

BACKGROUND

No. 3575 | FEBRUARY 4, 2021
CENTER FOR EDUCATION POLICY

Higher Education: Conservative Policy Responses to COVID-19

Andrew Gillen, PhD

KEY TAKEAWAYS

Policymakers should enact real reforms in higher education that allow new educational models, free from excessive government interference, to emerge.

The COVID-19 pandemic brought substantial shocks to higher education, from forcing online-only learning to drops in enrollment and state funding.

This is a perfect time to decelerate the politicization of higher education, which threatens free speech and academic freedom.

The coronavirus pandemic has and will continue to change many aspects of life. Higher education is no exception, which raises the question of how the conservative approach to higher education should change in response to the pandemic.

A conservative response to the coronavirus should include liability protection from virus-related lawsuits, deregulation of competency-based education, voucherization of state funding, and the introduction of alternative accountability metrics.

The Shocks to Higher Education from COVID-19

Due to the virus, many aspects of higher education have undergone substantial change. Four of these coronavirus shocks are particularly noteworthy.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3575>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

First, there has been a sudden and dramatic increase in online education. In the spring, almost every college shifted to online classes virtually overnight. Despite early hopes that this would be temporary, it appears that online education will remain dominant for some time. According to the College Crisis Initiative at Davidson College, which has tracked the reopening plans of almost 3,000 colleges, 44 percent of colleges were operating either entirely online or primarily online as of this fall. Only 27 percent were operating primarily in person or fully in person.¹ Moreover, some colleges that began the semester with in-person instruction have shifted to online format after clusters of students tested positive for coronavirus.

Second, fewer people are enrolling in college. In a typical recession, student enrollment increases as the newly unemployed seek to upgrade their skills and resumes. But that did not happen with the coronavirus downturn. Instead, early data from the National Student Clearinghouse Research Center indicate that enrollments have fallen 1.8 percent since last year, with community colleges seeing the biggest decline (8 percent).²

A third shock to higher education is coronavirus-induced state funding cuts. Higher unemployment means less tax revenue, which means shrinking state budgets. And because many states have a balanced budget requirement, some states are cutting their budgets, with some of those cuts targeting higher education. For example, Colorado is cutting \$493 million for higher education,³ and Maryland is cutting \$186 million.⁴

A final coronavirus shock is international student enrollment. While there are no reliable figures yet, it is likely that international enrollment has declined significantly due to restrictions on international travel. International students typically pay much higher tuition than native students, so if there are fewer international students, this will be another financial blow to colleges.

The Four Schools of Conservative Thought Regarding Higher Education

There is no shortage of potential policies that could address the coronavirus pandemic, so the key to finding policies that can garner widespread conservative support lies in understanding the four schools of thought through which conservatives approach higher education policy reform. It is useful to keep in mind that this classification scheme is intended for conservative *arguments*, as opposed to individuals, because few individuals fall entirely within one school of thought.

Free Marketeers

This group believes that markets almost always work better than government control and that government should therefore be smaller and less intrusive in most areas of life, including higher education. This group argues that government taxation and funding skews incentives and the optimal allocation of resources, both from the distortionary taxes imposed to raise money and from special interest influence and political favoritism when the government spends money. They also worry that government control leads to the politicization of education. For this group, the less government involvement and interference in higher education, the better.

Chesterton's Fence Brigade

The second school of thought is named after G. K. Chesterton's famous quote:

There exists in such a case a certain institution or law; let us say, for the sake of simplicity, a fence or gate erected across a road. The more modern type of reformer goes gaily up to it and says, "I don't see the use of this; let us clear it away." To which the more intelligent type of reformer will do well to answer: "If you don't see the use of it, I certainly won't let you clear it away. Go away and think. Then, when you can come back and tell me that you do see the use of it, I may allow you to destroy it."⁵

These conservatives view rapid change as dangerous because modern society is the result of hard-to-build, complex, and interdependent institutions. Thus, they argue, wanton dismantling would likely have severe unintended consequences that could not be easily or quickly reversed. As former House Speaker Sam Rayburn reportedly once said, "Any jackass can kick down a barn but it takes a good carpenter to build one."⁶ While this group may have objections to some aspects of higher education, they oppose radical change and instead gravitate toward incremental and gradual reforms.

