

# The Federal Update for October 7, 2022

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Re: Federal Update

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## Legislation and Guidance

### ED Releases Guidance on Title IX and Pregnancy

The U.S. Department of Education (ED) released guidance this week reiterating federal requirements under Title IX of the Education Amendments of 1972 with regards to pregnancy and related conditions. The guidance comes following pressure from Democrats to issue guidance on this topic in light of the U.S. Supreme Court case this summer that overturned the precedent set in *Roe v. Wade*.

The guidance does not impose any new requirements on educational entities receiving federal funding, but it reminds schools that discrimination based on a student’s or employee’s “pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom” is prohibited under the current Title IX regulations, including harassment and exclusion from programs. Schools are required by Title IX to respond to these conditions in the same manner as other temporary disabilities, including for leave policy. For eligible students, at a minimum, a school is required to allow leave, without consequence, if a student’s doctor determines it is medically necessary. Schools must also provide employees with a leave of absence without pay for pregnancy and the related conditions outlined in the regulations. Teachers must also allow students flexibility with regards to deadlines for assignments when a student is on leave due to pregnancy or related conditions.

The Title IX regulations proposed by the Biden administration in June also address pregnancy and related conditions, including termination of a pregnancy, adding more detail to the current regulatory requirements. However, with hundreds of thousands of comments received on that set of regulations, the earliest ED is likely to finalize them is next year.

[The guidance released this week is available here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-pregnancy-resource.pdf).

Resources:

Bianca Quilantan, “Cardona unveils Title IX guidance for protecting pregnant students,” *Politico*, October 4, 2022.

Author: KSC

### White House Issues AI “Bill of Rights”

In a document issued this week, the White House outlined a number of proposed policy principles around automated systems and data collection and their overlap with privacy concerns. Among the principles the White House outlined are testing and efficacy evaluation of data systems, algorithms that are designed in an equitable and non-discriminatory way with proactive equity assessments, protection from abusive data practices or misleading default consent options, notice and explanation of how automated systems are used, and the ability to opt-out or access support where needed.

The framework is meant to apply to systems that are automated and that have the “potential to meaningfully impact the American public’s rights, opportunities, or access to critical resources or services.” The White House explains that this means civil rights and liberties like freedom of speech, voting, and privacy, as well as equitable access to opportunities in housing, employment, and other programs, or access to healthcare or social services.

In an appendix to the document, the White House notes that equal opportunities can include education-related systems like algorithms that purport to detect student plagiarism or cheating, assist with admissions, online student monitoring system, and projections of student progress or outcomes. Recent studies have suggested that student monitoring software is overbroad and that data collected is not properly used or protected. The White House urged school districts to refrain from “continuous surveillance” if the use of monitoring tools is likely to impinge on students’ rights or privacy. In another fact sheet released alongside the Blueprint, the White House announced that the U.S. Department of Education would release recommendations on schools’ use of artificial intelligence that “define specifications for the safety, fairness and efficacy of AI models used within education” and introduce “guardrails that build on existing education data privacy regulations.” Those recommendations are expected in “early 2023.”

The [AI Blueprint is available here.](https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf)

Author: JCM

## News

### Senators Express Concerns About “Informal Removal”

Senators Dick Durbin (D-IL) and Tammy Duckworth (D-IL) wrote to the U.S. Department of Education (ED) on Wednesday urging the agency to update regulations to prohibit “informal removal” as a disciplinary practice and to formally define the term. Informal removal occurs when students with disabilities are temporarily removed from school and, as a result, lose access to the programs to which they are entitled under law. Temporary removals include sending a student home to participate in virtual learning, homebound instruction, or use of shortened school days.

The letter comes in the form of comment to ED’s announcement that it would rewrite regulations to Section 504 of the Rehabilitation Act of 1972, which outlines how schools and colleges must accommodate students with disabilities. ED also issued guidance in July on preventing disciplinary policies and practices that are discriminatory against students with disabilities.

“In some cases, informal removals may result in students with disabilities missing months and even years of classroom instruction,” the senators wrote. They also said the form of discipline, which is not documented, makes it “impossible to know the exact number of informal removals and the amount of class time that children with disabilities lose when they are informally removed.”

The [Durbin/Duckworth letter is available here](https://www.durbin.senate.gov/imo/media/doc/2022.10.5_Letter_ED%20Public%20Comment_NDRN%20and%20504_Final.pdf?source=email).

Author: JCM

## Reports

### NASFAA Releases Study on HEERF Student Aid

The National Association of Student Financial Aid Administrators (NASFAA) recently published a report that summarizes results of a study that sought to capture students’ and institutions’ experiences with receiving and administering Higher Education Emergency Relief Fund (HEERF) emergency financial aid awards. The study captured data on who received the awards, how they were used, and how much students received, among other information. The study also looked at administrators’ ability to use Minority Serving Institution (MSI) HEERF funds to address students’ needs, the criteria institutions used to determine eligibility for student emergency grants, and whether institutions used institutional HEERF funds to fund student grants, among other information. For the student responses, NASFAA surveyed 18,316 students between March and April 2022. For administrator responses, NASFAA surveyed 321 practitioners between February and May 2022.

The report shows that 35% of students responded that the amount of their emergency financial aid grant was between $1,000 and $1,999. Most recipients responded that they used their HEERF award for food (65%), books (57%), and housing (50%). Students also reported spending HEERF funds on past due balances, medical expenses, transportation, and technology costs. While one of the intents of congress for HEERF funds was to help students re-enroll, about a third (36%) “disagreed” that they re-enrolled in college because of the emergency aid they received after being forced to withdraw as a result of COVID-19. However, many students, 89% and 61%, “agreed” that the emergency aid they received helped with stress and ability to study, and that the amount was adequate to meet their needs. Moreover, 58% of respondents indicated that the aid helped them stay enrolled in college.

Eligibility criteria largely remained consistent with the U.S. Department of Education’s policy to make awards based on student need, with 69% of practitioner responses indicating they used Expected Family Contribution (EFC) as an eligibility criteria and 66% indicating they used federal Pell Grant recipient status. Other criteria mentioned included: food, housing, course materials, technology, and healthcare needs, among others.

NASFAA hopes that legislators and administrators can use the results of the study to inform strategies for planning future emergency aid programs.

[A full copy of the report can be viewed here.](https://www.nasfaa.org/uploads/documents/Evaluating_Student_and_Institutional_Experiences_with_HEERF.pdf)

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

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