

for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State's support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act [Mar. 27, 2020].

“(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.”

[For definition of “coronavirus” as used in sections 18001–18008 of Pub. L. 116–136, set out above, see section 23005 of Pub. L. 116–136, set out as a note under section 162b of Title 2, The Congress.]

#### INTERIM APPOINTMENTS

Pub. L. 96–88, title VI, § 602, Oct. 17, 1979, 93 Stat. 696, provided that:

“(a) In the event that one or more officers required by this Act [see Short Title note above] to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act [May 4, 1980] and notwithstanding any other provisions of law, the President may designate an officer in the executive branch to act in such office for one hundred and twenty days or until the office is filled as provided in this Act, whichever occurs first.

“(b) Any officer acting in an office in the Department pursuant to the provisions of subsection (a) shall receive compensation at the rate prescribed for such office under this Act.”

#### Executive Documents

##### EXECUTIVE ORDER No. 12212

Ex. Ord. No. 12212, May 2, 1980, 45 F.R. 29557, which established the effective date for the Department of Education Organization Act, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

##### ENSURING A SAFE RETURN TO IN-PERSON SCHOOL FOR THE NATION'S CHILDREN

Memorandum of President of the United States, Aug. 18, 2021, 86 F.R. 46951, provided:

##### Memorandum for the Secretary of Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**SECTION 1. Policy.** As the school year starts across the country, a top priority of my Administration is to do everything in our power to ensure a safe return to full-time, in-person school for our Nation's children. With increased access to vaccinations for school staff and students age 12 and older, proven virus prevention strategies, and unprecedented resources from the American Rescue Plan Act of 2021 (Public Law 117–2) [see Tables for classification] (American Rescue Plan) and other Federal pandemic relief funds, opening all schools this fall for full-time, in-person learning is essential. At the same time, the Centers for Disease Control and Prevention (CDC) has made clear that, with the B.1.617.2 (Delta) variant driving an increase in COVID-19 cases nationally, it is critical for schools to protect students against exposure, especially given the number of children who are ineligible to obtain the vaccine at this time. The CDC has provided clear guidance to schools on how to adopt science-based strategies to prevent the spread of COVID-19, and the Department of Education has provided guidance to schools on how to reopen safely while addressing the academic, social, emotional, and mental health needs of our Nation's students.

Many Governors and other State and local officials have risen to the challenge of beginning the new school year safely and responsibly by implementing prevention and mitigation strategies to maximize the health and safety of students, educators, and staff. The Federal Government is supporting these efforts in critical

ways. The American Rescue Plan provides significant support to schools to develop and implement science-based health protocols to prevent the spread of COVID-19. Additionally, the Federal Emergency Management Agency is reimbursing States, including their school districts, at 100 percent Federal cost share to support the safe reopening and operation of school facilities and to effectively maintain the health and safety of students, educators, and staff.

At the same time, however, some State governments have adopted policies and laws that interfere with the ability of schools and districts to keep our children safe during in-person learning. Some of these policies and laws have gone so far as to try to block school officials from adopting safety protocols aligned with recommendations from the CDC to protect students, educators, and staff. And some State officials have even threatened to impose personal financial consequences on school officials who are working tirelessly to put student health and safety first and to comply with their legal obligations to their communities to further the essential goal of a safe, in-person education for all students.

Our priority must be the safety of students, families, educators, and staff in our school communities. Nothing should interfere with this goal.

**SEC. 2. Department of Education Role in Ensuring a Safe Return to In-Person School.** (a) In furtherance of the policy set out in section 1 of this memorandum, I direct the Secretary of Education to assess all available tools in taking action, as appropriate and consistent with applicable law, to ensure that:

(i) Governors and other officials are taking all appropriate steps to prepare for a safe return to school for our Nation's children, including not standing in the way of local leaders making such preparations; and

(ii) Governors and other officials are giving students the opportunity to participate and remain in safe full-time, in-person learning without compromising their health or the health of their families or communities.

(b) The Secretary of Education's assessment in subsection (a) of this section shall include consideration of whether to take steps toward the initiation of possible enforcement actions under applicable laws.

**SEC. 3. General Provisions.** (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

#### § 3402. Congressional declaration of purpose

The Congress declares that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively. Therefore, the purposes of this chapter are—

(1) to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual;

(2) to supplement and complement the efforts of States, the local school systems and other instrumentalities of the States, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education;

(3) to encourage the increased involvement of the public, parents, and students in Federal education programs;

(4) to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information;

(5) to improve the coordination of Federal education programs;

(6) to improve the management and efficiency of Federal education activities, especially with respect to the process, procedures, and administrative structures for the dispersal of Federal funds, as well as the reduction of unnecessary and duplicative burdens and constraints, including unnecessary paperwork, on the recipients of Federal funds; and

(7) to increase the accountability of Federal education programs to the President, the Congress, and the public.

(Pub. L. 96-88, title I, § 102, Oct. 17, 1979, 93 Stat. 670.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 668, known as the Department of Education Organization Act, which enacted this chapter, amended sections 928, former 929, 1102, 2390, 2711, and 3012 of this title, section 19 of Title 3, The President, sections 101, 5312, and 5314 to 5316 of Title 5, Government Organization and Employees, sections 2, 9, and 11 of the Inspector General Act of 1978, formerly set out in the Appendix to Title 5 (see 5 U.S.C. 402, 422, 424), section 1004 of Title 21, Food and Drugs, and sections 761b, 794c, 821, 829, 873, 879, 882, 914, and 952 of Title 29, Labor, and enacted provisions set out as notes under sections 1102 and 3401 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

#### § 3403. Relationship with States

##### (a) Rights of local governments and educational institutions

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

##### (b) Curriculum, administration, and personnel; library resources

No provision of a program administered by the Secretary or by any other officer of the Depart-

ment shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

##### (c) Funding under pre-existing programs

The Secretary shall not, during the period within eight months after May 4, 1980, take any action to withhold, suspend, or terminate funds under any program transferred by this chapter by reason of the failure of any State to comply with any applicable law requiring the administration of such a program through a single organizational unit.

(Pub. L. 96-88, title I, § 103, Oct. 17, 1979, 93 Stat. 670.)

#### Editorial Notes

##### CODIFICATION

In subsec. (c), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of this title.

#### § 3404. Definitions

As used in this chapter, unless otherwise provided or indicated by the context—

(1) the term “Department” means the Department of Education or any component thereof;

(2) the term “Secretary” means the Secretary of Education;

(3) the term “Deputy Secretary” means the Deputy Secretary of Education;

(4) the term “function” includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(5) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the terms “private” and “private educational” refer to independent, nonpublic, and private institutions of elementary, secondary, and postsecondary education; and

(7) the term “office” includes any office, institute, council, unit, organizational entity, or component thereof.

(Pub. L. 96-88, title I, § 104, Oct. 17, 1979, 93 Stat. 671; Pub. L. 101-509, title V, § 529 [title I, § 112(a)(3)(A)], Nov. 5, 1990, 104 Stat. 1427, 1454.)

#### Editorial Notes

##### AMENDMENTS

1990—Par. (3). Pub. L. 101-509 substituted “Deputy Secretary” for “Under Secretary” in two places.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Pub. L. 101-509, title V, § 529 [title I, § 112(e)], Nov. 5, 1990, 104 Stat. 1427, 1455, provided that: