

 1120 20th Street, N.W., Suite 740

Washington, D.C. 20036

 phone: 202.965.3652

 fax: 202.965.8913

 bruman@bruman.com

 [www.bruman.com](http://www.bruman.com/)

# **The Federal Update for February 23, 2024**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: February 23, 2024

[Legislation and Guidance 1](#_Toc159589969)

[Senators Ask for More Time on ARP-HCY Funds 1](#_Toc159589970)

[New Wave of Student Loan Forgiveness Goes into Effect 2](#_Toc159589971)

[SCOTUS Declines to Hear High School Admissions Policy Case 2](#_Toc159589972)

[Cassidy Seeks Input on Potential Literacy Legislation 3](#_Toc159589973)

[ED Provides More Information About FAFSA Emergency Funding 4](#_Toc159589974)

[Reports 5](#_Toc159589975)

[OCR Releases Fact Sheets with New Civil Rights Data Collection 5](#_Toc159589976)

*Lawmakers are continuing to negotiate fiscal year 2024 funding legislation. Funding for some agencies will expire on March 1, while funding for other agencies, including the U.S. Department of Education, will expire on March 8.*

## Legislation and Guidance

### Senators Ask for More Time on ARP-HCY Funds

Senators Joe Manchin (D-WV), Lisa Murkowski (R-AK), and Kyrsten Sinema (I-AZ) have sent a letter to Senate Appropriations Committee and Subcommittee leadership this week requesting a one-year extension of the obligation deadline for homeless children and youth funding under the American Rescue Plan (the ARP-HCY program).

The letter notes that the population of students experiencing homelessness has increased significantly since the passage of the ARP legislation and argues that these children – as well as those not captured in the statistics but who live in temporary housing or motels and other locations – were disproportionately impacted by school closures. The authors – all of whom represent schools with large rural or remote populations – say that rural communities are often left out of funding opportunities and may not have had equitable access to those funds. And it states that the U.S. Department of Education did not release guidance noting the full range of uses for ARP-HCY funds until September 2023, when funds will expire just a year later – all creating issues with getting ARP-HCY funds to students who need them in a timely manner.

The lawmakers suggest that a one-year extension will allow schools to “use ARP-HCY funds in the most strategic way possible for one additional school year, meeting needs as they arise in the most impactful ways, and leveraging them for continued support,” as well as to “reallocate ARP-HCY funds more equitably to communities with unique needs” and to “sustain innovative programming and partnerships.”

Lawmakers are working to draft appropriations legislation now, and policy riders like these extensions are a common element of such bills and will likely be part of the debate as they work to finalize legislative text.

Author: JCM

### New Wave of Student Loan Forgiveness Goes into Effect

The U.S. Department of Education and President Joe Biden implemented a new round of student loan forgiveness on Wednesday. This latest wave will wipe approximately $1.2 billion in debt held by almost 153,000 borrowers. It will cover loans for those who are enrolled in the Saving on a Valuable Education (SAVE) plan, originally borrowed $12,000 or less, and have been in repayment for at least 10 years.

This new round of forgiveness comes approximately six months ahead of schedule. Future rounds of forgiveness for borrowers with higher original balances will roll out in the next few months. While approximately 7.5 million borrowers are already enrolled in the SAVE plan, the administration says it will reach out to additional borrowers they have identified who could benefit from the plan, which also provides income-based repayment options as low as $0 per month.

Republicans in Congress criticized the effort, saying that student loan forgiveness only passes the debt along to taxpayers. “Unfortunately, Biden believes that more government dependence means more votes come election day—and as a result—has focused his time and energy on harmful initiatives to bolster his ratings” said Committee on Education and the Workforce Chair Virginia Foxx (R-NC). “It means less money in the pockets of hardworking taxpayers, more debt, and a continuing decline of an already failing student loan system.”

