



To Whom it May Concern:

Thank you for the opportunity to comment on the Department of Education's ("the Department's") Notice of Proposed Rulemaking (NPRM) entitled "Direct Grant Programs, State Administered Formula Grant Programs" (Docket ID ED-2022-OPE-0157). Cru is a nonprofit religious organization with affiliated Chapters on college and university campuses across the nation. As our Chapters would be negatively impacted should the proposed rule be enacted, we appreciate the opportunity to be heard on this important matter.

## I. SUMMARY

This NPRM proposes to rescind 34 C.F.R. §§ 75.500(d) and 76.500(d) based on three reasons:

- The provisions are not necessary to protect the First Amendment right to free speech and free exercise of religion;
- The provisions have created confusion among Institutions of Higher Education (IHEs); and
- The provisions' requirement that the Department investigate allegations that IHEs have violated students' First Amendment rights is "unduly burdensome" to the Department.

NPRM, p. 1.

In proposing to rescind these provisions, the Department has failed to consider significant and vital facts that, when properly evaluated, require a different result than is proposed in this NPRM. Indeed, rather than creating confusion as the NPRM asserts, the provisions slated for possible elimination provide needed clarity to IHEs in navigating the interplay between First Amendment rights and anti discrimination laws. Accordingly, and again contrary to the NPRM's assertions, the provisions are necessary to protect First Amendment rights of free speech and free exercise of religion. Eliminating the provisions would jeopardize these rights by depriving IHEs of necessary guidance and by removing a powerful incentive for them to comply - the threat of the loss of federal grant money.



Further, the NRPM asserts that investigating allegations that an IHE has violated the First Amendment rights of students would unduly burden the Department of Education, and that the Department should therefore not be involved. A decision by the Department to not become

involved in this area would abdicate its responsibilities as an executive agency charged with fostering educational excellence and ensuring equal access. It is astounding that the Department's NPRM on the one hand acknowledges the vital importance of the First Amendment rights of America's students, but then asserts that the Department cannot be bothered with protecting these rights because doing so would be too much of a burden. The Department works to protect students and guide IHEs in many important and complex areas, but none is more important than the First Amendment. If the Department feels that it lacks necessary expertise and resources to protect these important rights, the solution is to gain that expertise and resources, not to vacate the field.

## II. DISCUSSION

The NPRM is correct insofar as it asserts that stakeholders are confused over how properly to implement "other nondiscrimination requirements, including the longstanding requirements to comply with Federal civil rights laws and regulations." NPRM, p. 19. The NPRM errs, however, when it attributes this confusion to the provisions themselves. *Id.* As set forth in detail below, the reality is that the confusion from which IHEs suffer predates the provisions at issue and relates to the interplay of nondiscrimination requirements and the First Amendment itself, not with these provisions. Quite the contrary, these provisions provide needed clarity.

### A. *The NPRM Misstates the True Nature of the Problem:*

Cru is a religious organization with a presence on over 2,000 campuses across America. We regularly hear from universities and student governments that they are applying their policies fairly when they refuse religious groups the ability to select qualified leaders by considering whether candidates agree with the religious beliefs of the organization because "no groups are allowed to use religious criteria in selecting leaders." This reflects a fundamental misunderstanding of the requirements of the First Amendment and in fact denies religious groups their constitutional right to free expression.

This is so because it is patently *unequal* to apply nondiscrimination requirements to prohibit religious groups from using belief considerations in selecting leaders while allowing other groups to expect their leaders to agree with the missions and purposes of their groups. It should not be surprising, and certainly not confusing, that religious groups want to pursue their religious identity freely and have qualified leaders. It is consistent with what every other group



wants, and it is common sense. Accordingly, it is not in fact equal treatment as applied when these prohibitions directly and only impact religious student groups because they are religious, while other student groups are permitted to have belief-based criteria. For example, the PIRG network makes clear in multiple ways that the reason for joining them should be “belief-based.”

See <https://pirg.org/why-work-with-us/>. (#3 says “you believe...,” #4 says you are willing to work with anyone “who agrees with our positions...,” #5 says “you care...,” #7 says “you believe...” and #9 says “You’re passionate about...”). Similarly, the American Association of University Women (AAUW) has student chapters, and they specifically say that starting a chapter means “AAUW’s student organizations agree to promote AAUW’s mission by advancing equity for women and girls through advocacy, education, philanthropy, and research.” In addition, they remind their student organizations of their obligation to remain faithful to the national organization’s beliefs and goals, stating “Student organizations interested in taking a position on any policy issue, including but not limited to federal, state, and local legislation, should coordinate those efforts with AAUW before doing so...” See <https://ww3.aauw.org/resource/student-organization-terms-conditions/>.

Permitting secular groups to employ belief-based considerations in determining leadership while denying the same right to religious groups is facially disparate treatment.

Some IHEs have attempted to justify this disparate treatment by asserting that religion is a protected class under nondiscrimination laws. These same IHEs typically allow fraternities and sororities to have gender-based requirements and athletic clubs to have ability-based criteria, however, which also impact protected classes, so it is the religious groups that are singled out for unequal treatment. Indeed, Title VII of the Civil Rights Act of 1964 itself recognizes that if a factor such as religion, sex, national origin, etc., is reasonably necessary in the normal operation of an organization to carry out a particular job function, then that factor is bona fide occupational qualification, and the use of such a factor is not considered discriminatory. Many IHEs seem to recognize this common-sense logic in contexts other than religion, but do not recognize it with respect to religious groups.

The ability to include religious belief considerations in determining a group’s leadership is no small thing. In fact, it is what gives a group its distinctive character. In the same way that a chess club is not a chess club if its leaders do not understand chess or an astronomy club is not an astronomy club if its leaders are apathetic about the cosmos, a religious group is not a religious group if its leaders do not share common beliefs. As a result of the confusion that exists among IHE’s, that the NPRM itself recognizes, religious groups often are faced with a Hobson’s choice of abandoning religious belief considerations, which is what gives them their distinctiveness, in order to exist on campus and have access to university facilities and resources. They are essentially being told, “You can be a religious group, or you can exist on campus and have access to university resources. You cannot do both.”



This is a patently unconstitutional result. In *Trinity Lutheran Church of Columbia v. Comer*, 582 U.S. \_\_\_\_, 137 S. Ct. 2012 (2017), the Supreme Court considered a case in which the Missouri Department of Natural Resources (DNR) denied a Lutheran preschool’s application to participate in a government grants program because the DNR had a policy of not approving applications from entities owned or controlled by a church or other religious organization. The Supreme Court held that the DNR’s policy violated the school’s First Amendment right to freely exercise its religion. *Id.* at \_\_\_\_, 137 S. Ct. at 2024-25. In reaching its conclusion, the Court expressly stated, “the Department’s policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. Of course, Trinity Lutheran is free to continue operating as a church ... But that freedom comes at the cost of automatic and absolute exclusion from the benefits of a public program for which the Center is otherwise fully qualified. And when the State conditions a benefit in this way ... the State has punished the free exercise of religion.” *Id.* at \_\_\_\_, 137 S. Ct. at 2021-22.

This is precisely what is happening on many college campuses as IHEs do not understand First Amendment jurisprudence and misapply nondiscrimination requirements in a way that “conditions a benefit” (the ability to exist on campus) on religious groups giving up their religious nature. In an effort to prevent discrimination on campus, IHEs focus on the wrong thing (how religious groups select their leaders instead of how religious groups are being treated vis-a-vis other groups) and are, in fact, discriminating. Conditioning a benefit on a group’s giving up its religious identity is, in fact, a First Amendment violation. As the Supreme Court has said, government action that prohibits conduct “because it is undertaken for religious reasons” violates the Free Exercise Clause. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Prohibiting religious clubs from using belief-based criteria for leadership positions is a prohibition of conduct because it has a religious basis. This is particularly true with respect to how religious groups choose their leaders. See *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. \_\_\_\_, 140 S.Ct. 2049 (2020); *Hosanna Tabor Evangelical Lutheran School v. EEOC*, 565 U.S. 171 (2012).

The NPRM’s characterization of the cause of confusion among IHEs is thus mistaken. The confusion does not result from the provisions proposed for rescission in this NPRM. Instead, it results from IHEs not understanding how to apply the First Amendment in the first instance. The provisions proposed for rescission provide needed guidance to IHEs on this very point where the confusion lies.

**B. The NPRM Fails to Develop an Adequate Record Supporting the Need for Change:**

As the NPRM correctly observes, the provisions proposed for rescission were added to the Code of Federal Regulations and became effective in November 2020. The decision to add these provisions was based on an extensive record that clearly establishes that the confusion described above existed before the regulation became effective and that explains in great detail



how the provisions address that problem. See Direct Grant Programs, State Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and

Universities Program, and Strengthening Historically Black Graduate Institutions Program, 85 Fed. Reg. 59,916 (Sept. 23, 2020). In that record, the Department specifically said,

The Department notes the numerous comments recounting instances of discrimination against religious student organizations, in which they were deprived of recognition, funding, or facilities, among other benefits, due to their religious status or character. The Department is revising §§ 75.500(d) and 76.500(d) specifically to remedy these issues of disparate treatment.... These anecdotes concerned religious student organizations at hundreds of schools across the country; came from national nonprofit organizations, professors, faculty advisors, students, and lawyers; and described experiences that occurred over decades.

*Id.* at 59,944. Organizations like ours have also shared numerous examples of barriers to access that religious student organizations have faced. See attachment 1 for Cru’s Comment on the 2020 NPRM; See also attachment 2 for a further list of examples where these issues have arisen.

In proposing the rescission of these provisions, the NPRM omits any discussion of this extensive record, nor does it reflect any effort to determine whether these instances of improper treatment continue. Accordingly, it is not surprising that the Department misattributed the confusion that exists to the provisions themselves instead of to its actual cause - misunderstanding the interplay between First Amendment and nondiscrimination requirements. The record underlying the 2020 NPRM clearly demonstrates that confusion abounded before the passage of the provisions at issue and thus could not have resulted from them. As the Department observed, “A significant number of commenters expressed support for the proposed regulations because they would clarify longstanding confusion over religious organizations’ role and rights on university campuses.” 85 Fed. Reg. at 59,936.

Instead, rather than identifying any flaws in the 2020 NPRM record or providing any updated research evidence, the NPRM bases its conclusion that the provisions themselves are the cause of all confusion on the Department’s “outreach efforts” to certain stakeholders, some of which said they are confused. These outreach efforts could not have been very extensive insofar as they did not include this organization or, to our understanding, many of our sister organizations, including those that have been involved in litigation over these very issues. That is a significant omission.



Had the Department asked, they would have learned that, instead of causing confusion, these provisions have been extremely helpful in assisting IHEs in understanding how to properly balance First Amendment rights and anti discrimination laws. Indeed, as discussed in further detail below, these provisions have allowed Cru and other religious groups to avoid litigation simply by referring to the regulatory language in letters to universities, enabling us to reach non-antagonistic solutions that accommodate religious groups while continuing to uphold and value nondiscrimination.

Furthermore, as noted above, the provisions being proposed for rescission became effective in November 2020, in the middle of a global pandemic when university operations were significantly affected. Many were operating exclusively or primarily in a remote learning environment, and on-campus clubs were simply not meeting. This is hardly an environment in which to properly evaluate the effectiveness of the provisions, nor is it an environment in which massive confusion could have developed. Thus, because the Department failed to account for the extensive record underlying the 2020 regulation, failed to consider evidence that the provisions have been effective in eliminating confusion, and simply did not give the provisions a fair opportunity before proposing their rescission, the record does not support any need for change and, in fact, reveals that change at this point would be arbitrary and capricious.

**C. *The NPRM Incorrectly Concludes that the Provisions Do Not Protect First Amendment Rights:***

In addition to failing to pinpoint the true nature of the problem, the NPRM also errs in concluding that the provisions slated for rescission do nothing to protect First Amendment rights. See NRPM, p. 20 (“the Department has not observed that [these provisions] have meaningfully increased protections of First Amendment rights for religious student organizations or campus administrators since the rule went into effect.”). For the reasons set forth below, this conclusion is simply wrong. The provisions do provide significant protections to First Amendment rights that are not available through other means.

**1. The NPRM Wrongly Concludes that Litigation Alone is an Adequate Remedy**

It is axiomatic that justice delayed is justice denied. Accordingly, the NPRM’s conclusion that aggrieved students can seek redress through the courts provides little comfort. A student’s collegiate career is of very short duration, and civil litigation takes time to resolve. According to the United States Courts’ report “U.S. District Courts - Civil Statistical Tables for the Federal Judiciary (December 31, 2021),” the most recent report available, the median time for a civil case in a United States District Court to proceed from filing through trial is 29.2 months. <https://www.uscourts.gov/statistics/table/c-5/statistical-tables-federal-judiciary/2021/12/31> Thus, students could be deprived of the opportunity to participate in these groups for well over half of the time that they typically are in college.



In addition to simply the time that litigation takes to resolve, it is costly, sophisticated, and complex. Indeed, the NPRM suggests that these issues are too complex even for the Department of Education to investigate. See NPRM, pp. 21-22 (“The First Amendment is a complex area of law with an intricate body of relevant case law. Closely contested cases ... are typically very fact-intensive, and litigated thoroughly through the courts. A proper review of an alleged violation could require the Department to devote extensive resources to investigate the allegation given the nature of these cases. Therefore, even if the Department revised the regulations to clarify this confusion, we would still be concerned that enforcement would be overly burdensome for the Department” (footnotes omitted.)). If navigating these issues is too difficult for the Department, then certainly it is too much to expect a typical college student to even recognize the violation, let alone find his or her way to court.

Some religious groups, like those affiliated with Cru, have access to a national organization that can provide resources and support, including staff who understand complex legal theories, but many do not. Yet even with available support, most students involved in Cru do not want to engage in litigation. They want to avoid the tension that a public battle with their university would cause and would rather serve their fellow students and their campus. Many groups in fact just disappear if there is not a less confrontational option - a great loss to their campus community.

This is particularly problematic for minority religious groups, many of whom do not have national organizations behind them. Students in these groups likely have no ability to challenge infringements on their rights. Accordingly, leaving litigation as the sole remedy places a particular and unacceptable burden on minority religious groups.

As a result of these considerations, litigation should be the remedy of last resort, not the remedy of only resort. Student groups of all sorts, certainly including but not limited to religious ones, bring great benefit to college campuses. Student groups of various purposes existing together on campus promote diversity and provide emotional safety and growth opportunities for students. Indeed, the Becket Fund for Religious Liberty found that the majority of Americans, who have different perspectives on religion, want religious people in the public square. Fully 85% of the respondents to the Becket Fund survey support religious sharing. See 2022 Religious Freedom Index, Fourth Edition, Becket Fund for Religious Liberty, December 2022 (page 34 of this index is attached as Attachment 3).

