



JANUARY 2020 PUBLIC POLICY UPDATE

Administration

Why Is It So Hard for Betsy DeVos to Provide Debt Relief and Loan Forgiveness to Students?

(Courtesy of the Los Angeles Times Editorial Board)

Not every college graduate is aiming for the job with the biggest possible paycheck. Many hope to pursue intrinsically rewarding careers by serving in government or teaching or working for charitable organizations. These jobs don't pay particularly well, but they are of enormous importance to our society and economy.

That's why, in 2007, Congress created the Public Service Loan Forgiveness program, which is supposed to work the way its title suggests it would: After a college graduate works for 10 years in one of the approved public-service categories, whatever remaining student loan debt he or she has is forgiven.

Theoretically, at least.

In reality it's not going so well. And it is not just this one loan-forgiveness program that is in trouble. In fact, pretty much everything having to do with college debt is messed up at the U.S. Education Department under Secretary Betsy DeVos, who has consistently avoided giving students the help to which they're entitled. You could say she's moved glacially on student debt relief—except that in this era of climate change, the glaciers might just be outpacing her.

Among those who have had to wait too long for debt relief are more than 200,000 students who say they were tricked into taking valueless courses at for-profit college chains such as the now-defunct ITT Technical Institute and Corinthian Colleges. DeVos' own staff found that those schools defrauded students by making misleading assurances about the jobs that students would find after training and about the money they would earn.

But DeVos and her agency are 18 months behind on processing the claims of fraud. The debt relief was promised in a rule by the Obama administration. DeVos was even fined \$100,000 in October for violating a judge's order to halt debt collection against former Corinthian students.

Is she grossly incompetent, unheeding of the law, or actively hostile to students seeking debt relief? It's hard to say.

The Public Service Loan Forgiveness program started long before DeVos took office, but the first 10 years ended in 2017, which made her responsible for the program's implementation. The rate of approvals granted by her department to applicants was devastatingly low at 1%. So in 2018, Congress temporarily extended the program to allow more college graduates to qualify. The approval rate remained at 1%.

Many of the denials were valid, but not 99% of the total claims. One serious problem was that DeVos hadn't created the simple application process that she was required to under the law. Applicants for the expanded program also had to fill out the application for the original debt forgiveness program, and according to a September report by the General Accounting Office, this information wasn't made clear to those putting in their paperwork.

The DeVos policy "created a confusing process for borrowers," the report said. In addition, it said, the denial letters don't include full information on how to appeal the decisions.

There's nothing new or surprising about DeVos slow-walking or trying to undo policies laid down by the previous administration, but she has lost round after round in court after she bungled the required procedures for changing the Obama-era rule. She also has gone out of her way to protect for-profit colleges, which have much higher rates of fraud claims and student loan defaults than other postsecondary schools, by gutting rules that required them to show halfway-decent results or close down. Such rules are needed not just to protect the many low-income students who attend for-profit schools but to protect the taxpayers, who bear the financial brunt of defaults.

Earlier this month, the Education Department unveiled a set of rules for receiving debt relief from the defunct for-profit colleges that demands a dramatically higher level of proof from the victims, including showing specific evidence that they made their decision to attend based on a recruiter's false claims and evidence that the recruiter knew the claims were false. How are individual students supposed to come up with evidence that in the first case probably doesn't exist, and in the second case isn't obtainable by people who don't have a cadre of lawyers backing them.

It's not that DeVos should deliver blanket debt relief to anyone who files a claim. Applicants should be able to show that they were in fact defrauded and harmed financially as a result.

She just needs to treat American college students fairly, something she seems unwilling or incapable of doing.

Proposed Changes to Title IX Will Not Solve the Problem of Sexual Assaults on College Campuses

(Courtesy of The Hill)

New rules governing sexual assault on college and university campuses will likely be made public very soon. Secretary of Education Betsy DeVos claims they will restore balance to a system she believes favors the accuser. Women's rights organizations, colleges, and campus activists fear the new rules will discourage victims of sexual assault from coming forward — and make it virtually impossible for them to prevail if they do.

Sadly, the new regulations are likely to make a flawed system even worse.

The proposed regulations are based on Title IX, a 1972 law prohibiting "discrimination based on sex in education programs or activities that receive Federal financial assistance."

In 2011, the Obama administration sent a "Dear Colleague" letter to higher education institutions, citing an often misunderstood report indicating that about one in five women were victims of "completed or attempted sexual assault while in college," and outlining how its Department of Education would assess compliance with Title IX.

