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# The Federal Update for March 31, 2023

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

Re: Federal Update

Date: March 31, 2023

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## Legislation and Guidance

### Secretary Urges Schools to Prohibit Corporal Punishment

In a letter released late last week, Secretary of Education Miguel Cardona urged schools to discontinue the use of corporal punishment. Approximately half of the States across the country have laws or policies prohibiting the use of corporal punishment, but it is still permitted – or not explicitly outlawed – in 23 States. There are also no federal laws that prohibit the use of corporal punishment in schools.

Though use of corporal punishment in schools has declined in recent years, many still implement the practice. Cardona’s letter notes the potential negative impacts of corporal punishment on students, including an increase in mental health and behavioral issues, lower academic achievement rates, and an impact on brain and cognitive development, among others. Additionally, the letter highlights data from the Civil Rights Data Collection that suggests students with disabilities, boys, and students of color are subject to higher rates of corporal punishment than their peers.

Cardona encourages schools to use alternative methods that are evidence-based, such as positive behavioral interventions and supports, and reminds States and school districts that those initiatives can be supported with federal funding under certain programs, including some programs under the Elementary and Secondary Education Act, the American Rescue Plan Act, and the Bipartisan Safer Communities Act. Finally, Cardona notes the U.S. Department of Education technical assistance partners that provide resources to assist schools with reducing and/or eliminating their use of corporal punishment.

[The full letter on corporal punishment is available here](https://www2.ed.gov/policy/gen/guid/secletter/230324.html?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

Author: KSC

### Title IX Sports Rule in Final Stages of Approval

The U.S. Department of Education has reportedly sent its Title IX athletics rule to the Office of Management and Budget (OMB) for review – the final step before the proposed rule can be published. OMB will conduct a close read of the rule for compliance with existing laws, including the Administrative Procedure Act and related regulations, and will hold meetings with stakeholders to ensure statutory and regulatory concerns are addressed.

Based on previous statements by the administration and precedent set in the proposed rule for educational programs, this new rule is widely expected to define “sex” broadly for purposes of athletics under Title IX, likely including gender identity and sexual orientation as elements of the protected class. Under that standard, schools would be prohibited from restricting participation in athletics to cisgender students (that is, students whose gender identity aligns with their reproductive biology and sex assigned at birth).

The anticipated rule would likely conflict with existing laws in 19 States, where lawmakers say restrictions are necessary to ensure fair competition and protect cisgender female players from locker room harassment. But many of those laws have been suspended because of legal challenges. This proposed rule is also likely to face litigation, especially from States with conflicting rules.

Meanwhile, the U.S. House of Representatives is set to consider a bill that would restrict participation in sports to those teams aligning with students’ sex assigned at birth. The Senate is unlikely to take up the measure if it passes the House, and the President is unlikely to sign it. However, Congress does retain the power to define “sex” more narrowly for the purposes of sports or educational programs, and a statutory change which does so would override any administrative regulations in place.

The proposed rule will likely come out in late spring or early summer.

Author: JCM

## News

### ED Delays Redesign of FAFSA to December

Last week, the U.S. Department of Education (ED) announced that it would miss the traditional October 1st release date for the Free Application for Federal Student Aid (FAFSA). Instead, the Department will launch the 2024-2025 FAFSA form sometime in December.

The delay comes as ED works to redesign the FAFSA in accordance with the requirements for simplification and expanded Pell Grant eligibility in the 2021 Consolidated Appropriations Act. The bipartisan bill reduces the number of questions on the FAFSA from 108 to 36, limits requirements for students who are in foster care or are experiencing homelessness, and reduces the amount of earnings that working students see calculated into their aid formula. Members of Congress have noted that the revisions could help 555,000 students become eligible for aid and 1.7 million more students qualify for the maximum aid award each school year.

Later this year ED plans to also release more Pell Grant information to help students and families prepare for the new changes to the calculations for federal aid. The Department will publish a tool for students to estimate their eligibility for federal financial aid.

ED’s announcement explained that the redesign was being delayed because of “unprecedented complexity,” which demanded more time than originally expected. Additionally, the agency stated that it wants to ensure that the application is released securely and stably.

ED will accept comments on the draft of the simplified FAFSA until May 23. The draft version includes 46 questions across 21 pages, with some questions having multiple parts. While not as short as some expected, the draft version is still simpler than the current FAFSA.