These groups also foster emotional and mental health among students in a way that official services cannot. Indeed, in February 2021, over 70 percent of University presidents identified mental health as a top concern. See [College and University Presidents Respond to COVID-19: 2021 Spring Term Survey, Part II](#). By nearly every metric, student mental health is worsening. During the 2020–2021 school year, more than 60% of college students met the



criteria for at least one mental health problem, according to the Healthy Minds Study, which collects data from 373 campuses nationwide ([Lipson, S. K., et al., \*Journal of Affective Disorders\*, Vol. 306, 2022](#)).

Besides promoting diversity and mental health, student groups also promote belonging, which has become a key focus for colleges, and a culture of wellness needs to be part of the long-term plan for universities. It is well known that “social connection” plays a crucial role in maintaining and restoring mental health. See [Student mental health is in crisis. Campuses are rethinking their approach](#). Jillian Kinzie, interim co-director of the National Survey of Student Engagement, says the key is to help students connect with a group that supports what they feel is a salient part of their identity. Those could be groups based on race, religion, or sexual orientation, but also an academic interest or a sports team, for example.” Lu, Adrienne, “Everyone is Talking About Belonging,” *The Chronicle of Higher Education*, Feb 17, 2023 (Attachment 4). See also Attachments 5 and 6, which are excerpts from Rockenbach, A.N., et al., *IDEALS: Bridging Religious Divides Through Higher Education* (2020), which detail the importance and benefits of including diverse groups, particularly religious ones, on university campuses.

The Department of Education has engaged on these topics, hosting seminars, writing blog posts, engaging stakeholders, and publishing resources addressing them. The Department should not then ignore clear evidence that spiritual community, resources, and support are a key factor in supporting those very same goals. Depriving religiously-minded students of the opportunity to avail themselves of these benefits while their case winds its way through court - assuming it ever gets there - does them a great disservice. Indeed, as these resources demonstrate, it does a tremendous disservice to the entire university community, not just those who are religiously-minded. In light of these considerations, we are shocked that the Department has concluded that “rescinding §§ 75.500(d) and 76.500(d) would not have costs for students or campus communities.” NPRM, p. 30. To the contrary, rescinding these provisions would impose tremendous costs on these communities.

## **2. The NPRM Overlooks Significant Benefits Provided by the Provisions**

The provisions proposed for rescission provide benefits beyond the mere possibility of sanction for IHEs who violate students’ First Amendment rights. As noted above, Cru and other religious organizations have been able to avoid litigation simply by referring to the regulatory language in letters to and conversations with universities, enabling us to reach amicable resolutions that accommodate religious groups while continuing to uphold and value nondiscrimination. A primary benefit of these provisions, then, is that they allow for religious



organizations to point to them so that universities specifically consider how to treat them fairly and how to value their free exercise rights, rather than misapplying the “religion” category in ways that end up discriminating against religious organizations.

For example, a ministry of Cru at the University of Kansas known as “Bridges” was denied funding through the Office of Student Diversity to help international students attend the Bridges International End-of-the-Year Vision Conference, even though university resources were made available to other groups for similar purposes. The group was informed that the request was denied “due to the religious activity that would be taking place during the trip.” Cru’s legal staff was able to persuade the university to reverse its decision through a letter that pointed out the flaws in the decision, which included specific reference to the regulations proposed for rescission in this NPRM. See Attachment 7.

Another recent example occurred at the State University of New York in Cortland (SUNY Cortland). In that situation, SUNY Cortland rejected a Cru student group’s constitution because the constitution said that the ability to provide spiritual leadership to the group and knowledge of the group’s core messages would be considerations in selecting the group’s leaders. It further stated that candidates for leadership positions could be asked about their faith, beliefs, and views during the election process so that group members could make an informed decision when casting their votes. In rejecting this constitution, SUNY Cortland told the group that “elect[ing] anyone based on religious beliefs” would violate school policy. Again, Cru legal staff was able to persuade the university to reverse this decision in a letter that, among other things, made specific reference to these regulations. See Attachment 8.

Thus, although the Department has not received many complaints under these provisions and estimates that it will receive fewer than five complaints annually, NPRM, p. 30, that does not mean that the provisions are of no value. To the contrary, the provisions actually have proven effective in avoiding conflict and expensive litigation.

This benefits not only student groups, but it also benefits IHEs and their staff. Indeed, in *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855, 864 (8th Cir. 2021), the court found that the law was clearly established, denied qualified immunity to university administrators, and imposed sanctions on the university administrators in their individual capacities. The clarity of these provisions thus assists not only IHEs but also university administrators themselves in avoiding expensive adverse judgments. We note that the NPRM’s discussion of available remedies does not discuss the possibility of individual sanctions, which does a disservice to these individuals. The risk of that exposure should be made known to them.



As noted above, student groups that are backed by national organizations may have the ability to make sophisticated legal arguments to university officials and judges, but most religious student organizations do not have access to such resources, particularly those representing minority religions. While a typical college student likely cannot analyze Supreme Court precedent establishing the contours of the Free Exercise Clause, he or she can certainly understand the plain language set forth in these regulations. The simplicity of being able to point to a regulation, as opposed to having to provide a multi-page, complex legal analysis, is a significant benefit that protects *both* religious student groups *and* IHEs who in good faith want to satisfy First Amendment and nondiscrimination requirements and who want to avoid the costs and disruption of litigation. In short, the provisions provide a way to achieve quick and positive resolutions that not only avoid litigation but also do not require the imposition of sanctions provided for by the provisions or the need for a Department of Education investigation.

The NPRM says that some IHEs expressed concern that the Department’s involvement “would undermine individual institutions’ ability to tailor their policies to best meet the needs of their student populations and campuses within existing legal constraints.” NPRM, p. 12. These provisions do not deprive IHEs of their policymaking voice. They merely assist IHEs in finding the guardrails beyond which they cannot cross. The provisions do not dictate policies that must be adopted. They simply clarify that IHEs need to make sure to value the speech, associational and free exercise rights of religious organizations in a way that is consistent with how the Supreme Court views such rights. This is something many have struggled to do.

### **3. The NPRM Understates the Value of Loss of Grant Money as a Remedy**

The NPRM states that the Department does “not believe that a threat of remedial action with respect to the Department’s grants is necessary to make the guarantees of the First Amendment, including the Free Exercise Clause, a reality at public institutions.” NPRM, p. 21 (internal quotation omitted). This conclusion understates the importance IHEs place on grant money and its significance as a motivating factor. Even a cursory review of the Department’s website reveals that it awards tens of billions of dollars in grants to IHEs, and IHE’s are dependent on receipt of this money.

A July 2022 study by IBISWorld found that over 40% of total funding for postsecondary education in the United States comes from the federal and state governments, with the federal government providing the lion’s share. The study found that “[i]n particular, public universities depend on government funding as they typically lack the endowment and donation network of private institutions.” See [Government Funding for Universities - United States | IBISWorld](#)

As a result, the threat of possibly losing this revenue stream provides significant motivation to universities to ensure that they comply with First Amendment requirements. Given



the length of time that litigation takes, and the few challenges that have been brought, the possible loss of grant money surely exceeds the threat of litigation as a motivator. The NPRM's implication that the possibility of losing these resources adds nothing to First Amendment protection therefore is misplaced.

**D. The NPRM Errs in Determining that Protecting First Amendment Rights on America's Campuses is not Within the Department's Mandate:**

Insofar as there is confusion about principles for preserving First Amendment rights and nondiscrimination principles, it is right for the Department of Education to provide guidance for how to balance those interests. Indeed, the Department's website says that its mission "is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access." If, as the NPRM claims, IHEs are confused about how to navigate the interplay between anti-discrimination laws and First Amendment rights, then it is the Department's obligation to fix that, not sidestep the issue. Sidestepping the issue is a failure "to ensure equal access."

The Department successfully navigates equal access issues in many different areas. That these issues bump into the First Amendment of the United States Constitution in the context of religious groups on campus makes it *more* important that the Department be involved in protecting these rights. The Department should see its role as helping IHEs apply the law properly in the higher education context.

The university context is unique and important culturally. This is not the space of government programs or contracts. It is a clearly First Amendment protected space, where associational rights are particularly important and meaningful. Student groups have a free association right that is stronger than the right to get a government contract, and the university context is unique in light of its historical role in culture creation, leadership development, and academic freedom. When confusion arises in this area, as the NPRM acknowledges has happened in this area, it is important that the Department of Education provide necessary guidance to help IHEs navigate that confusion in a way that protects the First Amendment and, at the same time, promotes diversity, mental health, and belonging by providing religiously minded students equal opportunity on campus.

### **III. CONCLUSION**

For the reasons set forth above, the provisions proposed for rescission are important in addressing confusion that exists on America's campuses about the interrelationship between First Amendment rights and nondiscrimination policies. Thus, they not only help student groups but also IHEs themselves, providing necessary guidance in a way that avoids conflict and



litigation, rather than causing it. Consequently, the Department of Education should not rescind these provisions.

At a minimum, if the Department remains unpersuaded of the benefit of these provisions, then it should undertake additional fact-gathering that is lacking in the NPRM. The Department has issued a Request for Information addressing certain parts of this same regulation. If the Department is still unsure, it should seek additional information about §§ 75.500(d) and 76.500(d) rather than rescinding them. Specifically, the Department should seek information from religious groups on campuses about situations where these regulations have served to resolve conflicts. It should also seek information from IHEs concerning their views on belief-based leadership criteria for religious groups. We believe that such fact gathering would make clear to the Department that many IHEs would not allow a student group to be registered on campus if it required its leaders to agree with its religious beliefs, which is patently unconstitutional.

Respectfully submitted,

DocuSigned by:  
*Steve Sellers* 3/21/2023  
842D46F3BBBA3467...

Steve Sellers  
President  
Cru / Campus Crusade for Christ International

DocuSigned by:  
*Mark Gauthier* 3/21/2023  
E9943314F2C044C...

Mark Gauthier  
Vice President for North America and Oceania  
Cru

Attachments:

1. Cru Comment to 2020 NPRM
2. Overview of the Problem Facing Religious Student Groups
3. Excerpt from 2022 Religious Freedom Index, Fourth Edition, Becket Fund for Religious Liberty, December 2022, p. 34.
4. Lu, Adrienne, "Everyone is Talking About Belonging," The Chronicle of Higher Education, Feb 17, 2023.
5. Excerpt from Rockenbach, A.N., et al., IDEALS: Bridging Religious Divides Through Higher Education (2020), p. 13.
6. Rockenbach, A.N., et al., IDEALS: Bridging Religious Divides Through Higher Education (2020), p. 27.
7. Cru Letter to University of Kansas
8. Cru Letter to SUNY Cortland

# **Attachment 1**



February 18, 2020

Jean-Didier Gaina, U.S. Department of Education  
400 Maryland Avenue SW  
Mail Stop 294-20  
Washington, DC 20202

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Re: Written Comment re the Department of Education's proposed rulemaking of January 17, 2020 at 85 FR 3190. Docket ID: ED-2019-OPE-0080-0001. RIN 1840-AD45.

We are writing today to offer Cru's perspective as a nonprofit organization with affiliated Chapters on college and university campuses all over the country.

We strongly support the proposed language for 34 CFR § 76.500(d) and § 75.500(d):

A public institution shall not deny to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including full access to the facilities of the public institution and official recognition of the organization by the public institution) because of the beliefs, practices, policies, speech, membership standards, or leadership standards of the religious student organization.

Thank you for taking action to protect religious student organizations.

Cru started its campus ministry in 1951 at UCLA. It has been seeking to provide a safe space for students to explore Christianity and grow in their faith since that time. We presently have student chapters on 1,439 campuses, with more than 106,000 students involved across the country in our various ministries. On many of those campuses, the Cru chapters have been active for decades, meeting the spiritual needs of students and providing meaningful community during that pivotal time in their lives.

Our Cru chapters have always welcomed any student to get involved and we have never had membership restrictions. We have sought to give leadership to students and develop them as caring and compassionate people and leaders. Because the role of leadership involves teaching religious beliefs and what it means to live out the Christian life, however, we believe that our student leaders are best equipped to lead if they have made the decision to follow Jesus and see

their faith as an important part of their life journey. What unites our chapters around the country is a shared faith and a shared mission and purpose.

The proposed language is helpful because it acknowledges the importance of allowing religious student organizations to have authentic expressions of religious faith. It allows religious student organizations to preserve the integrity of their beliefs by ensuring that people who are leading and speaking for the group agree with and care deeply about its mission and purpose which, in this case, is religious.

In this comment, we will make the following observations:

- There is a clear legal basis for the proposed language for 34 CFR § 76.500(d) and § 75.500(d).
- There is a clear logical basis for the proposed language.
- The proposed language is important and will remedy real problems.

**There is a clear legal basis for the proposed language:**

There is strong Supreme Court precedent for the principle of not singling out religious groups for different treatment. It violates a religious group's speech and association rights to be treated differently than other groups because it is religious. See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830-31 (1995). Student groups and organizations may engage in expressive activity without it being considered the university's speech. On public universities, this is based upon the principle of limited open forums, where a university opens space for private speech. See *Widmar v. Vincent*, 454 U.S. 263 (1981); *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000).

It is unreasonable to force religious groups to choose between preserving their religious missions and messages or being recognized student organizations. This choice puts religious student groups in an unreasonable position, hindering their association rights. It is a significant burden to be unregistered. See *Healy v. James*, 408 U.S. 169, 181-82 (1972). In addition, the principle that religious groups should not be singled out and refused benefits because of their religious status was made even more clear in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

There is also no Establishment Clause problem. A public university is not favoring religion when it allows private religious speech in the context of a limited open forum. See *Rosenberger*, 515 U.S. at 834. In fact, it creates more entanglement when a university dictates how a religious group may or may not function, such as by dictating what they are or are not allowed to consider in selecting the leaders who will represent the group and its religious beliefs.

The language in 34 CFR § 76.500(d) and § 75.500(d) can also be read consistently with *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010). *Martinez* addressed an uncommon policy that it called an "all comers policy," and said that it was permissible, but neither required nor expected for a university to implement such a policy. A true all comers policy (not allowing

any group to have requirements based on any beliefs or statuses) is extremely uncommon; the vast majority of schools that claim they have them do not. Any exceptions at all disqualify a policy from being a true all comers policy, including the choice to allow single-gender fraternities or sororities, or club sports. *See Martinez*, 561 U.S. at 704 (J. Kennedy, concurring) (stating that “Here, the policy applies equally to all groups and views”). In fact, the Martinez court singled out fraternities and sororities as an example of groups that might function without official recognition. *Id.* at 691. In light of this narrow definition, we have not seen true all-comers policies on any large university campuses.

