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Review of 2020 in Higher Education

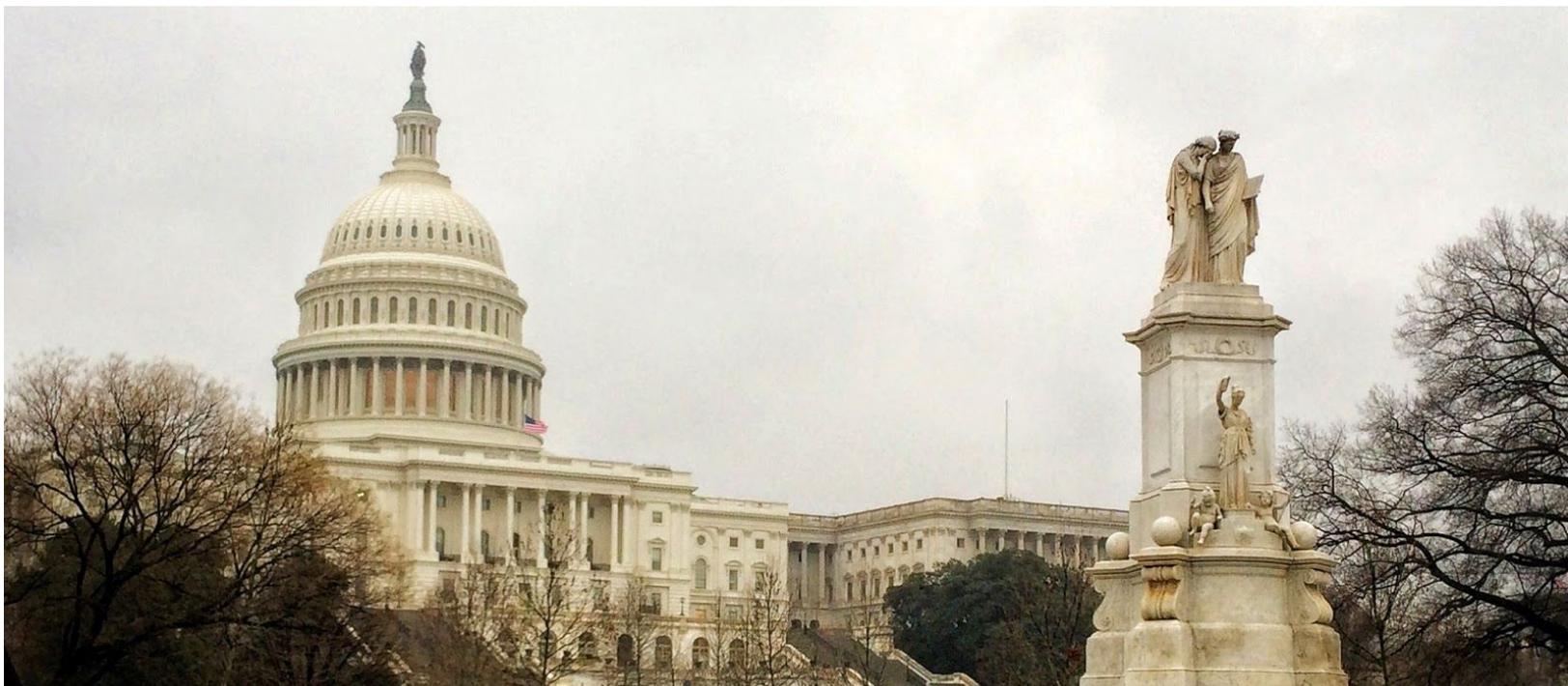


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This review covers the news that has occurred in 2020 regarding Title IX, Faith-Based College Rights, COVID-19, Foreign Funding of Universities, Student Loans, University Funding, and Higher Education Authorization.

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Title IX

On May 6th, the Department of Education released its [final draft of the new Title IX regulations](#), and schools must had to be compliant by August 14th, 2020. In November of 2018, the Department of Education proposed changes to [Title IX regulations](#) which would include more narrowly defines sexual harassment only requires the school to act when something is reported to the Title IX office.

The guidelines require that schools hold live hearings, allowing the students' advisers to cross-examine and witnesses or parties involved, and assume the innocence of the accused before the investigation has begun. [Other changes include](#): universities are only obligated to investigate reports of sexual assault if it occurs on property officially used by student or institutional organizations; the same standards as a burden of proof for all complaints; includes stalking, domestic and dating violence as sexual harassment, but also more narrowly defines sexual harassment as “any unwelcomed conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access;” colleges and universities do not have to handle sexual complaints outside of the US; obligates a Title IX coordinator to take action if multiple informal complaints are made against a single individual, however [this does maintain that coach and other employees must report allegations](#); all individuals involved in the Title IX process in colleges must be trained and the training material available online. Colleges also must be willing to conduct investigations virtually, and keep recordings of the event for at least 7 years; in addition, all evidence related to a party is required to be sent to the advisors 10 days before a response is required and parties are not prohibited from speaking about the event. Colleges must be prompt in responding to allegations, as well.

