

## **NLRB Withdraws Proposed Rule Intended to Block Student Union Organizing**

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On March 12, 2021, the National Labor Relations Board withdrew its [proposed rulemaking](#) that would have prevented college student workers from organizing unions. As a result, the Board's 2016 decision granting student workers the right to form unions is likely to remain the law for the foreseeable future.

The Board's approach to the question of whether student workers at colleges and universities qualify as employees eligible to form unions under the National Labor Relations Act (NLRA) has shifted in recent years. The Board granted student workers the right to organize under the NLRA in 2000. In 2004, the Board rescinded those rights, only to restore them again in [2016](#). In each instance, the Board shifted its stance on student workers through rulings on cases before it. In September 2019, however, the Board, then controlled by Republican appointees, proposed rescinding those rights through a new federal regulation. Its proposed rule stated that students performing services for compensation at a private college or university in connection with their studies are not "employees" within the meaning of the NLRA.

In light of the change in administration, the Board seemed intent to finalize the rule prior to its transition from a Republican to a Democratic majority, which will occur in August of this year. In December 2020, the Board released a regulatory roadmap indicating its intent to issue the final rule in January. Last Friday, March 12, 2021, however, the Board [reversed course](#), pulling the rule "in order to focus its limited resources on competing agency priorities, including the adjudication of unfair labor practice and representation cases currently in progress."

Unless a case presents the issue for the Board in the next few months, which appears unlikely, colleges and universities should expect the current standard to hold: student workers, including graduate and undergraduate teaching and research assistants, are statutory employees under the Act and are entitled to unionize under federal labor law. With the 2016 Board decision still in effect and the 2019 rule off the table, college and universities should expect a resurgence in student organizing in the fall.

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