

Washington Update May 22, 2020

Dear Colleagues:

Happy Memorial Day Weekend! I hope you have some sort of special activity in store for your weekend. I'll be having a socially distanced get together with friends on my back deck and enjoying every moment of it. Congress is on their Memorial Day Recess through next week as the country continues its rocky path managing the pandemic and easing toward reopening.

1. How Will the Senate Respond to the House Passed \$3 Trillion HEROES Act?

Last week the House passed its follow up to the \$2 trillion CARES Act by adopting the HEROES Act – the next COVID-19 relief bill. The Senate does not appear to be in a hurry to act and has clearly articulated different priorities from those in the HEROES Act.

Majority Leader Mitch McConnell (R-KY) has stated that it is too early to consider another relief bill, as only half of the funding made available under the CARES Act has been distributed. He argues that the government should wait to see the impact of CARES before moving on to the next bill. However, he and other Republican colleagues do believe there will need to be another bill. Their timeline for consideration looks to be the end of June – possibly completing action before the July 4 recess.

One priority in a Senate bill, according to McConnell, will be to limit COVID-19 related liability for businesses, so long as the businesses are following required public health protocol. Many colleges and universities are arguing they also need pandemic-related liability protection. Republicans are also concerned that too much unemployment funding will serve as a disincentive for people to return to work.

Educators and their congressional allies are weighing in for a strong infusion of cash for education in the next bill. In the House Reps. Tlaib (D-MI), Hayes (D-CT) and Pressley (D-MA) are circulating a letter to their colleagues which requests that \$305 billion be targeted to K-12 education in the next COVID-19 bill. In comparison, the HEROES Act targets \$58 billion to K-12 education. Many education organizations are supporting their request, including NEA, AFT and AASA.

On the higher education side, almost 80 education organizations have requested that the maximum for the Pell Grant be doubled, anticipating that students will be facing unprecedented struggles when starting the new academic year and beyond.

In the Senate, a bipartisan letter was released led by Sen. Doug Jones (D-AL) and Sen. Lisa Murkowski (R-AK) urging an increased investment for education in the next COVID-relief bill. In his press release, Sen. Jones notes “Prior to this pandemic many Alabama schools were already struggling with a shortage of qualified teachers and shrinking budgets will worsen this problem....We are particularly concerned about how the educator workforce and other school personnel will be impacted by COVID-19.”

Pell increase letter: https://ticas.org/wp-content/uploads/2020/05/Pell-Joint-Letter_51820.pdf

2. House Adopts New Rules to Do Business Virtually

In an historic first, the House of Representatives adopted rules that allow Members to cast their votes while not physically present in Washington. At no time in the nation's history has this been allowed.

The partisan vote of 217-189 on May 22 yielded a package of temporary changes to House procedures, which some hope will lead to a long-term shift in the virtual capacity of the House to do business. Members may cast their votes by proxy for a 45-day period – which could be extended, though not beyond the end of the 116th Congress. Proxy voting would allow members to send a letter electronically to the House clerk authorizing another member, who is physically present, to cast their vote. The letter must include specific instructions on how to vote on each matter on the agenda. A member may not cast more than 10 proxy votes.

Committees may also meet virtually for hearings, markups and depositions using software certified by House IT experts. The House Rules Committee issued regulations addressing matters from the use of the “mute” button to work-from-home dress codes. Campaign slogans or political displays as background during virtual Committee business are prohibited.

The partisan divide was on full display during this vote with House Rules Committee Chair Jim McGovern (D- MA) arguing that “Convening Congress must not turn into a super-spreader event,” and Rep. Greg Walden (R-OR) calling the temporary changes “a wrecking ball of Democratic lawmaking.” Republicans generally want to follow the lead of President Trump and the Republican controlled Senate and return to regular order.

<https://www.rollcall.com/2020/05/15/historic-rule-change-oks-house-proxy-votes-and-virtual-committees/>

3. Sec. DeVos Proceeds with Privatization Initiatives: How is Congress Responding?

Sec. DeVos has promoted the use of federal funds for privatization in two key initiatives utilizing funding intended to provide relief for the COVID-19 pandemic, the CARES Act. First, she issued guidance to states as to how they should distribute funding to K-12 schools. Historically the funding has been distributed under a long-established Title I formula that allocates some funding for poor children attending private schools. DeVos directed states to calculate the amount going to private schools using the total number of students in private school, not just poor students. Thus, well-to-do students whose families are paying full private school tuition would also count in the distribution formula.

Leading democratic law makers Rep. Bobby Scott (D-VA), Rep. Rosa DeLauro (D-CT) and Sen. Patty Murray (D-WA) sent a letter to Sec. DeVos blasting this decision holding that it “seeks to repurpose hundreds of millions of taxpayer dollars intended for public school students to private services for private school students, in contravention of both the plain reading of the statute and the intent of Congress.” Sen. Lamar Alexander (R-TN), chair of the Senate HELP Committee, said he is not sure about Sec. DeVos’ interpretation of the law. “I thought, and I think most of Congress thought, that money from the CARES Act would be distributed in the same way that Title I is distributed.”

The HEROES Act, passed by the House last week, would rescind DeVos’ directive expanding funds to private schools.

The second initiative DeVos is pursuing is the utilization of funds from the CARES Act for competitive grants that would “rethink” K-12 education and allow funds to be used as “microgrants” or vouchers for parents to purchase private services, pay private school tuition, purchase online courses and more. As of May 19, 17 states noted that they intended to apply for the funds. The deadline for applying is June 29. It is expected that about 13 grants will be awarded to states. The HEROES Act would put the breaks on this use of funds, however, since its future is unknown it may not have any effect.

