ed Dive; ['The gatekeepers': Trump's action on accreditation sparks concerns over government intrusion](#) | Higher Ed Dive; [Under Trump pressure, ABA poised to suspend law school DEI rule into 2026](#) | Reuters; [AG Bondi tells ABA to drop DEI requirement](#).

it.²³ Those orders halted the Department’s attempt to stifle efforts in schools, colleges and universities to advance educational opportunity for all students through inclusive curricula and DEIA practices. The Dear Colleague Letter set forth the Education Department’s novel and overly expansive position on the meaning of the Supreme Court’s decision about race-conscious college admissions under Title VI and the Equal Protection Clause, *Students for Fair Admissions v. Harvard*,²⁴ and its application to a range of activities in educational settings. The Letter prohibited entities covered by Title VI from “using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies and all other aspects of student, academic, and campus life”—including through unspoken “cues” about a student’s race like personal essays and extracurriculars. The Letter also asserted that “DEI programs” are discriminatory because they “frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not,” thereby “stigmatiz[ing] students who belong to particular racial groups on crude racial stereotypes.”

NEA, the American Federation of Teachers (AFT), and the National Association for the Advancement of Colored People (NAACP) each (along with other plaintiffs) filed lawsuits challenging the Letter and implementing documents—a Frequently Asked Questions document, an “End DEI” reporting portal, and the Certification—as unlawful intrusions into educators and students’ rights, and into educational programming, in violation of the First Amendment, the due process clause of the Fifth Amendment, and the Administrative Procedure Act (APA). The three lawsuits, filed respectively in the U.S. District Courts for New Hampshire, Maryland, and the District of Columbia, resulted in preliminary rulings in April 2025 that wholly or partly granted the requested injunctive relief.

The New Hampshire court preliminarily enjoined the Letter and implementing materials as to NEA, its co-plaintiffs, and their members.²⁵ The court reasoned that the Department’s “ban on DEI” likely violated educators’ Fifth Amendment rights on vagueness grounds and their First Amendment right to academic freedom in the higher education context, and violated the APA (because the Letter was contrary to constitutional rights, in excess of statutory jurisdiction in reaching school curriculum, contrary to law, and in violation of the notice-and-comment requirement).²⁶ The court in Maryland stayed the Letter’s implementation nationwide, holding that those plaintiffs were likely to succeed on their similar claims under the APA,²⁷ while the District of Columbia court enjoined the Certification requirement, holding that its prohibition on DEIA was likely unconstitutionally vague.²⁸

²³ [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025).

²⁴ 600 U.S. 181 (2023).

²⁵ [Order](#), *National Education Association v. United States Dep’t of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), at 81.

²⁶ *Id.* at 45-74.

²⁷ [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. April 24, 2025), at 26-43, 46-47.

²⁸ [Oral Ruling](#), *NAACP v. U.S. Dep’t of Education*, No. 1:25-cv-01120 (D.D.C. April 24, 2025), at 13-15.

The Maryland court later fully vacated the Letter and Certification requirement, concluding that the Department had violated the APA and educators' constitutional rights.²⁹ Relevant here, the court concluded that the Letter and Certification violated the APA because they were arbitrary and capricious: they unjustifiably adopted a view of *Students for Fair Admission* that deviated from past positions and existing precedent (calling into question the acceptability of meetings or course materials focused on race, and condemning race-neutral means of enhancing diversity), lacked factual grounding for their assertions (such as the Letter's claim that schools had "toxically indoctrinated" students about systemic racism), and failed to consider educators' and school districts' reliance on past positions.³⁰ The court also held that the Letter violated the APA as contrary to law to the extent it reached classroom speech by condemning certain teaching about race (or supposedly "stigmatizing" or "indoctrinating" students), because the Department of Education Organization Act (DEOA) prohibits the Department from regulating curricular content.³¹

The Maryland court held that the Letter and Certification violated plaintiffs' constitutional rights (and the APA) because the Letter constituted "textbook viewpoint discrimination" in violation of the First Amendment based on its identification of "systemic and structural racism" and "teach[ing] about moral burdens" relating to racism as discrimination that could give rise to enforcement actions.³² In addition, the court held that the Letter and Certification were unconstitutionally vague because they prohibited "DEI practices" without clearly defining what they were.³³

The proposed regulation resembles the agency actions vacated in the Dear Colleague Letter litigation in at least two respects: their express targeting of ill-defined DEI "programs" (or "practices," "activities," or "initiatives"), and their potential for infringing academic freedom and First Amendment rights by restricting certain viewpoints. All three of the courts discussed above held that either the Dear Colleague Letter, the April 3 Certification, or both, were unconstitutionally vague in their attempts to prohibit educational institutions from implementing DEI "programs" or "practices." The courts acknowledged the capaciousness of the term "DEI" and the Department's failure to clearly identify when it is unlawful—even though the Letter and an accompanying FAQ document provided some gloss on whether and how those terms applied. The proposed certifications here, too, point generally to the possible illegality of DEI "programs or initiatives," "activities," or "practices," without definition or legal support.

