



NAVIGATING A NEW WASHINGTON: WHAT WILL THE BIDEN PRESIDENCY MEAN FOR EDUCATION POLICY?

Julia Martin
Brustein & Manasevit, PLLC
Future of Education Technology Conference 2021

Agenda

- Who are the decision-makers?
 - Organizational obstacles
- Potential Agenda items and issues
- Congressional Questions
 - Legislation on the horizon
- Coming up in the courts



DISCLAIMER

- This session is being recorded well in advance of the conference. Many things may happen between now and when you are watching. Updates will be provided and questions answered during the live session on January 28th, 2021.



WHO ARE THE DECISION-MAKERS?

Who are the decision-makers?

- Department of Education “landing team” (in part)
 - Linda Darling-Hammond
 - Ary Amerikaner, Ruthanne Buck, Ajita Menon, Keia Cole, Lindsay Dworkin, James Kvaal, Paul Monteiro, Emma Vadehra, Michael Yudin (Obama)
 - Beth Antunez, Shital Shah, Marla Ucelli-Kashyap (AFT)
 - Donna Harris-Aikens (AFT)
 - Ben Miller (CAP)
 - Norma Cantu (Clinton)

Who are the decision-makers?

- New Secretary of Education: Miguel Cardona
 - CT Commissioner of Education
 - Former elementary school teacher, principal, district administrator
 - Supported by Congressional Hispanic Caucus, AFT, NEA
 - Has pushed to reopen schools and have regular State assessments



Obstacles to Administrative Organization

- Senate?
 - May refuse to confirm first choice of cabinet positions
 - McConnell has pledged to put nominees "on the floor"
 - Appointees can serve as "acting" for up to 210 days
- Belated "letter of ascertainment" declaration from GSA
 - Drives resources, office space, access to staff, briefings
- Permanent staffing issues
 - ED staffing down 14% since December 2016 - will take time to rebuild
 - Loss of institutional knowledge
 - Moving staff to "schedule F"



POTENTIAL AGENDA ITEMS AND ISSUES

Agenda for a New Administration

- Increased funding for Title I
- “Full funding” for IDEA
- Additional aid for schools
- Expand K-12 education to include universal 3- and 4-year old pre-K



Needs
Congressional
action

Agenda for a New Administration

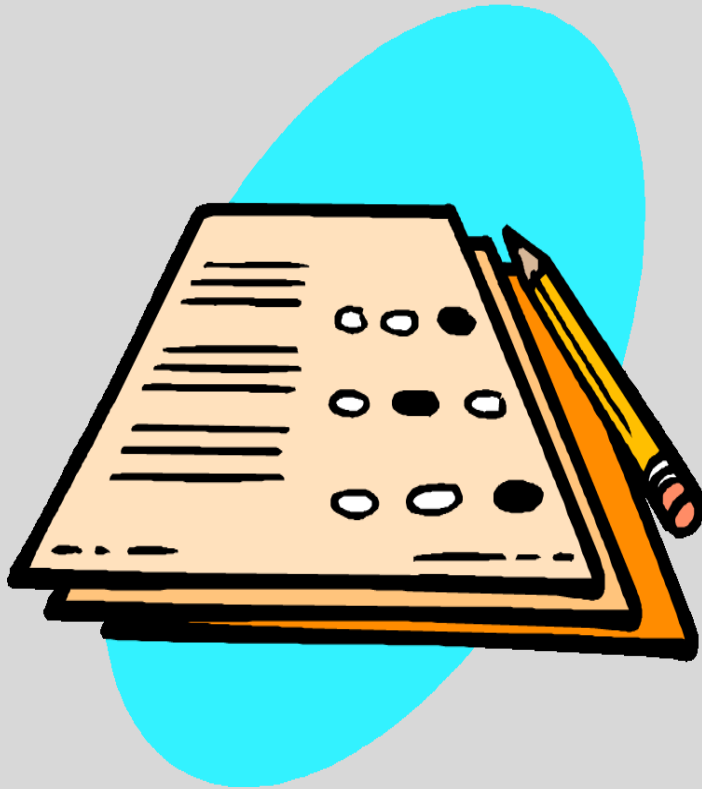
Can be done
without
Congress

- Provide guidance on reopening for schools and colleges
- Extend student loan freeze
- Use the Defense Production Act to ramp up manufacturing of PPE
- Reinstate Obama-era Title IX guidance
- Rescind other regulations/guidance
- Cancel first \$50k of student loan debt?