Before the release, there were a number of lawsuits attempting to block the changes from being released, since many victim advocates believe the changes will traumatize future victims more. When COVID-19 began to impact lives of Americans, [two-hundred and nine groups have urged federal officials to pause work on rewriting Title IX regulations during the coronavirus pandemic](#). They argue that schools do not currently have the resources to review and implement new regulations and it would be an unnecessary stress. This did not occur. After the new Title IX rules were released, multiple organizations filed lawsuits, including 18 Attorney Generals who attempted a preliminary injunction. This motion was denied on August 12th.

Faith-Based College Rights

In January of 2020, Secretary DeVos has announced a new [rule](#) to ensure equal rights to faith-based colleges in gaining federal grants. This new regulation addresses 5 areas of concern: 1) religious and nonreligious schools are treated equally by the government; 2) universities allow faith-based student organizations the same rights as their nonreligious counterparts; 3) it repeals the prohibition of using grants for religious activities; 4) it clarifies the phrase “controlled by a religious organization” for Title IX purposes; and 5) it ensures that public universities with federal grants follow their responsibilities

with upholding the First Amendment and private universities only need to meet their stated institutional policies. Some opponents of this new regulation [claim](#) that it is unnecessary because faith-based institutions already have different regulations which allow them more freedom to express their beliefs than other universities (i.e. allowing for them to fire or not hire someone because of religious protections) and that this is another way to allow for discrimination in the name of religion. A [group of senators](#) however back the rule changes because they believe it protects students religious freedoms. In February, the Democrats asked the Departments of [Health and Human Services](#), [Education, Justice](#), and [Labor](#) to opposing the Trump administration's plans to allow organizations to accept federal grants while still only hiring people who follow their religious views.

On September 9, Secretary DeVos published the [final rule](#) on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities. According to the [administration](#), this rule would protect people from being “forced to choose between their faith and their education.” It addresses four areas considered to be important: 1) to implement Executive Order 13864, in which public colleges and universities need to comply with the First Amendment to receive grants, and private institutions only has to meet their institutional policies; 2) to provide guidelines for universities to show that they are controlled by religious organizations, and therefore not required to enforce Title IX; 3) to ensure religious students are treated equally at public colleges and universities; and 4) To revise the regulations of grant programs under Title III and Title V, to “better align with the First Amendment”.

However, opposing this, Representative Elissa Slotkin (D-MI-8) introduced the Trauma-Informed Investigation Act ([HR 8136](#)) August 28 that would ensure investigation of sexual misconduct at colleges and universities and these are “fair, trauma-informed, and evidence based.” This bill was sent to the House Committee on Education and Labor. It is currently cosponsored by Lois Frankel (D-FL-21), Debra Haaland (D-NM-1), and Ann Kuster (D-NH-2).

COVID-19

Due to the new coronavirus, the Center for Disease Control and Prevention (CDC) recommended that [colleges and universities postpone or cancel upcoming student exchange programs](#) in March.

The House and Senate also passed an emergency response fund for \$8.3 billion ([H.R. 6074](#)) and then was signed into law on March 6. On March 2, Sen. Edward Markey [D-MA] introduced the Coronavirus Vaccine Act ([H.R. 3370](#)), which would support research into finding a vaccine to coronaviruses; it was sent to the Senate Help, Education, Labor, and Pension committee.

Several U.S. universities have [satellite campuses](#) in China, and were concerned when COVID-19 took hold of the country. Instead of cancelling classes, many of these universities have switched to online classes, so there is less spread of the disease through campus. While it has been an adjustment for both faculty and students, it currently seems to be working effectively. [Other schools with campuses and pupils in countries](#) with numerous cases of COVID-19 are taking steps to protect their students. Syracuse University is closing its Florence, Italy campus and helps students return to the U.S., while New York University is going to have classes remotely in the same city. Many other schools are following the CDC's guidance and closing their study abroad programs for the time being.

By the end of March, [at least 200 colleges and universities have cancelled or postponed in-person classes, instead moving to online courses.](#)

On July 6, Immigration and Custom Enforcement (ICE) announced a new federal [guideline](#) that does not allow for international students to stay in the United States if they are only taking online courses under the guise of protecting people from COVID-19. At the time, there were over one million international students who are beginning to be impacted by the new regulations.