The letter required schools to make findings of sexual harassment and assault based on a preponderance of the evidence (i.e., a more likely than not test) rather than the more

demanding “clear and convincing” standard then in use on many campuses. The letter also “strongly discourages” schools from permitting the parties personally to cross examine each other because it “may be traumatic or intimidating” to complainants.

Colleges and universities adopted grievance procedures in line with the letter’s requirements, hired additional staff to support students and deal with Title IX complaints, and ramped up related educational programming.

These efforts have satisfied no one. Some critics accuse colleges of sweeping allegations of sexual assault under the rug to protect their reputations and avoid alienating donors. Others accuse colleges of denying mostly male defendants some of their due process rights to satisfy campus activists.

For everyone, the stakes are high. To file a claim, students who may already have been traumatized by sexual assault must navigate a complicated investigatory process, often with little official support. Survivors (as they are known on campus and in the advocacy community) risk retaliation, or at least ostracism, by the accused and their friends, even though retaliation constitutes an independent violation of Title IX. Students who are accused of sexual assault may also face ostracism, often well before any formal resolution of the complaint against them. And a finding that they are responsible for sexual assault may result in expulsion, sometimes weeks or days before graduation.

Despite devoting substantial resources to Title IX programs, colleges and universities face periodic protests from students angry that they have not done more. Lawsuits have been brought by complainants who claim they were treated unfairly and, more frequently, by men who allege the proceedings were biased against them.

Secretary DeVos has waded into this debate on the side of the accused. In 2017, she rescinded the 2011 Dear Colleague guidance, criticizing it for creating a “failed system.”

DeVos’s proposed regulations define harassment far more narrowly than the Dear Colleague letter. To be actionable, conduct can no longer be any “unwelcome conduct of a sexual nature”; it must be “unwelcome conduct on the basis of sex that is so severe, pervasive and objectively offensive that it effectively denies a person access to the school’s education program or activity.” The rules also permit schools to choose either the preponderance of the evidence standard or the more difficult clear and convincing standard, as long as schools use the same standard in other judicial proceedings carrying the same maximum penalty. The most controversial change will require schools to hold live hearings, with cross examination by attorneys permitted. If a student requests it, schools must provide an advisor to conduct cross examination.

To date, the draft regulations have attracted over 124,000 public comments. Most are sharply critical. Nonetheless, it appears the regulations will be promulgated largely intact (with one exception: unlike the draft regulations, the final rules may encompass sexual misconduct by students that occurs off campus).

In essence, the new regulations impose a one-size fits all process modeled on the court room. Colleges, however, are not courts, and the costs of such a judicialized process will be high. Wealthy students will be free to hire high-priced lawyers to represent them. Students without resources will have to depend on a college-appointed advisor. While faculty and staff could theoretically be trained to fill that role, few educators will feel equipped to do so against an experienced litigator. Colleges may feel compelled to hire a lawyer to represent any student without adequate representation. Colleges may also find it necessary to hire lawyers to oversee the proceedings, because few faculty or staff will feel competent to rule on the admissibility of

questions objected to by one side or the other. And, of course, colleges will be paying their own lawyers to advise them throughout the process.

But the most enduring cost is likely to be the effect of an adversarial hearing on the filing of claims. Few victims of sexual assault will want to go through such a process. For them, due process for defendants may end up meaning no process at all.

Ironically, the new regulations may never go into effect. Colleges must be given a reasonable period to adopt the new procedures, and advocacy groups like Know Your IX have already threatened litigation to block implementation. Legislation that would do the same is pending in the House (though unlikely to pass the Senate). And, of course, the election of 2020 may result in a new set of players with a new set of policies.

Clearly, the existing system on college campuses is flawed. But efforts to address sexual assault, in our judgment, should be comprehensive: They should also address a civil court system that can be slow, costly, and, if the accused lacks resources, ultimately fruitless, and a criminal justice system in which—contrary to periodic claims of “guilt by accusation”—only a very small percentage of allegations result in felony convictions. The proposed changes to Title IX will not solve the problems on college campuses—and may well make matters worse.