NEA disagrees that the Department has the authority to define academic freedom to the extent that universities and colleges can engage in programs or support academic teaching or research that promote diversity, equity, inclusion, and accessibility. Because the preamble provides some explanation of possibly discriminatory practices, the Department is usurping the role of the courts in

²⁹ [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025), at 40-69.

³⁰ *Id.* at 40-51.

³¹ *Id.* at 51-55 (citing [20 U.S.C. § 3403\(b\)](#)).

³² *Id.* at 56.

³³ *Id.* at 63-68.

interpreting civil rights and constitutional protections.

Just as the plaintiffs successfully argued in the various Dear Colleague Letter challenges, the body of the proposed regulation’s attempts to curtail DEI-related programs and practices lack adequate guidance as to when efforts to build and meet the needs of their students and staff (whether labeled “DEI” or not) might run afoul of the certifications—and at risk of grave penalties if they do. The potential threats to accreditation would support the Department in its crusade against disfavored educational institutions that promote diversity and inclusion—one that has continued even after its losses in the Dear Colleague Letter litigation.³⁴ By suggesting that DEI “programs or initiatives” can be unlawful “discriminatory practices” that would warrant loss of accreditation, these accreditation criteria could be interpreted as prohibiting any sort of programming that is supportive of DEI, potentially chilling the exercise of First Amendment rights in the classroom on the basis of viewpoint, absent any protective limitations.

Even if the proposed accreditation standards do not run headlong into the Maryland order and the stipulated terms of the dismissals in New Hampshire and District of Columbia, they might well be struck down under the same kinds of reasoning. As discussed above, the accreditation criteria targeting diversity, equity, inclusion, and accessibility are susceptible to challenges under the Fifth and First Amendments: they are vague as to what forms of DEI-related programs or practices they prohibit, susceptible to arbitrary enforcement, and likely to have a chilling effect on both educational institutions’ regular activities and on the exercise of academic freedom in higher education.

In addition to being legally dubious, inclusion of the proposed regulation requirements may well discourage or even prohibit lawful programs and practices that promote equal opportunity, advance academic achievement, and support all students and staff in colleges and universities. A diverse student body is beneficial to all students—and can be achieved through a variety of lawful measures—despite the proposed certifications’ presumption to the contrary.³⁵ Studies have shown that exposure to diversity in the classroom improves students’ cognitive skills, such as critical thinking and problem solving.³⁶ In addition, contact among students of different racial backgrounds

³⁴ U.S. Department of Education, [U.S. Department of Education’s Office for Civil Rights Initiates Title VI Investigation into Portland Public Schools](#) (Feb. 17, 2026).

³⁵ Although GSA has not offered express justifications for the proposed certifications (beyond generally seeking to align with other guidance documents), they appear to draw on the current Administration’s expansive and novel interpretation of *Students for Fair Admission*. But that decision was specifically about race-conscious college admissions when tied to the aim of achieving the educational benefits of diversity. It did not address, much less condemn, the extremely broad range of practices to which the Administration apparently wishes to apply it—from race-neutral admissions practices, to addressing systemic racism in the classroom, to practices that have nothing whatsoever to do with educational opportunity.

³⁶ Century Foundation, [The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms](#) 1–2 (Apr. 29, 2019); Amy Stuart Wells, et al., [How Racially Diverse Schools and Classrooms Can Benefit All Students](#), The Century Foundation 14, 18 (Feb. 2016); Katherine W. Phillips, [How Diversity Works](#), 311 SCI. AM. 42, 44–46 (Oct. 2014); Roslyn Arlin Mickelson & Martha Bottia, [Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research](#), 88 N.C. L. REV. 993, 998 (2010); Geoffrey Borman & Maritza Dowling, [Schools and Inequality: A Multilevel Analysis of Coleman’s Equality of Educational Opportunity Data](#), 112 TEACHERS COLL. REC. 1201, 1236–39 (2010); Bernadette Gray-Little & Robert A. Carels, [The Effect of Racial](#)

can combat stereotypes and prejudice, and can make students more comfortable relating to others, better preparing them for interacting with clients, customers, and colleagues in the workplace.³⁷ This also prepares students for citizenship in a diverse society.³⁸ Programs that support the recruitment and retention of students from underrepresented groups also have been proven to contribute to expanding participation in crucial fields like STEM.³⁹

