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# The Federal Update for March 24, 2023

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

Re: Federal Update

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## Legislation and Guidance

### Parents Bill of Rights Advances in the House

The House of Representatives advanced legislation this week that would require districts to report additional information and guarantee access to parents. The legislation, known as the “Parents Bill of Rights” (H.R. 5) was approved in the Rules Committee late Wednesday for floor action, and after debate Thursday and Friday passed in the House by a vote of 213-208.

The legislation would amend the Elementary and Secondary Education Act (ESEA) and would require that districts publicly disclose budget materials, give parents the ability to testify before a school board, and offer at least two meetings per year with students’ parents. It would also prohibit schools from selling student educational information for profit, require schools to provide lists of books available in classrooms and school libraries, and give parents the opportunity to review and comment on instructional materials prior to their use.

At the Rules Committee hearing on Wednesday, bill sponsors offered concern that parents had been labeled “disruptive” during school board meetings and that schools were allowing access to explicit material without parental consent. Democrats in the Committee suggested that the results of the legislation could be to create a chilling effect on what books or materials could be used in the classroom, and that it provided a roadmap for parents to object to specific books and impact the education of other students. Still others noted that schools would not be provided with additional funding under this legislation to comply with the additional reporting and feedback requirements, and that it would result in the federal government micromanaging what is happening at the school site level.

Among the amendments approved by the House are those which would provide information to parents if transgender students are allowed to play on school sports teams or use facilities consistent with their gender identity, requiring schools to inform parents when students express a desire for a different gender identity or sexual orientation, and express a sense of Congress that the Department of Education should be eliminated.

The President issued a Statement of Administrative Policy this week noting his opposition to the bill. The statement argues that the bill “does not actually help parents support their children at school” and that “instead of making LGBTQI+ students feel included in their school community, it puts them at higher risk.” Senate Majority Leader Chuck Schumer (D-NY) has said the body has not plans to take up the legislation.

Author: JCM

### Senators Float Plans to Overturn Student Loan Forgiveness

Last week, the Government Accountability Office (GAO) released a decision which determined that President Biden’s student loan forgiveness plan and payment pause are rules, subject to the Congressional Review Act (CRA). The GAO considered whether the U.S. Department of Education’s (ED’s) actions to forgive student loans and pause loan payments, which it posted on its website and the *Federal Register*, were considered “rules” for the purposes of the CRA, which allows Congress to overturn an agency’s rule with a majority vote. The CRA requires a rule to be submitted to the House of Representatives and the Senate before it can take effect, unless certain exceptions are met.

However, the Biden administration maintained that the loan forgiveness program, which would forgive up to $20,000 per borrower, and the payment pause, which has been extended multiple times, are compliant with the law and based on ED’s longtime statutory authority from Congress. An ED spokesperson stated, “[t]his longtime statutory authority has never been subject to the Congressional Review Act. GAO’s decision is at odds with clear longstanding practice…”

After the release of the GAO decision, Republican Senators Bill Cassidy (R-LA), John Cornyn (R-TX), and Joni Ernst (R-IA) announced that they will be introducing a CRA resolution. If passed, the resolution would overturn the Biden administration’s student debt forgiveness program, which is already facing challenges at the U.S. Supreme Court. Additionally, no federal agency, including ED, would be able to establish a “substantially similar” program. The program would have to be enacted by Congress.

The three Republican senators, along with 40 colleagues, filed an amicus brief with the Supreme Court in the joint *Biden v. Nebraska* and *Department of Education v. Brown* cases, which stated that the forgiveness program circumvents Congress’ authority. Cassidy also joined Senator John Thune (R-SD) last month in reintroducing the Stop Reckless Student Loan Actions Act, which would end the current student loan payment pause.

With a slight democratic majority in the Senate, the CRA resolution is unlikely to receive enough support to pass. However, Senator Joe Manchin (D-WV) has previously criticized the cost of the Biden administration’s student debt forgiveness program and could lead other moderate Democrats to support the CRA resolution.

[The GAO report can be viewed here.](https://www.help.senate.gov/imo/media/doc/gao_student_loan.pdf)

Resources:

Lexi Lonas, “Senate GOP to Target Biden Student Loan Forgiveness,” *The Hill*, March 17, 2023.

Senate Committee on Health, Education, Labor, and Pensions Press Release, “Ranking Member Cassidy, Cornyn, Ernst Announce Effort to Overturn Biden’s Reckless Student Loan Scheme Through Congressional Review Act,” March 17, 2023.

