

# The Federal Update for April 15, 2022

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Re: Federal Update

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## Legislation and Guidance

### Congress in Two-Week Recess

Congress entered a two-week recess beginning late last week, surrounding the Easter and Passover holidays, with an expected return on April 25th. Prior to the recess, the Senate failed to pass a standalone bill with additional COVID-19 aid for research and treatment purposes, after COVID-19 funding was cut from the fiscal year 2022 omnibus bill passed in March.

When lawmakers return later this month, the Senate may return to consideration of the $11 billion COVID-19 legislation, which was stalled due to disagreement over whether to consider an amendment related to border policy. In addition, lawmakers will be turning to fiscal year (FY) 2023 funding, with appropriations subcommittees beginning to schedule hearings on the President’s FY 2023 budget request. The subcommittees will request testimony from the heads of federal agencies, including Secretary of Education Miguel Cardona, prior to drafting legislation.

In addition, the House Committee on Education and Labor approved a reauthorization bill for the Workforce Innovation and Opportunity Act earlier this month. The bill has been reported to the full House for a vote, which will likely take place sometime after lawmakers return from the April recess.

Author: KSC

### Stabenow Offers Standalone Legislation on School Meals Issue

Senate Agriculture Committee Chair Debbie Stabenow (D-MI) and Senator Lisa Murkowski (R-AK) introduced legislation earlier this month that would extend waiver authority for the U.S. Department of Agriculture (USDA) for school year 2022-23, allowing the agency to reimburse States, districts, and schools for meals served to all students regardless of income. Stabenow has said she wants to attach the bill, titled the Support Kids Not Red Tape Act, to supplemental public health legislation being negotiated for when Congress returns from recess after the Easter and Passover holidays.

The legislation comes after Republicans in the Senate, led by Minority Leader Mitch McConnell (R-KY), blocked similar waivers from inclusion in the omnibus appropriations legislation for fiscal year (FY) 2022. McConnell said that the waivers were only for emergency purposes while schools were closed and with schools in most of the country operating as usual, they were no longer needed. McConnell also blamed the estimated cost of the waivers—between $8 and $11 billion for the upcoming school year—and President Biden’s decision not to request the waiver authority in his FY 2022 budget request, submitted to Congress last May.

Administration officials say they support the waivers and have expressed that support to lawmakers. But Congress needs to act to provide the flexibility, since USDA is significantly constrained by the school lunch law in terms of what requirements it is able to waive without Congressional approval. States and school food authorities say that ongoing supply chain issues and increasing food and fuel costs will make it difficult to meet school meal pattern standards and keep costs under control without additional assistance.

Author: JCM

## News

### ED Announces “Equity Action Plan”

Agencies across the federal government, including the U.S. Department of Education (ED), released “equity action plans” this week. The plans are designed to work in alignment with the “Advancing Racial Equity” executive order issued by President Biden in January of last year.

ED says it plans to implement a series of actions to integrate efforts of equity into the Department’s programs, including prioritizing access to higher education by reworking financial aid evaluations and investing in minority-serving, tribal, and historically Black colleges and universities;

* Ensuring that the “Maintenance of Equity” requirement in the American Rescue Plan is enforced to ensure that high-need schools do not see their funding cut while recovering from the pandemic;
* Using additional Civil Rights Data Collection information to help identify and address educational inequities and the impact of the pandemic;
* Focusing procurement on minority-owned small businesses, where consistent with regulations; and
* Expanding grant application review panels to attract broader pools of reviewers.

In its announcement, ED also highlighted ongoing work on technical assistance for pandemic relief, drafting new Title IX regulations to prevent discrimination, identifying avenues of relief for student loan borrowers, and finding ways to invest in teacher training and the educator pipeline—especially when it comes to recruiting teachers of color. ED also noted the pandemic assistance allocated through programs like the Elementary and Secondary School Education Relief Fund as key to help advancing equity in education.

The [detailed equity plan is available here](https://www2.ed.gov/documents/equity/2022-equity-plan.pdf).

Author: JCM

### High School Discriminatory Admissions Policy Reaches SCOTUS

Pending before the Supreme Court is an emergency request filed by parents of students at Thomas Jefferson High School for Science and Technology (TJ) in Fairfax County, Virginia who allege that TJ implemented discriminatory admissions policies in 2020 that negatively impact the admissions of Asian-American students. Parents requested the Supreme Court to vacate the Fourth Circuit Court’s order to stay the District Court’s decision pending the appeal process.

TJ is an elite magnet school that is part of the Virginia Department of Education and that the Fairfax County School Board (School Board) administers. The issue began in 2020 when the School Board adopted a new admissions policy that responded to the school’s lack of diversity, particularly the small number of Black students. The new policy eliminates the standardized test requirement, caps the number of students that can be admitted from each of the district’s middle schools, and considers socioeconomic backgrounds. However, according to Pacific Legal Foundation, counsel for the parents, limiting the number of students that TJ can accept from each middle school mostly impacts Asian American students enrolled in three of the schools that have historically accounted for most of TJ’s admissions. Following the policy’s implementation, the class of 2025, the first class admitted under the new policy, saw admission rates for Black students increase from one percent to 7 percent and from three percent to 11 percent for Hispanic students. Meanwhile, admission rates for Asian American students decreased from 73 percent to 54 percent.

In response to the change in policy, parents sued the School Board. On February 25th, the U.S. District Court ruled in favor of the parents citing that “undisputed evidence demonstrates precisely how the Board's actions caused, and will continue to cause, a substantial racial impact.” However, on March 31st, the Fourth Circuit Court in a 2-1 vote stayed the District Court’s ruling pending appeal. The Circuit Court ruled that the School Board satisfied the legal requirements to stay the lower court’s decision pending the appeal process, such as suffering of irreparable harm as more than 2,500 students are waiting for their “TJ admissions decisions, which are supposed to be released ‘no later than April.’” This means that TJ can use the policies that the lower court held to be discriminatory for this year’s admission cycle for the incoming class of 2026.

On April 8, following the Circuit Court’s order, the parents filed an emergency request in the Supreme Court to vacate the stay and Chief Justice Roberts called for Virginia to respond. Considering that the Supreme Court has other cases in its docket regarding discriminatory admissions policies, [such as the Harvard case](https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/), it will be interesting to analyze the Supreme Court’s actions in this case.

Author: MPM

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