Fostering and supporting diversity within the faculty and staff of educational institutions is another valuable practice that the proposed regulation may needlessly hinder. Indeed, diversity among professionals and academics leads to more creativity and innovation,⁴⁰ and enables a field to take advantage of a broader talent pool.⁴¹ The benefits of a diverse teaching body include the capacity to lead for social justice through local and global civic engagement, as well as the development of an inclusive school culture and culturally relevant pedagogy; diverse educators can also serve as both cultural translators and role models.⁴²

Diversity among educators also supports student achievement. For example, having a Black teacher is associated with higher test scores (and social and emotional gains) for Black elementary school students, and emerging findings show that the same holds true for Latino teachers and students.⁴³ The presence of a Black teacher within a school's grade-level teaching team is associated with improved

Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students, 7 J. RES. ON ADOLESCENCE 109, 123, 125–26 (2010); James Benson & Geoffrey Borman, *Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children?*, 112 TEACHERS COLL. REC. 1338, 1371, 1374–75 (2010); Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 SOC. SCI. RESEARCH 531, 544 (2007).

³⁷ Leane Salazar Montoya, *Equity, Diversity and Inclusion: What's in a Name?*, 22 Seattle J. for Social Justice 621, 630 (2024); Elise Cappella et al., *The Hidden Role of Teachers: Child and Classroom Predictors of Change in Interracial Friendships*, 37 J. EARLY ADOLESCENCE 1093, 1111 (2017); Elizabeth Stearns, *Long-Term Correlates of High School Racial Composition: Perpetuation Theory Reexamined*, 112 TEACHERS COLL. REC. 1654, 1670–74 (2010); Cynthia Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L. J. 1, 19, 23–24 (2000).

³⁸ Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOC. ISSUES 17, 28 (2004).

³⁹ Mica Estrada, et al., *Improving Underrepresented Minority Student Persistence in STEM*, 15 CBE Life Sci. Educ. (2017); Kenneth Maton, et al., *Outcomes and Processes in the Meyerhoff Scholars Program: STEM PHD Completion, Sense of Community, Perceived Program Benefit, Science Identity, and Research Self-Efficacy*, 15 CBE Life Sci. Educ. (2017); John T. Matsui, *"Outsiders at the Table"—Diversity Lessons from the Biology Scholars Program at the University of California, Berkeley*, 17 CBE Life Sci. Educ. (2018); Zakiya S. Wilson, et al., *Hierarchical Mentoring: a Transformative Strategy for Improving Diversity and Retention in Undergraduate STEM Disciplines*, 21 J. Sci. Educ. Technol. 148 (2012).

⁴⁰ National Institutes of Health, *Notice of NIH's Interest in Diversity* (2019); Talia H. Swartz, et al., *The Science and Value of Diversity: Closing the Gaps in Our Understanding of Inclusion and Diversity*, 220 The Journal Of Infectious Diseases S33 (2019).

⁴¹ James A. Olzman, *Diversity Through Equity and Inclusion: The Responsibility Belongs to All of Us*, 31 MOLECULAR BIOLOGY OF THE CELL 2749 (2020).

⁴² Carlos Nevarez, *Benefits of Teacher Diversity: Leading for Transformative Change*, 4 J. OF SCH. ADMIN. RESEARCH & DEV. 24 (2019); Desiree Carver-Thomas, et al., *Supporting and sustaining a diverse teacher workforce*, Learning Policy Institute (2025).

⁴³ Carver-Thomas, at 3.

test scores for Black students even when those students are assigned to a White teacher.⁴⁴ And, like exposure to diverse classmates, exposure to diverse educators also develops culturally proficient students “who are equipped to promote cross-cultural consciousness and equitable social change.”⁴⁵ A lack of exposure, on the other hand, can lead students to a propensity for heightened stereotypical behavior.⁴⁶ To reap the benefits of diversity among faculty and staff, however, schools may need to employ targeted and responsive measures to address barriers to the recruitment, and, importantly, retention, of educators of color.⁴⁷

