Updates on Federal Funding, Legislation, and the Administration

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Agenda

- Congressional Updates
- Federal School Safety Funding and Initiatives
- Every Student Succeeds Act Updates
- Regulatory, Guidance Updates
- Federal Civil Rights Enforcements
- ED Staffing Updates
- Reorganization Efforts at ED

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Congressional Updates

FEDERAL FUNDING, LEGISLATION, AND CONGRESSIONAL AGENDA

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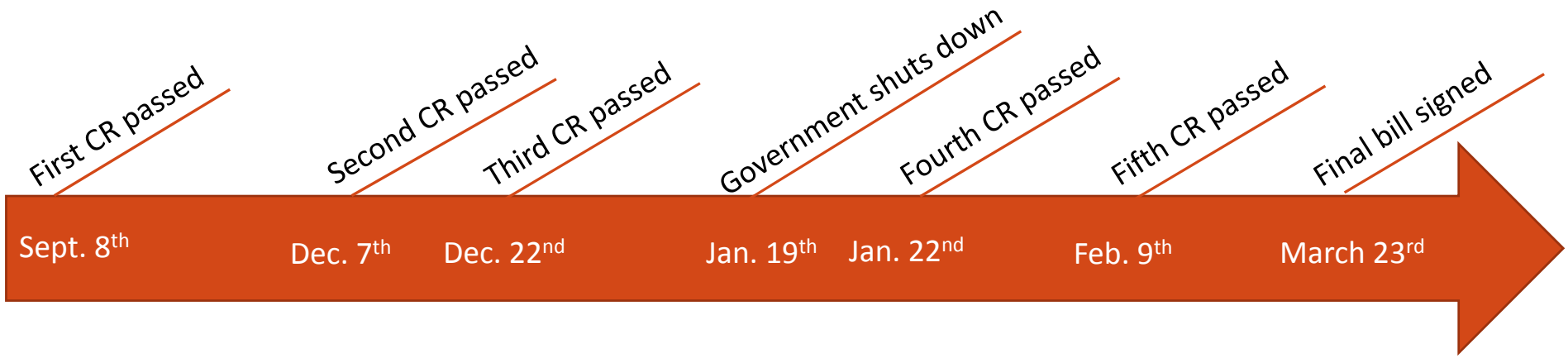
Fiscal Year (FY) 2018 Funding



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FY 2018 Omnibus

- Nearly every major formula-funded program increased
  - ESEA Title I grants increased by $300 million
  - 21st Century Community Learning Centers boosted by $20 million
  - $57.8 million more for charter school grants
  - Increase of $700 million for ESEA Title IV-A block grant → competitive option not included
  - $75 million more for Perkins CTE State grants
  - ESEA Titles II and III level-funded

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Sequestration Is Still Alive!

- Budget Control Act of 2011
  - Imposed budget caps, mandatory cuts to federal spending
  - Amended since 2011 to raise caps but extends sequestration
- February 2018 bipartisan budget deal raises caps again
  - More funding for education
- Only a two-year deal → spending cuts in 2020?

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FY 2019 Budget Request

- Similar to FY 2018 proposals from the White House on education funding
  - Eliminate several ESEA programs
    - ESEA Title II-A: Supporting Effective Instruction State grants
    - 21st Century Community Learning Centers
    - Title IV-A: Student Support and Academic Enrichment grant

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FY 2019 Budget Request

- Opportunity Grants program
  - Funded at $1 billion
  - Provide scholarships to low-income students to use at private schools
- Increased funding for charters, magnet schools

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Rejection by Congress

- Congress passes on White House proposals in FY 2018
  - Suggested eliminating funding for Title II, 21st Century → both remain
  - Proposed new school choice program → not included
  - Proposed reduced funding for Office for Civil Rights → funding increased by $8 million
  - Tried to redesign budget office → omnibus prohibits a "reorganization that decentralizes, reduces the staffing level, or alters the responsibilities, structure, authority, or functionality of the Budget Service of the Department of Education"

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Rejected by Congress

- Very similar requests for FY 2019 → frustration among lawmakers
- House and Senate FY 2019 proposals largely reject requests… again

"I am concerned about the administration continuing to request cuts that Congress has rejected" (House Appropriations Subcommittee Chairman Tom Cole (R-OK))

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Where are we now?