Education Is Special

This group believes that markets generally work better than government control but will support government intervention when they believe there is either a market imperfection or a strong moral case. Education, they argue, has both. Education and research may have

spillover effects that benefit the rest of society above and beyond the benefits that accrue to the students or researchers themselves. Economists call these spillovers “positive externalities” and note that markets tend to underproduce such goods and services. This underproduction can be remedied with subsidies, so these conservatives argue that positive externalities justify government subsidization of higher education. Another contingent of this group argues that education is so crucial in generating opportunities throughout life that it would be immoral to allow children from lower-income families to remain undereducated due to their inability to pay for college. For these conservatives, government funding for students, in general—and students from lower-income households, in particular—is justified in the name of increasing equality of opportunity and social mobility.

Ideological Siege Defenders

This group does not have uniform views on the scale of government involvement in education. However, they strongly object when they believe educational institutions are being used by progressives as re-education camps that aim to indoctrinate rather than educate the next generation. They look at higher education and conclude that it is being used as a weapon to wage ideological war on conservatives. For this group, either conservatives need to be reestablished within the higher education ecosystem to restore ideological balance, or failing that, the conservative movement should abandon existing higher education and build alternatives that are not so overtly hostile to conservatives.

Conservative Higher Education Policy Reforms

While there is a plethora of higher education reforms that conservatives have proposed, the factors discussed above help identify the policies that hold the most promise of gaining the support of a critical mass of conservatives.

Virus Liability Protection for Colleges and Universities

The first idea that could generate widespread support among conservatives is liability protection for colleges and universities from lawsuits related to COVID-19 infections among students and staff.

Under current state law, if staff or students get sick and sue the college, many states would use a “preponderance of evidence” standard to determine if a college acted reasonably. For colleges, this is a costly legal minefield. Consider the conflicting advice from public health authorities for re-opening K-12 schools, with the American Academy of Pediatrics and the Centers for Disease Control and Prevention initially offering conflicting recommendations.⁷ If a university followed one set of recommendations but not another, should this conduct be considered unreasonable? Should the university be subject to ruinous litigation?

Conservatives from all schools of thought should see little value in making colleges navigate such a legal minefield. Republican Senate proposals would allow coronavirus infection liability cases to be heard in federal courts using a *clear and convincing evidence* standard (rather than a *preponderance of evidence* standard) to determine if there was “gross negligence or intentional misconduct” (rather than just “unreasonable” behavior).⁸ These changes would allow for colleges that behave egregiously to be held accountable while protecting colleges that make good-faith efforts from unjustified and opportunistic lawsuits.

Deregulate Competency-Based Education

Another area of conservative agreement could be deregulating competency-based education, which measures the amount students learn rather than the amount of time they spend in class.

The traditional college model holds seat time fixed and lets the amount learned vary. In a 15-week class, some students learn a lot, some students learn little, but all attend class for 15 weeks. Under competency-based education, the amount of material learned is fixed and seat time can vary. If a student can learn the material in 10 weeks instead of 15, they can use those five weeks to move on to the next class. Similarly, some students may need 20 weeks to learn the material.

Competency-based education holds great potential to improve education for some students. Those who thrive in a self-paced learning environment could benefit substantially from competency-based education options. In addition, many people gain considerable knowledge outside the formal school system but are hampered by the lack of a credential certifying their knowledge. By allowing these individuals to gain credentials quickly and at less cost, competency-based education can help these individuals make the most of their experiential knowledge.

However, competency-based education has been hampered by a complex legislative and regulatory history.⁹

Federal financial aid programs were originally designed with traditional in-person and on-campus education in mind. Universities participating in these aid programs needed to track the “clock hours” or “credit hours” of the courses students enrolled in so that the government could determine how much aid to provide the student.

Measuring time spent in a classroom is relatively straightforward for traditional in-person classes. But this model never quite fit distance education, especially when the Internet dramatically expanded the quantity and quality of distance education.

The first major legislative change came in 1992. Some Members of Congress were worried about the possibility of online diploma mills, so they eliminated financial aid for any university where more than 50 percent of students attended courses online. This did not outlaw online education, but it did ensure that most online education occurred via traditional colleges.

The next significant legislation was the Higher Education Reconciliation Act of 2005, which made three big changes affecting online education. The first was to distinguish between distance and correspondence education. Distance education would be required to have “regular and substantive” interaction between faculty and students. Correspondence education would not have such interaction. Second, distance education would be fully eligible for financial aid programs, whereas correspondence courses would remain subject to the 50 percent cap at the university level and would not be eligible for aid for room and board. Third, “direct assessment” was introduced as an alternative to the “credit-hour” standard for universities wishing to participate in financial aid programs. Rather than tracking the time students spend in class, universities using direct assessment could instead track their learning outcomes.