Further, the proposed regulation may dissuade colleges and educators from adopting instructional approaches that promote and support diversity, which also can advance equal educational opportunity and attainment for all students. Research has established that a culturally responsive and racially inclusive curriculum benefits all students and offers the most effective pedagogical approach.⁴⁸ Indeed, widely implemented equity-based practices are simply good instruction, regardless of whether they are labeled “DEI.”⁴⁹ Further, culturally responsive education can enhance “students’ critical thinking . . . reasoning, inference-making, and analytical skills,” and is associated with “increased standardized test scores,” “improved math, science, and reading achievement,” “higher GPAs,” “higher attendance rates,” and higher graduation rates.⁵⁰ Additionally, like a diverse student body, such approaches prepare students to thrive in our multiracial democracy, preparing them as citizens and voters who are able to critically engage with the world and make their place within it.⁵¹

Deterring lawful programs and instructional approaches that seek to promote goals like diversity, equity, inclusion, and accessibility also inhibit academic freedom and the exercise of First Amendment rights by students, faculty, and staff. Schools and universities must be forums where free and open debates about pressing issues are encouraged, not silenced or chilled by fears of government retaliation. Indeed, efforts to the contrary, like this one, may force educators out of the classroom.⁵² As institutions whose very mission is education, colleges and universities must set an example, by their words and actions, that decisions about curriculum and instruction are off limits from federal interference and censorship efforts.

With respect to data, NEA set out its position on this question in January, in response to the Department's request for information on updates to the Accreditation Handbook. We wrote then that

⁴⁴ *Ibid.*

⁴⁵ *Id.* at 30.

⁴⁶ Hua Yu Sebastian Cherng & Peter F. Halpin, *The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers*, 45 EDUCATIONAL RESEARCHER 407 (2016).

⁴⁷ Carver-Thomas, at 46-53.

⁴⁸ See National Education Association and Law Firm Antiracism Alliance, *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* (2022), at 6-11.

⁴⁹ Joshua P. Starr, *How Education Leaders Should Respond to the Anti-DEI Crowd*, Education Week (March 27, 2025).

⁵⁰ *Id.* at 7 (citing studies).

⁵¹ *Id.* at 15.

⁵² Anna Merod, *Survey: 37% of teachers will likely quit if K-12 censorship laws reach them*, K-12 Dive (Jan. 24, 2022).

the use of disaggregated data by race, ethnicity, sex, and disability status "has long been recognized as a best practice in accreditation." Such data, we explained, "have been essential in identifying and dismantling barriers that historically excluded Black and Brown students and students with disabilities from access to success in higher education." We also urged the Department to avoid "vague or politically charged standards, such as undefined claims of 'unlawful discrimination,' that chill speech and invite arbitrary enforcement."⁵³ This NPRM engages neither point, and it moves in the opposite direction on both.

Disaggregated data came from accrediting agencies from their own processes at first without federal instruction. The Middle States Commission on Higher Education, for example, requires institutions to maintain "processes to disaggregate and analyze student achievement data to inform and implement strategies that improve outcomes for all student populations."⁵⁴ Directing accreditors to assess outcomes without reference to race, ethnicity, or sex would not make assessment neutral; it would make assessment less accurate as it will lead to the evidence of any disparities to pass unnoticed.

NEA has concerns about the impact of this beyond higher education. Grow-your-own partnerships with school districts, paraprofessional-to-teacher pathways, and scholarships with specific demographic criteria are among the ways that schools of education build an educator workforce that reflects the students it serves. Creating additional burdens on programs that support local teacher recruitment and retention is not the way to create more opportunities for new educators, and neither is lowering accreditation standards that leads to lower quality programs.

Educational quality cannot be improved by suppressing the evidence of where it falls short. NEA urges the Department to withdraw §§ 602.17(g) and 602.23(h).

Peer Review and Shared Governance (§§ 602.3, 602.15(a), and 602.17)

The concept of peer review sits at the foundation of both academia and the scientific method. Only experts in a field should be able to evaluate the work of others in that field. Without peer review, the credibility of an evaluation could come into question. Educators, for instance, are at the heart of teaching and have the expertise on pedagogy and content in the best way to instruct their students. Peer review works within the current accreditation system because it serves as a way for institutions to improve standards or institutional prestige. Having fellow professors and staff evaluate a campus during site visits gives accreditation itself professional weight and institutional legitimacy.

The proposed rule removes the requirement of that quality check in the accreditation process. Proposed § 602.3 removes peer review from the definition of an accrediting agency. An agency would become any legal entity conducting accrediting activities "through voluntary, non-Federal review, which may include peer review." Proposed § 602.15 then eliminates the requirement that educators serve on the bodies that render accreditation decisions. In the Department's own words, it

⁵³National Education Association, Comment on Request for Information: Updates to the Accreditation Handbook, Docket ID ED-2025-OPE-1009 (Jan. 26, 2026).