Unfinished Business

- Any flexibility for ESEA?
 - Some short-term accountability determination delays allowed
 - Functionally same as Sec. 8401 waivers
 - Longer-term waivers require State plan amendment application
 - Provided waivers for Title IV-A and IV-B at State level
 - 21st CCLC: using funds outside of after-school programs and non-school days
 - SSAE: needs assessment and alignment, use of funds restrictions, technology restrictions

Unfinished Business



- Currently: no assessment waivers
- Accountability adjustments assume 2020-21 data
 - Don't want to miss learning loss happening in distance learning scenarios
- But growing concerns about validity/reliability of 2020-21 assessments
 - Test scores mask equity problems?
 - Not comparable to classroom learning

Unfinished Business

- But: NAEP assessment waiver request
 - DeVos to Congress: please let us skip NAEP “until the assessment will be able to produce useful results, likely in 2022”
 - Primary obstacles: lack of in-person instruction, prohibition on visitors
 - Conclusion: can’t “complete the test “in a manner with sufficient validity and reliability”
- Bipartisan Congressional agreement
- What does this mean for States?
 - DeVos: “I strongly believe that [S]tates should implement their own assessments on schedule in spring 2021, given that they do not face the same constraints as NAEP and have ample time to plan...”

Unfinished Business

- Advocates still waiting for guidance on:
 - What constitutes FAPE for students with disabilities in distance learning?
 - How to deal with loss of school meal data from 2020-21 school year?
 - Guidance on validity/use of assessment data?
 - More information on planned Title IVA waivers
 - Clear reopening guidelines
 - Differentiated by grade level, K-12 v. higher ed





CONGRESSIONAL QUESTIONS

House of Representatives

- Democrats to retain majority in House of Representatives
 - But slimmer margin after losing several seats to Republicans

222 DEMOCRATS ✓

218 for Control of House

REPUBLICANS **211**



Gained 3 Seats, Lost 12 Seats

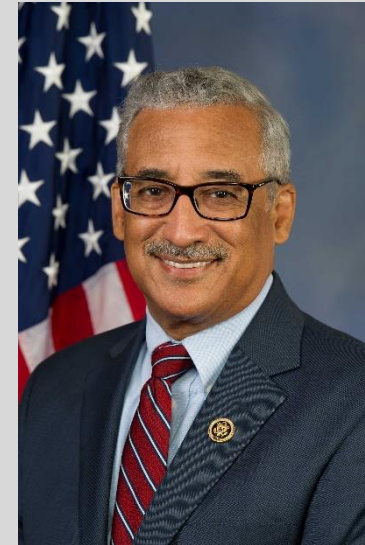
Gained 13 Seats, Lost 3 Seats

i *What is this?*

Source: CNN. Accessed 12/14/2020

House of Representatives

- House leadership changes?
 - Pelosi running for another term as Speaker
 - Says it will be her last
 - New lower-ranking leadership
- House Ed Labor Committee changes?
 - Stability expected
 - Bobby Scott (D-VA) to remain as Chairman
 - Virginia Foxx (R-NC) to continue as Ranking Member



Senate

- Senate party balance determined by January 5th Georgia special election
- Handful of seats flipped
- McConnell, Schumer each reelected as Senate party leaders

48 DEMOCRATS ⓘ

35 Not Up For Election

Gained 2 Seats, Lost 1 Seat

50
▼

ⓘ **REPUBLICANS** **50**

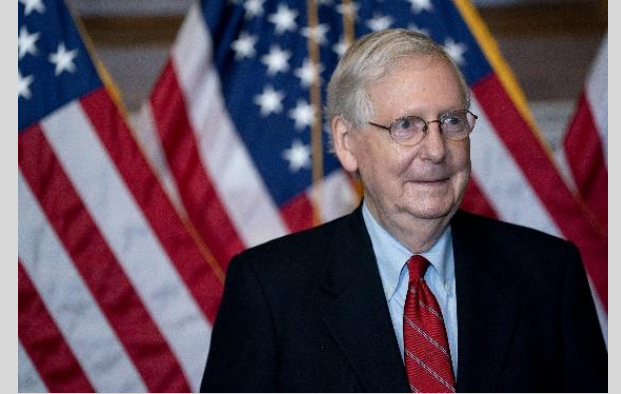
30 Not Up For Election

Gained 1 Seat, Lost 2 Seats

ⓘ *What is this?*

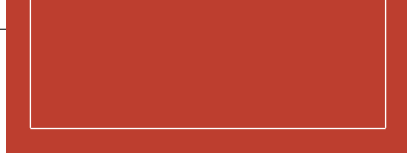
Senate

- Senate leadership??
 - Majority v. Minority leader to be determined following Georgia runoff
- Senate HELP Committee leadership??
 - Chairman Lamar Alexander (R-TN) retired
 - If Republicans maintain majority:
 - Richard Burr (NC) next in line
 - Rand Paul (KY) second in line
 - If Democrats win majority:
 - Current Ranking Member Patty Murray (WA) to become Chairwoman