The direct-assessment method introduced in the Higher Education Reconciliation Act of 2005 should go hand-in-hand with competency-based education since both require extensive testing to determine a student’s progress. But the regulations for direct-assessment programs are complex, burdensome, and ambiguous.

Western Governors University (WGU), the first large-scale competency-based university, does not use the direct-assessment method, even though direct assessment was explicitly designed with WGU in mind. Instead, WGU maps its courses into the credit-hour standard. This indicates that direct assessment is not the viable pathway for competency-based education it was designed to be.

One illustration of the overregulation of direct assessment is that it still requires universities to meet the requirement for “regular and substantive” interaction between students and faculty. A well-designed competency-based program may not require much direct faculty and student interaction, so requiring “regular and substantive” interaction is effectively outlawing one of the main advantages of competency-based education.

Of course, much hinges on how *regular and substantive* is defined, particularly in the context of a self-paced competency-based program delivered online. This issue came to a head in 2017, when the Department of Education’s Office of Inspector General determined that WGU courses did not meet the “regular and substantive” interaction standard, rendering WGU ineligible to participate in any federal financial aid program. The inspector general recommended that WGU pay back \$713 million in federal financial aid.¹⁰ WGU was spared this fate when Secretary of Education Betsy DeVos ignored the inspector general’s recommendation.¹¹

But regulations that are ill-suited to a promising new educational model and that pose an existential threat to universities are not an ideal environment for fostering innovation even if there is the potential for discretionary pardons. Conservatives should therefore support further deregulation of competency-based education.

The main need is to deregulate direct assessment. This deregulatory effort should scrap all input and process requirements and replace them entirely with outcomes-based requirements. If a program can prove that its students are mastering the course material or succeeding in the labor market, there is little gained and much to be lost in letting federal or state governments dictate or otherwise interfere with how the college goes about educating its students.

Prior to the coronavirus pandemic, the biggest objections to facilitating online competency-based learning would have come from Chesterton’s fence brigade due to worries about undermining tried and true models of education. But due to the pandemic-induced shift to near-universal online learning, this group is less likely to object to deregulation of this alternative educational model.

Voucherize Spending

Another policy reform that could gain widespread conservative acceptance is voucherizing higher education spending. Federal financial aid is already primarily distributed in the form of vouchers: Students qualify for Pell Grants or federal student loans and can use the money at any accredited university. Most states, however, provide funding directly to universities, not to students.

This model of funding institutions rather than students suffers from several problems. First, it restricts choice. State support is restricted to those colleges the state legislature chooses to subsidize. Students wishing to attend a different college receive no support from their state. Second, in some cases, it allows the institution to hold students hostage to non-educational demands. Consider the case of the Los Angeles K–12 schools. Before agreeing to return to teaching this fall, the Los Angeles teachers union demanded a wealth tax, a millionaire tax, and to defund the police.¹² The only reason they had any leverage on these non-educational issues is because the state gives the money to the schools rather than to the students.

A third problem is that direct funding of universities is ineffective in making college more affordable. Direct funding of colleges is premised on the assumption that there is some fixed cost of providing an education, allowing state funding to mechanically lower tuition for students. Under this assumption, if it costs \$20,000 to educate a student, then a state that provides \$10,000 per student to the college will see tuition of \$10,000, whereas a state that provides \$15,000 per student to the college will see tuition of only \$5,000. But, as Howard R. Bowen argued with his revenue theory of costs, the assumption of a fixed cost that is shared between the state and the student is false.¹³ Because college quality is difficult to determine, colleges compete to increase their prestige or reputation, an academic arms race with no upper limit—universities will raise and spend as much as they can.¹⁴ As former Harvard University president Derek Bok put it, “Universities share one characteristic with compulsive gamblers and exiled royalty: there is never enough money to satisfy their desires.”¹⁵ This means that colleges will simply pocket any funding from the state and then raise tuition anyway. Providing direct funding to universities in the hope that they will reduce the costs for students is a fool’s errand.

All of these problems can be avoided by giving the money to students rather than to colleges, and by allowing students to determine which schools receive state funding, voucherization would introduce market forces into higher education.

