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# The Federal Update for July 21, 2023

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

Re: Federal Update

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## Legislation and Guidance

### ED Publishes Final Title VIII Equitable Services Guidance

This week the U.S. Department of Education published final guidance on providing equitable services under programs in the Elementary and Secondary Education Act (ESEA). The equitable services provisions in ESEA Title VIII apply to all titles unless otherwise specified, so the guidance applies to programs like Title IV and Title II, but not Title I, which has its own equitable services provisions for offering services to students and teachers in private schools. The guidance reiterates the importance of consultation, but also that “[a]fter timely and meaningful consultation, an LEA makes the final decisions with respect to the services to be provided to eligible private school children and educators.” And it suggests that a district could rely on the State private school ombudsman to identify appropriate private school officials with which to consult.

Changes from the prior version of the guidance include the removal of a paragraph which states that districts may set reasonable deadlines for non-public schools that was duplicative of information in another section. Language in a section about construction was broadened to note that use of ESEA funds for renovation and repair of existing private school facilities is also prohibited.

A new question notes that the district is not required to use the same entrance and exit procedures for English learners in private schools as it does in public schools, unless required by State law. However, the district may choose to use those or similar benchmarks after consultation with nonpublic schools to help identify eligible students.

Several new questions and answers in the document deal with programs under Title IV. For example, new questions discuss how 21st Century Community Learning Centers subgrantees calculate a proportionate share for equitable services, how a community business organization that is a subgrantee should engage in consultation, and how often consultation should take place in the case of multi-year grants. And there are several new questions and answers surrounding the use of funds for Project SERV grants, qualifying events, and how consultation should be handled.

The [new final guidance is here](https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf).

Author: JCM

### White House Threatens Veto on House-Passed Facilities Bill

The House passed a bill on Wednesday, the Schools Not Shelters Act, that prohibits public K-12 schools and institutions of higher education from providing shelter to noncitizens. Schools violating this prohibition would lose access to federal funding. The only exception to the legislation is shelter due to a “specified disaster,” which is primarily defined as a natural disaster.

The House passed a resolution expressing disapproval of this practice earlier this year, but Congressional resolutions do not impose actual policy or law, they express a sentiment. The bill passed this week imposes actual consequences should schools provide shelter to noncitizens.

The White House issued a “statement of administration policy” before the passage of the bill this week saying that it is “strongly opposed” to the legislation and that the bill “would supersede local control, interfering with the ability of States and municipalities to effectively govern and make decisions about their school buildings.”

The legislation is unlikely to be considered by the Democratically controlled Senate and the statement of administration policy issued this week makes clear that President Biden would veto the legislation should it make it to his desk.

Resources:

Juan Perez Jr., “White House slams Republican-proposed penalties for school migrant shelters,” *Politico*, July 19, 2023.

Author: KSC

## News

### Administration Starts New Student Loan Forgiveness Initiative

The U.S. Department of Education (ED) held a public hearing Tuesday, the first step in a negotiated rulemaking process under the Higher Education Act (HEA) targeted at cancellation of student loan debt. The administration has said it plans to craft a new student loan forgiveness program following the Supreme Court ruling earlier this summer which struck down an earlier version of the plan, saying the President did not have sufficient authority under the 2003 Higher Education Relief Opportunities for Students (HEROES) Act to waive or forgive student loan balances.

The session did not discuss any details about potential structure of the loan forgiveness program but instead sought public comment on the concept of loan forgiveness generally. The majority of the comments were in favor of student loan forgiveness as well as changing federal law to allow student loans to be discharged in cases of bankruptcy. A handful of commenters – including one group which was a co-plaintiff in the case before the Supreme Court that struck down the prior plan – suggested that wide-scale loan forgiveness would be too costly.

The next step will be for ED to convene a higher education rulemaking committee. However, with payment scheduled to resume in October they will have to move quickly if they intend to institute forgiveness before borrowers have to make additional payments.

Author: JCM

## Reports

### GAO Report Finds Problems with Foods in Schools Program

Last week, the U.S. General Accountability Office (GAO), which provides evaluative services to Congress, publicly released a report that found systemic problems with the implementation of the Foods in Schools Program. The U.S. Department of Agriculture’s (USDA) Foods in Schools program provides schools access to over 200 products from domestic sources, which USDA purchases on behalf of the schools, averaging $1.6 billion annually. The foods are used as part of meals provided through USDA programs, such as the National School Lunch Program (NSLP). The Foods in Schools program accounts for 15 to 20 percent of the food provided to students through NSLP.

The Senate Committee on Agriculture, Nutrition, and Forestry asked GAO to examine program spending, challenges that States have faced in operating the program, and any assistance that USDA provided to address challenges. GAO analyzed purchases from school years 2014-15 to 2021-22, surveyed States, and interviewed officials from a sample of States and USDA. Over those seven school years, GAO found that fresh produce purchases tripled, and beef and poultry accounted for 40 percent of all purchases.

GAO reported that schools experienced major challenges in operating the USDA Foods in Schools program, including frequent delays in delivery, price fluctuations, and partially fulfilled orders. After the COVID-19 pandemic, schools struggled to provide food in the 2021-22 school year, often resorting to making last-minute menu substitutions or even providing the same meal for multiple days in a row. Additionally, almost all States reported issues with manufacturers and distributors, who they had previously relied on, deciding to no longer participate in the program. In order to operate effectively, USDA relies on private sector agricultural manufacturers and distributors. However, the number of national manufacturer agreements has declined by 28 percent over the last four years. While these problems worsened during the pandemic, States reported that the problems are long-standing and systemic.

The report noted that while USDA has identified areas of concern and is attempting to address some of these problems, it lacks a systemic way to identify and respond to problems with the Foods in Schools program. Schools are struggling at every part of the process, from ordering to receiving and using the food, yet USDA has had difficulty in responding and offering additional assistance, the agency says. GAO made a series of recommendations for USDA, including establishing guidelines for timely communication with States, setting response times for those communications, and providing a toolkit for States to share lessons and promising practices.

USDA confirmed the challenges that schools were facing and released a statement in response to GAO’s report. In the statement, USDA acknowledged that they were making effort to address supply chain challenges and would “continue to seek input from [S]tate agencies about the best ways that the Department can meet [S]tates’ needs and ensure timely communication.”

[The GAO report can be found here.](https://www.gao.gov/products/gao-23-105697)

Resources:

Libby Stanford, “Watchdog Finds Systemic Problems With Major School Meals Program,” *Education Week*, July 18, 2023.

Author: BNT

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of The Bruman Group, PLLC’s virtual trainings. Topics cover a range of issues, grants management, COVID-19 relief programs, the Elementary and Secondary Education Act, and more. To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/training-and-recordings/*](http://www.bruman.com/training-and-recordings/)*.*

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