Instead, policies that schools claim to be implementing equally frequently include exceptions for fraternities and sororities and often result in uniquely disadvantaging religious student groups. Often religious groups are the only student organizations asked to change their standards. When a school’s policy specifically affects religious groups because those groups have detailed standards (a logical result of the fact that religious beliefs are specific and detailed differently than other generalized beliefs), then that school is treating those groups differently “because of” their religious beliefs and leadership standards, etc. 34 CFR § 76.500(d) and § 75.500(d) would remedy that. In addition, religious beliefs are uniquely tied to religious identity in a way that is distinct from the other statuses frequently listed in nondiscrimination statements. For example, a womens’ rights group may require its leaders to hold certain beliefs about gender equality, but that belief qualification is independent of whether someone identifies as a certain gender. If someone holds a set of religious beliefs, however, they, by definition, have the corresponding religious status; if they do not hold those beliefs, they do not have that religious status. Therefore, to allow religious groups to have the same associational rights and ability to preserve their messages requires that they be allowed to expect agreement with their beliefs in the same way other groups are able to expect agreement, even though it ends up resulting in a distinction based on “religion.”

Religious groups, in fact, merit particular protection. The Supreme Court has acknowledged that, supported by the presence of the religion clauses in the First Amendment, religious organizations have a particularly strong interest in ensuring that those teaching and representing their beliefs also subscribe to them. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012) (holding religious organizations have an affirmative right under the Religion Clauses of the First Amendment to select leaders consistent with their faith and finding that a neutral and generally applicable federal nondiscrimination law could not override that right). In fact, the Court noted that government interference in dictating selection for religious leadership positions constitutes interference with internal decisions that “affect[] the faith and mission” of the church or organization itself. *Id.* at 707.

**There is a clear logical basis for the proposed language:**

Our religious student organization chapters want to be treated fairly. The way this issue has often been discussed turns religious discrimination on its head. Opponents often claim that to allow religious groups to use religious criteria in selecting leaders means the government is permitting discrimination based on religion. In fact, the government is committing religious discrimination

against such groups when it prevents them from preserving their beliefs and maintaining their religious identities, while allowing other groups to preserve their non-religious identities.

All groups want leaders who embody a combination of knowledge, skill, values and beliefs that match up with those of the group or organization that they represent. Religious beliefs, in particular, involve more than a set of statements or even intellectual assent; they are communicated and expressed in word and deed. In order to authentically and effectively pursue a religious mission and speak on behalf of a religious community, one must believe in its mission and be motivated by authentic personal faith. In addition, religious groups are often unique in wanting to write down the specific tenets of the beliefs they hold in order to distinguish themselves from other religious perspectives. It dilutes religious diversity if groups are not able to define themselves clearly based upon their particular missions and beliefs.

In addition, equal treatment is only possible if religious organizations can become officially recognized student organizations. There are significant benefits to being registered. These benefits are many and varied, ranging from room reservations to advertising to funding requests. Some of the benefits that directly involve aspects of expression by the groups include tabling, handing out fliers, advertising and promoting activities and events, having access to websites that students at that campus regularly access, and being able to apply for funding that enables the group to hold events that engage the broader campus community.

Accordingly, there is tremendous loss when a religious student group is refused registered status. It becomes essentially a second-class group, becomes more isolated, and loses credibility with students. It also often experiences considerable (and often prohibitive) financial costs, required to pay for the use of campus facilities that are made available to registered organizations at no cost. The campus community is harmed as well, because diversity is most rich when authentic belief-based expression by both individuals and groups is allowed to flourish.

**The proposed language is important and will remedy real problems:**

Cru chapters around the country have faced numerous challenges over the years. We always seek to resolve concerns respectfully, engaging with each campus individually to address policies that seem to single out religious student organizations. Our involved student leaders tend to be non-political and want to maintain good relationships with administrators, so they prefer dialogue to confrontation. Nevertheless, it takes a lot of time and energy away from their ability to serve their fellow students and campus communities when the status of their groups is threatened.

For example, some of the challenges we have faced include:

- A policy change in the California State University system in 2014 that resulted in many religious student organizations being without official status for a full year, many experiencing loss of members and high financial costs in trying to continue meeting on campus during that time.
- A proposed policy change that would have prevented religious qualifications for leaders that took eight months of dialogue with administrators to resolve at Indiana University in 2015.

- A student government deciding to refuse religious groups the ability to consider religion in selecting their leaders at Southeast Missouri State University in 2016.
- A refusal to approve a Cru chapter for over a year at Northern Colorado University in 2018 because its constitution said student leaders must meet an “alignment requirement.”
- Religious groups being singled out and evaluated as possibly violating school policies in ways non-religious groups were not at University of Iowa in 2018-19.
- And many more challenges, some of which never get resolved. Our students often choose to function in non-ideal situations in order to avoid tension, just hoping that they can preserve their group’s identity despite the problematic policies.

Thank you for considering our comment. For the reasons stated above, we believe that the language proposed for 34 CFR § 76.500(d) and § 75.500(d) is legally appropriate, practical, and necessary to ensure that religious student organizations of all types will be able to continue to add to the rich diversity that is so essential to college life in this country.

Respectfully submitted,

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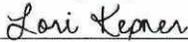
Mark Gauthier

Vice President and Executive Director, US Campus Ministry

Cru

[mark.gauthier@cru.org](mailto:mark.gauthier@cru.org)

DocuSigned by:



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Lori D. Kepner

Staff Attorney

Cru—General Counsel’s Office

[Lori.kepner@cru.org](mailto:Lori.kepner@cru.org)

100 Lake Hart Drive – 3500

Orlando, FL 32832

407-826-2355

# **Attachment 2**



**When Colleges and Universities Exclude Religious Student Groups:  
A Serious Problem  
(last updated March 2023)**

The following data is compiled from the experiences of several different religious student organizations. It is a representative list and is not comprehensive, because many situations—indeed probably the majority of situations—go unreported.

At many universities and colleges nationwide, religious student organizations have been threatened with exclusion from campus because they require their leaders to agree with their religious beliefs. All of these colleges and universities receive federal funding.

On a typical campus, hundreds of student groups meet to discuss political, social, and philosophical ideas. The student groups apply to the university administration for “recognition” as a student group. “Recognition” allows a student group to reserve free meeting space on campus, communicate with other students, and apply for student activity fee funding available to other student groups.

Without recognition, a group is stigmatized and finds it nearly impossible to exist on campus. A group loses the ability to reserve free meeting space. It loses the ability to communicate with students on the same basis as other student organizations communicate. It cannot attend student activity fairs at the beginning of the semester or be listed on the college website that connects students with recognized student groups.

Religious student organizations enrich campus life in tangible and intangible ways. Religious groups provide emotional and spiritual support for students, thereby improving wellbeing and mental health for students, and benefiting retention. Religious groups enhance campus diversity by contributing to the “marketplace of ideas” on campus. Religious groups are among the most ethnically diverse student groups on campus. They give students opportunities to serve their campuses and communities through an array of service projects.

Excluding religious student organizations harms students and diminishes campus diversity. Some colleges have adopted policies that protect religious groups and their ability to choose their leaders according to their religious beliefs. Unfortunately, many colleges have punished religious student groups for their religious beliefs and speech, including having religious leadership requirements, as described below.

**This is a nationwide issue.** This document demonstrates that religious student organizations face many issues on campuses around the country. We note, however, that there are many more undocumented issues that have occurred than those listed here.

Very often, the process of getting a religious group registered involves their chapter constitutions receiving additional scrutiny, and their leaders being subject to additional questions or requests to change their chosen language that expresses their beliefs, including their leadership standards. For example, one religious organization with student chapters noted that, in the last four

years, they had consulted legal counsel related to issues on sixteen different public colleges and universities, in order to get help navigating recognition issues, ranging from an actual denial to the threat of denial, or unusual bureaucratic hurdles to overcome. Another religious organization stated that they had numerous examples of similar problems, but it declined to share the details of many of those challenges due to various sensitivities. This is often because the student leaders of these religious groups are too intimidated by their schools' climate of hostility to their religious beliefs or speech to even want their schools identified. Often students don't want to talk publicly about problems they encounter because they are concerned about the repercussions to their group and to the relationships they are seeking to build with administrators.

## **Alabama**

### **University of South Alabama**

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to get registered. In 2019, the Alabama Legislature adopted legislation protecting belief-based student groups. (Ala. Code § 16-68-3(a)(8))

## **Arizona**

### **Embry Riddle Aeronautical College**

In 2018, a religious student group was refused recognition by the college because of its religious leadership requirements.

### **University of Arizona**

In 2010, the university denied recognition to a pro-life student group because the group's proposed constitution required that its members share its beliefs about the sanctity of human life. After receiving a letter from a legal organization, the university granted recognition to the group. Subsequently, in 2011, the Arizona Legislature protected religious student groups' ability to choose their leaders and members according to their religious beliefs. (A.R.S. § 15-1863)

### **Arizona State University**

In 2004, the university denied a religious student group recognition because it required its leaders and members to agree with its religious beliefs. After the group challenged the university in court, the university revised its policy to allow religious student groups to require their leaders and members to share their religious beliefs. (*Christian Legal Society Chapter at Arizona State University v. Crow*, No. 04-2572 (D. Ariz. Nov. 17, 2004))

In 2018, 2020, and 2022, university staff denied the CLS chapter's application to re-register. After CLS's legal counsel corresponded with the university general counsel, however, the university agreed to register the CLS student chapter in accordance with the 2004 settlement agreement.

## **California**

### **California State University**

The California State University comprises 23 campuses with 437,000 students. In the 2014-15 academic year, the University withdrew recognition from many religious student associations because they required their leaders to affirm the associations' religious beliefs. Some excluded groups had met for sixty years on Cal State campuses with religious leadership requirements. But under a new university policy, as a Cal State administrator explained, "What they cannot be is faith based where someone has to have a profession of faith to be that leader."

Eventually, Cal State retreated from its position and provided a letter that, under certain circumstances, religious groups' leadership selection processes could include questions about a candidate's religious beliefs. But the problematic policy remains on the books, and the religious groups remain on campus solely at the discretion of university administrators. In the past two years, some religious groups have experienced problems obtaining recognition on particular campuses. Also on the books is a decision by the federal Ninth Circuit that allowed (but did not require) the university to exclude religious groups because they require their leaders to be religious. (*Alpha Delta Chi v. Reed*, 648 F.3d 790 (9<sup>th</sup> Cir. 2011).) This Ninth Circuit opinion leaves 25% of all college students in the nation unprotected.

The 23 California State University campuses are: California State University, Bakersfield; California State University, Channel Islands; California State University, Chico; California State University, Dominguez Hills; California State University, East Bay; California State University, Fresno; California State University, Fullerton; Humboldt State University; California State University, Long Beach; California State University, Los Angeles; California Maritime Academy; California State University, Monterey Bay; California State University, Northridge; California State University, Pomona; California State University, Sacramento; California State University, San Bernardino; ;San Diego State University; San Francisco State University; San Jose State University; California Polytechnic State University, San Luis Obispo; California State University San Marcos; Sonoma State University; California State University, Stanislaus.

### **University of California, Davis**

A nondiscrimination policy at the University of California, Davis protected students regardless of their religious beliefs, unless they held Christian beliefs. The policy said: "Religious/Spiritual Discrimination - The loss of power and privilege to those who do not practice the dominant culture's religion. In the United States, this is institutionalized oppressions toward those who are not Christian." In February 2011, after receiving a letter from a legal group, the university revised its policy.

### **University of California, Hastings College of the Law (now UC College of the Law, San Francisco)**

In 2007, a religious student group was denied recognition because it required its leaders and voting members to agree with its religious beliefs. The law school claimed to have a novel policy that required all student groups to "allow any student to participate, become a member, or seek leadership positions in the organization, regardless of their status or belief." The Supreme Court ruled, 5-4, in 2010 that the law school could apply this "all-comers" policy to religious

groups, but only if it applied the policy uniformly to all student groups. (*Christian Legal Society v. Martinez*, 561 U.S. 661 (2010)) This decision has created nationwide confusion on college campuses with severe repercussions for religious student groups, because many colleges claim they have this novel policy when they do not and instead are discriminatorily excluding religious student groups from their campuses.

## **Colorado**

### **Aims Community College**

In 2022, students wanted to start a chapter of a national religious organization but were told that they could not because the college had had a negative experience with a prior religious group. The chapter leaders then met with administrators and cited the 2020 federal regulation that protects religious student organizations, and the administrators then agreed to recognize the group.

### **University of Northern Colorado**

In the 2018-19 academic year, a religious student organization was threatened with de-recognition unless it dropped its faith requirement for its leaders and submitted a constitution that in no way indicated that the organization *expected* its leaders to share its religious beliefs. The student leaders sought help from legal counsel. After receiving a letter from the students' legal counsel, the university claimed it had an "all-comers" policy and said it could not accommodate the group, despite its language referring only to enumerated statuses. The group was eventually recognized.

In 2011, a religious student group was denied funding for a campus event due to a university policy that prohibited funding for "ideological, political, or religious activities." The policy was eventually changed.

### **University of Colorado, Colorado Springs**

In the 2018-2019 academic year, a religious student organization whose purpose is to articulate Christian apologetics in a campus environment was denied recognition by the University because of its requirement that its leaders agree with its religious beliefs. On November 15, 2018, the group filed a federal lawsuit against the university, which settled in favor of the student group in May 2019.

### **Fort Lewis College**

In 2012, a religious student group was told that a college policy did not allow them to approach other students on campus to discuss spiritual topics. The problem was resolved through correspondence from legal counsel.

## **Florida**

### **Florida Polytechnic**

In 2020, the university refused to recognize an InterVarsity chapter until multiple rounds of engagement with legal counsel caused the university to change its position.

### **University of Florida**

In 2008, the university refused to recognize a religious student group because of its religious requirements for its leaders and members. When the group challenged the policy in court, the university revised its policy to protect the right of religious groups to have religious leadership and membership requirements. The university paid several hundreds of thousands of dollars toward the student group's legal fees. (*Beta Upsilon Chi, Upsilon Chapter at the University of Florida v. Machen*, 586 F.3d 908 (11<sup>th</sup> Cir. 2009), *vacating as moot*, 559 F. Supp. 2d 1274 (N.D. Fla. 2008))

### **University of South Florida**

In 2015, the university implemented a new policy that effectively denied student activity fee funds to student groups with religious leadership requirements.

### **Rollins College**

In 2013, a number of religious groups were de-recognized and could no longer hold Bible studies on campus because college administrators applied a policy that effectively prohibited religious student groups from having religious leadership and membership requirements. When several religious groups sought to once again be recognized in the 2018-2019 academic year, they faced the same challenges.

### **Florida State University**

In 2004, the university threatened not to recognize a religious student group because of its religious leadership requirements. After a letter from a legal organization, the university recognized the group.

## **Georgia**

### **University of West Georgia**

In the summer of 2019, a religious student group was told by university administrators in the Center for Student Involvement that it would not be a registered student organization for the 2019-2020 academic year because of its religious leadership requirements. It had been a registered student group since 2014, although at that time, it had taken several months and the involvement of a legal organization to become a registered student organization. In August 2019, after a legal organization became involved, a high-ranking university official reversed the decision and registered the organization.