Some observers have raised objections to this idea, but they can be addressed with minor modifications. For example, vouchers could be restricted to use within a state’s geographic boundaries to avoid subsidizing out-of-state colleges. Similarly, states could means-test the vouchers to provide larger vouchers to students from lower-income households. Some states may also want to add a merit-based component to incentivize hard work and high performance.

What would conservative critics think about voucherization? The “free-marketeers” would be partially satisfied, because, while they may prefer to end government funding altogether, vouchers are a step in the right direction, allowing the market to determine which colleges succeed and fail rather than letting politicians choose.

The “ideological siege defenders” will likewise view this policy as a partial victory, because colleges that discriminate against conservatives could be more easily avoided, and new colleges that are less hostile to conservatives could attract plenty of voucher students. At the very least, subsidization of colleges that are hostile to conservatives would no longer be compulsory.

The “education is special” adherents would not strongly object to voucherization, as they are more concerned with the level of government funding than with the form of it takes. They can even be convinced to actively support the policy if the vouchers are means-tested, something that direct funding of colleges cannot achieve.

The main opposition to voucherization would likely come from “Chesterton’s fence brigade.” They worry that voucherizing state funding would lead to closure of many (formerly) public universities, leading to a host of undesirable effects. A gradually rising cap on voucher enrollment may be needed to gain the support of Chesterton’s fence brigade. In the first year, the number of voucher students a given university could enroll would be capped at the greater of historical enrollment (for public universities) or 1,000 students. The next year, the cap would rise to 2,000 students, then 4,000 students, and so on. This compromise would avoid sudden and drastic disruption to higher education while enabling a gradual shift to more market-driven outcomes.

Introduce New Accountability Measures

It is surprising how little accountability there is in higher education considering the massive government funding involved. Currently, colleges receive funding based on the number of hours students spend sitting in class. The more students the school has and the longer it keeps them enrolled, the more funding the school receives. Thus, colleges are incentivized to enroll students who have little chance of graduating or who take many extra years to graduate.

School accreditation is another area that lacks accountability. Accrediting agencies in theory ensure adequate academic quality. But in practice, accreditation has never defined let alone measured quality. Instead, their assessments are based on self-reports and short site visits up to 10 years

apart. And the whole process is paid for and staffed by the very colleges being accredited. This cartel-like structure leads to cartel-like outcomes—easy approval for incumbent colleges combined with high barriers to entry for new competitors.¹⁶

Given the dismal performance of some colleges and some programs, new accountability metrics should be enacted. These metrics should focus on two college outcomes: learning and earning.

Measuring the amount that students learn can be difficult, but when it is possible, accountability measures should be introduced. For professions with third-party certification exams, value-added passage rates could be used. For example, law schools that do not increase their students' bar exam passage rates sufficiently could have their eligibility for federal financial aid terminated.

Earnings are another useful accountability metric. A minimum average earnings threshold of some multiple of the minimum wage could be required for continued taxpayer subsidies. Value-added earnings are another promising option, where programs that fail to increase earnings by a set dollar amount or percentage are cut off from taxpayer subsidies. Another possibility is the Gainful Employment Equivalent test created by the Texas Public Policy Foundation, which identifies programs where students take on excessive student loan debt that is unaffordable given their post-graduation earnings.¹⁷

What do the various conservative schools of thought think about imposing new accountability measures on colleges?

"Free-marketeers" would ideally like to cut off all government subsidies but would see this option as a partial victory that would at least add some market discipline to higher education.

The "ideological siege defenders" would support these new accountability measures because the colleges and academic fields most hostile to conservatives would likely be weakened.

"Chesterton's fence brigade" could be convinced to support these reforms as well if it were clear that the vast majority of colleges would not be endangered. This might entail setting relatively lenient cutoffs at first and gradually strengthening them.

The main objection would be from the "education is special" school. These conservatives worry that new accountability measures would lead to the closure of some colleges or programs and that any reduction in overall college enrollment would hurt the country in general (by reducing the spillover benefits from education) and the students who no longer attend college. Since many of the colleges and programs that would fail the new

accountability measures cater to disadvantaged, underprepared, or low-income students, these conservatives worry that this group of students would be further cut off from higher education opportunities. However, providing “access” to a school with terrible outcomes does not generally help these students. But it does saddle them with student loan debt and a subpar education. To truly help these students, they need access to colleges with better outcomes, a goal that can be achieved with means-tested financial aid.

Conclusion

These conservative policy reforms can help higher education get through the current coronavirus epidemic and lay the foundations for a durable and innovative higher education system that America will need to succeed in the future.

