

# The Federal Update for February 18, 2022

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Re: Federal Update

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## Legislation and Guidance

### Senate Passes CR, Averting Government Shutdown

The Senate cleared a continuing resolution (CR) Thursday evening that will extend government funding for a third time, until March 11th, to provide lawmakers additional time to finalize fiscal year (FY) 2022 funding.

The fate of the CR was initially unclear as lawmakers were divided over whether to allow votes on certain amendments, primarily related to vaccine mandates. An amendment that would have prohibited federal funds from flowing to schools that implement vaccine mandates was defeated. The House passed the CR last week and the President plans to sign the legislation prior to the midnight deadline tonight when the existing CR expires.

Congress has reportedly made progress on negotiations for final FY 2022 appropriations – the fiscal year that began on October 1, 2021 and will end on September 30, 2022 – but draft legislation has not yet been released. Lawmakers are continuing to negotiate the top-line spending amounts for non-defense programs and defense programs and are optimistic that an agreement will be reached prior to the expiration of the next CR on March 11th.

Resources:

Jennifer Scholtes, “Senate Clears Funding Patch to Kick Shutdown Cliff into March,” *Politico*, February 17, 2022.

Author: KSC

### ED Releases New ESEA Accountability Guidance

The U.S. Department of Education (ED) released new accountability guidance for the Elementary and Secondary Education Act of 1965 (ESEA). The frequently asked questions (FAQs) provide information regarding how State educational agencies (SEAs) should respond to the pandemic’s impact on ESEA accountability systems. Section 1111 of ESEA requires States to develop and implement accountability systems to support schools and students in meeting academic standards. However, due to COVID-19 and pandemic-related challenges, ED allowed SEAs to waive the accountability requirements for academic years 2019–2020 and 2020–2021. Still, the waiver provided that SEAs would resume accountability measures in the fall of 2022 using data from the current academic year (2021–2022). As SEAs work this year to re-establish accountability measures and school improvement requirements, ED’s guidance answers a set of questions that SEAs will encounter along the way.

The topics discussed in the guidance range from general questions such as how to submit requests to amend ESEA consolidated plans to accountability system questions that answer whether SEAs can amend their calculations to measure academic achievement indicators. The FAQs also provide a list of factors that SEAs can consider when determining the most appropriate methods to implement in their accountability systems. For instance, SEAs can factor in (i) necessary adjustments due to missing or less reliable data because of the pandemic or (ii) the available opportunity to improve statewide summative assessments such as using multiple measures (such as portfolios, projects, or extended performance tasks) to show student academic achievement.

The FAQs provide the methods for States to follow when submitting amendment requests to their ESEA consolidated State plans for the 2021–2022 academic year. For instance, SEAs can follow the regular amendment process for long-term changes, but should follow the COVID-19 State Plan Addendum process for one-year changes. SEAs can request to modify their indicators, their system of annual meaningful differentiation, and their methods to identify schools for comprehensive support and improvement (CSI), targeted support and improvement (TSI), and additional targeted support and improvement (ATSI) criteria.

Regarding long-term goal amendments, the FAQs provide that SEAs can request to modify these as long as the goals and measurements of interim progress stay ambitious and consistent with ESEA requirements. For instance, although SEAs can request to amend their student growth calculations, SEAs cannot use the “best of two” or “higher of two” methods on an individual student. SEAs can also modify the methods used to calculate their academic achievement indicators, graduation rate indicators, progress in achieving English language proficiency, and school quality or student success indicators if they are consistent with ESEA section 1111 requirements.

The document also allows SEAs to request to amend their definition for “consistently underperforming” or their methods to identify TSI schools “due to consistently underperforming subgroups in fall 2022.” Moreover, the guidance lists sources that not only SEAs, but also local educational agencies (LEAs) and identified schools can use to develop support and improvement plans. CSI, TSI, or ATSI schools can modify how they use the funds to address school improvement needs related to COVID-19. Meanwhile, SEAs can use section 1003 funds to support staff and pay for professional development, mentors, and coaching.

As noted, ED’s guidance provides that although SEAs need to implement accountability measures again this year, some flexibilities are still in place giving States an opportunity to recover from COVID-19’s impact on school and student performance. However, in doing so, SEAs should continue ensuring ESEA compliance.