⁵⁴ <https://www.msche.org/standards/fourteenth-edition/>

"proposes to eliminate the current requirement in 34 CFR 602.15(a)(3) that institutional agencies include academic and administrative personnel on their evaluation, policy, and decision-making bodies." It likewise proposes to remove the parallel requirement at § 602.15(a)(4) that programmatic agencies include educators, practitioners, and employers on those bodies.⁵⁵ The replacement standard requires only "competent and knowledgeable individuals, qualified by education or experience in their own right as appropriate for their roles."

Notably, the Department relies on peer expertise for site visits when a different provision calls for it. Proposed § 602.24(b) would require that site visits to new branch campuses not be conducted by agency staff alone. Explaining that requirement, the Department writes that "peer reviewers bring field specific knowledge that allows them to assess academic standards, administrative capacity, and institutional practices with appropriate depth."⁵⁶ That statement is correct, and it does not make sense to separate this from the rest of the role of peer review for the definition of an accrediting agency. The Department offers no study or example as to why other evaluations without subject-matter educators produce better outcomes for students, or even equivalent ones. The justification offered is flexibility and reduced burden, without a rationale that would increase quality.

Proposed § 602.17(a)(2)(v) requires any accreditation agency to maintain policies regarding the integrity of scholarly activity, research, and practices designed to prevent, detect, and address fabrication, material misrepresentation, falsification, plagiarism, and other forms of research misconduct, and § 602.17(a)(2)(vi) requires that the accrediting agency must evaluate whether an institution maintains policies related to research misconduct. These requirements for accreditors go beyond what is allowable by statute, under the aforementioned prohibition against promulgating "any regulation with respect to the standards the accreditation agency uses to assess the institutions."⁵⁷ Additionally, the DEOA⁵⁸ and the General Education and Provisions Act,⁵⁹ prohibit the federal government from exercising "any direction, supervision, or control over the...personnel of any educational institution."

Proposed § 602.17(a)(2) also has the potential to create conflict with applicable collective bargaining agreements (CBAs) and institutional policies applicable to many NEA members. This section requires policies regarding the integrity of scholarly activity, research, and practices designed to prevent, detect, and address fabrication, material misrepresentation or falsification, plagiarism, and other forms of research misconduct. This would need to include mechanisms for timely investigation, corrective actions, and as appropriate, public disclosure. In addition, to be accredited, institutions must have "sufficient flexibility in instructional staffing policies and procedures to respond to persistent material changes in student demand, program viability or financial conditions." Such flexibility may directly conflict with, or at least effectively undermine, the requirements of CBAs and tenure policies at schools that often limit certain institutional actions and provide protections for

⁵⁵NPRM at 53954

⁵⁶NPRM at 53965

⁵⁷ 20 U.S.C. § 1099b(o).

⁵⁸ 20 U.S.C. § 3403(b).

⁵⁹ 20 U.S.C. § 1232a.

faculty and staff.

Tenure protects many NEA members from termination except for adequate cause or financial exigency (e.g., serious budgetary crises that require reductions in force), representing a key pillar of academic freedom.⁶⁰ The protections of tenure preserve the independence of research which can be perceived as criticizing federal, state, local, and Tribal governments or other powerful entities, reducing faculty's fear of losing their position. The proposed regulations could allow federal, state, or local government to threaten the loss of accreditation to pressure institutions to remove any remaining tenure protections and more easily discharge professors who hold controversial views. For example, as described in more detail below, governments could pressure institutions to remove faculty who teach about race, gender, or other politically contested topics, even when those instructors are academically qualified.⁶¹

Proposed § 602.17(b) would eliminate the requirement that an institution conduct a self-study and instead substitute a "comprehensive process, which may include a self-study." The self-study is where faculty may have the most input in this process, but the Department's description of what might take its place allows for removal of this opportunity. Institutions, it says, "may prefer an independent audit or a review from business leaders in the community or region."⁶² An audit is not an academic evaluation, however, and business leaders are not positioned to judge whether curriculum assessments measure what they claim to do.

Faculty are the experts in their field, research, and curriculum, and the people best suited to evaluate that work are peers in their field. When an accrediting agency evaluates those judgments, it is reviewing faculty work. We urge the Department to retain peer review in the definition of an accrediting agency at § 602.3, to retain the requirements at § 602.15(a)(3) and (a)(4) that educators sit and vote on accrediting agency evaluation, policy, and decision-making bodies, and to retain the self-study requirement at § 602.17(b).