### **University of Georgia**

In 2006, the university denied recognition to a religious student group because of its religious leadership and membership requirements. When the group challenged the policy in court, the university revised its policy to allow religious student groups to select leaders and members based on their religious beliefs. (*Beta Upsilon Chi v. Adams*, No. 3:06-cv-00104 (M.D. Ga. 2006))

### **Georgia Institute of Technology**

In 1997, a university threatened to derecognize a religious student group because of its religious leadership and membership requirements. The Georgia Attorney General issued an

opinion that the university was violating the group's free speech rights. The university then recognized the religious organization. (Ga. AG Op. 97-32)

## **Idaho**

### **Boise State University**

In 2008, the university implemented a policy that would not allow religious student organizations to consider religion in selecting leaders. The student government required two religious groups to remove references to the Bible from their constitutions. The groups challenged the policy in court. The university agreed to recognize the religious groups and allow them to "limit leadership positions to students who share the same beliefs, values, and purposes" of the groups. (*Cordova v. Laliberte*, No. 08-543 (D. Idaho 2008).

In 2012, the university stated that it wished to return to a policy that would prohibit religious groups from having religious leadership requirements. In 2013, the Idaho Legislature protected the ability of religious student groups to have religious leadership requirements. (Idaho Code § 33-107D)

### **University of Idaho College of Law**

In 2001, a law school's student government denied a religious student group's request for student activity fees funding because the religious group required its leaders and voting members to agree with its religious beliefs. In deciding the religious group's appeal, the student judiciary determined that the religious group could receive student activity fees funding while having religious leadership requirements.

In 2021, a CLS student chapter sought recognition as an official student group at the University of Idaho College of Law. The law school student government, which was delegated the authority to recognize student organizations, grilled the CLS student leaders for nearly an hour about their application for recognition. The student government's questions focused on CLS's religious beliefs. After two such student government meetings in which the CLS student leaders defended their religious beliefs, legal counsel for the CLS chapter sent a letter to the University, asking that the CLS student chapter be recognized. The letter relied on the federal campus access regulation, 34 C.F.R. §§ 75.500(d) & 76.500(d). The CLS chapter was recognized.

## **Illinois**

### **Knox College**

In 2019, a student activist group sought to get the Student Senate to derecognize the InterVarsity chapter each year for nearly two years because of the chapter's convictions regarding sexuality. The Senate approved a campus-wide referendum to vote on the chapter's recognition, a move which was eventually stopped by the administration.

### **Northwestern University**

In 2015, several religious students were found to have violated campus policies against solicitation after university administrators defined "solicitation" as "seeking to gain support for organizations or causes." The administrators concluded that students who initiated spiritual

conversations with other students and invited them to a meeting violated university policy. The university punished the religious student group by imposing sanctions on it.

### **University of Illinois**

In 1993, a law school threatened to derecognize a religious student group for its religious beliefs. When a faculty member wrote a letter on behalf of the religious group, the law school allowed the group to remain recognized. (Stephen M. Bainbridge, *Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act*, 21 J.C. & U.L. 369 (1994))

### **Southern Illinois University School of Law**

In 2005, law school administrators revoked a religious student group's recognition because it required its leaders and members to agree with its religious beliefs. The student group challenged the policy in court and won a preliminary injunction. (*Christian Legal Society v. Walker*, 453 F.3d 853 (7<sup>th</sup> Cir. 2006))

## **Indiana**

### **Indiana University**

In August 2015, the university announced that it would change its policy so that religious student groups could no longer require their leaders to agree with the groups' religious beliefs. The university acknowledged that religious groups would not be able to choose their leaders according to their religious beliefs but that fraternities and sororities would be allowed to discriminate on the basis of sex in their selection of members and leaders.

Twenty religious student groups, including Catholic, Muslim, Jewish, and Christian student groups, sent a letter to the administration expressing their concerns about the new policy and its impact on religious groups' ability to choose their leaders according to their religious beliefs. After seven months of communications from students, parents, alumni, donors, and state political leaders, the university announced that it would keep its original policy and allow religious student groups to have religious leadership requirements. In 2022, the Indiana Legislature adopted legislation protecting religious student groups. (Indiana Code 21-39-8-1 *et seq.*)

### **Ivy Tech Community College**

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to become registered.

### **Purdue University**

In 2003, the university threatened to derecognize a religious student housing cooperative because it required its members to agree with the religious beliefs that defined the house. After receiving a letter from a legal organization, the university agreed to continue to allow religious housing cooperatives formed around religious beliefs.

## **Iowa**

### **University of Iowa**

In 2017, the University derecognized a religious student group, which had met on campus for 25 years, because it required its leaders to share its religious beliefs. The group had been previously recognized for its outstanding service to the student body. The group filed a federal lawsuit to regain its recognition and was granted a preliminary injunction in January 2018. The university lost and appealed, also losing the appeal. *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021).

In July 2018, the University officially derecognized 38 other student groups, including Muslim, Sikh, Mormon and Christian groups. InterVarsity was among these groups and was told that it could not require its leaders to agree with the group's religious beliefs. The Eighth Circuit Court of Appeals ruled that the University of Iowa officials had violated a clearly established right when they derecognized the religious student organizations, and that they therefore had forfeited qualified immunity. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8th Cir. 2021).

These court cases were not the first time concerns arose at the University of Iowa. For over a decade, religious groups had been targeted by other student groups for exclusion from campus because they required their leaders to agree with the groups' religious beliefs. In 2004, for example, the law school denied recognition to a religious student group because it required its members and leaders to agree with its religious beliefs. After several letters from a legal organization, the university recognized the group. But over the years, there was a steady drumbeat of opposition to religious student groups on campus. In 2019, the Iowa Legislature adopted a law protecting religious student groups on public university campuses. (Iowa Code § 261H.3(3))

### **Central College**

In 2008, the college threatened to expel a religious student group from campus because it asked its leaders to agree to live according to its religious beliefs. Eventually, the college agreed to allow the group to remain on campus.

### **Cornell College**

In 2011, the college required religious groups to delete their religious leadership and membership requirements from their constitutions in order to remain on campus.

## **Kansas**

### **University of Kansas**

In 2021, the student government denied a funding request for a religious student organization, noting that it could not grant a request if any of the funds would be used for religious purposes. The student leaders sought help from legal counsel for the organization. Legal counsel sent two separate letters requesting changes to the unconstitutional funding policy that singled out religious groups for different treatment. The student government changed its policy and granted the student group funding.

### **Washburn University School of Law**

In 2004-2005, a law school student government voted to punish a religious group for not allowing a student to lead its Bible studies even though the student admitted that he did not agree with the group's religious beliefs. When the religious group sought protection in court, the law school agreed to allow the religious student group to keep its religious leadership and membership requirements. (*Christian Legal Society Chapter of Washburn University School of Law v. Farley*, No. 04-4120 (D. Kan. Sept. 16, 2004).) In 2016, the Kansas Legislature adopted a law protecting religious student groups on public university campuses. (K.S.A. §§ 60-5311 to 60-5313)

## **Louisiana**

### **Louisiana State University**

In 2003-2005, the university denied recognition to a Muslim religious student group that had met on the LSU campus for many years. The university said that a new university policy required all student organizations to state in their constitutions that they would not restrict membership based on religious belief. After receiving a letter from a legal organization, the university restored recognition to the religious student group. In 2016, Louisiana adopted a law protecting belief-based organizations. (LSA-R.S. § 17:3399.33)

## **Maine**

### **Bowdoin College**

In 2014, the college derecognized a religious student group because it required its leaders to agree with its religious beliefs, as it had done for several decades. Despite *The New York Times*' front-page coverage, the college derecognized the religious group.

### **University of Maine, Farmington**

In 2010, the university threatened to deny recognition to a religious student group unless it removed from its constitution that the group's purpose was to evangelize. After fifteen months, the university agreed to restore its recognition.

## **Maryland**

### **University of Maryland – Baltimore County**

In 2022, the Graduate Student Association refused to recognize religious groups (including InterVarsity) because they were religious groups.

### **Towson University**

In 2010, the Student Government Association voted to deny funding to a religious student organization, because it determined that the event that was to be funded was too religious.

## **Massachusetts**

### **Tufts University**

In 2000, the student judiciary voted to derecognize a religious student group because it required its leaders and members to agree with its religious beliefs. After a legal organization sent

a letter, the administration restored recognition to the religious group. The issue arose again in 2014.

### **Harvard University**

In 2018, the university placed a religious student group on administrative probation because it required its leaders to agree with its religious beliefs.

### **Springfield Technical Community College**

In 2022, a religious student group was told they could no longer be recognized because their values didn't align with those of the university.

## **Michigan**

### **Eastern Michigan University**

In 2022, a religious student group was told they had to include language stating they would not use religious criteria in the selection of leaders "unless the student organizations' restriction is shown to be specifically allowed by law." The chapter received legal counsel on how to clarify that religious leadership criteria for religious groups is specifically allowed by law, actually enabling religious groups to be treated like other groups in being able to maintain an expressive identity. The group was then recognized. Most groups, however, would not be able to understand their rights, as most would understand the language to except only fraternities and sororities from the policy in relation to their sex-based distinctions.

### **Wayne State University**

In 2017, after several months of trying to reason with the administration, a religious student organization that had been a recognized student group at the university since 1956 was derecognized because it required its leaders to agree with its religious beliefs. After a federal lawsuit was filed, the university restored recognition to the student organization, but continued to fight in court for the right to deny recognition to the group. It lost in district court, with the judge finding that the university had violated the free speech, freedom of association, freedom of assembly, and free exercise rights of the student organization. (*InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 542 F. Supp. 3d 621 (E.D. Mich. 2021))

### **University of Michigan**

In 2012, the university derecognized a religious student group because it required its leaders to agree with its religious beliefs. In 2013, the university restored recognition to the religious student group. The university has a history, dating back to 1992, of sporadically threatening to exclude a religious group because it requires its leaders to agree with its beliefs.

## **Minnesota**

### **University of Minnesota**

In 2020, the university's Graduate Student Activities office refused to allow religious groups, including InterVarsity, to participate in the activities fair.

In 2003, the university denied recognition when another religious group refused to state in its constitution that its membership was open to all students regardless of religion. The group challenged the university policy. In order to settle the case, the university changed its policy to allow religious student groups to “require their voting membership and officers to adhere to the organization’s statement of faith and its rules of conduct.” (*Maranatha Christian Fellowship v. Regents of the Board of the University of Minnesota System*, No. 03-5618 (D. Minn. Oct. 24, 2003))

In 1994, the university derecognized a religious student group because it required its leaders and members to agree with its religious beliefs. A professor at the law school led the successful effort to regain recognition for the group. (Michael S. Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on “Equal Access” for Religious Speakers and Groups*, 29 U.C. Davis L. Rev. 653, 675 (1996))

#### **Minnesota State University, Mankato**

In 2015, a student invited some of her dormitory neighbors to discuss religious ideas. A residential advisor told the student that she was violating a university policy which allowed students to prohibit “religious solicitation” on a dormitory floor by majority vote. Eventually the university repealed its policy.

### **Missouri**

#### **Southeast Missouri State University**

In 2015-2016, the university denied a religious student group recognition because it required its leaders to agree with its religious beliefs. The group worked with the administration and the student government to secure a policy that would protect religious groups. In April 2016, the student government voted *not* to adopt a policy that would protect religious groups. After the student government vote, five additional religious groups indicated that they would not be able to remain on campus if they could not require their leaders to agree with their religious beliefs. In October 2016, the university agreed that religious student groups could have religious requirements for their leaders.

### **Montana**

#### **University of Montana School of Law**

From 2007-2011, the law school student government denied recognition to a religious group because it required its leaders and members to agree with its religious beliefs. The religious group challenged the policy in court, but the district court ruled against the religious group because it was in the Ninth Circuit. The religious group dismissed its appeal when the law school agreed to implement numerous reforms to bring allocation of student activity fees into conformity with the First Amendment. (*Christian Legal Society v. Eck*, 625 F. Supp.2d 1026 (D. Mont. 2009), *appeal dismissed*, No. 09-35581 (9<sup>th</sup> Cir., Aug. 10, 2011))

#### **Montana State University**

In 2022, the university refused to recognize a religious student organization’s chapter because of the chapter’s religious leadership requirements. It required the chapter to submit a

constitution which did not include an explanation that religious leadership requirements were consistent with the university's nondiscrimination requirement.

In 2014, the university adopted a new policy that effectively prohibited religious student groups from having religious leadership requirements. The religious groups could not persuade the university to allow them to maintain their leadership requirements because of Ninth Circuit precedent.

## **Nebraska**

### **University of Nebraska-Omaha**

In 2010, the university told a religious student group that it must remove from its constitution its requirement that its leaders agree with its religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. The university also had told a different religious group that its students could not meet with students who had filled out a card indicating that they wanted to receive information from the group.

## **New Hampshire**

### **University of New Hampshire Franklin Pierce Law School**

In 2022, the law school's Student Body Association asked inappropriate questions about a religious student organization's religious beliefs, with certain members appearing hostile to the chapter's views. Legal counsel wrote two letters citing federal regulations, 34 CFR §§ 75.500 (d) and 76.500 (d). The group was then granted recognition.

## **New Jersey**

### **Princeton University**

For several years before 2005, the student government denied a religious student group recognition because it was religious. After a letter from a legal organization, the administration eventually granted the group recognition.

### **New Jersey Institute of Technology**

In 2010, the college had a policy creating three tiers of student groups with the third tier automatically denied student activity fee funding, unlike the groups in the first two tiers. The third tier consisted largely of religious student groups.

### **Rutgers University**

In 2021, the Graduate Student Association refused to recognize multiple Christian groups as duplicative (one of which was an InterVarsity chapter). Two years of conversation with the university finally resulted in two Christian clubs being recognized.

In 2002-2003, the university derecognized a religious student group because it would not include language in its constitution that would prevent it from requiring its leaders to agree with its religious beliefs. In response to a court challenge, the university revised its interpretation of its

policy to allow religious student groups to keep their religious leadership requirements. (*Intervarsity Multi-Ethnic Campus Fellowship v. Rutgers*, No. 02-06145 (D.N.J. 2002))

## **New Mexico**

### **University of New Mexico**

In 2020, the University refused to recognize a religious student group because of its religious leadership requirements. The student leaders sought help from the national organization, and after multiple conversations with administrators, the University backed down only because the organization reminded them of the federal regulation finalized in 2020 that protected religious student groups, 34 CFR §§ 75.500 (d) and 76.500 (d).

### **University of New Mexico School of Law**

In 2001, the law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After receiving a letter from a legal organization, the university revised its policy and recognized the religious group with its leadership and membership requirements.

