

Biden administration seeks to rescind Trump-era rule about faith on campus

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March 6, 2023



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Does a Trump-era rule protect religious belief of students at public colleges and universities or cause discrimination against some attending them?

The Biden administration's Education Department has recommended rescinding a portion of the so-called Free Inquiry Rule related to that religious freedom debate within institutions of higher education.

"The Department proposes to rescind the regulations because they are not necessary to protect the First Amendment right to free speech and free exercise of religion; have created confusion among institutions; and prescribe an unduly

burdensome role for the Department to investigate allegations regarding IHE's treatment of religious student organizations," it said in an announcement last month.

The Education Department wants to remove portions of the rule about public student religious organizations at some colleges and universities that call for the department to enforce grant conditions related to adherence to First Amendment principles by those groups if they receive a grant from the department or a state-related program.

The department said it has heard concerns from faith-based and civil rights organizations worried that aspects of the rule could allow discrimination against "vulnerable and marginalized students," including LGBTQ students, while other faith groups argue those parts of the rule "ensure religious students feel welcome on public college campuses."

With a deadline of March 24 to respond to the proposal, some organizations and hundreds of individuals have already stated their approval or criticism of the department's plans.

"Rescinding the harmful Trump rule means students won't be forced to subsidize clubs that discriminate against them," said Rachel Laser, president and CEO of Americans United for Separation of Church and State, in a statement. "It also means colleges won't be forced to choose between protecting students and losing federal funding, or allowing discrimination against students in order to keep federal financial assistance."

Her organization has expressed concern that the rule will harm students who are LGBTQ or who are nonreligious or are religious minorities.

When Americans United filed a suit in 2021 on behalf of the Secular Student Alliance against the rule enacted the previous year, it said: "The rule gives religious student clubs the absolute right to use religion to discriminate while still receiving official university recognition and funding."

The organization agreed to temporarily pause its litigation after the Biden administration announced in August that it intended to remove the portions of the rule that the church-state separation group had challenged.

Joe Cohn, legislative and policy director of the Foundation for Individual Rights and Expression, said in an interview that his organization plans to submit a formal comment supporting the existing rule.

Cohn, whose organization aims to protect free speech on campuses, said in an email that the rule “helps ensure that institutions don’t prohibit belief based student organizations from requiring their leaders to share the organization’s beliefs. We do not agree with critics of the rule who allege that it invites discrimination against LGBTQ students or that it is overly confusing.”

Charles Haynes, senior fellow for religious liberty for the Freedom Forum, said the rule emanates from a history that includes a 2010 Supreme Court decision, *Christian Legal Society v. Martinez*, where the justices ruled 5-4 that a Christian student group could only be recognized at a public law school if it accepted non-Christians and gays as potential leaders. It upheld the “all-comers policy” at the University of California’s Hastings College of Law, which, Haynes said, left some religious organizations with a dilemma.

“They either compromise their faith by permitting any student to be eligible for leadership, which, of course, includes leading worship, scripture study,” he said, “or following their religious convictions, and then they might lose the benefits of being recognized as a student club.”

He added: “It goes back to this thing we’ve been doing now for a very long time: religious liberty claims on one hand and nondiscrimination for LGBTQ people on the other hand.”

Asked if any institution had lost any grant funding as a result of the rule, an Education Department spokesperson said, at the time of the February 21 rule change announcement, it “has not received any complaints regarding alleged violations” of the sections it wants to expunge.

A department spokesperson said all of the more than 600 comments that had been received as of March 3 will be reviewed before a final rule is issued.

The Education Department noted in its announcement about its proposed change in the rule that courts have generally resolved disputes about these “complex matters,” and taking on their enforcement would be “overly burdensome” for the department.

Bill Donohue, president of the Catholic League for Religious and Civil Rights, disagreed.

“It was precisely because the religious rights of students were not protected on campus that the previous administration was beckoned to act,” Donohue said in a statement. “Moreover, it is risible for an administration that is regulation-happy to start worrying about rules that are ‘unduly burdensome.’”

David Calloway, the religious freedom specialist at the Freedom Forum, said in an interview that, beyond the current debate, religious liberty, along with other First Amendment rights, should be a given on campus.

“It’s important to note that these institutions, public universities and colleges, are required to uphold the First Amendment regardless of whether this rule is in place.”
—Religion News Service