Recognition of New Agencies, Accreditor Switching, and Transfer of Credit (§§ 600.11, 602.12, 602.24(e), and 668.43)

Current regulations require that an accrediting agency must conduct accrediting activities for at least two years before it may seek initial recognition by the Department. Proposed § 602.12 would eliminate that requirement, and in its place an accrediting agency would not require any prior evidence of conducting the accrediting process, requiring only that they be legally established in the relevant jurisdiction, to have stated standard and operating procedures, and to have at least some sort of a process that an institution has applied. A further provision would require that the agency have

⁶⁰ American Association of University Professors, "Academic Due Process for Non-Tenure-Track Full-Time Faculty Members after Seven Years of Service," November 12, 2015, available at <https://www.aaup.org/sites/default/files/2015-DueProcessNTTF.pdf>.

⁶¹ [The Trump Administration Moves to Tighten Grip on Colleges - Center for American Progress](#).

⁶² NPRM at 53958

granted accreditation to one institution before recognition is granted.⁶³ Three of those conditions are documents an organization prepares about itself. The fourth is a single accreditation decision. On that record, the Secretary and the National Advisory Committee on Institutional Quality and Integrity declare an organization "a reliable authority as to the quality of education or training." A proven track record is a sign and evidence of reliability, but this proposed regulation would award recognition, even when it has never denied an institution or gone through any institutional appeal process. Ensuring quality should include the willingness to deny accreditation if standards are not met. These proposed regulations do not require an accreditor to have evidence of such stringency.

The Department's justification for lowering the bar is competition, on the theory that easier entry and easier switching will improve quality. The value of accreditation comes from its being thorough and difficult to obtain, and a credential means something to an employer or a licensing board because the label certifies a baseline of quality that holds across institutions. When you introduce unproven agencies without high standards, institutions may seek out whichever accreditor will approve them and force accreditors into a race to the bottom.

The proposed provisions easing the process to switch accreditors make that outcome considerably more likely. Proposed § 600.11 keeps the phrase "reasonable cause" for an institution changing accreditors while not saying what that reasonable cause could be. Approval in this case will likely be automatic, given that the Department explains in its own paperwork analysis, "unless the Secretary determines otherwise, all reasons are acceptable."⁶⁴ Institutions could also hold accreditation from more than one agency at once. Under proposed § 600.11(b)(2) a college facing a withdrawal, a probation, a show cause order, or a suspension by an existing agency could add a second accreditor while the action is pending. Taken together, these changes remove the adverse accreditation findings, and the only risk for an agency becomes the risk of losing institutions to a laxer competitor.

We have already seen this happen at the state level. In 2022, Florida enacted a law requiring its public colleges and universities to change accrediting agencies at each renewal cycle. New America concluded that the law "encourages poorly performing institutions to seek out accreditors that will allow lower standards while threatening those with higher standards with retaliation if they do their jobs properly."⁶⁵ The Department held the same view: its July 2022 guidance explained that the reasonable cause requirement "helps prevent an erosion of accrediting agency standards" and ensures "that institutions do not switch accrediting agencies simply to evade accountability, avoid open inquiries, or seek approval from an agency with less rigorous or easier-to-meet standards."⁶⁶ Four years ago, seeking an agency with less strict standards would not be allowed, but under this proposal it would be.

The transfer of credit provisions in the NPRM makes this issue worse, further accelerating a potential

⁶³NPRM at 53950

⁶⁴NPRM at 53992

⁶⁵ <https://www.newamerica.org/education-policy/edcentral/departments-of-ed-puts-colleges-on-notice-about-accreditor-shopping/>

⁶⁶ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies>

race to the bottom. Proposed § 602.24(e) would require institutions to apply "a presumption of awarding transfer credit" for undergraduate coursework completed at any institution accredited by a recognized agency and "comparable in content and learning outcomes" to the receiving institution's own offerings. The presumption yields only if the institution supplies a written basis for denial, and the student may appeal that denial within fifteen calendar days.⁶⁷

Determining whether a course completed elsewhere is equivalent in terms of content or rigor is a faculty judgment rather than a formality. Expertise is needed to determine if the content and learning outcomes of two courses are equivalent. Even if two courses carry the same title and the same credit hours, and even a similar description, the courses may be extremely different in terms of the material, rigor, and evaluation. Those differences are invisible on a transcript, but the differences in course equivalency become obvious if transferring students then struggle with higher level courses. In the proposed regulations, faculty would no longer determine equivalence but would instead document non-equivalence, course by course, on a fixed schedule and subject to appeal. This may prove impossible without ready access to additional information from the student and/or their previous institution. A reduction in denials will result, since a denial would now generate written work, an appeal, and institutional exposure. Considering the number of schools that students may transfer from, this could create an administrative workload that would strain faculty and staff that are often already over capacity. If the course is indeed not equivalent, students could enroll in coursework for which they are unprepared, and the failure would surface a semester later.