[The new ED FAQs on accountability measures is available here](https://oese.ed.gov/files/2022/02/Acct-FAQ-Final-2.11.22-1.pdf).

Author: MPM

### Final Title I-A Allocations Guidance Published

The U.S. Department of Education (ED) issued final guidance this week on within-district allocations under Title I-A of the Elementary and Secondary Education Act (ESEA). The guidance was first released in draft form and available for stakeholder comment in March of 2020.

The final guidance does not offer new requirements, but it compiles into one single reference point information on Title I-A allocations addressed in previous guidance and supersedes prior guidance on allocations. The guidance walks through the required ESEA reservations and how that impacts Title I-A allocations to schools, providing step-by-step instructions for local educational agencies (LEAs). The guidance also discusses the data options available to LEAs in determining school poverty counts recognizing that, while LEAs would generally use data from the previous school year as the most recently available data, the COVID-19 pandemic has created data challenges. The allocations guidance references other recent guidance from ED on this particular issue, which discusses alternative options for data in light of the lack of complete National School Lunch Program data for States and LEAs.

The guidance provides a number of examples on how to calculate allocations and how to rank schools using different available methods, such as determining allocations on an LEA-wide basis versus within grade spans. The guidance also includes flexibilities that ESEA provides with regard to Title I-A allocations and includes two appendices on related topics. The first appendix excerpts certain questions and answers from existing ED guidance on within-district allocations and the Community Eligibility Provision, and the second appendix similarly excerpts questions and answers from 2000 guidance on within-district allocations and new or significantly expanded charter schools.

[The final ED guidance on Title I-A within district allocations is available here](https://oese.ed.gov/files/2022/02/Within-district-allocations-FINAL.pdf).

Author: KSC

### OCR Publishes Fact Sheet on Section 504 Responsibilities

The U.S. Department of Education’s (ED’s) Office for Civil Rights (OCR) issued a fact sheet this week reminding schools of their responsibilities to provide services to and evaluate students with disabilities under Section 504 of the Rehabilitation Act of 1973. The fact sheet emphasizes that these requirements still apply despite challenges faced during the COVID-19 pandemic and regardless of what type of instruction a school is using, such as in-person or virtual.

The fact sheet states that if an eligible student did not receive services or a timely evaluation during the COVID-19 pandemic, then the school is required to determine whether compensatory services are warranted. Schools should make these determinations by convening a group of individuals that are knowledgeable about the student. The fact sheet provides examples of when compensatory services may be appropriate, such as when a student did not receive physical therapy during a period in which the school was providing virtual instruction.

Finally, the fact sheet reminds parents of their right to seek a hearing through the Section 504 due process procedures or file a complaint with OCR if they believe their child is not receiving a free appropriate public education or appropriate compensatory services.

[The fact sheet on Section 504 obligations is available here](https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html).

Author: KSC

## News

### ED Hires New Communications Staffers

The U.S. Department of Education (ED) announced it will add two former news reporters to its communications team as the agency attempts to boost its outreach efforts to historically disadvantaged communities. Lynda Lopez will serve as a senior advisor and Branden Cobb will serve as deputy assistant secretary for creative content.

Lopez will leave her position at WCBS Newsradio in New York where she worked as an anchor and special projects reporter to help carry ED’s message keeping schools open for in-person instruction amid the COVID-19 pandemic. Meanwhile, Cobb joins ED from British defense company BAE Systems, where he led the company’s digital strategy. Cobb also worked as a journalist and has extensive experience covering a variety of national news stories including 9/11, the Trayvon Martin trial, and the Newtown school shooting. His former work also includes working at New York City’s ABC7 Eyewitness News for which he won a Peabody Award.

Resources:

Rafael Bernal, “Department of Education Hiring Two Top Communications Officials Amid Outreach to Disadvantaged Communities”, *The Hill*, February 14, 2022.

Author: ASB

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of Brustein & Manasevit’s upcoming virtual trainings. Topics cover a range of issues, including COVID-19 related issues, grants management, the Every Student Succeeds Act, special education, and more. To view all upcoming virtual training topics and to register, visit* <https://bruman.com/training-and-recordings/>.

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