- Fiscal year 2019 begins on October 1st
- Senate progress in August due to shortened recess
  - Nine of twelve bills passed in smaller "minibus" packages
- House passed six bills before August recess
- Two minibuses in conference to hammer out differences

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Government Shutdown?

Unlikely…

Possibly a continuing resolution for some funding streams

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Outlook for Education Funding

Senate:

- Passed full Senate in August
  - Increases ED funding by $541 million
  - ESEA Titles I and IV-A, IDEA Part B each increased by $125 million
  - Adult Education, Impact Aid boosted $25 million
  - Additional $45 million for charter schools
  - Most other K-12 programs level-funded

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Outlook for Education Funding

House of Representatives:

- Passed by House Appropriations Committee but no floor action
  - Increases funding to ED by $43.6 million
  - ESEA Title IV-A increased by $100 million
  - Perkins CTE grants boosted by $115 million
  - Additional $52 million for Impact Aid
  - Increases charter schools by $50 million
  - Level-funding for most other K-12 programs

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Rescission of Federal Funds?

- President asked for line-item veto authority during Omnibus signing ceremony
- Next best thing: Congressional Budget and Impound Control Act of 1974
  - President can ask for a rescission of certain budget items
  - Congress must draft rescission bills, send them through committee and pass them through both chambers within 45 days.
  - If no action within 45 days, rescission fails
  - Was fairly common until the 1990's
    - Every president from 1974 to 1992 asked for some sort of rescission authority
      - Congress approved about a third of those requests

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Rescission of Federal Funds?

- President sent $15.4 billion rescission request on May 8th
- Request targeted previously approved funds that White House says not being used or for which authorization to obligate the funds has lapsed
- Some funds included in request:
  - Advanced Technology Vehicles Manufacturing Loan Program at Department of Energy
  - Funds from Center for Medicare and Medicaid Innovation
  - Excess funds remaining from the 2015 Ebola outbreak response
  - Children's Health Insurance Program

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Rescission of Federal Funds?

- May rescission request passed House but ultimately failed in Senate
- Administration considering another request this year
  - Congress has indicated it's not interested in clawing back funding
  - Not very likely to gain significant support

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Next on Congress' Agenda

SCOTUS nominee confirmation

Brett Kavanaugh

Farm Bill

Expires September 30th

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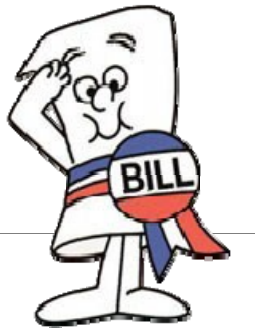
Education Bills This Year?



- Perkins Career and Technical Education program reauthorized in July
  - House passed bill in June 2017
  - Stalled in Senate over debate on secretarial prohibitions
  - Push from White House to reauthorize
  - House adopted Senate proposal in July

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Strengthening Career and Technical Education for the 21st Century Act

- Not a transformative bill
- Provides federal definition for CTE concentrator
- Required Congressional notice for issuance of regulations
- Expanded stakeholder consultation requirements
- Local plan → local application
- Alignment with WIOA, ESSA
- Changes to MOE provision
- Removes negotiation process with Secretary for performance targets

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Strengthening Career and Technical Education for the 21st Century Act

Implementation Timeline

- Option to submit one-year transition plan to ED
  - Not subject to consultation requirements
- 4-year plans under new law likely due April 2020

More information from ED forthcoming

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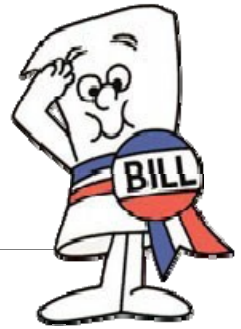
Education Bills This Year?