## **New York**

### **State University of New York, Cortland**

In 2022, a religious student organization submitted revisions to its constitution that included statements that it expected its leaders to demonstrate knowledge of the national organization's teachings, and that the process would include asking applicants about their beliefs. The Student Government Association (SGA) asked the leadership to remove those statements, claiming it went against the SGA policy that said the SGA could oppose recognizing a group if "it is discriminatory in any way...". After legal counsel sent a letter detailing the state of the law and that the chapter wished only to preserve its religious identity, the chapter was re-registered and allowed to include the statements in its constitution.

### **State University of New York, Albany**

In 2016-17, a religious student group had difficulty achieving recognition from the Student Association due to a policy stating that any student must be allowed to be a member and run for office in any student organization, with no eligibility qualifications allowed to ensure suitability, knowledge or experience. The religious student group expressed concern about preserving its religious beliefs and mission and the university's hindering its association rights, but the university continued to insist on the policy and asked for language changes in the constitution. The group achieved recognition after a convoluted process of updating its constitution, though it remained concerned that it would not be able to uphold its religious beliefs.

### **New York City College of Technology, Brooklyn**

In 2017, a religious student group seeking to register as a student organization was told that their constitution could not have any leadership requirements other than the basic GPA-type requirements the college has in place. They were asked to remove any such language in their constitution. The group was concerned about its association rights and asked for policies clarifying

the requirement further. The administrator refused to give more details, and just demanded that they remove all religious requirements for leaders, or they would not be registered.

#### **State University of New York, Buffalo**

In 2011, the student government derecognized a religious student group because it required its leaders to conform to its religious standards of conduct. After seven months, the student judiciary ordered that the student government restore recognition to the religious group.

#### **North Country Community College**

In 2005, a student was told by university administrators that she could not form a religious student group because of “separation of church and state.” After a letter from a legal organization, the university agreed to allow her to form a religious student group.

#### **Pace University**

The law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After eighteen months of correspondence, including letters from a legal group, the law school eventually recognized the religious group with religious requirements for leaders.

#### **State University of New York, Oswego**

In 2001, a religious student group was denied recognition because it required its leaders and members to agree with its religious beliefs. Eventually the university agreed to recognize the group with its religious leadership and membership requirements.

### **North Carolina**

#### **University of North Carolina, Chapel Hill**

In 2005-2006, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. The student group challenged the university’s action in court. The university settled the case by adopting a policy that allows all student groups, including religious groups, to have leadership and membership requirements regarding beliefs. (*Alpha Iota Omega Christian Fraternity v. Moser*, No. 04-765, 2006 WL 1286186 (M.D.N.C. May 4, 2006); 2005 WL 1720903 (M.D.N.C. Mar. 2, 2005)) Nonetheless, for the next 8 years, religious groups at UNC were repeatedly told that the policy might be altered to no longer allow religious leadership requirements. In 2014, the North Carolina General Assembly enacted legislation to protect religious student groups on public college campuses. (N.C.G.S.A. §§ 115D-20.1 & 116-40.12)

#### **University of North Carolina, Greensboro**

In 2011-2012, the university denied recognition to a religious student group because it required its members to agree with its religious beliefs. The university recognized the group after it challenged the university policy in court.

## **North Dakota**

### **University of North Dakota**

In 2003, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After several months, the university agreed to allow religious groups to take religion into account in selection of their leaders and members and restored recognition to the group. In 2021, the North Dakota Legislature adopted legislation to protect student groups. (N.D. Code § 15-10.4-02(h))

## **Ohio**

### **The Ohio State University Moritz College of Law**

In 2003-2004, a religious group was threatened with derecognition by the law school after a member of another student group demanded that it be derecognized because of its religious leadership and membership requirements. After months of discussions with university administrators, the religious group sought court protection. It dismissed its legal challenge after the university revised its policy to allow religious student organizations to have religious leadership and membership requirements. The religious group then met without problem from 2004 to 2010. (*Christian Legal Society Chapter of the Ohio State University v. Holbrook*, No. C2-04-197 (S.D. Ohio 2004) (dismissed when university changed its policy))

In 2010, the university asked the student government whether the university should discard its policy and no longer allow religious groups to have religious leadership and membership requirements. After several public meetings on the issue, the student government urged the university to drop its protection for religious student groups and “endorse[d] the position that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those [religious] organizations.” Having unleashed anti-religious sentiment on campus, the university eventually tried to compromise and retain protection for religious groups’ leadership requirements but not membership requirements. But the campus controversy continued. Ultimately, the Ohio Legislature resolved the issue by prohibiting public universities from denying recognition to religious student organizations because of their religious leadership and membership requirements. (Ohio Rev. Code § 3345.023)

### **University of Toledo College of Law**

In 2005, the law school refused to recognize a religious student group unless it removed all scriptural references from its constitution. The university also required the group to pledge not to choose its leaders and members on the basis of religion, even though the university actually had a written policy that allowed religious groups to do so. As a result of the group’s challenge in court, the university recognized the group and agreed that student groups could have religious leadership requirements and include references to the Bible in their constitutions and bylaws. (*Christian Legal Society Chapter of the University of Toledo v. Johnson*, 3:05-cv-7126 (N.D. Ohio June 16, 2005))

### **Case Western Reserve University**

In 2006, the university denied recognition to a religious student group until it received a letter from a legal organization. In 2013, the student government of a graduate school at the university denied recognition to a religious student group because of the “emphasis on God and

especially because of the bible sessions” in its application for recognition. After a letter drafted by a legal organization was sent, the graduate school recognized the group.

### **Wright State University**

In 2009, the university denied a religious student group recognition because it required its voting members to agree with its religious beliefs. The religious group had been a recognized student group at the university for 30 years. After receiving correspondence from a legal group organization, the university restored the group’s recognition.

### **Cleveland State University**

In 2018, the university derecognized a religious student group because it required its leaders to agree with the group’s religious beliefs, even after the group brought to the administrator’s attention that Ohio state law prohibited public universities from denying recognition to religious student organizations because of their religious leadership requirements. Eventually recognition of the group was restored.

## **Oklahoma**

### **The University of Oklahoma**

In August 2011, the student government sent a memorandum to all registered student organizations, announcing a re-interpretation of university policy that would prohibit religious student associations from having religious leadership and membership criteria. After receiving a letter from a legal organization, the university agreed that a religious student group could require its leaders to agree with its religious beliefs. In 2012, the university denied recognition to a religious student group because it required its members to agree with the group’s religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. In 2014, the Oklahoma Legislature enacted protection for religious student groups. (70 Okl. St. Ann. § 2119)

## **Oregon**

### **The University of Oregon**

For many years, religious groups have been sidelined and placed under the authority of a separate association. As a result, most groups do not actually register as student organizations, are treated differently in terms of how they can reach out to involve students and get funding. In addition, students don’t have as many opportunities for leadership within religious groups. When a religious group sought recognition as a student organization in 2018, they were told they could not have religious standards for leadership.

## **Pennsylvania**

### **Penn State**

In 2004, the university refused to recognize a Christian student group because the university claimed that its purpose was duplicated by other religious groups. The university had a policy that required all religious groups to be “unique.” The policy would effectively limit the

number of Christian groups on the campus. After the group challenged the policy in court, the university recognized the religious student group and deleted its policy requiring “uniqueness.”

In 2005, however, the university adopted a policy that prohibited religious student groups from requiring their leaders to agree with the groups’ religious beliefs and standards of conduct. In response to another court challenge, the university revised its policy to allow religious groups to choose their leaders according to their religious beliefs. (*DiscipleMakers v. Spanier*, No. 04-2229 (M.D. Pa. 2005))

#### **Shippensburg University**

A university derecognized a religious student group because its leadership and membership requirements purportedly violated the university’s speech code. After the group filed a court challenge, the university changed its policies to affirm that religious and political groups could choose their leaders and members according to their beliefs.

#### **Temple School of Medicine**

In 2013, a religious student group was told by campus administrators that it stood to lose recognition because it required its leaders to lead lives in accordance with its religious beliefs.

### **South Carolina**

#### **College of Charleston**

In 2016-17, a religious student organization experienced different treatment than other student organizations because religious groups were required to follow a different process of approval in order to access numerous benefits: getting registered, having access to facilities, and getting funding for their events. The students and religious organization advisors learned to navigate within the system, though they were often frustrated by the process.

#### **Charleston School of Law**

The Christian Legal Society chapter was attacked by the Equality Alliance for hosting a speaker who communicated a biblical understanding of marriage and sexual conduct.

#### **University of South Carolina**

In 2008, a religious student group was denied access to student activity fee funding that was available to other student groups solely because it was religious. After the group challenged the policy in court, the university adopted a new policy that allowed all student groups to be funded on the same terms.

### **Tennessee**

#### **Vanderbilt University**

In 2011-2012, Vanderbilt University denied recognition to fourteen religious groups because they required their leaders to agree with the groups’ religious beliefs. The university told one religious student group that it must delete five words from its leadership requirements if it wanted to remain on campus: “personal commitment to Jesus Christ.” That group left campus rather than recant their core religious belief. The university told another religious student group

that it was religious discrimination for the group to state in its constitution that it expected its leaders to lead its Bible study, prayer, and worship. Also, the university claimed it was religious discrimination for the group to require that its leaders affirm that they agreed with the group's core religious beliefs.

In 2013, Tennessee passed a law protecting religious student groups on public university campuses. (T.C.A. § 49-7-156) The law does not apply to Vanderbilt University because it is a private university.

## **Texas**

### **Texas A & M University**

In 2009, the university told a religious group that it would no longer be recognized because it required its members to agree with its religious beliefs. After a legal organization sent a letter, the university agreed to recognize the religious group with its religious membership requirements.

In 2011-2012, another religious group was told it must delete its religious requirements for its leaders and voting members from its constitution if it wanted to remain a recognized student group. After several letters from a legal organization, the university agreed to allow the group to be recognized with its religious requirements for leadership and membership.

### **University of North Texas Dallas**

In 2016-2017, the law school delayed granting a religious student group recognition because of its religious leadership requirements. After 8 months, the university adopted a policy that protects religious groups: "A registered student organization created primarily for religious purposes may restrict officer positions to those members who subscribe to the registered student organization's statement of faith." The religious student group was recognized.

## **Vermont**

### **Middlebury College**

In 2016, a religious student group was derecognized because of its theological beliefs.

## **Virginia**

### **University of Virginia**

In August 2021, several religious groups at the University of Virginia learned that the Student Council was requiring that all student organizations submit an "Identity Inclusivity Disclosure Form" in order to participate in the Fall Activities Fair, an important event for student organizations to introduce themselves to incoming students. The Student Council's form required a student organization to indicate whether it restricted its membership, leadership, programming, or activities based on the enumerated classes in the University's nondiscrimination policy. Regardless of its responses on the Form, a student organization would be allowed to participate in the Fall Activities Fair. However, if the Council decided that an organization did not respond honestly, an Honor Code charge could be brought, which could result in expulsion of the student officer signing the Form. Recognizing that the Form was targeting them, several religious organizations sent a letter to University leaders voicing their concerns and citing federal

regulations, 34 CFR §§ 75.500 (d) and 76.500 (d). The Student Council withdrew the Form several days later.

Earlier in November 2020, the Student Council had adopted a resolution for its lobbyist to seek repeal of the Virginia law that protects religious and political student groups' right to choose their members and leaders according to their beliefs. To date, the state law has not been repealed. (Va. Code Ann. § 23-9.2:12)

#### **James Madison University**

In the fall of 2016, a religious student group was denied funding to help send students to a conference; in previous years, they had received funding. During the student government meeting addressing the appeal, the student group responded to one claimed basis for the denial. The discussion then turned to whether student activity fees should be used to support Christian beliefs. Many claimed they should not and then voted to deny the appeal. The discussion was lively and heated among student government members. The experience demonstrated a clear lack of understanding of the Supreme Court's rulings on student activity fees and forums for speech.

#### **Randolph-Macon College**

In 2017, a religious student organization was threatened with derecognition if it did not permit a student who disagreed with the chapter's theological positions to become a leader.

#### **University of Mary Washington**

In 2005, a student wanted to start a religious student group but could not agree to a university policy that would prohibit it from having religious leadership requirements. In the past, the university had denied recognition to any student group that was religious or political in nature. After receiving a letter from a legal organization, the university recognized the group. In 2013, the Virginia General Assembly passed a law to protect religious and political groups. (Va. Code Ann. § 23-9.2:12)

#### **William and Mary College of Law**

In February 2021, the Christian Legal Society chapter at the William and Mary College of Law invited a religious freedom lawyer to speak at its meeting. Due to the COVID-19 pandemic, the meeting was held on Zoom, and the speaker was located in California. CLS publicized its meeting through the normal campus communication channels. Several student groups, calling themselves the Equality Alliance, published an open letter to the law school, urging the CLS student chapter to disinvite its speaker due to his work on religious freedom cases. CLS students received disturbing and harassing comments from their fellow students.

In an email to the law school community, the administration explained that student groups were allowed to invite speakers, even people whose views other students disliked. The federal campus access regulations, 34 CFR §§ 75.500 (d) and 76.500 (d), may have helped administrators respect the CLS chapter's right to function on campus and prevented an escalation of the situation.

## **Washington**

### **University of Washington**

In 1997, a religious student organization was repeatedly treated differently than other groups because of its religious status. It was denied the opportunity to advertise the way other groups were allowed to do, and its fliers were even removed. It was also subjected to different treatment in how rooms were allocated and was denied an appropriate room for a large event it was having that was routinely given to other groups. The group was also threatened with having its club status removed. After a strongly worded letter from legal counsel, the university stopped targeting the group.

### **Highline Community College**

In 2007, a religious student organization was denied funding allocated for student organizations. The groups was told they were ineligible because the funds could not be used to fund religious activities. After a letter was sent from legal counsel, the college granted the group funding.

## **Wisconsin**

### **University of Wisconsin, Madison**

In 2022, a CLS chapter was seeking to re-register at the law school. They were asked to delete language in their constitution that a leader “must be a Christian.” The group was told that they could require agreement with beliefs, based on the Regents’ Policy 30-6, but could not require identification with a particular religion. This nonsensical distinction was confusing to the student leaders. After receiving a letter noting federal regulations, 34 CFR §§ 75.500 (d) and 76.500 (d), the chapter was able to re-register. Administrators, however, informed the chapter that its registration was “provisional.”

In 2006, the university derecognized a religious student group in part because of its religious leadership and membership requirements. When the group challenged its policy in court, the university had to change its policy. (*Madison Roman Catholic Found. v. Walsh*, 2007 WL 1056772 (W.D. Wis. Apr. 4, 2007)). The university then denied student activity fee funding to the religious group because its speech included prayer and religious instruction. The religious group won its court challenge to this viewpoint discrimination. (*Badger Catholic v. Walsh*, 620 F.3d 775 (7<sup>th</sup> Cir. 2010))

### **Milwaukee School of Engineering**

The student government refused to renew recognition of a Christian student group because of its religious standards of conduct. After a legal organization sent a letter, the student government restored recognition to the group, as well as to a Muslim student group.