Author: BNT

### USDA Proposes Broader Eligibility for CEP

The U.S. Department of Agriculture (USDA) published a draft rule Wednesday that would lower the threshold for schools to opt into the Community Eligibility Program (CEP). Under the proposal, schools with an “identified students percentage” (ISP) of 25 percent or more would be able to participate in CEP, replacing the current minimum threshold of 40 percent. Under CEP, students are “identified” as eligible for free and reduced-price meals through their participation in other income-based programs like Medicaid or the Supplemental Nutrition Assistance Program (SNAP). Reimbursement for meals is then based on the ISP and a “multiplier” set by USDA.

The proposed rule would not provide any additional funding for the program, meaning that districts which opt into the program would have to fund any additional costs through State and local dollars. However, USDA says it could still result in cost savings for districts already offering free school meals, and those which accumulate school meal debt from students who have not applied for meal programs or are not considered eligible. Secretary of Agriculture Tom Vilsack told reporters that he hoped Congress would see the benefits of the program and support it with additional funding.

Comments on the proposed change are open through May 9th. A copy of the [proposed rule is here.](https://www.federalregister.gov/documents/2023/03/23/2023-05624/child-nutrition-programs-community-eligibility-provision-increasing-options-for-schools)

Resources:   
Marcia Brown, “Biden administration pushes to expand free school meals,” *Politico*, March 22, 2023.  
Author: JCM

## News

### SCOTUS Issues Ruling with Impact on Students with Disabilities

The U.S. Supreme Court issued a unanimous decision this week that allows a deaf student from Michigan to sue his former school district for monetary damages under the Americans with Disabilities Act (ADA) for the district’s failure to provide adequate sign language services while enrolled as a student there. The key question in the case was whether a student with disabilities must exhaust all administrative procedures under the Individuals with Disabilities Education Act (IDEA) before seeking relief under other federal statutes.

The student in the case brought a lawsuit against his former school district under the ADA for compensatory damages after settling his IDEA administrative complaint. Lower courts determined that the student could not seek relief under other federal statutes until all IDEA administrative dispute resolution avenues were exhausted. The lower court decisions were based off of language in IDEA that says the IDEA does not restrict individuals from seeking relief under other federal laws protecting students with disabilities “except that before the filing of a civil action under such [other federal] laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted.”

In the decision issued this week, the Justices determine that the IDEA procedures must only be exhausted prior to filing a lawsuit under other federal laws if the relief the plaintiff is seeking under federal laws is also available under IDEA. In the case of the Michigan student, he is seeking compensatory damages under the ADA, which are not available under IDEA, and therefore, the Court ruled that he can proceed with the ADA lawsuit without exhausting all IDEA administrative procedures first.

[The Supreme Court’s decision in *Luna Perez v. Sturgis Public Schools* is available here](https://www.supremecourt.gov/opinions/22pdf/21-887_k53m.pdf).

Resources:

Mark Walsh, “Supreme Court Rules Deaf Student Can Sue School District Over Alleged Failures,” *Education Week*, March 21, 2023.

Author: KSC

### ED Announces New Higher Education Negotiated Rulemaking

The U.S. Department of Education (ED) issued a notice in the *Federal Register* Thursday that announces upcoming negotiated rulemaking sessions on a range of higher education topics. ED will also host public hearing sessions as part of the process, during which stakeholders may present comments on the proposed topics.

The negotiated rulemaking will cover seven topics, including: 1) federal TRIO programs, including programmatic eligibility and operations; 2) the Secretary of Education’s recognition of accrediting agencies; 3) institutional eligibility, including State authorization; 4) return of Title IV funds; 5) cash management; 6) third-party servicers and related issues; and 7) the definition of “distance education.” One of the planned topics, third-party servicers, is an area in which ED recently issued controversial guidance that significantly expanded the definition of “third-party servicer.”

In addition to gathering public comments through the hearing sessions, ED will also accept written comments from stakeholders through the federal rulemaking portal. Following the public hearings, ED will move forward with selecting members for the negotiated rulemaking committees and subcommittees.

[The notice on the negotiated rulemaking committee is available here.](https://www.federalregister.gov/documents/2023/03/24/2023-06028/negotiated-rulemaking-committee-public-hearings)

Author: KSC

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