

EducationCounsel Summary and Analysis
The 2020 Election Results: An Outlook for Education Policy

This memo provides an overview of how the 2020 elections will likely influence federal education policy, particularly in the context of a global pandemic, economic uncertainty, and a national reckoning on racial injustice. This overview is not intended to fully explore all education issues that may be addressed by the federal government under the leadership of President-elect Joe Biden and Vice President-elect Kamala Harris over the next four years, but it provides initial insights on likely dynamics, priorities, and near-term actions that will have both immediate consequence and set up longer term scenarios. With the Senate balance currently standing at 50-48 toward Republican control, the two runoff elections in Georgia will decide whether the Biden Administration faces a unified Democratic Congress or a divided government. While Democratic control of the Senate would likely allow for a bigger, bolder Democratic agenda in all regards, this memo assumes that there could be a divided Congress and explores what that would mean for the federal education agenda.

KEY TAKEAWAYS

- The Biden Administration will likely seek a more active influence on state and local education decisions, compared to the Trump Administration, and will use multiple levers of the federal government to center equity – especially racial equity – within the education decision agenda at all levels.
- To advance its agenda, there are many actions that the Biden Administration can take absent congressional action or authority, including using Executive Orders, issuing guidance/regulations, and influencing state and local decisions through its bully pulpit.
- It is likely – as with most departing presidents – the Trump Administration will make a continued (and potentially amplified) push to enforce or double down on current policies; to issue new regulations, guidance, interim final rules, or Executive Orders; and launch new investigations before leaving office. Although the Biden Administration will have the ability to roll back many of these moves, actions by the Trump Administration will continue to have both immediate and potentially longer-term impact.
- The coronavirus pandemic will continue to occupy much of the attention of both Congress and the Biden Administration. While congressional leaders continue to negotiate, President-elect Biden will most likely propose a major relief and recovery legislative proposal early in his Administration, which will almost certainly include significant education investments and could be a vehicle for President-elect Biden to act on early policy priorities.
- Control of the Senate will impact the magnitude of a Biden Administration’s education legislative agenda – depending on if Republicans maintain their majority or if Democrats retake control. Given the small margins for either chamber, bipartisanship becomes even more important to advance shared goals and the importance of more moderate Members will become amplified during negotiations.

PRESIDENTIAL OVERVIEW

President-elect Biden has already named a transition team and begun outlining the contours of his Administration’s priorities. Though it is likely that agency-specific policy initiatives will not be announced until closer to his Inauguration, the Biden-Harris transition team has already outlined four major priorities that will govern much of the new Administration’s efforts across issues and agencies – the coronavirus pandemic, economic recovery, racial equity, and climate change. Before the Inauguration, the Biden-Harris transition team will put together a first proposed budget request, Biden’s first address to Congress, and identify immediate actions ripe for Executive Orders, guidance, and regulation to accomplish these goals.

In addition to continuing to build out and announce policy decisions related to these priorities, between now and Inauguration, personnel and cabinet announcements will also offer signals to the “what” of major policies that may be pursued by a Biden Administration. Initial indications may be drawn from those who have been selected to serve on the Agency Review Teams (ARTs)¹. The ART responsible for the U.S. Department of Education (USED) will be led by Dr. Linda Darling-Hammond, who also led the team during the Obama-Biden transition in 2008. The current members of the transition team come from a variety of organizations, with a heavy union presence and several former Obama Administration officials, leading to a relatively balanced team. A few additional members may still be named to the teams, particularly as they begin to work with agencies.

It should be noted that although the ARTs will prepare, as much as possible, for the smooth transfer of power after Inauguration, this transition will be unlike years past. Over the last four years, agencies across the entire federal government have suffered from significant levels of staff departures and overall lowered levels of staff morale. An incoming Biden Administration will need to build up staff – at both the political and career levels – before it can begin attending to the myriad of major policy initiatives. While the incoming Administration will work to identify people to quickly fill key political positions between now and Inauguration, the time required to staff up the agencies with career employees is substantial and may hamper the president-elect’s early agenda.

An important indicator of how the new Administration will approach education policy, from early childhood education through higher education, may be provided by the selection of a nominee for USED Secretary. President-elect Biden has made clear that he intends to nominate someone with experience in public education and someone who understands and values the experiences of teachers. Many, including the President-elect himself, point to the teaching experience of his wife, Dr. Jill Biden, as an important influence on his approach.

Additionally, it will also be important to pay close attention to how the incoming president outlines his plan for controlling the coronavirus pandemic, including details of his initial stimulus and recovery package. With the announcement of a coronavirus task force as one of his first actions as president-elect, Biden has made it clear that addressing, controlling, and recovering from the pandemic will be his team’s number one priority. The extent and breadth of this proposal may be influenced by whether Congress can advance a relief package during its lame duck session (more on this below).

