

# Seizing the Moment: A State Education Agenda for 2023

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## KEY TAKEAWAYS

There is significant momentum for state-level reforms that empower parents through education choice, parental bills of rights, and curriculum transparency.

Numerous states have a flexible education savings account program, including a universal option in Arizona. State policymakers across the country should follow suit.

State policymakers also have a duty to secure free speech and open academic inquiry at public colleges and universities.

**K**-12 public education is a state responsibility and a federal interest, which means that state lawmakers have the primary responsibility for adopting and revising the laws governing public schools as well as scholarships, education savings accounts, and other private learning options. State officials also have significant authority over the laws concerning higher education, and given the dismal student results at elementary, secondary, and post-secondary levels, state lawmakers have opportunities to make critical reforms to improve student achievement. Over the past three years, K-12 student results, in particular, have plummeted. Average scores in math and reading among nine-year-olds saw dramatic dips on the Nation's Report Card when federal officials released these scores in October 2022—the first declines in math since this test was administered

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in the 1970s.<sup>1</sup> On the American College Testing (ACT), a commonly used college entrance exam, scores fell to their lowest level in 30 years.<sup>2</sup>

Parents are also concerned about the material that educators are using in classrooms. Prior to the November 2022 election, a Fox News poll found that 79 percent of parents were “extremely” or “very” concerned about “what’s taught in schools,” with inflation being the only issue that worried parents more.<sup>3</sup>

Higher education institutions remain beset by a free speech crisis.<sup>4</sup> The 2022–2023 school year had only just begun when students began reporting shout downs and riots on campuses.<sup>5</sup> State lawmakers should adopt proposals that protect the right of everyone lawfully present in a public area of a campus to listen and to be heard, as well as proposals that protect anyone on a public college campus from shout downs or the “heckler’s veto.”

Most state lawmakers will return to session at the beginning of 2023, and when they do, there will be an urgent need to give K–12 students more quality learning options and make sure that public policies are not preventing parents from being involved in their children’s education. Furthermore, state legislators must protect expressive rights on public college campuses.

Following is The Heritage Foundation’s blueprint for state lawmakers in 2023.

## Education Savings Accounts for Every Child

State lawmakers should consider proposals that offer every child the opportunity to use an education savings account. With an account, as adopted in Arizona, Florida, Mississippi, New Hampshire, North Carolina, Tennessee, and West Virginia, state officials deposit a portion of a child’s funds from the state education formula (or a separate appropriation) in a private account that parents use to buy education products and services for their children.<sup>6</sup>

Though savings account laws vary slightly from state to state, in general, this is how the accounts work: A parent applies for an account, usually submitting the application to a state department of education.<sup>7</sup> If the agency approves the application, the parent removes the child from the assigned public school. The state agency sends parents information that allows them to access an online account portal, where parents can either choose from a list of education providers, such as a personal tutor, and products, such as textbooks, or request access to a provider who is not on the list. State officials review potential education vendors to add them to an approved list of participating vendors.

Parents make purchases using the online portal and can send their child to a private school, pay tuition for online courses or individual services, such as classes at traditional public schools, hire an education therapist and personal tutors, pay for transportation services, and more, in any combination. Again, state laws vary, but typically parents can also save at least a portion of unused account funds from year to year.

In 2021, West Virginia lawmakers approved a proposal that allows the parents or guardians of nearly every child in the state to apply for an account.<sup>8</sup> Also in that year, Florida lawmakers combined what was known as the Gardiner Scholarship Program, an education savings account program, with a K–12 private school scholarship program known as the McKay Scholarships.<sup>9</sup> By doing so, Florida lawmakers included the education savings accounts in the state funding formula (lawmakers previously funded the accounts through an annual appropriation). In June 2022, Arizona Governor Doug Ducey (R) signed a proposal that allows the parents or guardians of every public school student in Arizona to apply for an account.<sup>10</sup>

