

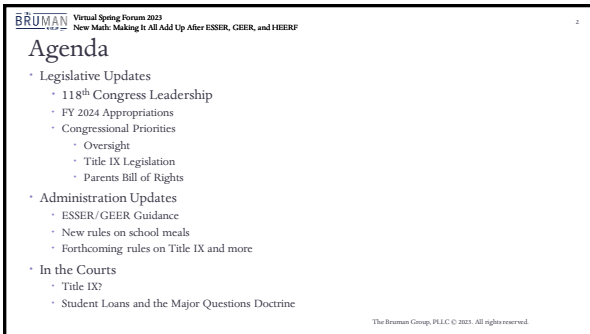
THE BRUMAN GROUP

Virtual Spring Forum 2023

New Majority, New Priorities?

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Agenda

- Legislative Updates
 - 118th Congress Leadership
 - FY 2024 Appropriations
 - Congressional Priorities
 - Oversight
 - Title IX Legislation
 - Parents Bill of Rights
- Administration Updates
 - ESSER/GEER Guidance
 - New rules on school meals
 - Forthcoming rules on Title IX and more
- In the Courts
 - Title IX?
 - Student Loans and the Major Questions Doctrine

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118th Congress Leadership

House of Representatives



Speaker of the House:
Kevin McCarthy (R-CA)



Minority Leader:
Hakeem Jeffries (D-NY)

Senate



Majority Leader:
Chuck Schumer (D-NY)



Minority Leader:
Mitch McConnell (R-KY)

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118th Congress Committee Leadership

House Committee on Education and the Workforce



Chair:
Virginia Foxx (R-NC)



Ranking Member:
Bobby Scott (D-VA)

Senate Committee on Health, Education, Labor, and Pensions



Chair:
Bernie Sanders (I-VT)



Ranking Member:
Bill Cassidy (R-LA)

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Appropriations



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Where are we?

- 2023 Omnibus passed December 23rd, 2022
 - Modest increases in most federal programs, at or below rate of inflation
- Debate over debt ceiling will control FY 2024 appropriations debate
 - Increases to tax rates?
 - Cut spending?
 - Slow rate of growth?
 - Potential for return of sequestration-like caps (automatic, across-the-board cuts to discretionary spending if Appropriation bills exceed a designated cap)

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Where are we?

- President released his FY 2024 budget request to Congress in March
- Next, budget committees to decide on debt ceiling and spending caps
 - Debt ceiling expiration May/June
- Appropriations Committees use caps to decide program-level spending
- FY 2024 begins on October 1

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President's FY 2024 Budget Proposal

Program	FY 2023 President's Proposal	FY 2023 Final	FY 2024 President's proposal	Percent change v. FY 2022
Title I	\$37,281	\$19,088	\$20,536	11.69%
Title II	\$2,149	\$2,190	\$2,190	--
21 st Century	\$1,310	\$1,330	\$1,330	--
Title IV-A/SSAE	\$1,220	\$1,380	\$1,405	1.81%
IDEA Part B	\$16,259	\$14,194	\$16,259	14.55%
CTE State Grants	\$1,355	\$1,430	\$1,473	3.04%
AEFLA	\$739	\$729	\$759	4.11%
CCDBG	\$7,562	\$8,021	\$9,000	12.2%

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House Priorities for 2023



- Must-pass legislation (appropriations)
- Oversight
 - COVID-19 relief funds
 - Student loan relief
 - Free speech on college campuses
- Parents Bill of Rights

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House Oversight

- COVID-19 relief funds spending
 - ESSER spending rate
 - ESSER spending on controversial topics
 - NSBA letter
- Early April oversight request to Secretary Cardona re: ESSER spending
 - Documentation related to ED's administration of ESSER funds;
 - ED documents re: appropriate use of ESSER funds;
 - Documents/communication containing any accounting for the length of time schools were closed for in-person instruction;
 - Docs/communication related to approvals of certain State plans.

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Parents Bill of Rights (H.R. 5)

- Passed House on March 24
- Would amend ESEA to require that districts provide certain information/access to parents as a condition of grant
- Additional reporting by LEA/SEA
 - State must publish curriculum
 - LEA must publish local budgets, information on violent incidents



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Parents Bill of Rights (H.R. 5)

- Right for parents to:
 - Review curriculum and instructional materials, with opportunity for comment
 - Access lists of books in library
 - Meet with teachers twice per year
 - Address school board
 - Review any professional development materials
 - Opt into (not out of) outside speakers and health screenings

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Impact at the Local Level



- New attention to parent and community engagement and transparency is impacting administrative burden on schools
 - State laws being passed
- Increases in FOIA and other document requests across the country
- Schools spending more money on staff labor, document review systems, etc.
- Primarily anecdotal – no database tracking these types of requests nationally

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Protection of Women and Girls in Sports Act (H.R. 734)