Advocates have warned that the delay in finalizing the new FAFSA will impact students. Some States have grant programs with priority deadlines in January, leaving less time for students to apply on time should the form be released in December. Also, the later colleges receive FAFSA information, the later they are able to finalize award notices, which have recently come under scrutiny after a Government Accountability Office report.

Despite the delay, ED did release the Better FAFSA Better Future Roadmap, which offers timelines for delivery of resources for students, families, and institutions on the redesigned FAFSA. ED will also host multiple trainings and question and answer sessions.

[The FAFSA Better Future Roadmap can be viewed here.](https://fsapartners.ed.gov/knowledge-center/topics/fafsa-simplification-information/2024-25-fafsa-roadmap) [The draft FAFSA and portal for submitting public comments is available here.](https://www.federalregister.gov/documents/2023/03/23/2023-06169/agency-information-collection-activities-comment-request-2024-2025-free-application-for-federal)

Resources:

Danielle Douglas-Gabriel, “FAFSA Redesign Delayed by Two Months, Says Education Dept.,” *Washington Post*, March 21, 2023.

Katherine Knott, “Draft FAFSA Released,” *Inside Higher Ed*, March 28, 2023.

Author: BNT

### States Slow to Distribute Stronger Connections Funding

A recent analysis from *Education Week* found that only a small percentage of funding under the Stronger Connections program has been distributed to school districts. The Stronger Connections program was authorized by the Bipartisan Safer Communities Act in 2022 and provides almost $1 billion to be used for certain allowable activities under Title IV, Part A of the Elementary and Secondary Education Act (ESEA). The grant funds are provided to States by formula and States are directed to subgrant the funds to local educational agencies (LEAs) in a competitive manner.

According to *Education Week*, only one State has completed its competition for the Stronger Connections grant, while eight States currently have open competitions and another 23 States have plans to open their application periods in the coming months. Some States have attributed the delay to new governors taking office in January of this year, as well as the preparation States have to undertake prior to opening the grant competitions, including defining “high-need LEA.” In addition, while Stronger Connections funds may only be used for activities permitted by Section 4108 of ESEA, which includes activities to support safe and healthy students, States are permitted add parameters to their grant competitions in order to focus subgrants on particular activities within the overall scope of allowable uses of funds.

Earlier this month, Secretary of Education Miguel Cardona urged States to work more quickly to distribute their Stronger Connections grants. “Only 15 percent of our [S]tates have already started a competition. That's unacceptable. Only one [S]tate has distributed those dollars. That's unacceptable,” Cardona said to a meeting of education leaders. “We're in a mental health crisis, we need it to happen.”

States and LEAs have until September 30, 2026 to spend their Stronger Connections funds.

Resources:

Juan Perez Jr., “Few states are using school mental health money, Cardona says,” *Politico,* March 20, 2023.

Mark Lieberman, “Congress Passed $1B for School Safety Last Year. Only 38 Districts Have Gotten Money,” *Education Week*, March 30, 2023.

Author: KSC

## Reports

### GAO Report Cites High Estimated Improper Payment Rates

An analysis by the U.S. Government Accountability Office (GAO) says agencies estimated that more than $247 billion of improper payments were made in federal fiscal year (FY) 2022.

The report says that the biggest reason for these improper payments was overpayment (80 percent), with unknown payments being the next largest share at 13 percent. “Technically improper” payments were only 4 percent of the total identified. Medicaid and Medicare were the two individual programs with the greatest issues, with the Paycheck Protection Program close behind.

Notably, the estimated improper payment rate for Title I LEA grants was 35.7 percent, for Special Education grants to States it was 26.7 percent, and for the Education Stabilization Fund – the parent program which includes the Elementary and Secondary School Emergency Relief Fund, the Governors Education Emergency Relief Fund, and the Higher Education Emergency Relief Fund – the estimated rate was 12.1 percent. However, GAO was skeptical about these numbers, saying that while the Office of Management and Budget “requires agencies to develop sampling and estimation methodology plans when producing improper payment estimates,” agencies including the U.S. Department of Education had “inadequate plans.” Those agencies reportedly “had issues such as incomplete information, insufficient documentation, and lack of guidance to support sampling and estimation plan implementation.”

GAO suggests a number of strategies to address those payments such as training, new processes, and statutory changes.

[The GAO report is available here](https://www.gao.gov/assets/2023-03/d23106285_0.pdf).

Author: JCM

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