Andrew Gillen, PhD, is a Senior Policy Analyst in the Center for Innovation in Education and an Adjunct Professor of Economics at Johns Hopkins University.

Endnotes

1. The College Crisis Initiative, Davidson College, <https://collegecrisis.shinyapps.io/dashboard/> (accessed December 1, 2020).
2. Todd Sedmak, "Undergraduate Enrollment Down 2.5% and Graduate Students Up 3.9%, Compared to Sept. 2019," National Student Clearinghouse Research Center, September 24, 2020, <https://www.studentclearinghouse.org/blog/undergraduate-enrollment-down-2-5-and-graduate-students-up-3-9-compared-to-sept-2019/> (accessed October 7, 2020).
3. Jason Gonzales, "Colorado Lawmakers Slash \$493 Million from Higher Education, but Blow Will Be Softened by Federal Coronavirus Aid," *Denver Post*, May 19, 2020, <https://www.denverpost.com/2020/05/19/colorado-higher-education-funding-coronavirus-covid/> (accessed October 7, 2020).
4. Hallie Miller and Christine Condon, "Maryland Budget Cuts to Higher Education Could Mean Staff Shortages, Financial Aid Reductions," *Baltimore Sun*, July 7, 2020.
5. G. K. Chesterton, "The Thing: Why I Am a Catholic," 1929.
6. Sam Rayburn, Forbes Quotes, <https://www.forbes.com/quotes/8299/#:~:text=Quotes%20Thoughts%20On%20The%20Business%20of%20Life&text=com-,Any%20jackass%20can%20kick%20down%20a%20barn%20but%20it,good%20carpenter%20to%20build%20one> (accessed October 7, 2020).
7. Arianna Prothero, "How the CDC and Pediatricians Differ on School Reopening Guidance," *Education Week*, July 9, 2020, https://blogs.edweek.org/edweek/District_Dossier/2020/07/cdc_american_academy_pediatrics_guidelines_different.html (accessed October 7, 2020).
8. Kery Murakami, "Dispute Over Measure on Suing Colleges," *Inside Higher Ed*, July 20, 2020, <https://www.insidehighered.com/news/2020/07/20/republicans-make-it-harder-sue-colleges-coronavirus> (accessed October 7, 2020).
9. Online Learning Consortium, UPCEA, and WCET, "Regular and Substantive Interaction: Background, Concerns, and Guiding Principles," https://www.insidehighered.com/sites/default/server_files/media/Regular-and-Substantive-Interaction.pdf (accessed October 7, 2020).
10. U.S. Department of Education, Office of Inspector General, "Western Governors University Was Not Eligible to Participate in the Title IV Programs," September 2017, <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a05m0009.pdf> (accessed October 7, 2020).
11. Andrew Kreighbaum, "No Penalty for Western Governors," *Inside Higher Ed*, January 14, 2019, <https://www.insidehighered.com/news/2019/01/14/trump-administration-rejects-inspector-generals-critical-audit-findings-western> (accessed October 7, 2020).
12. United Teachers Los Angeles, "The Same Storm, but Different Boats: The Safe and Equitable Conditions for Starting LAUSD in 2020-21," July 2020, https://www.utla.net/sites/default/files/samestormdiffboats_final.pdf (accessed October 7, 2020).
13. Howard R. Bowen, *The Costs of Higher Education: How Much Do Colleges and Universities Spend per Student and How Much Should They Spend?* (San Francisco: Jossey-Bass Publishers, 1980).
14. Andrew Gillen, "Why Does Tuition Keep Increasing?," SSRN, September 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663073 (accessed October 7, 2020).
15. Derek Bok, *Universities in the Marketplace: The Commercialization of Higher Education* (Princeton, NJ: Princeton University Press, 2003), <https://press.princeton.edu/books/paperback/9780691120126/universities-in-the-marketplace> (accessed October 7, 2020).
16. Andrew Gillen, "The Case for Escape Hatches from Higher Education Accreditation," Texas Public Policy Foundation, April 2020, <https://files.texaspolicy.com/uploads/2020/04/08112552/Gillen-Escape-Hatches-from-Higher-Ed-Accreditation.pdf> (accessed October 7, 2020).
17. Texas Public Policy Foundation, "College Earnings and Debt," <https://www.texaspolicy.com/college-earnings-and-debt/> (accessed October 7, 2020).