Congress

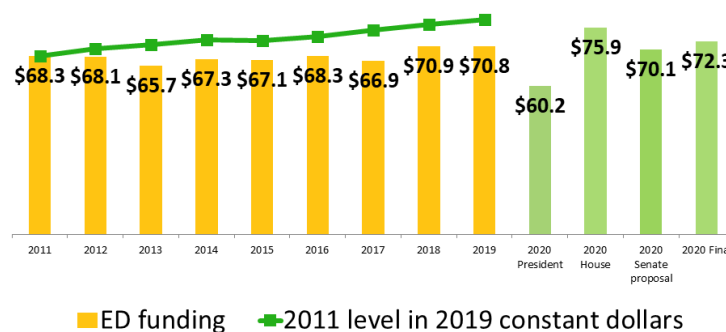
Deal to Fund the Federal Government

(Courtesy of the Alliance for Excellent Education)

Back in Washington, DC, Congress finally reached a deal to fund the federal government for the remainder of fiscal year 2020. The final appropriations bill increases funding for the Education Department by \$1.4 billion, including at least level funding or small boosts for most programs within the Department. For example, Title I grants to support low-income schools received \$16.3 billion, an increase of \$450 million from fiscal year 2019; and Title IV-A student support and academic enrichment grants received \$1.21 billion, an increase of \$40 million from last fiscal year. While it is good news that education investments are growing, there is still room for improvement. According to the Committee for Education Funding, Education Department funding is still almost \$6 billion below the 2011 level in inflation-adjusted terms.

Education Investment Grows in 2020 But is Still Almost \$6 Billion Below 2011 Level in Inflation-Adjusted Terms

(Department of Education Discretionary Funding in Billions of Dollars)



2017, 2019, & 2020 totals reflect rescissions of Pell Grant funds

12/17/19

The House of Representatives passed a bill that many in the education community may not have noticed, H.R. 3, the Elijah E. Cummings Lower Drug Costs Now Act. On first blush, this bill sounds like a healthcare bill, and it is, but H.R. 3 also authorizes \$100 million over 4 years for trauma support services for children in educational settings.

The bill, however, has little bipartisan support. Only two Republicans joined all the House Democrats in voting for the bill, so that fate of the bill in the Senate looks dim.

Perkins Basic State Grants Receives Increase in Funding for FY20; Marking Third Straight Year

(Courtesy of ACTE)

In December just prior to the congressional recess, negotiators published final text and report language for two legislative packages that contain all 12 government funding bills for fiscal year (FY) 2020. These two packages, totaling \$1.4 trillion in spending, were negotiated extensively between House and Senate leadership and provide concessions for both parties, allowing them to come to an agreement to alleviate any threat of a government shutdown ahead of Friday's fiscal deadline (when the current Continuing Resolution expires).

One of the bills, H.R. 1865, contains the Labor-HHS-Education (Labor-H) bill, which received a base increase of \$4.9 billion over the FY 2019 level. This final number represents a \$6.8 billion decrease from the House-passed level but \$4.7 billion increase over the bill proposed, but not acted on, in the Senate—a true compromise between the chambers. Within that total, the bill provides a net total of \$72.8 billion for the Department of Education (ED), an increase of approximately \$1.3 billion over the 2019 level.

More specifically, the Perkins Basic State Grant was appropriated at \$1.283 billion for FY20, which is \$20 million, or 1.6%, above the FY19 level. This marks the third straight year that Congress has increased appropriations for the Basic State Grant, bringing the total from \$1.118 billion in FY17, to 1.283 billion today. Below are some additional programmatic funding levels, and how they compare to FY19, that are important to ACTE and our membership:

- CTE National programs: \$7 million, flat funded from FY19 level
- Federal Work-Study: \$1.18 billion, an increase from \$1.13 billion in FY19
- Adult Education: \$671 million, an increase from \$656 million in FY19
- DoL Training and Employment Services programs: \$3.611 billion, an increase from \$3.502 billion in FY19
- Career Pathways for Youth Grants: \$10 million, new program in FY20
- Supporting Effective Instruction State Grants: \$2.132 billion, an increase from \$2.056 billion in FY19
- ESSA Title IV-A Student Support and Academic Enrichment Grants: \$1.21 billion, an increase from \$1.17 billion in FY19
- Pell Grant: \$6,345 for the maximum award, an increase of \$150 from FY19 level

The House passed the measure by a vote of 297 to 120. The Senate passed the measure by a vote of 71-23. The President signed the bill on December 20.

Trone, Cardin, Introduce Bicameral “TRUE EQUITY Act” to Strengthen Federal-State-Local Educational Partnerships

(Press release from Congressman Trone's office)

U.S. Congressman David Trone and Senator Ben Cardin (both D-Md.) announced legislation in the U.S. Senate and House of Representatives that would provide an additional \$1.4 billion in

federal grant funding for states and local communities that commit to transformative policy changes and allocated significant additional resources to address education inequities. Senator Chris Van Hollen (D-Md.) joined as a cosponsor in the Senate and Congressman Jamie Raskin (D-Md.) as a cosponsor in the House.

