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September 12, 2022

Dr. Curtis Culwell
Executive Director
Texas School Alliance

Via email: curtis@texasschoolalliance.org

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal activities of the TSA.

1. Appropriations update.

On July 28, the Senate Appropriations Committee released its proposed Democratic fiscal year (FY) 2023 funding bills. This means that we now have both the House and Senate proposals for FY23. It's important to note that these are the Democratic proposals, and the negotiated bipartisan bills may lead to significantly lower funding than the democrat-only bills.

Here are the proposed numbers for Title I and IDEA:

	President's Proposal	House	Senate
Title I	$36.5 billion (includes a proposal for $16 billion to be included as mandatory spending)	$20.5 billion (+$3 billion from FY22)	$20.1 billion (+2.6 billion from FY22)
IDEA	$16.26 billion (+3 billion from FY22)	$16.26 billion (+3 billion from FY22)	$15.3 billion (+1.98 billion from FY22)

The House left for August recess before passing the Labor-HHS-Education spending bill. Although it is possible the House passes the bill once they return, it's far more likely that the next action on FY23 appropriations will be a congressional vote to extend current FY22 funding for a period into FY23.

The Senate is not expected to take further action on appropriations as all attention is on a possible reconciliation package.

2. Pending deadline for ESSER funding.

On July 22, AASA, the Council of Chief State School Officers and ten other national organizations, sent a letter to Secretary Cardona confirming late liquidation guidance for ESSER funding that the Department recently issued, and to propose some additional clarifications and considerations. Specifically, the letter seeks clarification that the late liquidation would apply not only agreements related to school infrastructure projects, but also service agreements and licensing agreements that support COVID recovery, such as tutoring programs, summer school, professional learning, and online instructional materials.

It also seeks clarity around the liquidation extension timeline and requests that ED extend the liquidation extension period to December 31, 2026, so districts and states can use funds through the end of the 2025-2026 school year. Finally, they asked the Department to consider a process by which liquidation extension requests can be granted in a timely manner, given the extraordinary burden on districts, states, and the Department that reviewing requests on a case-by-case basis would present.

3. Title IX Regulation comments.

Education Secretary Miguel Cardona's proposed Title IX rule that overhauls the Trump-era rules on responding to sexual misconduct on campus drew more than 146,000 comments by Monday night, just ahead of the regulation's comment deadline. By Tuesday morning, it hit more than 349,000.

- The proposal would update the federal education law that bans sex-based discrimination by extending discrimination protections to LGBTQ+ students. The rule would ban "all forms of sex discrimination, including discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity."
- The rule largely focuses on undoing the Trump-era Title IX rule that mandates how schools must respond to reports of sexual misconduct in schools. The proposal no longer requires live hearings for Title IX investigations and reverts the definition of sexual harassment back to "unwelcome sex-based conduct that creates a hostile environment by denying or limiting" a person's ability to participate in a school's education program or activity. The Trump rule currently only prohibits unwelcome sex-based misconduct if it is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."
- The comment period for the proposed Title IX rule ended on Sept. 12. Catherine Lhamon, the Education Department's civil rights chief, indicated that it's unlikely the agency will extend its comment period on its proposed Title IX rule despite GOP lawmakers requesting an extension.

4. Medicaid flexibility expected.

The federal government will issue guidance later this summer to encourage states to support districts' Medicaid reimbursements for school-based health services, according to a letter to governors posted on the U.S. Department of Education website last week.

- Although states have been able to allow districts to seek reimbursements for school-based health services for all Medicaid-eligible students since 2014 — known as the "free care" policy — only

17 states have made this a practice, according to Sasha Pudelski, Director of Advocacy for AASA, the School Superintendent Association.

- The anticipated free care guidance to states, along with a long-awaited comprehensive update to Medicaid guidance for schools on how to deliver and receive reimbursement for health services in schools, could open the door for schools to financially and logistically expand healthcare services for children, advocates said.

5. Pending status of ARP funds questionable.

From the moment the U.S. Department of Education began distributing $122 billion in relief funds in March 2021, Secretary Miguel Cardona emphasized the need to act swiftly to help students make up lost ground. His comments have only grown more pointed. “What I’m asking for,” he said in July, “is a level of urgency unlike any level of urgency we’ve had.”

Some districts haven’t spent the first dollar, much less the 20% earmarked for academic recovery. And of the nation’s 25 largest districts, the 12 that were in remote learning for at least half of the 2020-21 school year have spent an average of roughly 15% of funds from the American Rescue Plan. “It’s hard to argue with the importance of addressing lost instructional time for all students,” said Roberto Rodriguez, the department’s assistant secretary for planning, evaluation and policy development, as quoted in a recent article. Rodriguez added, “We want to see these dollars put to work now.”

As more information is obtained, we will share with TSA.

Very truly yours,

Thompson & Horton LLP

Christopher P. Borreca

CPB/bg

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