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## If Democrats Take the House, Here's What Awaits Betsy DeVos, Civil Rights, and ESSA

By Andrew Ujifusa | Sept. 9, 2018



If Democrats take control of the House of Representatives next year, expect civil rights to grab the spotlight and for congressional subpoenas in the name of education oversight to become more popular. But you may not see as much of U.S. Secretary of Education Betsy DeVos as some might think.

The bad blood between Democrats and the Trump administration started, well, right at the start, when they clashed with Betsy DeVos in that now-famous confirmation hearing more than 18 months ago. And Democrats have been scrapping with DeVos and the U.S. Department of Education ever since. The two sides have publicly squabbled over how she's handled states' Every Student

Succeeds Act plans, her approach to Obama-era guidance on school discipline and transgender students, K-12 spending, her changes to civil rights investigations, and, most recently, whether schools could spend ESSA money to arm teachers.

But what if Democrats found themselves the big winners from the November mid-terms and Rep. Bobby Scott, D-Va., ends up holding the gavel on the House education committee? What issues would they focus on the most? How would they handle DeVos? And could Democrats' eyes get too big for their stomachs? We asked some Capitol Hill veterans for answers, and here are a few answers we received.

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## Civil Rights in Focus

Scott said in a statement that in addition to "closing persistent gaps in educational equity and achievement," Democrats "must hold the Trump administration accountable for attacking students' civil rights and prioritizing corporate profits over the best interests of young people across the country."

In this case, "accountable" probably has a very specific meaning.

"One thing they're definitely going to do is do a lot of oversight of the department. The secretary's given them a lot to work with," said Charles Barone, a former staffer for retired Rep. George Miller of California, a top Democratic lawmaker on education for years (Barone is now the director of policy at Democrats for Education Reform). "Does any of that change what the secretary is going to do? Probably not. But it's something they should do."

Civil rights is really the issue to watch here, for several reasons.

- Democrats could follow up on their past criticisms that [DeVos has approved too many ESSA plans](#) that leave disadvantaged students, especially students of color, out in the cold when it comes to labeling schools that need improvement.
- They could zero in on [DeVos' decision to revoke Obama-era guidance](#) designed to ensure transgender students had access to restrooms and locker rooms that match their gender identity. The [Obama-era guidance on K-12 racial diversity is also gone](#). The secretary is also considering [pulling guidance related to racial disparities in school discipline](#), a top concern for Scott over the last several months, and an issue that's been [become part of debates about school safety](#) since the killings at Marjory Stoneman Douglas High School in Parkland, Fla.
- Beyond guidance, DeVos has [delayed implementation of an Obama rule for special education](#) dealing with how districts identify and serve students of color with special education services.
- DeVos has changed how the department conducts civil rights investigations. She wants it to handle incidents on a case-by-case basis, whereas Obama investigators focused on uncovering systemic issues at schools. DeVos has approved changes to the case manual for those probes conducted by OCR.
- The secretary has sought—unsuccessfully so far—to [cut the office for civil rights' budget](#) in two successive spending proposals. Democrats could bring her push to cut that program into larger criticisms they have about her budget blueprints.

One other factor that could push civil rights to the forefront: Scott is a former civil rights attorney. If Democrats win the House and Scott runs the committee, he would be [the first black chairman of the committee](#) since Rep. Augustus F. Hawkins of California—during Hawkins' leadership, the committee went by the name Education and Labor.

[Since DeVos has had a significant impact on civil rights policy, Democrats could turn the tables and use it their House majority to defend Obama-era initiatives, said Alice Cain, a former staffer for retired Rep. George Miller of California, a top Democratic lawmaker on education for years.](#)

["It has seemed like everything Obama did, they want to undo, across agencies," said Cain, who's now the executive vice president for Teach Plus, an educator advocacy group.](#) (Obama's first education secretary, Arne Duncan, [made this argument explicitly in a recent piece for Education Week commentary.](#))

You can also expect a lot of oversight hearings in general, and in particular on higher education. And Democrats could be particularly interested in using subpoenas to draw out [what they've said are conflicts of interest](#) regarding DeVos' higher education work.

## Legislation Under Consideration

So what would Democrats actually try to pass? It's going to be tough to get significant policy bills through. But keep the spring teacher walkouts and protests in mind.

It doesn't get the most attention these days, but school infrastructure is an area where President Donald Trump and Democrats, in theory, could still find common ground, especially after educators highlighted. And Democrats have the Rebuild America's Schools Act already in the till—the legislation includes \$100 billion for upgrading buildings and new projects. It's hard to get anything to move in Congress these days, but school infrastructure projects might not cause the hyperpartisan outcry triggered by other issues.

More generally, newly empowered Democratic House appropriators could bump up money for the office for civil rights, Title II, Title IV, and other areas of DeVos' budget. They'd have to work with the Senate to make those increases a reality, but the department's budget increased in the first spending bill Trump signed, and might rise again next year.

Then there's perhaps the primary driver of this year's educator activism from earlier this year.

"Teacher pay was a big issue this spring," said Lisette Partelow, the K-12 Director of Strategic Initiatives at the left-leaning think tank Center for American Progress and a former Hill staffer. "They might want to do something about how a federal piece of legislation could address that."

