

# The Federal Update for June 10, 2022

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Re: Federal Update

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## Legislation and Guidance

### Final MOEquity Rule Pushes Back Submission Dates

The U.S. Department of Education (ED) published a final rule on Maintenance of Equity (MOEquity) in Tuesday’s *Federal Register*. The document does not make significant changes to the draft that was originally issued in January but attempts to clarify or justify the agency’s position on several elements of the requirement.

In the preamble to the new rule, ED says it has “adjusted the timeline” of reporting to help States ensure accuracy and completeness of data. States will now have until 30 days after the *Federal Register* notice, which ED has stated will be July 8th, to post the first round of information required – the remaining submission dates are the same as in the draft rule. ED also says that States may request a “reasonable extension” of the December 31, 2022 reporting deadline based on “State-specific circumstances.”

The discussion in the rule also attempts to clear up some confusion among commenters about how per-pupil expenditure data may be used, stating that districts may use it to help fulfill the funding test but not for the staffing test. ED also reinforces its expectation that States will post the reason any listed local educational agencies (LEAs) are exempt from the test, in addition to the fact of their exemption.

The rule itself also requires States to publish, within 30 days, “a description of how the SEA will ensure that each LEA that is not excepted … is ensuring that its high-poverty schools are protected” and do so in a way that allows LEAs to “make any necessary adjustments in a timely manner.” The regulations also say that each State should “require non-compliant LEAs to describe what adjustments the LEA will make to be in compliance prior to the start of the next school year.” It is not clear from the regulations whether districts will simply be expected to be compliant for the following year, or whether they will be expected to make underfunded schools “whole” through the allocation of additional resources.

Additionally, ED notes a number of States contested the estimated burden of $60,000 nationally, and they pushed back hard, breaking down their calculation but not acknowledging that some States had to build out data collection or provide technical assistance.  ED says they have based their burden estimate only on “the incremental cost of complying with the final requirements (e.g., through public reporting)” and not including costs of finance systems which they presume are already in place.

The final [rule is available in the *Federal Register* here](https://www.govinfo.gov/content/pkg/FR-2022-06-08/pdf/2022-12296.pdf).

Author: JCM

### Biden Administration Releases Fact Sheet on Teacher Investment

The U.S. Department of Education (ED) released a fact sheet Thursday on “Sustaining Investments in Teachers Beyond the American Rescue Plan” in conjunction with public remarks from Secretary of Education Miguel Cardona at a New York college. The fact sheet and Cardona’s remarks focus on the current teacher shortage across the country and how to leverage federal resources to address it.

The fact sheet states that the Biden administration “is committed to a comprehensive policy agenda to build a racially, culturally, and linguistically diverse and well-prepared educator workforce to support the success of every student.” The fact sheet names examples of how American Rescue Plan Elementary and Secondary School Emergency Relief Funds (ARP ESSER) can be used to invest in teachers, including increasing partnerships between teacher preparation programs and the State, providing mentoring programs for teachers early in their careers, and ensuring teachers have opportunities for advancement, among others.

In addition to providing examples of how ARP ESSER funds can be used to address teacher shortages, the fact sheet also notes other sources of federal funding that can be used for teacher investment, including Title I, Part A of the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Education Act Part B, the Higher Education Act Teacher Quality Partnership Grants, the Strengthening Career and Technical Education for the 21st Century Act, and many others. The fact sheet breaks down the potential uses of federal funding for teacher investment into several categories, including providing teachers with a living wage, investing in a teacher pipeline, supporting additional certification and professional development, helping teachers afford training and education for the profession, providing teachers with resources to allow them to succeed, and creating opportunities for advancement.

[The ED fact sheet on teacher investments is available here](https://www2.ed.gov/documents/coronavirus/factsheet-teachers.pdf).

Author: KSC

## News

### Education Organizations Issue Statement on Gun Violence

In the wake of a shooting at Robb Elementary School in Uvalde, Texas, 17 national education organizations recently published a statement urging Congress to pass legislation to address gun violence. The organizations signing on represent a wide variety of education stakeholders, ranging from mental health professionals to school business officials.