Author: JCM

### SCOTUS Declines to Hear High School Admissions Policy Case

On Tuesday, the Supreme Court turned down a request to hear *Coalition for TJ v. Fairfax County School Board*, which challenged the admissions policies at Thomas Jefferson High School for Science and Technology (TJ), a Virginia high school. The decision to deny a writ of certiorari – known as cert – comes a year after the Court’s ruling in *Students for Fair Admissions v. Harvard*, where the court found that affirmative action college admissions policies violate the U.S. Constitution’s Equal Protection Clause.

With that decision, advocacy groups have been challenging admissions policies at institutions and programs across the country. In 2020, the Fairfax County School Board, where TJ is located, implemented a holistic system for admission into the school, removed the requirements for standardized testing, and eliminated the $100 application fee. The process included consideration of factors such as English learner status, eligibility for free and reduced-price school meal programs, and attendance at an underrepresented public middle school. According to the school board, the change was intended to mitigate socioeconomic barriers for prospective students, as previous classes were filled with students from Fairfax’s most wealthy neighborhoods. Additionally, the school board required the process to be race-neutral.

Coalition for TJ, a group of Asian American parents, sued the school board and argued that the admissions policy indirectly uses race as a factor in admissions. A district court agreed, stating that the policy had a disparate impact on Asian American students. The Fourth Circuit disagreed, saying that Coalition for TJ did not establish that the admissions policy was created with discriminatory intent and only intended to improve the overall diversity in the school. In fact, that court noted that Asian American students benefited more from the policy change than any other group, with over half of admissions offers now going to Asian American students.

The group asked the Supreme Court to weigh in on whether diversity can be sought through race-neutral means. Since the Supreme Court declined review, the Fourth Circuit Court’s decision, and therefore TJ’s admissions policy, stays in place.

Justices Samuel Alito and Clarence Thomas dissented with the Court’s decision to deny cert in the case. In the dissenting opinion, Alito argued that the Fourth Circuit’s decision allows admissions policies to discriminate against groups that “perform at a higher rate than other groups.” He also wrote that TJ’s admissions policy now establishes a “blueprint for evading” the Court’s affirmative action decision in *Students for Fair Admissions v. Harvard*.

[The Court’s denial and the dissent can be viewed here.](https://www.supremecourt.gov/opinions/23pdf/23-170_h31i.pdf)

Resources:

Josh Gerstein and Bianca Quilantan, “Supreme Court rejects Thomas Jefferson high school admissions case,” *Politico*, February 20, 2024.

Melissa Quinn, “Supreme Court turns away affirmative action dispute over Virginia high school's admissions policies,” *CBS News*, February 20, 2024.

Author: BNT

### Cassidy Seeks Input on Potential Literacy Legislation

In a recent report on literacy issued by the Senate Committee on Health, Education, Labor, and Pensions, Senator Bill Cassidy (R-LA) asks for input from stakeholders on how to improve childhood literacy. The report notes the consequences of illiteracy – including lost income and increased likelihood of dropping out of high school – and expresses concerns about the implications for global competitiveness and national security. It also summarizes the recent results of the National Assessment of Educational Progress (NAEP), which shows reading scores are at multi-decade lows, and that the United States is falling behind other nations despite increases in “school spending, staff, and advances in education research and technology.”

The report promotes “the science of reading” as a broad concept, highlighting the importance of phonemic awareness, phonics, vocabulary, fluency, and comprehension. But it suggests that most teachers use “balanced literacy” methods which encourage students to rely on context cues rather than learn to decode words in a way that prepares them for higher levels of reading. And the report asserts that teachers and teachers’ unions have “tried to obstruct reforms,” claiming that teachers would prefer to “ignore evidence in favor of expediency,” and “both demand yet resist the need for additional training.”

The report also blames falling test scores on a new focus on social-emotional learning, which it says “takes away classroom time for academic endeavors,” as well as disciplinary issues and chronic absenteeism.

At the end of the document, Cassidy asks stakeholders for input on how Congress can improve literacy instruction, including asking how existing programs can be improved and what federal actions might hamper progress. The report asks how individual districts and schools monitor student progress, how student success is tied to a specific literacy teaching method, and how to better prepare parents and students. Comments may be submitted by email to literacy@help.senate.gov by April 5, 2024.

[The report is available here](https://www.help.senate.gov/imo/media/doc/literacy_report.pdf).