- Talk of Higher Education Act reauthorization earlier this year
  - House Republicans passed bill through Committee; no action in full House
  - House Democrats introduced their own bill in July → no action expected in Republican-controlled House
  - Senate has not released a proposal
  - Movement before the end of year unlikely

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Federal School Safety Updates

FEDERAL FUNDING FOR SCHOOL SAFETY, FEDERAL COMMISSION ON SCHOOL SAFETY

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STOP School Violence Act

- Authorized as part of FY 2018 Omnibus
  - $75 million
- Amends an existing Department of Justice (DOJ) grant – Secure Our Schools
- Grants awarded competitively to States, local governments, or Indian tribes
  - 50% match required
- Uses of funds:
  - Development of school threat assessment protocols
  - Training of school staff and students
  - Anonymous reporting systems
  - Physical security upgrades for schools
  - Coordination with law enforcement

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School-Age Trauma Training

- $1.8 million to be awarded through the Department of Homeland Security
- To develop training for students on how to respond to traumatic injuries during a mass casualty event
- Programs developed with funds intended to be free to the public

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ESSA Funds for Firearms Purchases?

- Reported that Secretary DeVos considering whether to allow States, districts to use Title IV-A funds to purchase firearms
- Significant pushback from some advocates, Democratic lawmakers
- No specific language prohibiting it
- Secretary DeVos says she has "no intention of taking any action concerning the purchase of firearms or firearms training for school staff under the ESEA…"

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Secret Service Guide on Preventing School Violence

- Issued by U.S. Secret Service's National Threat Assessment Center
- Reference guide for schools to help prevent targeted school violence
- "No profile of a student attacker"
- Schools should use threat assessment process to prevent violence

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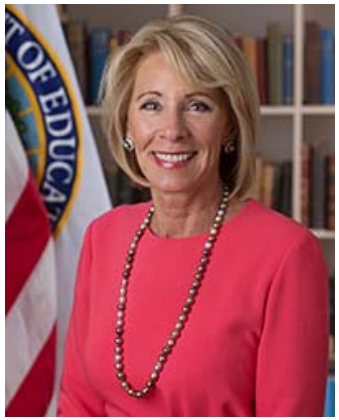
Federal Commission on School Safety

Betsy DeVos
Secretary of Education



Jeff Sessions
Attorney General

Alex Azar
Sec. of Health & Human Services

Kirstjen Nielsen
Secretary of Homeland Security

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Federal Commission on School Safety

- Tasked with reviewing variety of topic areas
  - Age restrictions on purchasing firearms
  - Youth consumption of violent entertainment
  - Repeal of Obama administration's school discipline guidance
  - Improving access to mental health services
  - Best practices for school security, school-based threat assessment
  - Press coverage of mass casualty events

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Federal Commission on School Safety

- Has held 14 meetings so far
  - Public listening sessions
  - Commission meetings
  - Field visits

- Will issue report including recommendations and best practices by end of year

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Administration Updates

ESSA, REGULATIONS, STAFFING, GOVERNMENT REORGANIZATION

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ESSA Updates

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Letter on Sexual Misconduct

- Reminds States and LEAs of responsibility to help protect students from sexual abuse (ESEA Sec. 8546)
- Seeks to end practice of "passing the trash" when teachers engage in sexual misconduct
- Must have in place laws, regs, or policies prohibiting the SEA, LEA, school, or employees from providing a recommendation for an employee that the entity or individual knows or has probable cause to believe has engaged in sexual misconduct with a student or minor
- Can still engage in routine transfer of administrative or personnel files
- Some exceptions
- Sec. 8546 includes minimum requirements → States may adopt more stringent ones
- Failure to meet requirements could lead to enforcement action by ED