CONGRESSIONAL OVERVIEW

Before a new Congress can be sworn in on January 3, 2021, the current Congress has work to complete during a lame duck session. Congress is under a deadline to address fiscal year (FY) 2021 appropriations by December 11, which is when the current continuing resolution (CR) expires. Congress may elect to complete a full-year spending package or push through another short-term spending fix to last into early next year (or decide on some combination of the two as part of a “CRomnibus”). Both Senate Majority Leader Mitch McConnell (R-KY) and Speaker of the House Nancy Pelosi (D-CA) have indicated that they would like to complete work on the appropriations bills and a new pandemic relief package, but it will remain to be seen if the two sides can reach an agreement on the policies and what level of funding to provide.

If an agreement is to be reached on additional relief aid in the lame duck (which would most likely be combined with end of year spending bills), it is likely that overall funding would be below the \$2.4 billion proposed by the House and above the \$500 billion proposed in the latest Republican “skinny” proposal – possibly in the range of above \$1 trillion. Key factors impacting if an agreement can be reached include whether Senate Republicans continue to push for a much smaller, more targeted relief package; if Speaker Pelosi can gain the support of her caucus for a smaller relief package now, recognizing additional relief may be possible early in the new year; and whether President-elect Biden supports reaching a deal now to clear the decks for a new Administration. Lame duck sessions are notoriously difficult for reaching agreements on large spending packages, and with the runoff elections in Georgia and Senate control in the next Congress undecided, a compromise appears challenging. Another unknown is whether a deal between Majority Leader McConnell and Speaker Pelosi on end of year spending bills combined with some amount

¹ On November 10, the Biden-Harris transition team announced members of the Agency Review Teams (ARTs). The full ART lists can be found [here](#).

of coronavirus relief funding would have the support of and be signed by President Trump. The next few weeks and the negotiations between Majority Leader McConnell and Speaker Pelosi may be telling for what a divided Congress could mean for the Biden Administration and its agenda.

Senate Outlook

The majority control of the Senate remains undecided until January, when the runoff elections for both Georgia Senate races will be held. Regardless of outcome, there will be shifts in leadership of key education-related committees.

If Republicans maintain their control of the Senate, we will see a new chair of the Senate Health, Education, Labor, and Pensions (HELP) Committee given current Chairman Lamar Alexander's (R-TN) retirement. The Committee would most likely be led by Senator Richard Burr (R-NC) or Senator Rand Paul (R-KY). There will also be at least three new Republicans on the HELP Committee given retirements and other committee shifts. Senator Kelly Loeffler (R-GA) is also a member of the HELP Committee and is locked in a battle for her seat in one of the Georgia runoffs. If she were to lose, there would be likely four new Republican members, or one-third of current Republican members.

If Senate Democrats gain control of the chamber, we will see current Ranking Member of the Senate HELP Committee Patty Murray (D-WA) likely continue to lead the Committee for Senate Democrats. However, there have been rumors of Ranking Member Murray possibly taking a higher leadership position within the Senate Appropriations Committee should Senator Patrick Leahy (D-VT) take over the leadership of the Senate Judiciary Committee. This would leave the HELP Committee leadership open to Senator Bernie Sanders (I-VT) or possibly Senator Bob Casey (D-PA).

House Outlook

The House of Representatives provides the most continuity, with Democrats remaining in control and current Speaker of the House Nancy Pelosi (D-CA) likely maintaining her role as Speaker. Under Pelosi's leadership, House Democrats will have to face the reality of a shrunken majority and growing divisions within the caucus. While the Education and Labor Committee will likely remain under the leadership of current Chairman Bobby Scott (D-VA), there will be a new Higher Education and Workforce Investment Subcommittee leader, given the retirement of current Subcommittee Chairwoman Susan Davis (D-CA). Additionally, the House Appropriations Committee will be led by a new Chairwoman, due to the retirement of Chairwoman Nita Lowey (D-NY). There is currently a three-way race between Labor, Health and Human Services, and Education (Labor/HHS) Appropriations Subcommittee Chairwoman Rosa DeLauro (D-CT), Rep. Debbie Wasserman-Schultz (D-FL), and Rep. Marcy Kaptur (D-OH). The Democratic caucus will hold Committee elections on November 30. The selection of Rep. DeLauro for full Committee Chairwoman would elevate the importance of the Labor/HHS bill, which includes funding for USED.

Republican leadership looks to remain stable, with current Ranking Member Virginia Foxx (R-NC) maintaining her position within the Education and Labor Committee and current Ranking Member Tom Cole (R-OK) maintaining his within the Labor/HHS Appropriations Subcommittee.

SOME KEY EDUCATION IMPLICATIONS OF THE 2020 ELECTION

Early Childhood Education

- President-elect Biden has signaled that he will make early childhood education a priority of his Administration. He has noted that we need to address the needs of child care in a coronavirus response package with a significant investment in the stability of the child care infrastructure, and that he will work to make sure that Congress passes such a package early in his Administration. If passed, this increase will require the new Administration to quickly develop guidance to ensure states can spend the funds efficiently and effectively to address the significant needs of children, families, and providers during the pandemic.
- The president-elect may include within his first budget proposal and future proposals significant increases to core early childhood programs, including the Child Care and Development Block Grant (CCDBG), Head

Start, Preschool Development Grants (PDG), the Maternal Infant Early Childhood Home Visiting (MIECHV) program, Parts B and C of the Individuals with Disabilities Education Act (IDEA), and other core programs to rebuild and support state early childhood systems.