Most troubling, this would be for any institution accredited by any recognized agency. Read together with the decline in recognition standards, faculty would be required to assume the equivalency of coursework approved by an agency that may have no history and, under proposed § 602.3, no educators on its review teams.

We urge the Department to retain the two-year operating requirement of 602.12. Initial recognition should further require a demonstrated record of applied accreditation decisions, including at least one adverse action carried through an agency's appeal process. We urge the Department to restore substantive review of accreditor changes under § 600.11.

Statutory Authority and the Rulemaking Record (HEA §§ 496(o) and 496(a)(5))

Congress was specific about the limits of the Secretary's authority in this area. Section 496(o) of the Higher Education Act directs the Secretary to establish, by regulation, the procedures for recognizing accrediting agencies and for appealing recognition decisions. The same provision imposes a limit, and the Department states it accurately in this NPRM: "Congress provided that the Secretary shall not promulgate regulations with respect to the standards of an accrediting agency described in Section 496(a)(5)." The standards described there are the ones addressing student achievement, curricula, faculty, facilities, fiscal and administrative capacity, student support services, recruiting and admissions practices, program length and credentials, student complaints, and compliance with

⁶⁷NPRM at 53964–65

Title IV responsibilities.⁶⁸ Congress purposefully intended these to be separate from regulation. Accreditation exists in its present form along with the Triad (federal government, state government, accreditors) because Congress wanted academic quality decisions to be made by actual experts.

The Department notes that while it may establish recognition criteria, it must leave “accrediting agencies the responsibility for developing and applying their own substantive accreditation standards,” and it represents that these regulations do “not prescribe the substantive content of institutional accreditation standards.”⁶⁹ Proposed § 602.16 specifies what an agency’s student achievement standards must contain, and proposed § 602.17(a)(2) specifies what its faculty standards must evaluate, reaching as far as a survey of perceived viewpoint range. Proposed § 602.17(a)(4) specifies how an agency must assess program length, and the preamble even mentions that a five-year bachelor’s degree “may be a program that an agency would feel to be inappropriate in length.”⁷⁰ Student achievement, faculty, and program length are three of the ten subjects Congress expressly kept out of the hands of the Department. A mandate being labeled “recognition criterion,” does not change how it functions.

The entire rulemaking process began in 2025 with Executive Order 14279.⁷¹ Though an executive order may direct an agency to consider a policy, it cannot provide the analysis and reasoned explanation required by the Administrative Procedure Act. By the Department’s own admission that analysis is indeed missing: “empirical evidence measuring the causal effect of institutions changing accreditors is limited,” and “previous regulatory barriers have resulted in too few accreditor switches to permit rigorous statistical analysis.” The Department also “recognizes that there is limited data available to estimate the proposed regulation’s potential impact.”⁷²

In place of evidence, the Department offers economic theories. Having conceded the gap, it answers that “the absence of such evidence, however, does not undermine the broader economic evidence concerning the benefits of competition in quality assurance markets.”⁷³ As mentioned earlier in this comment, accreditation is not a market in the way the Department implies it is. Other organizations have also surmised that the executive order “is merely trying to pave the way for the administration to recognize accreditors more friendly to its political agenda.”⁷⁴ The Department has not disputed this as the ultimate reason, and in fact, President Trump has identified accreditation his “secret weapon” to reshape higher education and “reclaim our once great educational institutions from the radical Left.”⁷⁵ More recently, you were quoted directly, stating “We’re talking about making sure that accreditors are not imposing an ideology on their institutions, ... focusing on student outcomes,

⁶⁸NPRM at 53944 (quoting HEA § 496(o))

⁶⁹NPRM at 53944

⁷⁰NPRM at 53958

⁷¹[Exec. Order No. 14279, Reforming Accreditation to Strengthen Higher Education \(Apr. 23, 2025\)](#);

⁷²NPRM at 53944

⁷³NPRM at 53944.