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Letter on Serving Homeless Students Under Title I

- Reviews changes to LEA Title I homeless student reservation made by ESSA
- LEAs required to reserve Title I funds to provide services to homeless students regardless of whether they attend Title I school or non-Title I school
- LEAs with combination of Title I and non-Title AND LEAs with all Title I schools must take the reservation
- No specific amount required → depends on needs assessment and must be sufficient

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ESEA Title I Regulations

- March 2017: Congress rescinds ESSA accountability regulations
- July 2017: No Child Left Behind regulations restored
  - Many parts not applicable because of changes made by ESSA
- August 2018: ED rescinds parts of Title I regulations that are superseded by ESSA
  - No impact on current operation of ESSA programs

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Forthcoming ESSA Guidance?

- Supplement, Not Supplant
  - ED still working to develop guidance
  - No timeline for completion
- Other major ESSA guidance/regulations not expected soon
  - More focus on higher education regulations at ED
  - Administration's effort to reduce regulatory burden

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Regulatory, Guidance Updates

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Significant Disproportionality Rule

- Promulgated under the Obama administration
- Intended to address disparities in the treatment of minority students with disabilities, including overidentification for special ed
  - Establishes a standard methodology to determine disproportionality
- Implementation delayed until July 1, 2020
  - Date for including children ages three to five pushed until July 1, 2022
- Delayed to provide ED time to review whether the rule is effective
- States can still move forward with new methodology if they wish
- Future rescission by ED?

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School Discipline Guidance

- 2014 “Dear Colleague on the Nondiscriminatory Administration of School Discipline” issued jointly by the Departments of Education and Justice
- Seeks to ensure minority students are not disciplined at higher rates and with harsher punishment than their peers
- Schools may be found in violation of civil rights law if policies are discriminatory (whether intentionally or not)
- ED reviewing effectiveness of guidance
  - Has held several meetings with supporters and opponents of guidance
  - Part of the agenda of Federal Commission on School Safety

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School Discipline Guidance (cont.)

- Opponents:
  - Has not been transformative
  - Schools afraid to suspend, expel students
- Supporters:
  - Instrumental in protecting overlooked groups of students from unfair punishment
  - Motivated States and districts re-examine discipline policies and makes changes that benefit all students
- April 2018 GAO Report: Discipline Disparities for Black Students, Boys, and Students with Disabilities
  - Finds disproportionately high rates of discipline for African-American students, students with disabilities, and boys
  - Says that rates of suspension were already dropping before the guidance was released

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Title IX - Sexual Violence

- "Dear Colleague" issued in 2011 under Obama administration
- DeVos rescinded DCL in fall 2017, publishing interim guidance with more flexibility
- Plans to use regulatory process for new rule, instead of issuing guidance
  - Regulation = force of law
- *New York Times* obtains draft proposed rule (tracks closely to interim guidance)
  - School can choose evidentiary standard for proceedings
  - Use of mediation to reach informal resolutions
  - Stricter definition of "sexual harassment"
  - Schools only responsible for investigating episodes reported to have taken place on their campus or within their own programs

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Title IX Sexual Violence

Next Steps?

- Publish proposed rule in Federal Register
- Allow public to comment on proposal
  - Typically 60 days
- Review public comments
- Publish final rule

Could change slightly from draft obtained by *New York Times*, but tracks closely to interim guidance and administration's previous comments/views

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Civil Rights Enforcement

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Office for Civil Rights

- Changes to enforcement practices generally
  - Backing off efforts to identify systemic civil rights issues
  - Regional investigators no longer required to notify Washington about “sensitive” cases
- Staff has decreased by 11 percent under this administration → increased caseloads per person

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Transgender Students and Title IX

- Obama administration guidance requiring schools to accommodate transgender students rescinded in 2017
- OCR no longer investigating complaints from transgender students related to bathroom access
  - ED now dismissing these types of complaints
- But, will still investigate other forms of discrimination against transgender students
- New Case Processing Manual says to investigators:
  - Use discretion in processing gender-based complaints
  - Follow Federal Court precedent applicable to the region

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The Title IX Debate

Does Title IX protect students from discrimination based on gender identity?