Last-Minute Legislation: the Coronavirus

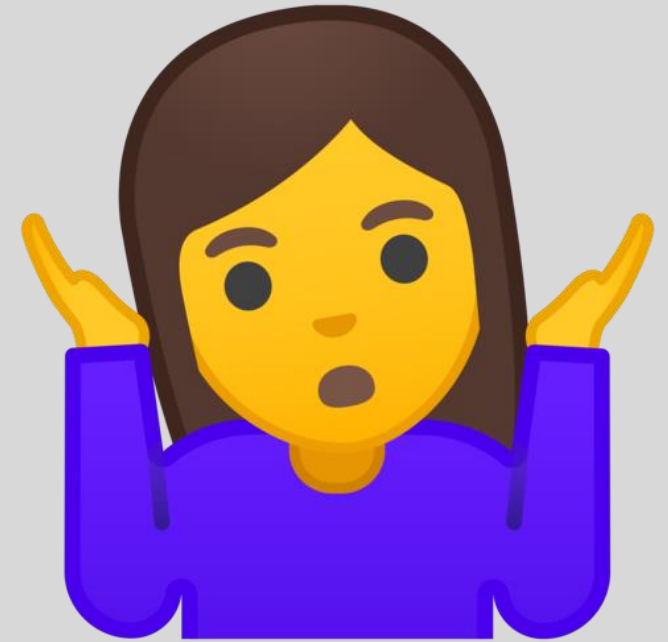
- Provides regular-year appropriations (similar to previous year levels, with small boosts to some programs) for remainder of FY 2021
- Postpones NAEP by one year, extends flexibility for data source on RLIS allocations
- Simplification of FAFSA, Pell grants
- New GEER funding (GEER2)
 - \$4.05 billion
 - \$2.75 for private schools, to be administered by SEA
- New ESSER funding (ESSER2)
 - \$54 billion
 - Similar (but expanded) use of funds
- New HEERF funding
- Signed late 12/27 after some discussion about veto



LEGISLATION ON THE HORIZON

Legislation on the Horizon

- Additional COVID Relief Bill?
 - State and local aid
 - \$2000 per person
 - Section 230 of Communications Decency Act
- Overriding veto of NDAA bill
- ...anything else will depend on outcome of GA election





COMING UP IN THE COURTS

Potential Expansion of Private School Rights?

- *Trinity Lutheran Church of Columbia, Inc. v. Comer* (SCOTUS 2017)
 - States can't prohibit funds from going to religious organizations if the purpose of the grant is secular
- *Espinoza v. Montana Dept. of Revenue* (SCOTUS 2020)
 - Weighs first amendment right of parents to freely exercise religion (by sending kids to religious school) against first amendment prohibition of "excessive entanglement" between State and religion
 - State can't prohibit public funds from going to private religious entities solely because of religious character
 - Invalidates "Blaine amendments"

Potential Expansion of Private School Rights?

- Trump administration executive order (December 28):
 - HHS to use CCDBG funding to allow “emergency learning scholarships” to disadvantaged families “without access to in-person learning”
 - Funds to be used for:
 - Tuition and fees for private or parochial schools, homeschool, learning pods
 - Special education and related services
 - Tutoring and remedial education
- Next: ??????

Affirmative Action Cases

- “Students for Fair Admissions” lawsuits going to SCOTUS this term
 - UNC → alleges that school admissions process is not “holistic” and disadvantages White and Asian-Americans students
 - Uses race “even when the application gives no indication that race affected the student’s life in any way”
 - Harvard → alleges that admissions process is biased against Asian-Americans
 - Subjective “personal rating” allows for discrimination
- DOJ Action against Yale in federal court
 - Investigation suggested that white and Asian-American applicants were one-eighth to one-fourth as likely to be admitted as African-American applicants with the same academic credentials.
 - Filed lawsuit in October

Gender Identity and Title IX

- Trump administration: gender identity not covered under Title IX of Education Amendments of 1972
 - Repealed Obama-era guidance saying otherwise in 2017
 - Told OCR investigators to apply law applicable in their region/State
 - Is *Bostock v. Clayton County* (2020) instructive?
 - SCOTUS decision on gender identity and employment discrimination
 - ED says no: not specific to Title IX
 - Revised CT athletics decision to acknowledge *Bostock* but says it doesn't impact Title IX

Gender Identity and Title IX

- Congressional intervention?
 - Protect Women's Sports Act (2020)
 - Rep. Tulsi Gabbard (D-HI)
 - Would clarify Title IX protections to be based on biological sex
 - Congressional mandate would supersede administrative interpretation
 - Can they do this? YES!
 - Does it make legal standard messy? YES!
 - K-12 and college levels
 - Would need to be reintroduced in 2021



Gender identity cases

- *Grimm v. Gloucester County*
 - Originally filed in 2015 when board adopted policy saying that transgender student couldn't use bathroom aligning with gender identity
 - District court denied injunction, 4th Circuit overturned, appealed to SCOTUS
 - DOJ/ED rescinded Title IX guidance on gender identity
 - SCOTUS sent back to district court
 - Federal district court ruled in favor of plaintiff (August 2019), circuit court rules in favor (August 2020)
 - Next step: SCOTUS





COMING UP: LIVE QUESTIONS

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