



March 24, 2022

The Honorable Dr. Miguel Cardona  
Secretary  
c/o Ashley Clark  
United States Department of Education  
Room 2C185  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

RE: Comments on Department of Education "Direct Grant Programs, State-Administered Formula Grant Programs," RIN 1840-AD72  
Document: ED-2022-OPE-0157-0001

Dear Secretary Cardona,

On behalf of the Coalition for Jewish Values (CJV), I am submitting comments regarding the Department of Education (the Department) Notice of Proposed Rulemaking (NPRM) entitled, "Direct Grant Programs, State-Administered Formula Grant Programs," which was published in the Federal Register on February 22.<sup>1</sup>

The proposed rule would rescind important regulations, 34 CFR § 75.500(d) and § 76.500(d), designed to ensure that religious groups at public universities are afforded the same rights and have access to the same benefits as other student groups on campus. CJV opposes this proposed rule and respectfully requests the Department to withdraw it, and that these existing regulations be retained.

CJV is the largest rabbinic public policy organization in America, representing over 2,000 traditional, Orthodox rabbis. CJV promotes religious liberty, human rights, and classical Jewish ideas in American public policy.

By proposing to overturn these regulations, we believe the Department is sending a disturbing and potentially dangerous message to America's public institutions of higher learning: that ensuring the religious freedoms guaranteed to all Americans under the First Amendment is not a priority for our federal government.

**The Current Regulations Provide Tremendous Value and Protection to Jewish Organizations at Public Institutions of Higher Education**

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<sup>1</sup> 88 Fed. Reg. 10,857 (Feb. 22, 2023).

It is no secret that the Jewish community is disproportionately targeted for hateful rhetoric and actions at colleges and universities. According to a just-published report by the ADL, campus incidents rose a stunning 41 percent in 2022, even higher than the 36 percent increase recorded for the nation overall—“the highest level of antisemitic activity since ADL started keeping records in 1979.”<sup>2</sup>

While it was previously commonplace for anti-Jewish hate to be masked behind the facade of anti-Zionist/anti-Israel activity, that number declined from 2021, though it remained higher than in 2020 and in previous years.<sup>3</sup> What has increased instead is the number of often violent, openly-hateful attacks which most frequently target visibly Orthodox Jews.<sup>4</sup> The obvious consequence of this sort of antisemitic harassment is to make Jewish students afraid to display signs of Jewish affiliation.

The aforementioned “anti-Zionist” activity routinely includes disruption of Israeli speakers and calls for anti-Israel boycotts,<sup>5</sup> both tactics with alarming roots in Nazi Germany,<sup>6</sup> and identified by both the ADL and the overwhelming consensus of rabbis as antisemitic. As the ADL pointed out, though university administrations routinely reject boycott calls and often attempt to stop disruptions, “resolutions with language targeting Zionism and pro-Israel groups on campus have the effect of making members of the campus Jewish community feel targeted and unsafe.”<sup>7</sup>

With that as background, it is easy to understand why religious groups for those of the Jewish faith are a necessary refuge and provide a sense of community for their members. These groups offer a lifeline for many Jewish students in public colleges and universities across the country, and cannot do so unless they are led by other Jews. It is simply unacceptable for a university to deny such organizations the right to provide private gatherings for individuals targeted due to their Jewish affiliation, and to be led by such individuals.

The protections provided in 34 CFR § 75.500(d) and § 76.500(d) are critical to ensuring that Jewish groups on college campuses are treated with the same respect and afforded the same protections and benefits as other groups on campus. The regulations are easy to understand and administer, and readily accessible. This makes them conducive to securing a resolution of any conflicts or inequities outside of the courtroom, because a religious group that is unfairly treated by a university will be able to approach administrators and easily show them that fair and equitable treatment is

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<sup>2</sup>ADL, “Audit of Antisemitic Incidents 2022,” (March 22, 2023), <https://www.adl.org/resources/press-release/us-antisemitic-incidents-hit-highest-level-ever-recorded-adl-audit-finds> (retrieved March 24, 2023).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> ADL, “Anti-Israel Activism on U.S. Campuses, 2021-2022,” (Oct. 12, 2022), <https://www.adl.org/resources/report/anti-israel-activism-us-campuses-2021-2022> (retrieved March 22, 2023).

<sup>6</sup> The Wiener Holocaust Library, “The Holocaust Explained—The role of the SA and the SS,” (March 20, 2019), <https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-nazi-rise-to-power/sa-and-ss/> (retrieved March 24, 2023).

US Holocaust Memorial Museum, “Anti-Jewish Boycott,” <https://encyclopedia.ushmm.org/content/en/timeline-event/holocaust/1933-1938/anti-jewish-boycott> (retrieved March 24, 2023).

<sup>7</sup> ADL, “Anti-Israel Activism on U.S. Campuses, 2021-2022.”

required. The students can then work with the administration to correct inequities and resolve differences without litigation.

### **The Department’s Proposal is in Opposition to President Biden’s Commitment to Equity**

On February 16, not even a week before the Department announced its proposal to rescind the current regulations, President Biden issued Executive Order 14091 entitled, “Further Advancing Racial Equity and Support for Underserved Communities.”<sup>8</sup> Among other things, the order directs the federal government to “pursue educational equity so that our nation’s schools put every student on a path to success.”<sup>9</sup> The order defines “equity” to include “members of religious minorities.”

Rescinding the current regulations runs counter to the Biden administration’s commitment to equity by removing regulations that are specifically designed to protect religious minority groups, like those of the Jewish faith, on campus.

### **The Department Offers No Specific Evidence to Support Rescission of the Current Regulations**

The Department provides no specific or meaningful evidence to support its decision to eliminate the protections the current regulations provide religious groups at colleges across the country. The most the agency can cite to justify this action is a recitation of vague “concerns” received in response to an August 2021 blog post and subsequent “stakeholder meetings.”<sup>10</sup> Importantly, the stakeholder meetings do not appear to have been announced in the Federal Register and were unknown to CJV and, we suspect, many other groups supporting the current regulations.

### **Conclusion**

By removing these regulations from the books, the Department’s action would be noticed. CJV believes the rescission would further ostracize religious groups (including those comprised of religious minorities) on college campuses across the country. Even though not done with this intent, it would signal to college administrators and students alike that the protections the First Amendment guarantees to all Americans are not a priority for the federal government, at least as they pertain to religious organizations.

CJV urges the Department to withdraw this NPRM and maintain the current regulations directing public institutions of higher education receiving grants to treat religious organizations on campus the same as other student groups.

Sincerely,

Rabbi Yaakov Menken  
Managing Director

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<sup>8</sup> Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Feb. 16, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf> (website last visited March 22, 2023).

<sup>9</sup> Ibid.

<sup>10</sup> 88 Fed. Reg. at 10,859.