In their request, the organizations seek legislation to address three items in particular related to gun violence:

* “Prevent[ing] access to dangerous weapons by those deemed at risk of hurting themselves or others;
* Expand[ing] background checks for all gun purchasers;
* Increas[ing] investments for rigorous gun-violence prevention research.”

The organizations also note the importance of mental health and behavioral supports but ask Congress to invest more in current programs that provide funding for these types of activities in schools, as opposed to creating new programs. Specifically, the organizations name the Mental Health Service Professionals Demonstration Grant Program, the School Based Mental Health Services Grant, and the STOP School Violence Act as current programs for Congress to allocate additional funding to.

The House passed legislation on Wednesday that would make sweeping changes to federal gun policy, but that bill is not expected to pass the Senate as it lacks bipartisan support. A group of bipartisan senators is also working on finding common ground on more modest changes that may be able to garner support from both Republicans and Democrats, but no agreements have been reached yet.

[The full statement on gun violence is available here.](https://aasa.org/uploadedFiles/K12_Orgs_Statement_on_Gun_Violence_Package_060722.pdf)

Author: KSC

## Reports

### HEERF Oversight Needs Work, ED OIG Says

The U.S. Department of Education (ED), Office of Inspector General (OIG), published a final audit report detailing its review of the Office of Postsecondary Education’s (OPE’s) oversight of Higher Education Emergency Relief Fund (HEERF) grants. As part of the review, OIG interviewed OPE and ED officials responsible for administering and monitoring HEERF grant funds, reviewed HEERF guidance and documents related to schools’ application for and reporting on HEERF grant funds, and reviewed the ED’s fiscal year (FY) 2020 Annual Performance Report and FY 2022 Performance Plan.

OIG found that OPE should strengthen its oversight of the HEERF program to ensure that schools use HEERF grant funds appropriately and that performance goals are met. Specifically, OIG found that OPE failed to: 1) develop a monitoring framework to guide its monitoring practices, procedures, and controls; 2) conduct a risk assessment of the HEERF program to identify potentially significant areas of concern; and 3) design and implement a risk-based monitoring plan to provide assurance that HEERF grant funds are being used appropriately and performance goals are being met. To strengthen its oversight of the HEERF program, OIG recommended that OPE “develop guidance containing key steps for OPE staff to follow when implementing emergency programs while experiencing resource and time constraints.” OIG also recommended that the Assistant Secretary for OPE “develop a monitoring framework for the HEERF program that uses a risk assessment process to identify and prioritize significant program risks, and design and implement a risk-based monitoring plan and associated key control activities.”

[A full copy of the OIG report can be found here.](https://www2.ed.gov/about/offices/list/oig/auditreports/fy2022/a20ca0029.pdf)

Author: ASB

### ED Issues Study on Implementation of ESEA Sexual Misconduct Rule

The U.S. Department of Education (ED) published a study recently on the requirement found in Section 8546 of the Elementary and Secondary Education Act (ESEA) that States have policies in place to prohibit schools, local educational agencies (LEAs), or the State from “aiding or abetting” school staff in obtaining a new job if there is probable cause that such individuals engaged in sexual misconduct with a student or minor. The provision applies to any school, LEA, or State that receives funds under ESEA, and the prohibited practice is colloquially known as “passing the trash.”

The study conducted by ED reviewed States’ challenges in implementing policies under this provision, as well as the general development and implementation of policies since the passage of the Every Student Succeeds Act (ESSA) in 2015, when the provision was added to ESEA, to determine how States enforce Section 8546. All States require background checks of employees and more than half of States have implemented at least one additional measure to identify individuals who are known or believed to have engaged in sexual misconduct with a minor, such as contacting prior or current employers for certain information. In addition, almost half of States have provided guidance to districts and schools on complying with the provision. In the development of these policies following the passage of ESSA, some States updated policies that were already established, and several State educational agencies worked with other State agencies in updating or crafting policies.

[The full study conducted by ED on Section 8546 implementation is available here](https://oese.ed.gov/files/2022/06/Study-of-State-Policies-to-Prohibit-Aiding-and-Abetting-Sexual-Misconduct-in-Schools.pdf).

Author: KSC

*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* [*www.bruman.com/virtualtrainings/*](http://www.bruman.com/virtualtrainings/)*.*

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