### **University of Wisconsin, Superior**

A university refused to recognize a religious student group because it required its leaders to agree with its religious beliefs. After a court challenge, the university recognized the religious student group with its religious leadership requirements. (*Badger Catholic v. Walsh*, 620 F.3d 775 (7<sup>th</sup> Cir. 2010)).

# **Attachment 3**

The Religious Sharing dimension measures how Americans with different perspectives on religion interact with each other and how strongly they support the right of religious expression. The 2022 Index found that Americans still believe that religious people are welcome in the public square.

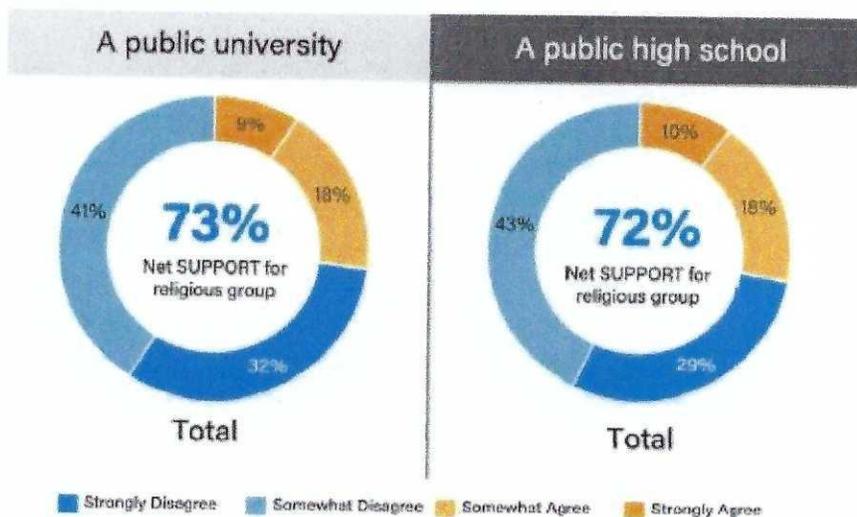
People of faith were overall more supportive of religious sharing, possibly because faith makes one more likely to value religious expression. As in previous years, a strong majority supported the rights of religious people to express and share religious beliefs with others. A slight increase from last year, 47 percent of respondents were completely accepting

and supportive, while 38 percent of respondents were mostly accepting and supportive (thus 85 percent of respondents were supportive). Strong support rose to 53 percent among people of faith, while strong support fell to 36 percent among people of no faith. Total support rose to 88 percent among people of faith and fell to 79 percent among people of no faith.

Similarly, a strong majority also supported the right of religious people to preach their faith to others, though people of faith and people of no faith had divergent responses. Roughly equivalent to previous years, 73 percent of respondents were overall supportive: 36 percent were

### Religious Groups on Campus Requiring Faithful Leaders

A religious group forms on campus and requires its leadership to be members in good standing of its faith community (e.g., refraining from premarital and homosexual sex, gambling, drinking, and smoking). Because of these requirements, this religious student organization should be kicked off campus. Do you...?



# **Attachment 4**

# THE CHRONICLE OF HIGHER EDUCATION

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# Everyone Is Talking About 'Belonging'

What does it really mean?



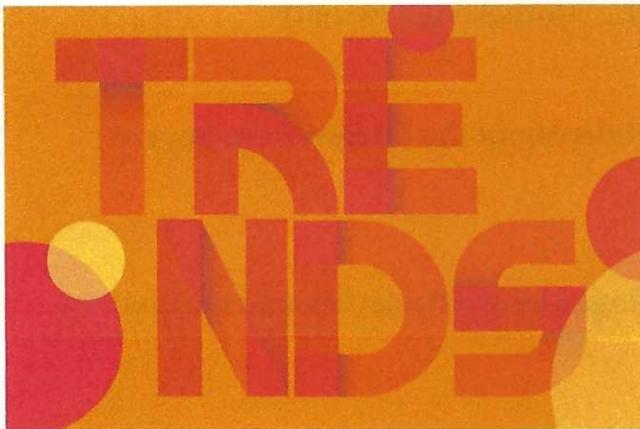
## CHASING A FEELING

By *Adrienne Lu*

LJ DAVIDS FOR THE CHRONICLE

FEBRUARY 13, 2023

It's everywhere. College T-shirts, notepads, and posters proclaim "You Belong!" Higher-ed associations offer training on how to increase students' sense of belonging, and philanthropies are encouraging colleges' efforts with grants. Belmont University, in Nashville, is hiring a vice president for hope, unity, and belonging, and soon you won't be able to look through a college directory without finding a high-level position devoted to the mission: Last year, 60 jobs posted in *The Chronicle* had "belonging" in their title, up from 23 the year before. Sometimes, it seems redundant: Fairfield and Syracuse Universities are just two institutions that have recently created high-level positions in charge of inclusion *and* belonging.



## The Trends Report 2023

For more analyses that will help you anticipate and respond to key developments in higher education, read on.

Congrats! You Didn't Apply, but We Admitted You Anyway.

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Students Demand Endless Flexibility — but Is It What They Need?

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Flagships Across the Country Prosper While Regional Colleges Withers

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The Climate-Conscious College

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## Other Developments You Should Watch

So is “belonging” just the latest buzzword in higher ed?

Yes, and no.

In many ways, the growing infrastructure to support belonging is just an extension of efforts to be more welcoming of students — and faculty and staff members — whom the founders of most colleges did not have in mind. At a time when diversity and equity are under fire in many quarters, belonging — a universal human need — may be less controversial, less political.

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### RECOMMENDED ARTICLES

STUDENTS

**If ‘Roe’ Falls, More Female Students Could Face the ‘Motherhood Penalty’**

Q&A

**‘It Does Get Tiresome’: What an ACLU Lawyer Thinks About the Endless Free-Speech Debate**

STUDENTS

**‘They’re Not Losing Sleep’: On One Campus, Feelings About a Racist Benefactor Contain Multitudes**

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But the focus on belonging also represents an important shift: In the past, higher education has often blamed retention problems on students’ deficits. Now, as pressure grows to keep enrollments up, more administrators are asking what colleges are doing wrong when large numbers of students don’t make it to graduation. Some are latching onto a “sense of belonging” as a potential lever of change, both for student success and to improve retention of faculty and staff members. Creating that sense is not just nice to do, says Marjorie Hass, president of the Council of Independent Colleges. It’s “a strategic question” central to institutional survival.

The literature on belonging has also evolved. When Terrell L. Strayhorn published the first edition of his book, *College Students' Sense of Belonging*, in 2012, there was relatively little research on the topic. "We have missed for decades the important role that relationships and feeling supported and valued, safe, and secure to be oneself at school and college played in the formula for success," Strayhorn says. "That's what belonging is."

The stakes are high: Research shows that college students who feel that they belong at their institutions get better grades and fare better on [persistence](#), [engagement](#), and [mental health](#). Conversely, Strayhorn writes in his book, "Students who do not feel like they belong rarely stay in college."

For all the progress in research and all the resources being invested across higher education, though, no one has perfected a blueprint for belonging. Ultimately, some say, the goal may be elusive.

**I**t's one thing to admit more diverse students and another to make sure they feel welcome and valued, especially as events of the past several years have increased racial tensions.

While the need to belong transcends categories such as race, sexual orientation, social class, and ability status, students in underrepresented or marginalized identity groups are more likely to arrive on campus already wondering if they belong there. Gregory M. Walton, a professor of psychology at Stanford University who co-wrote an influential [study](#) on a belonging intervention, says that for those students, negative experiences that others might easily brush off, such as receiving criticism or feeling lonely, can have a more lasting impact on motivation. Those kinds of experiences can even make it more difficult "to do the hard work of learning new material," he says.

## Administrators are asking what colleges are doing wrong when large numbers of students don't make it to graduation.

Jillian Kinzie, interim co-director of the National Survey of Student Engagement, which added questions about belonging to its annual survey in 2020, says the key is to help students connect with a group that supports what they feel is a salient part of their identity. Those could be groups based on race, religion, or sexual orientation, but also an academic interest or a sports team, for example.

To Monica Nixon, vice president for justice, equity, diversity, and inclusion at Naspas: Student Affairs Administrators in Higher Education, the emphasis on belonging represents a continuation of efforts that have been underway for years, rather than a hard pivot. But sometimes, she says, adding a fresh label can help more people to connect with an idea. "Maybe if we frame it as belonging, it will engage more people, and people will be able to grasp it a little bit differently," Nixon says. "And if belonging is it, then let's do that."

The Covid-19 pandemic also elevated the urgency of tackling belonging by reinforcing the idea that students don't go to college simply to gain knowledge but also to connect with others. Strayhorn believes some colleges are turning to the message of belonging as we come out of the pandemic — and the enrollment declines that came with it — to appeal to the growing number of students and families who are questioning whether to attend college at all. "This push for belonging is part of the persuasive apparatus of higher education to convince its customer that higher education is still a good choice," Strayhorn says.

**E**veryone feels the pain, at times, of not belonging. "It is inherently human," says DeLeon Gray, an associate professor of educational psychology and equity at North Carolina State University.

Traditional-age college students — who may be leaving behind friends and family members to build lifelong relationships, intellectual interests, and perhaps even a new sense of themselves — often wonder about their place in a particular community, or in the world.

A person's sense of belonging can also change in different contexts, or over time. One student might feel at home in a psychology lab but out of place at a sorority party, for example, or may feel alone at the start of the first year in college but later come to feel at home there. Surveys typically capture only a snapshot in time. Colleges pouring resources into student belonging are aiming at a moving target.

If the feeling of not belonging is an inescapable part of life, and a context-specific and ephemeral one at that, what should colleges be aiming for?

They are still figuring it out. When Gray, who teaches a graduate course on school belonging, had his students look for the term “belonging” on university websites, they found it in many strategic plans. But they had a harder time finding measurable goals or achievements. “It's not clear or apparent how a definition of belonging gets aligned with their indicators of success,” Gray says.

According to one critic, that lack of clarity is par for the course. Musa al-Gharbi, a Ph.D. candidate in sociology at Columbia University and a research fellow at the Heterodox Academy, says the diversity, equity, and inclusion administrators in higher education already do “too many things and none of them well enough.” He worries that expanding the mission of an already “ill-defined administrative apparatus” to include belonging will waste more money.

Still, some colleges are forging ahead by building on what they do know. Syracuse University decided to hire a director of inclusion and belonging after the theme of belonging appeared repeatedly in conversations with students, faculty, and staff, says Mary Grace Almandrez, vice president for diversity and inclusion. Students, for

example, asked administrators for more resources to help create a sense of community on campus, while faculty members talked about the need to change the organizational culture to be more inclusive and welcoming in order to complement efforts to not just recruit but retain diverse workers.

“Oftentimes when we recruit diverse employees or diverse students, we rely on the richness of their diverse perspectives to educate us,” Almandrez says. “But we, as an institution, have to also transform and change and think about our structures and our policies and procedures.”



The first step is trying to ensure that no one feels actively excluded. That can mean, for example, encouraging instructors to learn how to pronounce students' names correctly. Ensuring that transgender or nonbinary students' chosen names are the ones used in the college's systems and by professors. Making sure students' basic needs are met so they can focus on learning. Accommodating disabilities and uncovering the hidden curriculum — those unspoken expectations that students whose parents have degrees don't need to learn — for those who don't know to ask.

“When a student who's living with a disability can't access a room or a building or attend an event with the guest speaker because the room's not fitted for those who live with a wheelchair or there's no sound system in mind for those with auditory disabilities [or] there's no interpreter — that's how you say to people, 'You don't belong here because we're not even thinking of you,’” Strayhorn says.

Improving belonging might also look like strengthening discrimination and harassment policies, investigating tenure and promotion policies for faculty members, or examining merit raises for women or people of color.

Experts suggest mining data to determine potential areas for improvement and talking to students to learn more about their experiences. One place to start, says Kinzie, from the National Survey of Student Engagement, is to drill down into the social-identity groups on campus to see which have a low sense of belonging and talk to students — whether they are students of particular races, students in certain majors, part-time students, or students caring for dependents, for example — to understand the stories behind the numbers.

Another strategy is to look at engagement activities that are associated with a high sense of belonging — such as helping students develop relationships with people whom they can go to when they feel disconnected, activities that encourage

interactions among students from different backgrounds, and events about important social, economic, or political issues — and strive to ensure that more students can have those kinds of experiences.

**W**hile student activities are important for belonging, so, too, are classroom experiences and relationships, which means that colleges can't simply look to their offices of student affairs. Students need to feel as if they can talk to their professors if they are struggling.

Kinzie says improving students' sense of belonging is “totally within the power of institutions to influence.” Higher-quality relationships with faculty members, administrators, and their peers are positively associated with a sense of belonging, which means colleges should focus on helping students find people they can relate to.

Joanna Perez, an associate professor of sociology at California State University-Dominguez Hills, strives to create a sense of belonging in the seminar she teaches for first-year students, titled “Undocumented and Unafraid.” Professors at the university apply to teach first-year seminars on topics they're passionate about, which have included science fiction, the music industry, and social justice by the numbers.

The seminars, which meet twice a week, are intended to help students find their footing at the university. Together, students explore the resources available to them, start building relationships, and generally learn how to be college students together.

Perez's class tends to draw students who are undocumented or have family members who are. Many grew up feeling ashamed of their status and feeling afraid to talk about information that might be used against them or their family members.

Perez tries to create a safe environment for students to explore and embrace their identities, and to empower them to fight for their rights. Teaching the class, Perez says, has made her realize that, much of the time, higher education can be very

transactional. It's not enough, she says, for professors to care about students' academic success; they need to be more in tune with and sensitive to students' needs and their lives outside of class. "It's so important to humanize the student experience in order for that sense of belonging to be cultivated," Perez says.

Estefania Campos, who took Perez's class in 2018, says it helped give her the space to think about her identity as a beneficiary of the Deferred Action for Childhood Arrivals program, an Obama-era initiative that has helped prevent thousands of undocumented students and other young people from being deported. She knew many students who went to class and then went home, eventually receiving their degrees but never really finding their place or a direction. Campos says her class with Perez — and their continuing relationship — changed the course of her career and the way she thinks about the world.

"It starts with having those tough conversations, sharing what your purpose is and who your identity is," Campos says. "I think that's the best way to find your community."

**When a student with a disability can't "attend an event with the guest speaker because the room's not fitted for those who live with a wheelchair — that's how you say to people, 'You don't belong here.'"**

When administrators at Southern Illinois University at Edwardsville learned that Black students, who make up about 14 percent of its undergraduates, graduated at lower rates than did other demographic groups, they resolved to tackle the problem. Last year a longitudinal study uncovered a bright spot and possible strategy: About 42 percent of Black students who took a course in African American literature aimed at first-year students later graduated, compared with about 29 percent of Black students

who didn't take the class. (While any first-year student can enroll in the class, most students who take the class are Black.)

