

# The Federal Update for September 16, 2022

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Re: Federal Update

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[Legislation and Guidance 1](#_Toc114223640)

[ED Releases New School Safety Funding 1](#_Toc114223641)

[News 2](#_Toc114223642)

[DOJ to Appeal Title IX Interpretation Ruling 2](#_Toc114223643)

[SCOTUS Sides with College LGBTQ Group While Case Proceeds 3](#_Toc114223644)

[Lawmakers Ask for Information on ‘Inappropriate’ ESSER Spending 4](#_Toc114223645)

[Democrats Request More Comprehensive School Safety Approach 4](#_Toc114223646)

[Foxx Asks for Head Start Mask Mandate Removal in Letter to HHS 5](#_Toc114223647)

## Legislation and Guidance

### ED Releases New School Safety Funding

In a letter to States on Thursday, the U.S. Department of Education (ED) announced allocations for a billion dollars in funding appropriated under the Bipartisan Safer Communities Act, the gun control measure signed into law in June. This legislation provides additional funding to States by formula, aligned with States’ Title I allocations. States will then run competitions to distribute funding among school districts, which will be able to use the money for “safe and healthy students” activities as outlined in Section 4108 of the Elementary and Secondary Education Act (ESEA).

ED does not outline requirements or specific priorities for States to include in their competitions. Instead, the letter says that the agency “is encouraging” States to prioritize districts that:

* Implement “comprehensive, evidence-based strategies” to “meet each student’s social, emotional, physical, and mental well-being needs,” “create positive, inclusive, and supportive school environments,” and “increase access to place-based interventions and services;”
* Create systems of “engaging students, families, educators, staff, and community organizations” in the selection and implementation of strategies and interventions; and
* Design and implement “policies and practices that advance equity and are responsive to underserved students.”

ED suggests that culturally and linguistically responsive learning environments help contribute to a sense of student belonging and make it less likely students will bring weapons to school or engage in “risky behaviors.” The agency notes that evidence-based approaches should be used and urges States and districts to rely on the strongest tiers of evidence as defined in federal regulations. Additionally, the agency encourages the use of “culturally appropriate” and “trauma-informed” emergency training.

Where the statute requires that States prioritize “high-need LEAs,” ED does not set a formal definition but “encourages” States to consider both poverty rates (suggesting at least 40 percent of students living in poverty as a benchmark) and one or more additional criteria includes:

* High student-to-mental health professional ratios;
* High rates of chronic absenteeism, exclusionary discipline, or referrals to the juvenile justice system, bulling and harassment, community and school violence or substance abuse; or
* Where students recently experienced a natural disaster or traumatic event.

An assurances document posted by ED contains additional requirements for the funds. There will be a requirement that States and districts use the funding to supplement, not supplant, existing programs, and districts will be required to reserve a proportionate share of funds to provide equitable services for students and teachers in non-public schools (though funds and any items purchased with those funds must remain under the control of a public entity like a school district).

The letter says that ED will provide additional technical assistance on this grant, and agency staff said that a “frequently asked questions” document would be available in “early fall.” Up to one percent of funds may be reserved for State administration. ED staff also said funds would be available through September 2026.

More [information on the grant is available via the webpage here](https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/student-support-and-academic-enrichment-program/).

Author: JCM

## News

### DOJ to Appeal Title IX Interpretation Ruling

The U.S. Department of Justice (DOJ) said this week that it will appeal a federal judge’s decision blocking the administration’s interpretation of Title IX of the Education Amendments of 1972. The decision, issued last month, said a U.S. Department of Education (ED) “Notice of Interpretation” filed in the *Federal Register* violated States’ ability to make and enforce their own laws. The notice of interpretation relied on Supreme Court precedent saying that gender identity was inextricable from the concept of sex and that therefore that gender identity and sexual orientation were included in the discrimination protections of Title IX. A group of 20 States sued the administration, saying that this interpretation conflicted with State laws.

DOJ’s appeal comes as ED is working to produce a final rule on Title IX that will involve even broader protections under Title IX, extending this guidance to an enforceable regulation that protects students, applicants, and employees from discrimination on the basis of gender identity, sexual orientation, sex characteristics and stereotypes, and pregnancy. ED is likely concerned that this decision would undermine enforcement of a final rule, but that final rule may take some time – the public comment period on the draft version closed this week after receiving more than 235,000 public comments.

Author: JCM

### SCOTUS Sides with College LGBTQ Group While Case Proceeds

The U.S. Supreme Court ruled this week that Yeshiva University must continue to recognize an LGBTQ student group while the group’s lawsuit against the university proceeds through the legal system. Yeshiva University would not recognize the group as an official student organization on campus due to the school’s stance, based on religion, on sexual orientation.

Both a trial court and a State appeals court ruled in favor of the student group, determining that Yeshiva University’s actions violated a New York City human rights law. The university appealed to the Supreme Court for stay pending the school’s appeal of the State court decision. The Supreme Court, however, rejected the stay, directing the university to first proceed with remaining legal options in the State of New York court system and only returning to the Supreme Court should those avenues fail to provide “expedited review” or “interim relief.”

Notably, Chief Justice Roberts and Justice Kavanaugh, generally considered conservative justices, joined Justices Sotomayor, Kagan, and Jackson in voting to deny the request for stay. The remaining four conservative justices joined in a dissenting opinion arguing that the First Amendment’s right to free exercise of religion allows Yeshiva University to choose not to recognize the student group.