In response to the new regulation, [Harvard University and Massachusetts Institute of Technology \(MIT\)](#) filed a lawsuit to prevent the regulation from taking place. They allege that ICE is attempting to “force universities to reopen in-person classes” which would endanger lives. They claim they are being asked to choose between students who bring valuable benefits to their schools or put people’s health on the line. In addition, the lawsuit alleges that there are several violations of the Administrative Procedure Act. [Many universities](#) were still acting under the impression that ICE’s stance of allowing students to remain here during emergencies was still in effect. In addition, the University of California also plans on filing a suit against the rule for “violating the rights of the University and its students.” The lawsuit was dropped when the immigration guidelines were lifted.

As semesters began across the United States, [schools](#) were concerned about the risk of the Coronavirus increasing on campuses. It quickly became apparent that this was a warranted worry. Many colleges and universities are using a hybrid model, allowing students to return to campus if they wish. However, this has already led to problems at several schools. On August 17th, University of North Carolina, Chapel Hill announced it would no longer hold in person classes, since 130 students tested positive for COVID-19 in the first week of classes. Another 177 students were in isolation and 349 were in quarantine. On August 18th, [Michigan State University](#) and Ithaca College also announced that they would close their campus and use remote learning. In addition, University of Notre Dame paused the fall semester for two weeks, only eight days into the school year. Again, they had found that out of 947 students tested for the coronavirus on campus, 147 had returned positive. East Carolina University and Towson University have also moved online. Many schools are still concerned about the risk of coronavirus on their campuses and are remaining vigilant.

Unfortunately, many students on college campuses are less careful regarding social distancing. Colleges and universities are quickly finding that even the coronavirus cannot stop their students from throwing and attending [large parties](#). This has caused coronavirus outbreaks or student quarantining at Central Michigan University, University of Toledo, Syracuse University, and St. Olaf College. Meanwhile, University of Alabama, St. Mary’s College of Maryland, Northeastern University, and Arizona State University have tried to limit the amount of large parties.

Foreign Funding of Universities

In March, The Department of Education (ED) was investigating [foreign gifts and contracts](#) given to colleges and universities, after finding inappropriate relationships between the Chair of the Chemistry Department at Harvard University and China. They continued to examine the financials of multiple other universities, because of this \$6.5 billion of previously undisclosed money from foreign administrations have been declared. Some higher education (HE) groups believe that some of the

earlier methods of investigating to find foreign financial ties went beyond the authority given to the examiners.

By the end of May, The Department of Education found [\\$6 billion from other countries](#), including Russia and China, had been unreported by colleges and universities from across the nation. According to the Higher Education Act, any foreign gifts of more than \$250,000 must be reported, and House Republicans are monitoring the situation. However, the Department of Education is not able to easily access the information from institutions, because schools believe the Freedom of Information Act prevents the Education Department from giving the congressmen access to the data it receives.

This also led to President Trump issuing a [proclamation](#) in June that does not allow for the Chinese graduate students and visiting researchers to come to the US if they have any ties to the Chinese military. The administration claims this is to prevent any of these students and researchers from reporting scientific advances back to the Chinese military.

Student Loans

Before the coronavirus, there were several movements regarding student loan borrowers. In January of this year, the Department of Education (ED) [announced](#) a new method for assessing claims for the borrower defense to repayment program, a program that grants loan forgiveness for students victim to predatory lending or academic programs. The method identifies the median public earnings data for programs at all comparable schools, and grant loan tiered relief for applications with lower earnings. This plan shifts the burden of proof to students to show that they have been misled by predatory schools. However, Democrats in Congress have introduced resolutions in both the House and Senate disagreeing with these new regulations ([H.J.Res.76](#) and [S.J.Res.56](#)).

In addition, ED and Secretary Betsy DeVos are being sued for repealing the [Gainful Employment Rule](#) that has been a part of the Higher Education Act (HEA) since 1965. The HEA did not define “gainful employment,” until the Obama administration’s ED adopted the definition as requiring academic programs to lead to jobs with a high enough income to reasonably pay off student loans. However, in July 2019, the Trump administration [repealed](#) this rule; DeVos [claimed](#) that the Gainful Employment Rule penalized for-profit colleges unfairly. (She was previously [sued](#) by 16 states and the District of Columbia for ignoring the regulation.) The American Federation of Teachers (AFT), a powerful union, is [suing](#) DeVos and ED for this because they believe the repeal did not meet the justified means required for changing a federal law.