According to the administration?
No

"In the case of bathrooms, however, longstanding regulations provide that separating facilities on the basis of sex is not a form of discrimination prohibited by Title IX." –Liz Hill, ED spokesperson

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The Title IX Debate

Does Title IX protect students from discrimination based on gender identity?

According to the Courts?

No clear answer

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Staffing Updates

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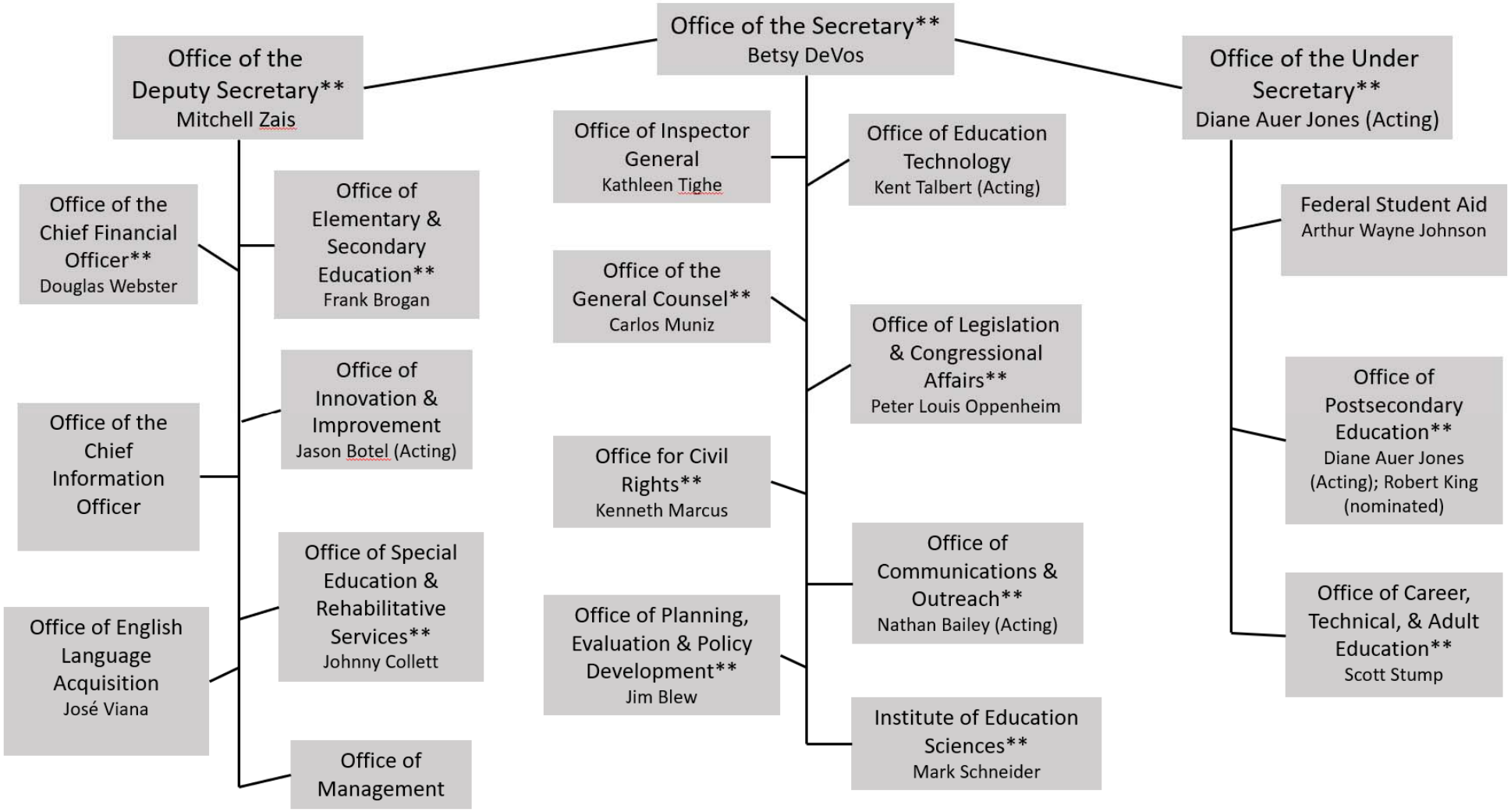