Should the case return to the Supreme Court, it remains unclear how the Court would vote. Although Chief Justice Roberts and Justice Kavanaugh agreed in denying the request, that may have been an issue with procedure, rather than an indication of whether they would support the student group or the university in this case.

Resources:

Joe Hernandez, “The Supreme Court rules Yeshiva University must recognize student LGBTQ group for now,” *NPR*, September 15, 2022.

Author: KSC

### Lawmakers Ask for Information on ‘Inappropriate’ ESSER Spending

Republicans on the House Oversight Committee have written to Secretary of Education Miguel Cardona asking for information on whether federal stimulus dollars have been used to pay for “racially biased” and “far left” programs in schools.

The letter, signed by 30 House Republicans, says that while funding under the Elementary and Secondary School Emergency Relief (ESSER) Fund is meant to go to projects that assist in reopening schools and virus mitigation, they are concerned that spending is broader than that. “Based on recent reports,” says the letter, the U.S. Department of Education “is allowing Coronavirus Aid, Relief, and Economic Security (CARES) Act and related COVID relief funds to pay for racially biased and other progressive leftist programs.” As illustration, the letter cites “cultural competency” trainings in one State and “equity driven investments” in another, along with 10 States which the letter says have plans to use ESSER funds to “implement a racially biased curriculum and programs based on critical race theory.”

The letter demands all documents and communications related to several ARP ESSER State plans, including those for California, New York, Michigan, Illinois, and New Jersey, as well as “[a]ll documents and communications related to the use of ESSER funds to facilitate the training or teaching on subjects related to Critical Race Theory, diversity, equity, and inclusion, and/or other racially biased training and/or programs.”

A [copy of the letter is available here](https://republicans-oversight.house.gov/wp-content/uploads/2022/09/SecCardonaUse-of-ESSER.CRT_.FINAL61.pdf).

Author: JCM

### Democrats Request More Comprehensive School Safety Approach

House Democrats sent a letter to Attorney General Merrick Garland, Secretary of Health and Human Services Xavier Becerra, and Secretary of Education Miguel Cardona on Tuesday expressing concerns regarding school safety prevention.

The lawmakers request a more comprehensive approach to school safety that meets the “holistic emotional, health, and safety needs” of students across the country. The letter states that the federal government has historically focused on funding law enforcement efforts in schools as the key school safety strategy, which the lawmakers argue does not always lessen incidents of violence but does often lead to higher rates of punitive measures such as student arrests and expulsions. The lawmakers urge the Biden administration to commit to implementing school safety strategies that are prevention-focused, rather than a response after violence has already occurred, such as increasing access to mental health supports and trauma-informed services in schools.

Specifically, the lawmakers ask all three federal agencies to “conduct a holistic review of any and all non-punitive, non-law enforcement preventative safety measures currently in schools, the health and safety impacts of such measures, and steps your agencies intend to take to meet the needs of our child and prevent the onslaught of violence we are currently witnessing in our schools” and to make such review available to the public.

The letter comes as the Biden administration works to implement the Bipartisan Safer Communities Act, which included funding for both mental health and related supports for students and existing programs that help to increase school resource officers and install structural safety measures in schools.

[The letter from House Democrats is available here](https://bush.house.gov/imo/media/doc/letter_support_comprehensive_public_health_strategy_to_prevent_gun_violence_in_schools.pdf).

Resources:
Juan Perez Jr., “Democrats push Biden administration to rethink school safety and campus police,” *Politico*, September 13, 2022.

Author: KSC

### Foxx Asks for Head Start Mask Mandate Removal in Letter to HHS

Ranking Member of the House Committee on Education and Labor Virginia Foxx (R-NC) sent a letter Wednesday to Secretary of Health and Human Services Xavier Becerra to rescind an Interim Final Rule with Comments (IFC) requiring children and staff to wear masks and be vaccinated when participating in Head Start activities – a request also made by the National Head Start Association.

The IFC went into effect on November 30, 2021, after the U.S. Department of Health and Human Services (HHS) found that delaying a vaccine mandate would endanger the health and safety of staff, children, and families. Generally, agencies must follow the rulemaking process set out by the Administrative Procedure Act (APA) which includes a notice and public comment period before a rule takes effect, but the APA allows agencies to waive these procedures if the agency finds good cause that these procedures are impracticable, unnecessary, or contrary to public interest.

In the letter, Foxx questions the efficacy of masks and vaccines and argues that imposing a mask and vaccine mandate actually harms the development and education of children. In support, the Foxx cites the Centers for Disease Control and Prevention position that universal masking is necessary only if there is a high community transmission rate and the World Health Organization recommendation that children aged five and under not wear masks. In addition, she points to the European Centre for Disease Prevention and Control which does not recommend masks for students up to 12 years of age. By leaving the IFC in effect, Foxx argues that HHS is failing to “follow the science.”

Recent litigation has prevented this rule from taking effect in 25 States, leaving childcare providers in limbo on how to enforce the rule. Vaccine and mask mandates have also led to childcare provider staff resigning or temporarily stopping work in some cases. This unclear enforcement and lack of staff availability also jeopardizes the development and education of children, Foxx argues. Foxx, like many others who oppose mask mandates, argues that masks on children have a detrimental effect on emotional, socialization, and language development.

Although the Office of Head Start released a statement that compliance with mask requirements would not be enforced for this upcoming program year, the rule remains in effect until rescinded by the agency.

[The full letter can be viewed here.](https://republicans-edlabor.house.gov/uploadedfiles/hhs_head_start_letter_final.pdf)

Author: ASB

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