- Biden and his team have also signaled that they want to focus on improvements to the child care system, with planned investments to make child care more affordable for working families, improvements to facilities, supports for the workforce, and expansion of pre-kindergarten programs.
- While this agenda may be difficult to implement with split control of Congress, there has been bipartisan support for child care and Head Start that could signal an opportunity for new early childhood education legislation.
- Despite proposed support from President-elect Biden, the early childhood education sector faces severe challenges due to the pandemic. If a next relief package does not include significant funding for the sector, then the president-elect will face a crumbling early childhood education system that will need to be rebuilt as opposed to improved and expanded.

K-12 Education

- Much like other agencies, USED will first focus on recovering from the pandemic and the resulting economic impacts, occupying much of the agency's focus and attention for the foreseeable future. Pandemic related actions will likely include distribution of recovery funding, providing leadership on school reopening, and other critical issues, such as widespread instructional loss, the persistent digital divide, student rights, basic needs such as housing stability and nutrition services, and the social and emotional needs of students. Additionally, President-elect Biden has indicated his interest in dramatically increasing funding for Title I and IDEA – a down payment on which will likely come from a pandemic recovery package.
- Early in the Administration, opportunities for action will rest with funding bills, as well as other priorities that USED can influence absent Congress. The Department will have the opportunity to quickly act by issuing guidance and regulations. Specifically, the Biden Administration will likely take quick action on disparate discipline practices in schools, protecting transgender students from discrimination under Title IX, and school integration policy.
- If the Senate is controlled by Republicans and the government remains divided, congressional Democrats will seek to coordinate with the Biden Administration to ensure Administrative actions advance shared Democratic priorities.
- Congressional Democrats are interested in ensuring increased funding equity and in preventing inequitable funding cuts at the state and local levels. Additionally, congressional Democrats are interested in increased oversight of state and district implementation of the Every Student Succeeds Act (ESSA) and IDEA. Further, both Congressional Democrats and the Biden Administration share the goal of restoring civil rights enforcement through the Office of Civil Rights, including the Civil Rights Data Collection (CRDC) and interrogating whether students' rights to education have been fully met and preserved during the pandemic.
- There are several bills up for reauthorization in the next Congress, including both ESSA and IDEA. However, given the focus on the pandemic and upheaval in schools nationally, it is unlikely that the next Congress will act on either bill.

Higher Education

- The higher education priorities that the president-elect laid out in his election platform were broad and centered around affordability. Specific initiatives and priorities included ensuring two-years of debt free community college, tuition free public college for families making less than \$125,000 a year, doubling the maximum Pell Grant, a new and more generous income driven repayment plan, improving and expanding the public service loan forgiveness (PSLF) program, and significant new investments in Minority-Serving Institutions (MSIs). It is also likely that the Administration will prioritize support for community colleges, especially given Dr. Biden's experience as a community college professor.
- However, most of President-elect Biden's priorities would require significant new resources that depend on congressional approval, making Biden's preferred agenda around affordability a tough sell in a divided

Congress. In addition, with a new Senate HELP Committee Chair, comprehensive reauthorization of the Higher Education Act (HEA) faces strong headwinds, even with the significant progress made on the reauthorization during the last Congress. This is because a new Chair will have their own priorities and want to put their own stamp on HEA reauthorization, which will impact timing for legislation in a new Congress. This will be exacerbated by leaders and staff who do not have experience negotiating with one another.

- Changes to higher education are, therefore, most likely to come administratively, both through executive actions of a Biden Administration and the regulations it is likely to promulgate. The most immediate actions are likely to center around pandemic-related protections for students and borrowers, such as how long to continue the existing pause on student loan repayment, and whether to forgive any outstanding loan debt. The Administration is also likely to move on forgiving loans for students who were defrauded by their colleges under Borrower Defense or if their schools closed through automatic closed school discharges, and perhaps publish additional data on the College Scorecard.
- In the medium term, the Administration is likely to dismantle many of the regulations put in place during the Trump Administration, likely starting with Borrower Defense and Title IX, and then addressing Gainful Employment and accreditation — though most regulatory changes will not be effective until mid-2022 at the earliest.
- Any legislative changes are going to need strong bipartisan support, and priority will be given to issues related to pandemic or economic recovery. For example, short-term programs and workforce- and job-specific training is likely to be an area of mutual interest between Republicans and Democrats. There is also potential for movement on data transparency, especially as students' plans are impacted by the pandemic and policymakers seek to understand where students are, and how best to reach them. Finally, simplification continues to be an area of interest, especially for the Free Application for Federal Student Aid (FAFSA) – which would encourage more students to apply to postsecondary programs – and in repayment to ensure that students have simple and easily understandable repayment options when student loan payments are restarted.

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