⁷⁴<https://www.newamerica.org/insights/students-lose-as-trumps-order-turns-accreditation-into-a-political-tool/>

⁷⁵[Accreditation Is Trump’s ‘Secret Weapon’; Accreditors brace for Trump’s promised higher ed shakeup | Higher Ed Dive.](#)

getting away from unlawful, divisive DEI standards.”⁷⁶

The composition of the negotiated rulemaking committee was not a diverse group of interest holders as Section 492 of the HEA requires. The notice announcing the AIM Committee, published January 27, 2026, set out the groups the Department would include as negotiators. That committee included students, veterans, employers, a consumer and civil rights seat, four categories of institutions, state officials, institutional and programmatic accrediting agencies, taxpayer organizations, nascent accreditation organizations, and National Advisory Committee on Institutional Quality and Integrity (NACIQI).⁷⁷ It included no faculty of any description. Those responsible for institutional research and the actual fundamental education of students were not included in far-reaching rulemaking in higher education.

The Department relies on the consensus the committee reached on May 21, 2026. Under the committee's own protocols, consensus means the absence of dissent by a seated member, and abstentions do not count as dissent.⁷⁸ This says nothing of the faculty who could not dissent because they had no seat on the rulemaking committee.

Lack of Statutory Authority

These proposed regulations would dramatically expand accreditor involvement in academic content and programming, going well beyond what is allowable by statute with respect to what can be regulated through accreditation standards. Section 103(b) of the DEOA specifically states that no provision of a program authorizes the Department to “exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution...any accrediting agency or association...” Like the DEOA, the Higher Education Act states that the Department is not permitted to establish criteria for accrediting agencies that are not required in the statute:

Nothing in this chapter shall be construed to permit the Secretary to establish criteria for accrediting agencies 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.⁷⁹

Furthermore, the Department is prohibited from promulgating any regulation with respect to the standards of an accreditation agency.⁸⁰

Two proposed sections of the proposed regulation inappropriately invest accreditors with the power to interpret and apply federal civil rights statutes to the institutions they review. Proposed section 602.17(g) prohibits accrediting standards that “encourage, direct, or otherwise require institutions or programs to violate Federal or State law, including by having policies that provide any preferences on the basis of race,” and section 602.23(h) similarly prohibits accreditors from having policies that

⁷⁶ [What Trump’s Top Higher-Ed Official Has in Mind for College Accreditation](#)

⁷⁷ NPRM at 53945–46

⁷⁸ NPRM at 53946.

⁷⁹ 20 US Code §1099b(g).

⁸⁰ 20 US Code §1099b(o).

“require institutions or programs to violate any Federal or State law,” including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972, “which means, among other things, that agencies must not have policies that require institutions or programs to provide unlawful preferences to students, faculty, staff, contractors, or any employees based upon their race, color, national origin, or sex, including in admissions, hiring, and the selection of contracts.”

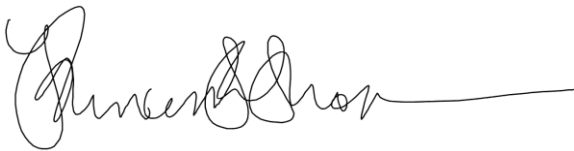
The Department, along with the Department of Justice, has the authority and expertise to investigate potential violations (given appropriate resources to do so), and may impose sanctions after attempts at resolution. Ultimately the courts are empowered to interpret and apply the federal civil rights statutes applicable to higher education students, faculty, and staff. Accreditors possess neither the expertise nor the authority to interpret or apply civil rights protections. Yet these proposed sections give accreditors the authority and power to pressure institutions into complying with this administration’s interpretations of those statutes, thereby encouraging, or even forcing changes that may not in fact be required by federal law or allowed by their state statutes and regulations. In addition, because institutions already are required to comply with Federal and state civil rights laws, this added requirement for accreditors is duplicative and unnecessary.

Conclusion

Accreditation is intended to provide students, parents, employers, and taxpayers with assurance that the time and resources invested in higher education support quality academic programs, and an independent system that holds institutions accountable when they fall short. This proposed rule represents a huge step in the wrong direction. It makes peer review optional, removes educators from the process of accreditation, and opens federal recognition to organizations with no demonstrated record, while directing agencies to evaluate academic freedom policies based on political viewpoint. NEA urges the Department to withdraw this proposed rule in its entirety.

We respectfully submit these comments for the Department’s consideration. Please do not hesitate to contact me or Daaiyah Bilal-Threats, Senior Director of Policy, at DBilal@nea.org should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Princess Moss", with a long horizontal line extending to the right.

Princess Moss
President
National Education Association