Because families are not required to spend a child’s savings account on any single purchase, such as private school tuition, the accounts are distinct from K–12 private school vouchers. This distinction is important because some state constitutions still include outdated and prejudiced provisions known as Blaine Amendments, which discriminate against those who hold religious beliefs. Blaine Amendments generally prohibit individuals or organizations from using state taxpayer resources for religious purposes. State courts in Arizona and Nevada have upheld the accounts in those states and ruled that education savings accounts do not violate these states’ constitutions.<sup>11</sup> The U.S. Supreme Court has also ruled that state agencies operating private education options cannot exclude religious schools from participating.<sup>12</sup>

Research finds that parents do, in fact, use education savings accounts differently than scholarships or vouchers and purchase more than one education product or service at the same time. For example, in North Carolina, 64 percent of account holders used their account to pay for more than one item or service in the 2018–2019 and 2019–2020 school years.<sup>13</sup> Researchers have found similar spending patterns among account holders in Arizona and Florida.<sup>14</sup>

## Eliminating Teacher Certification Requirements

Not every parent can or will choose an education savings account or other learning option. For those families who choose a traditional public school,

policymakers should consider reforms that improve the quality of learning for these students and make effective use of taxpayer resources. Policymakers should consider proposals that remove certification requirements for public school teachers. Research has found that a teacher's certification status does not predict student performance, which means that policies that require certification neither cause nor are consistently correlated with improved student achievement.<sup>15</sup> A Brookings Institution study even calls certification "irrelevant to predicting [a teacher's] effectiveness."<sup>16</sup> This study is supported by other research finding that "there is no statistically significant difference in achievement for students assigned to certified and uncertified teachers."<sup>17</sup>

Teacher-certification requirements vary by state, but these requirements commonly include a bachelor's degree, the completion of an additional teacher-certification program, satisfactory completion of additional subject-matter courses and tests, the completion of a designated number of hours as a student-teacher, and a passing score on a praxis exam.<sup>18</sup> Given these requirements, skilled engineers, mathematicians, historians, and other subject-matter experts are often ineligible to enter the classroom without additional training. Only eight states allow teacher licensure reciprocity, which allows a teacher to move to a different state and begin teaching immediately, without a requirement that the educator complete additional state-specific certification requirements in his or her new state.<sup>19</sup>

Considering that research does not find a positive relationship between teacher certification and effectiveness, lawmakers should consider policies that (1) allow individuals to enter the teaching workforce based on competence and job experience, subject to background checks and other safety measures but without additional schooling or testing requirements, and (2) consider teacher reciprocity provisions that allow teachers to more easily move to a new state and continue teaching, again, without additional certification requirements.

Over the past decade, the fastest-growing sector of the public school system has been the public charter school sector. In some states, including Arizona and Texas, not all charter school educators are required to be certified, and these hiring policies have not deterred parents from choosing a charter school when it meets their child's needs.<sup>20</sup> In fact, one-third of Arizona public schools are charter schools and have higher state test passing rates than the passing rates for traditional schools.<sup>21</sup> Research has not found a correlation between the presence of uncertified teachers in Arizona charter schools and improved student performance. Still, the hiring practice has not prevented charter school students from demonstrating higher passing

rates on state assessments. Lawmakers should extend the same autonomy to assigned public schools and allow school officials to hire and terminate employees based on job performance, not certification requirements.

## Enacting Parental Bills of Rights

State legislators should also consider policies that protect the rights of parents who choose traditional public schools for their children. Recent surveys measuring voter and parent satisfaction with classroom material that includes radical instruction on race and ambiguous instruction about “gender” find that a majority of parents oppose such lessons.<sup>22</sup> For example, a *New York Times*/Siena Poll from September 2022 found that 70 percent of registered voters opposed teaching elementary school children about “gender” and “sexual orientation and gender identity.” More than half of respondents opposed teaching this material to middle school students.<sup>23</sup> A Heritage Foundation survey of a nationally representative sample of parents finds that 70 percent believe that school officials should tell parents when a child chooses to “identify” as “transgender” or “has questions related to his or her gender identity,” contrary to state policies in California, New Jersey, and elsewhere that require teachers to hide this information from parents.<sup>24</sup> Surveys find similar opposition to critical race theory, a theory that says that everything in public and private life is the result of racism, and this theory’s principal idea that America is systemically racist and that race defines America’s national identity.<sup>25</sup>