But getting either bill to pass will be very far from easy. And the forecast is pretty gloomy for big-ticket bills, like those covering the Higher Education Act and the Individuals With Disabilities Education Act.

In addition to difficulty getting bipartisan support in the Senate, there are some in the advocacy community—particularly those who advocate for students with disabilities—who might pressure Democrats not to push to reauthorize high-profile laws while Trump and DeVos are in office, regardless of whether Congress can make across-the-aisle progress. (See the bit about the delayed special education rule above, which several advocacy groups opposed.)

Even if Democrats control the House next year, what they're able to accomplish would depend a great deal on the Senate, which probably isn't going to flip to the Democrats through the midterms. And it's also possible that Trump will be less inclined to work with Democrats if they take power away from Republicans in the House.

By the same token, "a Democrat's not going to win any points by showing up at a bill signing with Trump these days," said Martin R. West, a professor of education at the Harvard Graduate School of Education and a former staffer for Sen. Lamar Alexander, R-Tenn., the GOP chairman of the Senate education committee.

Still, it's not as if Republicans have been energetically working their way through a big K-12 to-do list. (The House GOP higher education bill has also stalled out.) So there may not be much of an education policy agenda for Democrats to stymie if they take the House, West added.

One way Democrats could signal they are serious about addressing policy and not just making noise? Moving a [Deferred Action for Childhood Arrivals bill](#) in the first 100 days. That's according to John Bailey, a visiting fellow at the American Enterprise Institute and a staffer for President George W. Bush.

"It's harder when you have to actually govern and allocate floor time and actually get things done," Bailey said. "Outside of even the relevant committee, [DACA] was something that they all sort of rallied around."

## DeVos on the Hill

Compared to her predecessors' relatively sleepy Capitol Hill hearings, when DeVos testifies, it tends to draw a crowd—and make news. Her comments about guns and undocumented students to Democratic lawmakers have made headlines, for example.

So should we expect to see DeVos up on the Hill all the time if Democrats run the House? Not necessarily.

The House staffer we spoke with indicated that while frequently calling DeVos up to testify might be appealing to a certain extent, Democrats would be more interested in her deputies who can discuss her department's approach in detail. So if Democrats are in control next year, we might get a relatively heavy dose of Assistant Secretary for Civil Rights Kenneth L. Marcus and Assistant Secretary for Elementary and Secondary Education Frank Brogan in House hearings, among others. Names to watch on higher education who could spend some time speaking into the committee's witness microphones are Robert Eitel, a senior counselor to DeVos on higher education issues, and Diane Auer Jones, a senior adviser—both come from jobs in the world of for-profit colleges.

Barone said that while constantly calling DeVos to testify would be politically appealing, it's doubtful it would have a broader impact.

"She's already been subject to intense scrutiny around a number of issues. And that hasn't changed how she conducts policy," Barone said. "I wouldn't expect any change to come from trotting her out in front of the committee and putting more pressure on her."

And while DeVos may not be the most popular Trump official on Capitol Hill, Republicans wouldn't just let her dangle in the wind as Democrats go after her on civil rights and ESSA, West said:

"Republicans do have a different view than most Democrats in Congress as to how those issues should be handled. I doubt that you would see them failing to defend the steps that the department has taken thus far."

### **'Very Different Dynamic'**

Cain recalled that the last time the House flipped to the Democrats, in 2007, subsequent meetings between her boss, other Democrats on the Hill, and Secretary of Education Margaret Spellings were "cordial" and conducted in good faith.

"I think we had trust that Secretary Spellings had the same goals. Maybe a different way of getting to them sometimes. But the discussion was: How do you get there? It's a very different dynamic right now," Cain recalled. "I don't think Democrats and Republicans would say [now] they're even trying to get to the same place."

When we wrote in 2006 about [the prospect of Democrats taking the House](#)—and the Senate—Miller and Sen. Edward M. Kennedy of Massachusetts talked about making some changes to the No Child Left Behind Act, which was strongly supported and signed into law by President George W. Bush, but keeping its core elements like annual testing. The environment around ESSA and oversight of the law is significantly different today.

Despite a less-forgiving political climate and the temptation to attack DeVos, her staff, and their policies at every opportunity, Cain said Democrats should also lay out a positive agenda for education if they were to win the House.

"If they're holding five oversight hearings for every one 'Here's our vision' hearing, then yeah, it's going to be perceived as overreach," Cain said.

### **Highlighting Students**

One tactic the Democrats might try is giving voice to students they believe have been negatively impacted by DeVos' moves, according to Partelow of the Center for American Progress. They could hear testimony from transgender students, for example, who have been affected by the secretary's decision to rescind the Obama transgender guidance.

"What does that mean for them? Are they afraid to use the bathroom at schools? They might be subject to more bullying and harassment," she said.

Aside from such tactical moves, however, Democrats would have to prioritize where education stands in the list of areas where they want to push back on the Trump administration, as well as

what education issues to investigate. And elementary and secondary education might take a backseat to higher education issues Democrats want to highlight, like how proposals for reducing college tuition, and how DeVos has handled student loans and for-profit colleges.

"I would say that Congress has no shortage of things to investigate," Partelow said.

*Photo: Education Secretary-designate Betsy DeVos testifies at her confirmation hearing before the Senate Health, Education, Labor and Pensions Committee in January, 2017.*

--Carolyn Kaster/AP-File

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