Purposefully aligning with the five main policy recommendations under the Maryland Commission on Innovation & Excellence in Education (Kirwan Commission), the legislation—the Transformational Reforms and Updates to Ensure Educational Quality and Urgent Investments in Today’s Youth Act (the TRUE EQUITY Act/S. 3149)—aims to strengthen federal-state-local partnerships. The overall goal is to positively leverage those partnerships to ensure educational equity and eliminate academic achievement gaps in exchange for stringent accountability measures. In Maryland, these new federal grants would cover a significant portion of the costs to implement the Kirwan Commission recommendations.

“It’s about time that we invest the money and resources so every child in Maryland and across the country can get a good education,” said Representative Trone, the only member of the Maryland delegation on the House Education and Labor Committee. “The Kirwan Commission created a blueprint for the investments we need to make in order to give every child a good, equitable education. This bill ensures the federal government will be a strong partner for states like Maryland that follow these necessary recommendations.”

“As a proud graduate of Baltimore City Public Schools, I’m committed to fighting for every current and future Maryland student,” said Senator Cardin. “I applaud the work of the Kirwan Commission that developed feasible and necessary recommendations to transform Maryland’s public schools and eliminate educational inequities. The TRUE EQUITY Act establishes a stronger federal partnership with state and local communities dedicated to providing their children a world class education.”

“Every student deserves access to a quality education. The TRUE EQUITY Act invests in the future of our children and our state by following the Kirwan Commission blueprint and increasing our commitment to schools on the federal, state, and local levels. This legislation builds on the Keep Our PACT Act to provide critical resources to Maryland schools and to ensure our students have the opportunity to succeed—no matter their zip code or their household income. I will keep working to push Congress to fully invest in America’s education system and our children’s success,” said Senator Van Hollen.

“As a professor of constitutional law for more than a quarter-century and a member of the House Public Education Caucus, I believe that education is the lifeblood of democracy in America,” said Representative Raskin. “I am committed to improving America’s public education system for all students in Maryland and beyond and am thrilled to cosponsor this bicameral legislation empowering the transformative recommendations of the Kirwan Commission.”

Education leaders across Maryland have expressed support for this new federal legislation.

“We commend Senator Cardin’s and Representative Trone’s steadfast support for the transformative and necessary recommendations made by the Kirwan Commission,” said Maryland State Education Association President Cheryl Bost. “They recognize that our kids can’t wait and educators in every school district in Maryland need additional resources and tools to build and sustain a school system that performs at the level of the best performing school systems in the world. The TRUE EQUITY Act will provide a true federal partnership with our state and local efforts to eliminate academic disparities across racial and socioeconomic lines and elevate the teaching profession.”

Under the TRUE EQUITY Act, an additional \$1.4 billion would be available to partner with state and local efforts to ensure educational equity and quality with stringent accountability measures. Specifically, this legislation would:

- **Early Childhood Education:** Create a new grant, authorized at up to \$275 million, that bolsters state and local investments in our youngest learners to prepare them to enter school ready to learn. In Maryland, this can expand access to all-day Pre-K and Judy Centers serving low-income families.
- **High-Quality and Diverse Teachers and Leaders:** Create a new grant, authorized at up to \$340 million, that supports additional teacher training and ensures educators are utilizing the latest practices. In Maryland, this would support statewide growing needs for special educators.
- **College and Career Readiness Pathways:** Create a new grant, authorized at up to \$50 million, which builds on state and local efforts to ensure that students have access to college and career pathways by 10th grade. In Maryland, this would expand access to certificate programs and dual-enrollment Pell.
- **More Resources to Ensure All Students Are Successful:** Create a new grant, authorized at up to \$750 million, which strengthens funding for programs that reduce achievement gaps and provide wraparound services for children. In Maryland, this would provide needed funding for low-income students, English learner students, children with disabilities, expansion of physical and mental health services and afterschool and summer learning activities.
- **Governance and Accountability:** Require that any state applying for funding under the TRUE EQUITY Act establish an independent State Oversight Board that has the ability to hold State and local school districts accountable for failing to meet the state-established educational equity goals, TRUE EQUITY Act grant renewals would be contingent on meeting educational equity goal. In Maryland, the Kirwan Commission's recommendation to establish an Independent Oversight Board would allow Maryland to qualify for the TRUE EQUITY Act grants.

All four grant programs created by the TRUE EQUITY Act provide a federal match of \$1 for every \$2 invested by state and local communities above Fiscal Year 2019 spending levels, with state and local communities receiving one of the new grant programs required to provide a Maintenance of Effort of at least the previous year's funding level. In Maryland, these federal grants cover a significant portion of the costs to implement the Kirwan Commission recommendations, bringing up to \$1.4 billion in new federal funding to the state.