- Passed House Committee on March 9th
- Amends Title IX of the Education Amendments of 1972
- Applies to all “recipients” of federal financial assistance
- Prohibits students from participating in women’s or girls’ sports if their reproductive biology and genetics are “designated male at birth”

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Administration Priorities

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New Guidance

- ESSER/GEER use of funds guidance (December 2022)
 - <https://oese.ed.gov/files/2022/12/ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update.pdf>
- Emphasizes importance of “COVID connection” (expenditures must “prevent, prepare for, and respond to” the pandemic)



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New Guidance

- ESSER/GEER use of funds guidance (December 2022)
 - Can use funds for school meal programs, wiping student meal debt
 - Video cameras ok, but privacy and civil rights concerns
 - New construction discouraged
 - Especially athletic facilities
 - Incentives for supplemental programs allowable
 - Can also pay student activity fees
 - Can pay gas/utility costs for district to help “maintain operations”


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New Guidance

- ESSER/GEER use of funds guidance (December 2022)
 - May be able to pay for services past obligation/liiquidation deadline under certain circumstances:
 - Obligated and liquidated in a timely manner?
 - Allowable under State/ local rules?
 - Reasonable and necessary?
 - Supportable under “prudent business practices” and internal controls?
 - Within 4 years of obligation deadline
 - But... “Generally, it is not good stewardship of Federal funds or prudent business practice to prepay for services that will extend many years into the future.”



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New Guidance

- PACs/PSCs State Approval guidance (December 2022)
 - <https://oese.ed.gov/files/2022/12/oese-pac-psc-prior-approval-dear-colleague-letter-to-post.pdf>
- States can approve (rather than seeking approval from ED)
 - Pre-award costs where otherwise allowable
 - Participant support costs up to \$5000 per person per event
- But! Prior approval =/= ultimately allowable!

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ESSER/GEER Monitoring

- ED is in the process of drafting monitoring protocol
- Will include:
 - CARES equitable services
 - Use of funds
 - Davis-Bacon compliance
 - Obligation/liquidation timing
- Also working on MOEquity compliance monitoring plan
 - Top-down from State level compliance determinations



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New Rules: Child Nutrition

- USDA is required to issue updated regulations that align with the Dietary Standards for All Americans
- Proposed updated standards on:
 - Sodium reduction
 - Added sugar limits
 - Whole grain minimums
- Changes to rules around flavored milk?
- Length of phase-in?
 - Starting fall 2024, running through fall 2029?



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New Rules: Community Eligibility

- USDA Proposed new eligibility standards for Community Eligibility Program (CEP)
 - Limited in what can be changed through regulations
- Proposed changes
 - Eligibility threshold from 40% ISP → 25%
 - Notify schools of potential eligibility at 15% (down from 25%)
 - NO ADDITIONAL FUNDING → “budget neutral”

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New Rules: Title IX

- For purposes of all athletics programs run by recipients of federal financial aid
- If a recipient “adopts or applies” a “sex-related criteria” for participation on any sports team consistent with a student’s gender identity, criteria must:
 - Be “substantially related to achievement of an important educational objective”
 - relevant to grade level, sport, level of competition
 - AND
 - “minimize harms to students” who would be limited or denied participation
- PROPOSED rule – 30-day comment window

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2022/3 Regulatory Agenda



- Fall 2022 Regulatory agenda published in January 2023
- Upcoming for K-12:
 - ⚠️ IDEA and school-based Medicaid proposed rule (est. April 2023)
 - REAP allocations proposed rule (est. May 2023)
 - Impact Aid final rule (est. June 2023)

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2022/3 Regulatory Agenda

- Upcoming rules:
 - ⚠ Updates to EDGAR (est. January 2023)
 - ⚠ FERPA updates (est. April 2023)
 - Title IX educational program /admissions final rule (est. May 2023)
 - Updates to Uniform Grants Guidance (est. July 2023)

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Court Cases: Three to watch

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(1) Title IX Litigation



- Two potential vehicles:
 - Notice of Interpretation (NOI) lawsuit filed by States, currently in federal court
 - Forthcoming Title IX Final Rule


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(2) Student Loan Forgiveness

- Two cases:
 - State of Missouri on behalf of MOHELA
 - Private plaintiffs
- Some standing questions
- Two main questions of law:
 - Did student loan forgiveness have to go through APA notice and comment process?
 - Does 2003 HEROES Act give President authority to wipe student loan debt?



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“Major questions” doctrine

- The concept that Congress must speak particularly clearly when it authorizes the executive branch to take on “matters of political or economic significance.”
 - How much action can President take without Congress being explicit?
 - What is “significant?” How is that measured?

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(3) Charter Schools Case


- North Carolina charter school requires different uniforms for male and female students because of believe that girls are “fragile vessels” and need to be shown courtesy/chivalry
- Argues the Equal protection clause does not apply because it is a private entity, not a “state actor”
 - Expand on Maine voucher case argument that private recipients of federal aid are not State actors
- Are charter schools public entities? State ones? Something else?

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Questions?



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