<https://edlabor.house.gov/imo/media/doc/2020-5-20%20Ltr%20to%20DeVos%20re%20Equitable%20Services.pdf>

https://www.washingtonpost.com/local/education/betsy-devos-stimulus-private-schools/2020/05/21/d790b926-9b99-11ea-ad09-8da7ec214672_story.html

4. Parental Complaints/Union Lawsuit Challenge IDEA Implementation During Pandemic

When Congress passed the CARES Act in March, they included a requirement that Sec. DeVos issue a report with recommendations as to whether she needed temporary waiver authority for provisions of IDEA and other education laws during the pandemic. The report recommended two very minor adjustments to the law, but none that a number of education organizations – including school boards and local superintendents – were requesting. One focus of the requests was extensions of timelines for IEP meetings and student evaluations. Disability and special education advocates mounted a strong campaign opposing waivers to the law. Advocates on both sides of the issue continue to weigh in with Congress eyeing the next COVID-19 relief bill as a possible vehicle for IDEA waivers.

In the meantime, numerous developments in states have intensified deliberations. In **New Jersey** some school districts distributed forms asking families to “waiver and relinquish; fully release and discharge; and indemnify and hold harmless” the school district in all of its employees “from all claims, liabilities, causes of action, costs, expenses, attorneys’ fees, damages, indemnities, and obligations of every kind and nature, in law, equity or

otherwise” before providing student with counseling and speech services required by their IEPs. Parents and their attorneys have taken the matter up with the New Jersey Department of Education which is actively monitoring the situation.

The state of Virginia is investigating **Fairfax County Public Schools** in response to allegations that it has failed to provide equal learning opportunities for students with disabilities. One parent noted that she received an email from the County saying that the school was developing a “Temporary Learning Plan” for her child which would reflect changes in educational delivery from in-person classes to online classes. The email also noted that “once schools physically open, your child’s IEP will resume.” Parents see the temporary plans as an abrogation of the responsibility to implement the IEP.

In **Pennsylvania** a lawsuit was filed in federal court on behalf of students with autism and seeking class action status. The suit seeks to require services for nonverbal and partially verbal students as life-sustaining, thus ensuring they are considered “essential workers” who would be required to work in person during the pandemic. The suit also seeks compensatory damages.

And finally, the **Chicago Teachers Union** filed suit against Sec. DeVos and the school district challenging the requirement to review and revise IEPs and accommodation plans for students with disabilities during the pandemic. The union argues that Sec. DeVos acted “arbitrarily and capriciously, and abused the discretion granted by the Cares Act” by failing to recommend waivers to these requirements in IDEA. A spokesperson for the Department of Education said “It’s sad to see the union making excuses for why they can’t educate all students instead of figuring out a way to make it happen.”

<https://www.inquirer.com/education/coronavirus-lawsuit-education-autism-governor-wolf-pennsylvania-bucks-county-20200519.html>

https://www.washingtonpost.com/local/education/virginia-investigates-complaints-that-fairfax-online-learning-fails-disabled-students/2020/05/18/377f7fd2-992b-11ea-a282-386f56d579e6_story.html

https://www.huffpost.com/entry/new-jersey-special-education-online-services-waiver-coronavirus_n_5ea4637ec5b6d3763590790c?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAGA0TFW3V9OFtIF31YShr1RF8MrMTJsrCUpsFfevNaaOeXo_CE3UImomimin00t_I4R5vd7dnzi-21dU8MX61RBthrFrwD0iVZDJy8J10vvUQc7tMgt0nLh7r2VqhA9mFfYvUv8mFq2nAUEGJAJhEbLpu9PgyxRO-x8Y-rKqJr3

<https://subscriber.politicopro.com/f/?id=00000172-3283-d57a-ad7b-7ea774cc0000>

5. Who Would Joe Biden Pick for Secretary of Education?

Last week I reported on the Education Task Force that VP Biden assembled. Designed to unify his campaign with Sanders supporters, the Task Force will make recommendations to the DNC committee regarding the 2020 platform.

In response to that article, I had a query from a reader who wondered if this had implications for who a Biden Secretary of Education might be. While proposing candidates for the Sec. of Education job appears to be outside the purview of this Task Force, they certainly could weigh in. But, just in case the Biden campaign gives me a call, I decided I should be ready with my list! Honoring the criteria that Biden laid out early in his campaign – that he would pick a public school teacher as his Secretary-- I've come up with a few recommendations. And it turns out, I'm not the only one thinking about this -- see article from Forbes below. Here is my short list:

- **Rep. Jahanna Hayes (D-CT)** – Rep. Hayes is in her first term in the U.S. Congress representing the 5th District of Connecticut. She is the first African-American to represent the state of Connecticut in Congress. She is the 2016 National Teacher of the Year and describes herself as a “schoolteacher and politician.” She says that education saved her life and prioritizes educational equity. She serves on the House Committee on Education and Labor.
- **Governor Tony Evers** – Gov. Evers was a schoolteacher, principal, local superintendent and state superintendent of education. He has served as chair of the Council for Chief State School Officers. He has been governor of Wisconsin since 2019.
- **Senator Elizabeth Warren (D—MA)** – While these days Sen. Warren seems to be in the running for the VP slot, she would also be a good candidate for the Sec. of Education. She was a special education teacher and also a professor. She has been a leader in promoting forgiveness for student loan debt and a strong critic of for-profit higher education institutions. She serves on the Senate HELP Committee.

Are you ready for the call from the Biden campaign? Who is on your list?

<https://www.cnn.com/2019/07/05/politics/joe-biden-appoint-teacher-education-secretary/index.html>

<https://www.forbes.com/sites/wesleywhistle/2020/05/21/who-might-biden-pick-as-education-secretary/#20e76252c2e0>

Washington Update will take a break next week and be back with you June 5.

See you on twitter @janewestdc

Best,

Jane