So the university expanded the course, now known as "The Black Scholar Experience," from 50 students in 2021 to about 310 students last fall. The class covers Black writers and artists but also topics such as why Black students struggle to graduate, how to manage stress and time in college, and barriers faced by Black women at the university. "We're really trying to support not just their transition to the institution, but very clearly from the very beginning, say you belong here, you have a community here," says Jessica C. Harris, vice chancellor for antiracism, diversity, equity, and inclusion.

Howard Ramsby, a professor of literature, has taught the class since 2004. He says students often tell him that they feel a sense of connectedness there, that they feel seen. "They felt like they were in a space in this class where they ... didn't have to overexplain certain kinds of things," Ramsby says.

**S**trayhorn is excited about the investment higher education is making in belonging. But he's also wary of the sector's tendency to marginalize values such as diversity, equity, and justice, and turn them into meaningless buzzwords, or, in his words, "nothing more than a cultural celebration or a bake sale."

And opportunities for students to interact with one another as peers *across* cultures are important, says Paulette Granberry Russell, president of the National Association of Diversity Officers in Higher Education. Research shows that those types of opportunities can buffer against discrimination and bias. "There's a greater sense of well-being that can be created as a result of those students' understanding those differences, engaging across differences," Russell says.

Many experts say it's important to both build bridges and provide affirmation of students' identities. But al-Gharbi, of Columbia, says college administrators often

make incorrect assumptions about why underrepresented students don't feel a sense of belonging. He says colleges often focus on "niche, idiosyncratic values," identity, and pursuing social justice in ways that are "actually alien and alienating to a number of people from less-traditional backgrounds."

While there's no such thing as a magic bullet for belonging, Walton's 2011 study may come close. It found that Black students who reflected on the idea that students of all backgrounds can struggle initially with the transition to college improved their academic performance over the next three years, cutting the achievement gap in half. An intervention based on the research is available to colleges through the [College Transition Collaborative](#) and the [Project for Education Research That Scales](#).

Based on his research, Walton says that, rather than telling students that they belong, colleges should send the message that it's normal for all students to struggle with the transition to college, and that things can get better with time. That message can be conveyed by top-level administrators, by professors in classes, and even in residential activities.

But while that initial message can help, it can go only so far, Walton says. If specific groups of students who receive that message later feel alienated on campus, colleges need to do the hard work necessary to resolve the underlying issues, by listening to students to learn where the trouble is. "If you're in a space where, for whatever reason, people in your group don't come to belong," Walton says, no amount of messaging is going to make a difference: You need to create spaces of belonging.

Walton cites the living-learning communities at [Michigan State University](#), which allow students who share interests in academic areas or multicultural living experiences to live together and attend some of the same classes, as an example of the structural changes some institutions are making.

Maybe there's no guarantee. "We can't make you feel a sense of belonging," Strayhorn says. "But we can create the conditions where the likelihood that you will feel a sense of belonging are greatest."

*A version of this article appeared in the [February 17, 2023, issue](#).*

*Read other items in this [The Trends Report 2023](#) package.*

*We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.*

STUDENT SUCCESS

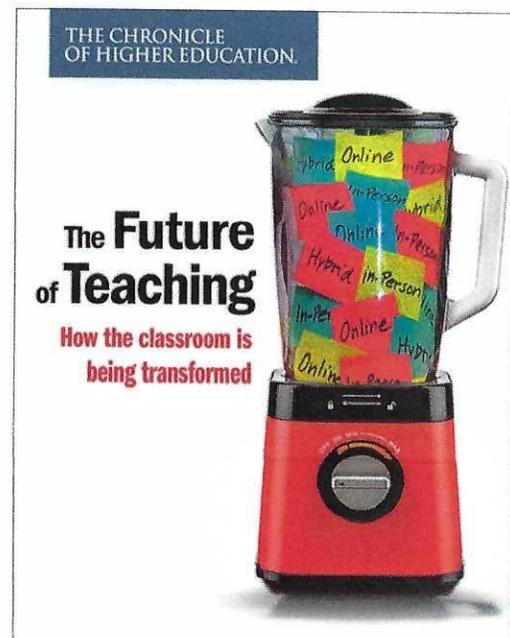
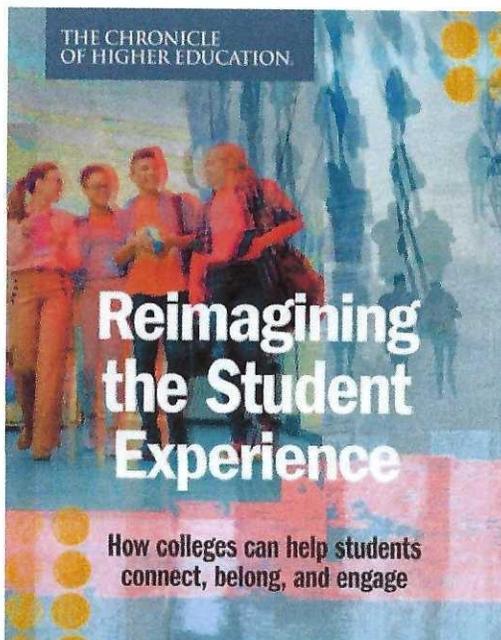
DIVERSITY, EQUITY, & INCLUSION



Adrienne Lu

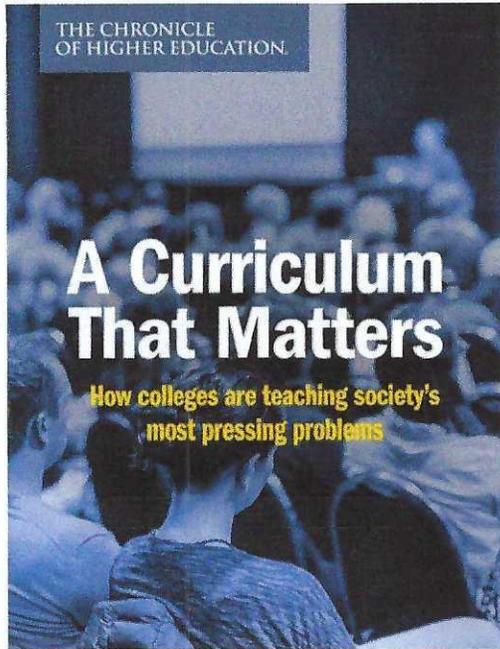
Adrienne Lu writes about politics in higher education and students — with a focus on underrepresented students. She can be reached at [adrienne.lu@chronicle.com](mailto:adrienne.lu@chronicle.com) or on Twitter [@adriennelu](https://twitter.com/adriennelu).

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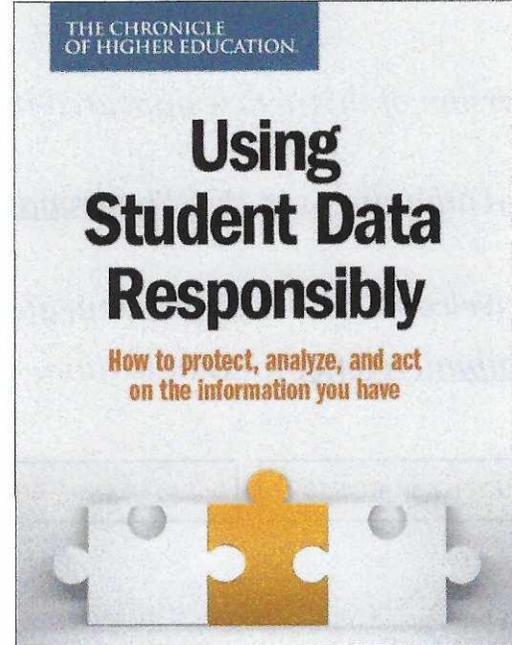


## Reimagining the Student Experience

## The Future of Teaching



**A Curriculum That Matters**



**Using Student Data Responsibly**



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# **Attachment 5**

We do not know definitively why more students are not discussing religious differences with their peers, but we do know that their hesitancy extends beyond the bounds of interfaith friendships. While a large majority of students have positive regard for others even when they deeply disagree with their beliefs (82%), a smaller number actively try to identify common values with people holding different religious perspectives (78%) and even fewer (65%) try to build relationships with people whose beliefs differ from their own.

To engage religious diversity productively in the broader society, students must be confident and willing to recognize—rather than avoid—the real and often challenging differences that exist between worldviews. Moreover, they must learn to build bridges across such divides. College campuses serve as an ideal context for students to wrestle with deep differences—with the support of campus leaders who can guide their efforts. However, higher education leaders must be more proactive in creating these opportunities.

Leaving worldview differences unaddressed, or addressing them in only superficial ways, does not prepare students for a world in which people of diverse religious and nonreligious beliefs are increasingly interconnected. It is heartening that so many of today's college students are embracing interfaith friendships, but there is deeper potential within these relationships that needs to be harnessed.

Percent of students who "somewhat agreed" or "strongly agreed" with the following statements about **encountering people with different beliefs**:



I have a positive regard toward others even when I deeply disagree with their beliefs.



When encountering people with different religious or nonreligious perspectives, I try to identify values we have in common.



I try to build relationships with people who hold religious or nonreligious beliefs that I disagree with.

# **Attachment 6**

## Institutional Investment

For college and university leaders at the highest levels (e.g., presidents, vice-presidents, and provosts) who are prepared to invest broadly in developing students' interfaith competencies, the following changes should be considered:

### **Send the message that your institution values all religious and worldview identities.**

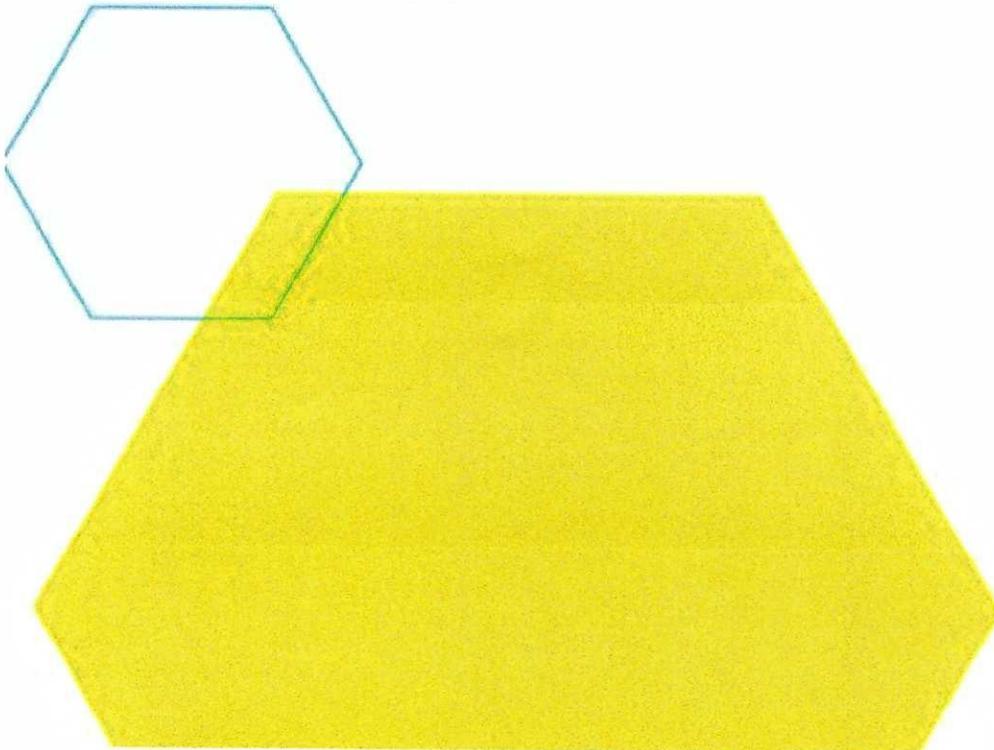
Whether you dedicate space on campus where all students can express their worldviews, endorse the formation of religiously-focused student organizations, or hire staff who are responsible for supporting diverse religious groups, you send a message that religious diversity is valued. Students who experience personal acceptance on campus are more likely to make gains in their interfaith learning and development.

### **Focus on teaching positive regard for all.**

At institutions where the student body collectively shows positive attitudes toward people with diverse beliefs, student attitudes toward specific religious minority groups are also more favorable. In other words, when it comes to cultivating appreciation for religious differences, a rising tide lifts all boats. For higher education leaders, this means that espousing inclusion for all can improve the campus experience for specific groups of students who struggle to feel welcomed and supported.

### **Expand religious, spiritual, or interfaith diversity policies.**

Creating policies that promote inclusion of different worldviews—such as formal accommodations in the academic sphere, offering food options that meet particular religious dietary needs in the dining halls, and explicitly naming religion in campus diversity statements—is a powerful way to affirm your institution's commitment to religious diversity. The mere presence of such policies is linked to students' interfaith learning and development, underscoring the capacity of institutional measures to tangibly affect students across campus.



# **Attachment 7**



November 3, 2021

Chancellor Douglas A. Girod  
Office of the Chancellor  
University of Kansas  
Strong Hall  
1450 Jayhawk Blvd., Room 230  
Lawrence, KS 66045  
[chancellor@ku.edu](mailto:chancellor@ku.edu)

Provost Barbara Bichelmeyer  
Provost & Executive Vice Chancellor  
Strong Hall  
1450 Jayhawk Blvd., Room 250  
Lawrence, KS 66045  
[provost@ku.edu](mailto:provost@ku.edu)

Brian A. White  
General Counsel and Vice Chancellor for Legal Affairs  
Strong Hall  
1450 Jayhawk Blvd., Room 245  
Lawrence, KS 66045  
[Brian-white@ku.edu](mailto:Brian-white@ku.edu)

Dear Chancellor Girod, Provost Bichelmeyer, and Vice Chancellor White,

Bridges International (Bridges) is a registered student organization at the University of Kansas. It is a student led group that is affiliated with the national organization of Bridges International, a ministry of Cru. I was contacted by the student leaders and the KU Affiliate advisor for the group, after it was denied its funding request through the Student Diversity, Equity and Inclusion Fund to help international students to attend the Bridges International End-of-the year Vision Conference in Baltimore, Maryland.

The decision to deny funding was made by the voting members of the Student Senate committee "due to the religious activity that would be taking place during the trip," according to Student Senate Treasurer [REDACTED] in an email on October 26, 2021. The student leaders for Bridges demonstrated in their funding application that the criteria for funding were met, noting that the purpose of the conference is to "experience unique global community." This purpose is consistent with the DEI fund's purpose to "foster an inclusive and multicultural environment for students" See DEI fund website at <https://studentsenate.ku.edu/guidelines-funding>. Bridges

leadership also indicated that the conference would involve considering the “spiritual aspect” to life’s purpose. I am writing to request that the funding request be granted for the legal reasons stated below.