Yet during the COVID-19 pandemic, when watchdog reports and parent complaints drew attention to the application of critical race theory and radical gender theory in K–12 classrooms, some school districts suspended the public comment period during their meetings—limiting parents’ ability to voice their concerns.<sup>26</sup> Likewise, the National School Boards Association (NSBA) colluded with President Joe Biden’s Administration to intimidate parents from speaking at school board meetings, with the NSBA issuing a letter to the White House saying that federal officials should respond to parents as though they were domestic terrorists. The letter could not identify more than a select few examples of violence that warranted local law enforcement action, with no evidence that federal activity was necessary.<sup>27</sup>

The NSBA letter was immediately followed by a memo from U.S. Attorney General Merrick Garland that called on the FBI to work with other federal agencies to “identify” threats to school officials—again, with no compelling evidence that the threats were significant or widespread—and “prosecute them when appropriate.”<sup>28</sup> This collusion created an atmosphere

of intimidation against parents who disagreed with school district policies concerning the pandemic and radical racial- and gender-related school content and activities.

Over the past decade, lawmakers in more than a dozen states adopted “parents’ bills of rights.”<sup>29</sup> These bills of rights are based on the idea that parents are a child’s primary caregiver, generally including this very phrase. Since the Coleman Report of 1966, researchers have recognized that student achievement and family characteristics are closely connected.<sup>30</sup> Research since has found that children of parents who are more involved in their education (especially students who live with stable married parents)—from reading to a child at home to choosing how and where a child learns—experience better academic and life outcomes.<sup>31</sup> Policymakers, then, should adopt policies that allow parents to be active participants in their children’s education experience.

Parents increasingly have reasons to be concerned about assigned traditional schools. The movement to impress left-of-center curricular materials on the minds of K–12 students has neither closed the achievement gap between students from different backgrounds nor has it improved student achievement overall. Even before the precipitous decline in student performance in math and reading that followed the COVID-19 pandemic, a decline reasonably attributed to the prolonged gap in in-person learning for millions of students across the country, average student performance was falling. Fourth-grade reading scores dropped two points between 2013 and 2019 before falling four points between 2019 and 2022.<sup>32</sup> Eighth-grade math scores fell three points between 2013 and 2019 before dropping another eight points from 2019 to 2022.<sup>33</sup> Meanwhile, the achievement gap between children at the upper and lower ends of the income scale has remained steady for some 50 years.<sup>34</sup> These are just some of the indicators demonstrating that radical, left-of-center curricular material does not compensate for family structure, close achievement gaps, nor improve parent satisfaction levels with assigned K–12 schools.

Lawmakers can protect parents and students with parental bills of rights. For example, in 2021, Florida officials expanded the state’s parental bill of rights to include additional policy areas, and lawmakers expanded the provisions again in 2022.<sup>35</sup> The new provisions prohibit teaching students about the ambiguous concepts of “gender” and “gender fluidity” in grades kindergarten through third grade, which is not age-appropriate content for students in these grades. Educators must also notify parents if school officials provide students with mental or physical health services, such as therapy. Policymakers in other states, such as Kansas, also considered

parental bills of rights that include similar provisions. (Though in Kansas, Governor Laura Kelly (D) vetoed the proposal.)<sup>36</sup>

These recent proposals include more than just statements that parents are a child’s primary caregiver and demonstrate that an effective parental bill of rights should contain at least three provisions, in addition to stating parents’ primacy in raising their children, either in the same proposal or in separate proposals.

First, no educator or student should be required to profess or believe any idea, especially not ideas that violate equality principles embedded in state or federal civil rights laws. By prohibiting compelled speech, state officials can reject the pernicious ideas of critical race theory. Critical race theorists have explained that the theory is more than an academic concept and contains an “activist” dimension.<sup>37</sup> Thus theorists designed their ideas—for example, racial discrimination is structural and inherent, capitalism is racist, and Marxism is a superior economic idea—so that activists, teachers, and students would *apply* these concepts. No one, though, should be required to adopt or act on these false ideas.