In March, the Senate joined the House in an attempt to stop Education Secretary Betsy DeVos and the Trump Administration from rewriting the “borrower defense to repayment” by using the Congressional Review Act. Under the Higher Education Act, the Obama Administration issued the borrower defense after a large increase in fraud claims from students indebted to for-profit schools. However, [DeVos delayed the rule from taking effect and rewrote it so the burden of proof was shifted to the student](#) to show the school knew it was at fault. [Supporters of the new regulations](#) agree with DeVos that the Obama-era rules were too lenient and allowed people to gain “free money.” She also has created a formula for the current rule that would determine how much relief to give to students based on predicted earning. While DeVos believes this to be a “scientific robust” way to determine

relief, many disagreed. Some go as far as saying the formula would make it impossible for 1/3 of borrowers from receiving full forgiveness.

In August, 23 Democratic attorney generals are suing Secretary DeVos due to the [rollback of student loan relief involving predatory for-profit institutions regulations](#) put in place by the Obama administration.

The CARES Act allowed for student loan payments to be postponed until October 1st. In July, [47 higher education associations asked congressional leaders to extend the student loan borrowers](#) from having to make payments until after Tax Day in April of 2021. Since the coronavirus is still impacting American lives. As part of the CARES Act, student borrowers would begin paying again on October 1st, 2020. Under the Republican proposal, people would still begin payments October 1st, but would not have to pay more than 10% of discretionary income after food and housing. Democrats and the higher education associations believed this is not enough since many are still trying to recover from the economic impacts of the coronavirus. [Democrats' plans](#) include an extension of the student loan benefits and possibly canceling up to \$10,000 per borrower. The student borrower relief covers about 40 million people. The unemployment rate of people holding bachelor's degrees has dropped from the high of 8% in April to 7%, according to the Department of Labor, it is still greater than the 2% in March. In August, President Trump signed a [memorandum](#) ordering an extension of the student loan relief until the end of 2020. As before, this [pauses the payments](#), but does not forgive them. Secretary DeVos implemented the student loan relief [on August 21st](#).

University Funding

Throughout the coronavirus impact, colleges and universities have struggled with the economic repercussions. After the CARES Act passed, the higher education institutions still needed more money. In April, the Association of American Universities, Association of Public and Land-grant Universities, and the American Council on Education asked Congress for an additional \$46.6 billion for higher education institutions and their students because the current money will not cover all the expenses. This did not include the [lost revenue](#) such as the \$11.6 from closing auxiliary services like resident halls and cafeterias.

On April 21st, a few days after \$6 billion was released to higher education institutions for emergency cash grants, Education Secretary Betsy DeVos announced another [\\$6.2 billion](#) became available for continuing learning. The funding was given to all forms of education as part of the CARES Act. Only [\\$8.3 billion out of \\$30 billion](#) for higher education has been paid out, as of July 31. The Department of Education extended the deadline for colleges and universities to apply for the money, after which the department will calculate and redistribute any leftover funds.

On April 28th, the [Education Department](#) restricted who can receive money from the colleges and universities' stimulus packages. Only students who participate in federal student aid programs can receive money. This change will not allow money to go to undocumented or international students, which is around 1.5 million students at the last count. This may include the [DACA recipients](#), as well, and many within government are debating the issue. The Education Department [does not plan](#) on considering DACA students as eligible, though.

In May, it came to light that it was unclear if [DACA students are able to receive stimulus package emergency aid](#). Secretary Betsy DeVos believed that DACA students are not allowed to receive funding, since Congress stated only students able to receive federal aid are eligible. However, the Democrats deny that there is anything in the CARES Act preventing the aid from going to the students. There is no mention of the DACA students within the CARES Act at all. Senator Patty Murray [D-WA], the ranking member on the Senate Health, Education, Labor & Pension Committee, and Representative Rosa DeLauro [D-CT-3], the House Education Appropriation Committee's Chairwoman wrote DeVos and stating that there were no limitations on which students could get emergency aid. Unfortunately, there does not seem to be a correct answer, because Democratic and Republican emails on the subject have disagreed. Without DACA students being implicitly described, neither can truly state that their side is legally correct.

Higher Education Authorization

As of April, many, including Senator Lamar Alexander [R-TN], have fading hopes for a [Higher Education Authorization](#) (HEA) being passed by the end of the year. While this was a major focus for Alexander and Patty Murray [D-WA], the Chair and Ranking Member of the Senate Health, Education, Labor, and Pension committee, at the beginning of the year, the COVID-19 pandemic has shifted attention. Many people who work on the Hill have stated that they have not heard mention of the HEA for several weeks, making it unlikely that the bill will be passed by the end of the year. Murray will continue working on the bill into the next term, but she will have the added challenge of a new Republican leader on the committee since Alexander will be stepping down at the end of 2020.

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