

# **The Federal Update for November 19, 2021**

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

Re: Federal Update

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*Due to the upcoming Thanksgiving holiday and Brustein & Manasevit, PLLC’s Fall Forum in Clark County, Nevada December 1-3, the next issue of the Federal Update will publish on December 10.*

## Legislation and Guidance

### House Passes Reconciliation Bill

The House passed a $1.75 trillion “social spending” plan Friday morning which will provide new funding for issue areas like healthcare and education, among others, and will be considered in the Senate under the reconciliation process in the coming weeks.

House Democrats have been working towards passage of the legislation for months. The bill has been revised multiple times since it was first introduced earlier this year, starting at a total cost of $3.5 trillion, but being modified down to $1.75 trillion earlier this month after objections from moderate Democrats over the bill’s cost. Though Speaker of the House Nancy Pelosi (D-CA) had hoped to vote on the legislation earlier this month, moderates refused to take a vote until the non-partisan Congressional Budget Office (CBO) scores were released, which analyze the total cost and potential impact of the bill on the national debt. With final scores published on Thursday evening, House Democrats were able to move forward with a vote Friday morning.

The Senate will now take up the bill after the Thanksgiving holiday, but it’s unclear whether all provisions in the House-passed bill will remain. The legislation will be considered by the Senate through the reconciliation process, which requires only a simple majority to pass – and therefore, no Republican support – but has strict limitations on what can be included in the legislation. Some provisions in the House bill may be in jeopardy, including one related to immigration. The Senate parliamentarian will review the legislation to determine if it passes muster for the reconciliation requirements. If any modifications are made to the bill in the Senate, then the House would be required to take another vote on the revised bill before it can be sent to President Biden for signature.

Under the House-passed bill, the U.S. Department of Education would receive a total of $38.3 billion, including funding for K-12 and higher education programs. The bill includes $700 million each for Adult Education programs and Perkins Career and Technical Education programs. That funding will be allocated to States with their fiscal year 2022 funding and will be available for obligation until September 30, 2027. In addition, through the U.S. Department of Labor, Title I programs under the Workforce Innovation and Opportunity Act would receive $4.5 billion with fiscal year 2022 allocations that would remain available until September 30, 2026. The legislation also includes funding for universal pre-school; educator development; Historically Black Colleges and Universities, Minority Serving Institutions, and Tribal Colleges and Universities; college retention and completion; and increases the maximum Pell Grant by $550, among other provisions.

Meanwhile, funding deadlines are quickly approaching as the continuing resolution (“CR”) for fiscal year 2022 will expire on December 3rd, and the United States is estimated to breach the national debt ceiling by mid-December. Lawmakers are currently discussing passing a second continuing resolution to push the deadline by two weeks to December 17th, pushing against the year-end holidays. Should Congress fail to either pass final appropriations before the December 3rd deadline, or agree to another continuing resolution, then the government will shut down after that date. With negotiations between Democrats and Republicans moving slowly, the funding debate may even be punted until early next year via another short-term spending measure.

Resources:

Heather Caygle, Sarah Ferris, Nicholas Wu, “Democrats scramble to finish social spending bill as price tag expected Thursday,” *Politico*, November 18, 2021.

Author: KSC

### Lawmakers Introduce “Parents’ Bill of Rights”

Congressional Republicans in both chambers have introduced legislation outlining a series of putative rights for parents of children in public schools against what they say are “efforts to shut them out of their children’s education.” The legislation would amend the Elementary and Secondary Education Act (ESEA) to include requirements for making information available, either automatically or upon request.

Under the proposed legislation, each local educational agency’s annual report card would include the budget for the school year, including all revenues and expenditures for the district as a whole and for each school. Local plans would be modified to include assurances that parents would be notified of certain rights to review information and materials pertaining to their children’s schools. Parents would need to be offered the opportunity to review the school curriculum, meet with each teacher at least twice per school year, review a list of all books and reading materials in the school’s library (and the opportunity to inspect all instructional materials, books, and reading that are part of instruction or evaluations or generally made available), information about any violent activity at schools, and information about any plans to eliminate gifted and talented programs. Parents would also have the “right to address the school board” within their district.

The proposal would also amend the Family Educational Rights and Privacy Act (FERPA) to include a prohibition on districts selling student information for commercial or financial gain, a requirement that districts develop privacy policies with “meaningful engagement” of parents, and a requirement that parents consent to any medical examination or screening, including any screening for mental health or substance use disorders.

In the Senate version of the bill, schools and districts would have to provide information about teachers, guest lecturers, third-party contractors, and outside presenters and would need to obtain “affirmative consent” for all field trips, assemblies, and extracurricular activities. Parents could also have to have the ability to “visit their minor child at school during school hours.” This version of the bill prohibits the collection of “biometric data” without affirmative consent and would allow parents to sue a school district for injunctive relief – or the State’s attorney general to do so on their behalf. If there is a pattern of violations including three or more final judgements against districts in the State over the previous five years, this version of the legislation would allow for the withholding of up to 50 percent of ESEA funds.