The decision to reject funding for Bridges was based on unlawful policy language embedded throughout the Student Senate Rules and Regulations. The funds that the Student Senate allocates for student organizations are from student activity fees that are collected from each student at the University of Kansas. The DEI fund, described in Appendix N (e)(2) of the Student Senate Rules and Regulations, says “Funds cannot be used for specific religious activities or materials.” Section 3.23 of the Student Senate Rules and Regulations state that “Funds cannot be used for specific religious activities or materials. This includes, but is not limited to, religious texts, worship or devotional services, conversion efforts and salaries for religious officials. Funds can be allocated to organizations whose primary function is religious for traditionally secular activities that may have a religious perspective.”

This policy language that excludes based on the religious character of the group and its activities is contrary to State law, Supreme Court precedent, and Federal Regulations. We respectfully ask that you change the policies to remove the unconstitutional language.

This policy is wrong for the following reasons, described in more detail below:

- Supreme Court precedent makes clear that the policy is unconstitutional under both the Free Speech and Free Exercise clauses of the First Amendment.
- The Establishment Clause is not violated when the university creates a limited open forum and treats all groups, including religious groups, fairly.
- The policy is in violation of Kansas Law under KSA60-5312.
- The policy contravenes Federal regulations that uphold the importance of treating religious groups fairly.

First, under clear Supreme Court precedent, this policy violates both free speech rights and free exercise rights. Under the First Amendment Free Speech Clause, it is content discrimination to exclude religious content based on its religious nature. In *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), the university refused to pay the printing costs of a publication by a religious student organization because the content was religious. The Supreme Court called it a free speech violation to refuse the religious group funding due to the religious content of its speech. *Id.* at 837.

In addition, when a university establishes a structure for students to form student organizations and to provide those groups opportunities to get funding, it has created a limited open forum with the purpose of stimulating extracurricular student expression. The university is not speaking, but enabling speech in a neutral manner. *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 235 (2000). In addition, a university may not seek to exclude certain types of religious speech, claiming they are unprotected. Even “worship” is an expressive activity protected by the First Amendment’s Speech Clause. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

The Free Exercise Clause is also violated when a law imposes a particular burden on the basis of religious status. The distinction in this policy based on “religious activities” clearly uniquely burdens religious organizations, leading to different treatment because of their religious status.

The Supreme Court made this principle clear in both *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012, 2019, 2021 (2017) and most recently in *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246 (2020). *Espinoza* emphasizes that *Trinity Lutheran* said no to “laws that impose special disabilities on the basis of religious status.” (“because of” their faith...). The *Espinoza* court further clarified that the government may not disqualify “otherwise eligible recipients from a public benefit solely because of their religious character.” That is a penalty on free exercise and triggers strict scrutiny. 140 S.Ct. at 2254. The government actor does not have to restrict specific content or beliefs in order to violate a group’s free exercise; the scrutiny is triggered merely by a distinction based on religious character. *Id.*, at 2255.

Second, the Establishment Clause is not violated when religious groups receive generally available benefits. The Supreme Court has made clear that the Establishment Clause is not violated when religious groups are allowed to participate in limited open forums. *Widmar*, 454 U.S. at 273 (stating that “an open forum in a public university does not confer any imprimatur of state approval on religious sects or practices”). The most important factor is neutrality; religious speech may not be favored or disfavored. Universities must distribute resources with “neutrality towards religion.” *Rosenberger*, 515 U.S. at 839; *see also Southworth*, 529 U.S. at 233. True neutrality can happen only when the government “extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Rosenberger*, 515 U.S. at 839.

If a university operates a limited open forum in a viewpoint neutral manner, then the fact that a particular voice is religious does not mean the state is “giving preference” to that particular viewpoint. In contrast, excluding religious groups from such a forum is unconstitutional “content-based discrimination against respondents’ religious speech.” *Widmar*, 454 U.S. at 276. The state violates the First Amendment if it silences religious voices by treating them differently. *See Southworth*, 529 U.S. at 233. The Supreme Court calls this violation of the free speech rights of groups “viewpoint discrimination.” *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993).

In addition, the Supreme Court has directly addressed the particular situation of student activity fee distribution, and has drawn an even more clear line, stating that such funds are distinct from a normal discussion of state fund distributions. Money distributed from mandatory student activity fees is not money coming directly from state coffers. *Rosenberger*, 515 U.S. at 841 (noting the fee paid by students “is not a general tax designed to raise revenue for the University”).

Third, the law violates KSA60-5312, passed in 2016 to protect religious student organizations on college campuses and ensure that they receive the same benefits available to other student associations. The law was passed specifically to ensure that religious student organizations are not excluded from benefits given to other student organizations. KSA60-5313 then also

indicates that a cause of action may be brought against a university that violates KSA60-5312 by treating religious student associations differently than other student associations.

Fourth, the policies also must be changed based on two federal regulations that make it a material condition of any grant that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization “any right, benefit, or privilege that is otherwise afforded to other student organizations . . . because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards.” 34 C.F.R. § 75.500(d) & § 76.500(d).

For all the foregoing reasons, the policy excluding “religious activities” from receiving funding is improper and must be changed to prevent religious discrimination. The university is responsible to ensure that the Student Senate follows the law, and that it distributes any student activity fees in a viewpoint neutral manner. You therefore must act to correct these Student Senate policies and ensure that all student organizations are being treated fairly, including religious student organizations.

We respectfully request that you amend the policy accordingly. We also appeal the funding denial for the Vision Conference and ask that the Student Senate approve the funding request because the only reason it gave for the denial is unconstitutional. Thank you for your time and attention to this matter.

Respectfully submitted,

/s/ Lori D. Kepner

Lori D. Kepner  
Staff Attorney  
Cru—General Counsel’s Office

Cc: Dennis Kasper, of Lewis, Brisbois, Bisgaard & Smith, LLP, General Counsel to Cru

# **Attachment 8**



November 3, 2022

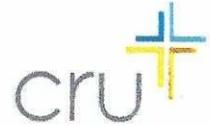
C. Gregory Sharer  
Vice President for Student Affairs  
SUNY Cortland  
P.O. Box 2000  
Cortland, NY 13045  
[greg.sharer@cortland.edu](mailto:greg.sharer@cortland.edu)

Student Government Association  
SUNY Cortland  
Corey Union, Room 217  
[sga@cortland.edu](mailto:sga@cortland.edu)

Dear Mr. Sharer and SGA leadership,

I am writing on behalf of the student leaders for the student organization of Cru at SUNY Cortland. The student organization is affiliated with the national organization of Cru as a recognized student led chapter. The chapter leadership sought to update their constitution in September of 2022 so that it would better reflect the way they function and would further clarify the purpose and religious identity of the chapter. They contacted me after they were told that their updated constitution was not acceptable.

While the student leaders for Cru are happy to make some adjustments and want to work with the SGA, they disagree with two of the requested changes. Legally, they should be allowed to retain those sections in the constitution. The first is a leadership qualification entitled "Knowledge Requirement" that focuses on ensuring that leaders have the required knowledge and skills to guide the chapter. It says "Officers must complete the Chapter's leadership application, which shall determine the applicant's skill in providing spiritual leadership for the Chapter and knowledge of the Chapter's core messages." Article V, section 2(B). The second is part of the description of the selection process. It is not a leadership qualification, but describes how applicants who have met the qualifications (making it to the pool of candidates) will be asked questions so that those voting can make an informed decision, considering the candidates holistically and keeping in mind the religious identity and integrity of the student organization. It says "During any election or selection process, applicants will be asked about their faith, beliefs and views. Qualified applicants may be asked about their willingness to model the Chapter's core messages through their behavior so that the messages are communicated with integrity." Article V, section 3(C).



When the Cru at SUNY Cortland president asked for more clarity, wishing to see the specific policy language that disallowed these sections, he was simply told again that “it goes against SGA and school policy” and that they could not “elect anyone based on religious beliefs.” Cru at SUNY Cortland respects and values nondiscrimination principles. It has no intention to discriminate, but merely wishes to ensure that its leaders are qualified to provide leadership to the religious group. A religious group should not have to risk diluting or losing its religious identity in order to become a registered student organization.

The SGA Constitution and Bylaws do not indicate that student organizations may not have standards to ensure that their leaders are qualified. In fact, the SGA bylaws state that clubs may have self-defined standards for active membership. *See SGA Bylaws*, §6.10 (<https://www2.cortland.edu/sga/>). The club planning forms, available at <https://www2.cortland.edu/student-life/clubs-and-organizations/sga/forms.dot>, also do not restrict leadership selection. The “Constitution Guidelines” do note that the Club Constitution Committee may oppose recognition if “It is discriminatory in any way....(race, sex, religion, age, national origin, disability, or veteran status),” and then states that “membership may not be exclusive.” This standard, however, does not justify rejecting a religious organization because it has leadership requirements that reference religion. This vague discrimination standard lacks clarity and guidance, should be revised, and must not be applied in a way that disadvantages religious organizations. It is very likely to result in arbitrary enforcement in its current form.

The presence and support of fraternities and sororities at SUNY Cortland reflects that their presence is not seen as a violation of campus nondiscrimination policies, despite the fact that they discriminate based on gender in their membership. *See* <https://www2.cortland.edu/offices/campus-activities/fraternities-and-sororities.dot>. The *Greek Life Operations Manual* simply states that the recognized chapters must provide “a certification that the constitution, by-laws, policies, regulations and practices of the organization do not restrict membership on the basis of race, creed, national origin, sex, age, or disability, except as may be specifically exempted by Federal or State laws/regulations.” *Greek Life Operations Manual*, §III(5). This statement’s framing reflects that the goal of SUNY Cortland is to ensure that membership is free from discrimination in accordance with legal standards. We respectfully ask that the same care and focus on appropriate legal standards, not arbitrary application, be made in decisions about how religious groups are treated.

It is common sense for student organizations to have leadership requirements so that their student leaders are qualified by being aware of, knowledgeable about, and able to lead in pursuit of the beliefs and purposes that the group exists to promote. If any groups are allowed to have belief-based or agreement-based leadership expectations, then religious groups should not be treated differently just because their beliefs are religious. It is not religious discrimination for a religious group to want religiously qualified leaders, though it would be religious discrimination if a club focused on environmental advocacy had religious qualifications. This is because religious



groups' beliefs are inextricably linked to their shared religious status, causing a mention of religious beliefs to relate to the category of "religion" in the listed protected categories. That means that religious groups are singled out uniquely for disfavor, not because they have purposes or beliefs (which all groups do), but simply because their beliefs are religious. Therefore, a policy is not neutrally applied in practice—if it results in every group except religious groups being allowed to have leadership qualifications related to the groups' purposes and beliefs—even if it appears to be neutral in that all groups must agree to it.

Recent legal developments reinforce that religious student organizations have the right to maintain religious leadership requirements. I will briefly review some of the clear legal principles that support this conclusion.

1. It is grounded in the fundamental rights to speech and association.
2. It is supported by Free Exercise rights.
3. It is required by Federal regulations.

### **Speech and Association Rights**

The Supreme Court has clearly stated that religious groups should be given the same treatment as other groups. See *Widmar v. Vincent*, 454 U.S. 263 (1981). In addition, it is a violation of the Free Speech Clause to discriminate against religious viewpoints. *Rosenberger v. Rector & Visitors of Univ of Va.*, 515 U.S. 819 (1995).

The Circuit courts have applied this principle as well. For example, the Second Circuit noted that a religious group's "religious test for leadership positions has been made purely for expressive purposes--to guarantee that meetings include the desired worship and observance--rather than for the sake of exclusion itself." *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d 839, 859 (2d Cir. 1996) (decided based on the EAA, but describing Free Speech principles). The Eighth Circuit also recently found that it was clearly viewpoint discrimination when a religious group was told it could not have religious leadership requirements. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855, 864 (8th Cir. 2021). In fact, the court found that the law was clearly established such that they denied qualified immunity to university administrators. *Id.* at 867. Another recent case, out of the Eastern District of Michigan, addressed and considered the right of religious student organizations on public university campuses and also found the law to be clear. *E.g., Intersvarsity Christian Fellowship v. Bd. of Governors of Wayne State Univ.*, 534 F.Supp.3d 785 (E.D. Mich, 2021) (finding violations to a religious student organization's "rights to internal management, free speech, freedom of association, freedom of assembly, and free exercise as a matter of law.").

### **Free Exercise Rights**

The Free Exercise clause is also implicated when religious groups are treated differently from other groups. The Supreme Court has said an organization should not be denied a benefit just



because it is religious. *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012 (2017). It also violates Free Exercise when the government dictates how a religious organization may select its leaders according to its religious tenets. See *Hosanna Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012); *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020) (affirming the right of “religious institutions to decide matters of faith and doctrine without government intrusion”). This principle of autonomy for religious organizations is critical to avoid government entanglement in religious practice.

In addition, the Ninth Circuit ruled this year that public school district officials likely violated the Free Exercise clause when they selectively enforced their nondiscrimination policy and refused to recognize a religious group because of its expectation that its leaders agree with its religious beliefs. *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 46 F.4<sup>th</sup> 1075, 1093 (9th Cir. 2022). The court noted that the government must respect religious beliefs and not selectively enforce laws against religious entities in a way that is different from how it treats secular entities. *Id.* at 1095.

The Supreme Court, also this year, specifically recognized that Free Speech and Free Exercise rights often interact and are layered upon one another. For that reason, it is particularly important to be aware of religious associations’ rights because “the First Amendment doubly protects religious speech.” *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2421 (2022).

It does not favor religion and does not violate the Establishment Clause when religious groups are allowed to participate in limited open forums. *Widmar*, 454 U.S. at 273 (stating that “an open forum in a public university does not confer any imprimatur of state approval on religious sects or practices”). The most important factor is neutrality; religious speech may not be favored or disfavored. Universities must distribute resources with “neutrality towards religion.” *Rosenberger*, 515 U.S. at 839; see also *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000).

## **Federal Regulations**

Finally, there are two federal regulations that make it a material condition of any grant that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization “any right, benefit, or privilege that is otherwise afforded to other student organizations . . . because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards.” 34 C.F.R. § 75.500(d) & § 76.500(d).

## **Conclusion**

This precedent makes clear that a religious student association has the right to select its leaders based on its religious purpose, beliefs and practices. In addition, university administrators have a duty to recognize religious student organizations and allow them to uphold their religious beliefs.



The university may violate the First Amendment's Free Speech and Free Exercise clauses by participating in viewpoint discrimination and interfering with its ability to select qualified leaders.

The Cru at SUNY Cortland student chapter expects that its leaders will teach and uphold its beliefs and live consistently with those beliefs so that they are communicated with integrity. We respectfully request that you recognize the student chapter of Cru at SUNY Cortland, amend the policy, and adjust your interpretation of any policy that would prevent such recognition. Thank you for your time and attention to this matter.

Respectfully submitted,  
/s/ Lori D. Kepner  
Lori D. Kepner  
Legal Counsel  
Cru—General Counsel's Office  
[REDACTED]

Cc: Dennis Kasper, of Lewis, Brisbois, Bisgaard & Smith, LLP, General Counsel to Cru