By prohibiting compelled speech and conduct, state officials will also be rejecting the idea that educators must address a student by a pronoun that does not correspond to his or her biology. Individuals, including students, should not be required to use a pronoun that is different from a child’s sex.

Second, public school officials should make academic material available to parents, voters, and taxpayers online as well as in-person during reasonable business hours. Educators should make reading lists, syllabi, worksheets, homework, and other classroom assignments available to the public. Teachers and administrators can do so without violating copyright provisions—they do not need to make entire textbooks available online; rather, teachers should post the school assignments that they require students to complete for course credit or extracurricular work.

Third, school officials must receive express permission from parents before they perform or administer any health-related services on a student, or refer a student for services, including therapy. For example, in recent years, so-called gender activists have falsely claimed that if policymakers and teachers do not affirm a minor child’s decision to act as a person of the opposite sex, that this child is more likely to commit suicide.<sup>38</sup> Some states require school officials to hide information about a child’s confusion about his or her sex from the child’s parents.<sup>39</sup>

Yet despite claims from activists, academic research findings do not support policies that encourage a minor to attempt to assume a gender different from his or her biological sex.<sup>40</sup> Research has not demonstrated that by

affirming a child's stated gender identity, as opposed to helping him or her become comfortable with his or her sex or treating other conditions that are commonly associated, such as depression and anxiety, policymakers and education and health professionals can reduce suicide rates. Suicide rates among minors are higher in states that have policies allowing minors to assume a gender different from their sex without parental involvement.<sup>41</sup>

In fact, in England, authorities recently closed the nation's only "gender clinic" after a review of the clinic's activities did not demonstrate that the activities were improving health outcomes for patients.<sup>42</sup> The reports' authors wrote:

The rapid increase in the number of children requiring support and the complex case-mix means that the current clinical model, with a single national provider, is not sustainable in the longer term.... We need to know more about the population being referred and outcomes.... There is lack of consensus and open discussion about the nature of gender dysphoria and therefore about the appropriate clinical response.<sup>43</sup>

A highly regarded children's hospital in Sweden has also discontinued the use of puberty blockers and cross-sex hormones for patients under the age of 18, and Sweden's National Board of Health and Welfare has adopted policies that follow this approach.<sup>44</sup>

Considering the evidence that "gender-affirming" care can result in life-altering changes, U.S. educators must receive express permission from parents before engaging in any health services, especially related to a minor child's confusion about his or her sex.

## Securing Free Speech in Higher Education

Free speech rights are facing a crisis in higher education. While many institutions claim to pursue ethnic "diversity, equity, and inclusion," few allow a diversity of viewpoints to reside on campus. State lawmakers should protect the right of anyone lawfully present on a public college campus to listen and be heard, especially when school administrators fail to defend freedom of speech and expression.<sup>45</sup> For public colleges and universities, state lawmakers should:

- **Prohibit public college officials from creating "free speech zones" on campus that limit speech on controversial issues to certain areas of campus;**

- **Create policies that forbid public university officials from sanctioning students or college employees** for taking public positions on current issues that conflict with stated university positions on those topics;
- **Prevent public college officials from disinviting speakers to campus** because of the speaker's views;
- **Require public university leaders to adopt policies that allow suspension or expulsion of students** who engage in the "heckler's veto" or violent shout downs of professors or other speakers on campus;
- **Require public college leaders to create freshman orientation sessions that inform new students** about the school's policies on free expression; and
- **Require public colleges to produce an annual report to the legislature explaining the incidents involving free expression on campus** and how the administration dealt with each incident.

## Conclusion

State lawmakers should act quickly to help students to recover from the learning losses they experienced during the pandemic lockdowns. K–12 education is cumulative: Students who fall behind in one school year are less prepared for more technical material in the next year. Learning losses do not happen overnight, and neither does dramatic improvement. The longer that state legislators wait to give families more quality learning options, the more students will be at a disadvantage. If implemented, the solutions offered in this *Backgrounders* will help to remake K–12 and higher education into an experience for students that helps them to advance in school and in life.

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