Author: JCM

### ED Provides More Information About FAFSA Emergency Funding

Following a challenging and delayed rollout of the updated Free Application for Federal Student Aid (FAFSA), the U.S. Department of Education (ED) took action earlier this month to assist colleges in processing financial aid packages, including announcing a plan to provide $50 million routed through non-profit organizations to help under-resourced colleges. ED released additional information this week on how the funding will be used.

The funding is being allocated from the Education Credit Management Corporation’s (ECMC’s) Federal Fund, which is a non-profit that guarantees and provides support for the administration of the Federal Family Education Loan program. The funding being used for FAFSA assistance is a surplus that would have otherwise been returned to the U.S. Treasury. The Secretary of Education has the authority to determine other allowable uses for ECMC’s Federal Fund outside of the typical uses of funds.

ED has currently selected two non-profits to provide assistance – the National Association of Student Financial Aid Administrators and the Partnership for Ed Advancement – and others may be selected moving forward. Those organizations have begun preparing to aid under-resourced institutions, but the institutions to receive assistance have not been selected yet. While criteria for which institutions will be selected has also not been finalized yet, ED intends to focus on historically Black colleges and universities and tribal colleges and universities, as one prong of the assistance. ED has advised other institutions that are interested in receiving aid to contact the “concierge” service established by ED as a response to the FAFSA issues, which can be reached at CollegeSupportStrategy-FAFSA@ed.gov.

Although details are still being worked out by ED and ECMC on the type of assistance to be provided to institutions, ED has indicated it may include services such as updating technology systems related to financial aid, general technical assistance, and help with compiling financial aid packages for prospective students.

ED expects to begin sending FAFSA student data to institutions in the first half of March, leaving minimal time for colleges to prepare financial aid offers and for students to make enrollment decisions prior to college deadlines.

Resources:

Katherine Knott, “Details Trickle Out About $50 Million FAFSA Support Fund,” *Inside Higher Ed*, February 15, 2024.

Author: KSC

## Reports

### OCR Releases Fact Sheets with New Civil Rights Data Collection

The U.S. Department of Education’s Office for Civil Rights (ED’s OCR) released new data from the Civil Rights Data Collection (CRDC) this week, along with a series of related fact sheets. The data is from the 2020-2021 school year and shows differences between the treatment of and opportunities for students with disabilities compared to their non-disabled peers.

The data shows that students with disabilities were underrepresented based on enrollment rates in advanced academic courses, such as advanced placement and gifted and talented programs, and in most public high school mathematics, science, and computer science courses. In addition, students with disabilities were restrained or secluded at significantly higher rates in the 2020-2021 school year than their non-disabled peers and were overrepresented in disciplinary actions based on overall enrollment numbers.

Overall, in the 2020-2021 school year, the CRDC shows that 8.4 million students with disabilities were enrolled in public schools, making up approximately 17 percent of overall student enrollment. Of that 17 percent, 14 percent were served under the Individuals with Disabilities Education Act and three percent were served under Section 504 of the Rehabilitation Act of 1973.

In conjunction with the release of the 2020-2021 CRDC, OCR also issued four new fact sheets on conditions that may be considered disabilities under Section 504, which may require schools to provide modifications to students in order to comply with federal disability and discrimination law. The fact sheets address [asthma](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-asthma-202402.pdf), [diabetes](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-diabetes-202402.pdf), [food allergies](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-food-allergies-202402.pdf), and [gastroesophageal reflux disease](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-gerd-202402.pdf), and describe how schools may provide remedies to address Section 504 obligations for students with these conditions.

Author: KSC

***The Federal Update has been prepared to inform The Bruman Group, PLLC’s legislative clients of recent events in federal education legislation and/or administrative law. It is not intended as legal advice, should not serve as the basis for decision-making in specific situations, and does not create an attorney-client relationship between The Bruman Group, PLLC and the reader.***

© The Bruman Group, PLLC 2024

Contributors: Julia Martin, Kelly Christiansen, Brandi Tennant

Posted by the California Department of Education, February 2024