****Indicates the position requires Senate confirmation**

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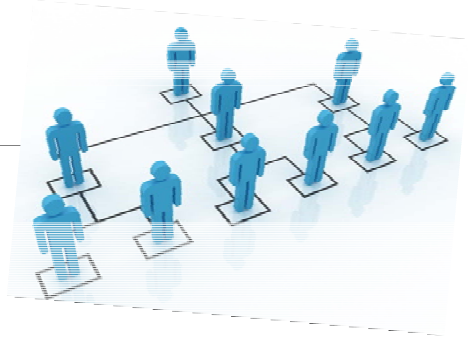
Progress on Filling Top Positions



- 11 of 15 Senate-confirmable positions officially filled
- 2 awaiting Senate confirmation
  - Robert King: Asst. Secretary of Postsecondary Education
  - Mark Schultz: Commission of Rehabilitation Services Administration
- 2 positions with no nominees
  - Under Secretary; Asst. Secretary for Communications and Outreach
    - Purposeful?

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Staffing Changes at ED

- ED workforce has shrunk 13% since President Trump took office
- Hiring freeze
- New telework policies
  - Employees can only telework one day a week
- Shifting around of Senior Executive Service members
- Early retirement, buyout offers to ED staff

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Impact of Changes?

- Slower responses to questions from States, districts
- Staff increasingly stretched thin
- ED policies intended to encourage staff to quit?
  - Telework changes

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Reorganization Efforts

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Proposal to Merge ED, DOL

- March 2017 Executive Order: Comprehensive Plan for Reorganizing the Executive Branch
  - Federal agencies to propose a plan to increase efficiency and effectiveness
    - Eliminate unnecessary components of agencies and programs
- June 2017: Administration releases government-wide reorganization plan
  - Department of Education and Department of Labor → Department of Education and Workforce (DEW)
  - School lunch program → Department of Health and Human Services (renamed Health and Public Welfare)

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Department of Education and Workforce

- Four sub-offices:
  - Workforce and Higher Education Administration
  - K-12 education
  - Enforcement
  - Research, Evaluation, and Administration
    - Office of Inspector General
- Would need Congressional approval
  - Other attempts have failed
  - No major appetite in Congress

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Office of English Language Acquisition Elimination?

- ED considering folding OELA into the Office of Elementary and Secondary Education
- Would eliminate Director position
- ED wants to keep all programs for disadvantaged students together
- Major backlash from English learner advocacy organizations
- Congressional approval needed?

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Resources

Secret Service Guide on Preventing School Violence: https://www.secretservice.gov/data/protection/ntac/USSS_NTAC_Enhancing_School_Safety_Guide_7.11.18.pdf

Letter re: ESEA sexual misconduct provision: https://www2.ed.gov/policy/elsec/leg/essa/section8546dearcolleagueletter.pdf

Letter re: ESEA Title I Homeless Student Reservation: https://www2.ed.gov/policy/elsec/leg/essa/letterforessatitleialeahomelesssetaside.pdf

ED Fact Sheet on Rescinded ESEA Title I Regulations: https://www2.ed.gov/policy/elsec/leg/essa/essaregulationrescissions.pdf

GAO Report on Discipline Disparities: https://www.gao.gov/assets/700/690828.pdf

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