Enforcement of these proposed requirements would be housed at the U.S. Department of Education, which would have the ability to “terminate assistance provided” under federal education programs if districts fail to comply. While many of these proposed requirements are already common practice (or required by other laws), the ones that are not – for example, the unlimited ability to address a school board, or the right to inspect books and materials – could prove disruptive for schools and districts, and would involve additional administrative burden. Items like an ability to visit a child during the school day could also conflict with established procedures regarding COVID-19 safety or school safety generally.

The [House version of the legislation](https://www.speaker.gov/parents/) is here. The [Senate version is here](https://www.hawley.senate.gov/sites/default/files/2021-11/Parents%20Bill%20of%20Rights%20-%20FILED_0.pdf).

Republican legislators have also sent a letter to the Chairs of two House subcommittees asking for hearings on parent involvement and free speech on college campuses. The letter suggests that “inappropriate sex and gender indoctrination” and “divisive and racist instruction informed by Critical Race Theory” are part of school curricula and cause for parent concern and suggests that parents must be given an opportunity to advocate for their children. A hearing on these topics, the letter says, would allow Congress to “hear directly from parents, families, and students across all levels of education about their objections to inappropriate and divisive teachings and the stifling of free expression in American education.” That [letter is available here](https://drive.google.com/file/d/1RowAN-1-jmAjf2jz4_Lc2BVMeGmuxxeg/view).

Author: JCM

### ED Sends Cover Letter of Required Annual FERPA Notices to States

The Student Privacy Policy Office (SPPO) at the U.S. Department of Education (ED’s) sent the cover letter to ED’s annual privacy notices required by the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) to Chief State School Officers and Superintendents last week. ED is required to notify State educational agencies (SEAs) of their obligations under FERPA and the PPRA as recipients of federal funds. The cover letter serves as a primer on FERPA and provides a list of resources on guidance and privacy data best practices. The guidance provided includes documents on privacy and virtual learning, and information on school disclosure of data on COVID-19 cases. The section on best practices encourages schools to improve the transparency of information on student privacy by posting on their websites their FERPA policies and provides schools with information on cyber security.

[The letter can be viewed here.](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA_annual_letter_2021.pdf)

Author: ASB

## News

### ED Announces Possible Changes to CRDC

The U.S. Department of Education (ED) has announced some changes to how it will collect compliance with various civil rights requirements in the biannual Civil Rights Data Collection (CRDC).

The CRDC is usually conducted every other year, but with new information set to be gathered, and a pandemic that interrupted data-gathering in 2020, ED has asserted that doing so two years in a row will help to address inequities created or exacerbated by the pandemic.

Among the changes proposed by ED are the optional submission of information on nonbinary students where the district already collects such information, and rates of bullying or harassment of students on the basis of gender identity.  The collection would also include information about schools’ share of teachers who are in their first or second year, and racial disparities in discipline by race at the preschool level.  Additionally, ED is asking for the number of documented incidents of school shootings, regardless of injury, and the number of homicides at schools (there is currently no federal data collection surrounding school shootings).  Finally, the CRDC would gather data on virtual instruction and the number of schools or districts offering virtual modes of instruction at any point during the year.

There will be a 60-day window in which to submit comments.  The draft [data collection information is available here](https://www2.ed.gov/about/offices/list/ocr/docs/proposed-21-22-crdc-data-elements.pdf).

Resources:
Andrew Ujifusa, “Schools Could Count Nonbinary Students Under Biden Proposal,” *Education Week: Politics K-12*, November 18, 2021.
Author: JCM

## Reports

### GAO Recommends Review of Cybersecurity Protections

The Government Accountability Office (GAO) issued a report last week highlighting the rise in cyberattacks on school districts and the increase in distance learning, and how the U.S. Department of Education (ED) should consider helping schools in addressing this correlation.

GAO recommended that ED re-consider its plan for addressing school risks issued in 2010 to acknowledge the existence of more recent cybersecurity risks. Specifically, GAO asks ED to consider whether the education sector needs more specific guidance on cybersecurity. The report looks at cybersecurity in K-12 schools to determine how federal agencies – through laws and guidance – have assisted schools in protecting themselves from cyber threats. The report found that the federal agencies have provided cybersecurity support to K-12 schools but have not kept plans up to date nor provided specific guidance to schools on how they should handle cyber threats. As a result, the report says that K-12 schools are less likely to have federal products, services, and support to help protect them from cyberattacks.

The report also includes information on the types of cyberattacks and the typical actors involved in committing these attacks. The cyberattacks identified in the report include ransomware, video conferencing disruption, denial-of-service, and phishing. The report also identified specific instances where each of these attacks happened in a K-12 school setting within the last few years. Lastly, the report identifies what federal products and support are available to schools including how the Federal Bureau of Investigation can alert and protect schools and how the Cybersecurity and Infrastructure Security Agency’s can help schools respond.

[The report can be viewed here.](https://www.gao.gov/assets/gao-22-105024.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* <https://bruman.com/training-and-recordings/>.

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