

The Advocate: 2018 Wrap Up, 2019 Forecast

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2018 was a surprisingly substantive federal education policy year, especially when we consider it was a highly partisan, bruising mid-term election year. We would have predicted a pretty low volume of consequential education policy and a continuing resolution for our slice of the funding pie (LHHS), and on both accounts, we would have been wrong. So, what did we get instead? Here's a quick laundry list of things that happened in 2018:

- **Perkins Career and Technical Education (CTE) Reauthorization:** Congress was able finish reauthorization of the CTE bill, which had been stalled in the Senate since the previous Congress, due to differences over how to reign in the regulatory authority of the Secretary. The President applied political pressure starting in March 2018, and the bill was over the finish line by fall 2018. **The bill had bipartisan support in both the House and Senate, though the better House bill was passed over in favor of the Senate language for final passage.** While the final reauthorization does represent small improvements in the underlying statute, AASA was disappointed to see the missed opportunity for additional improvements in current law. Moving into the 116th Congress, the big focus on Perkins will be related to funding, to ensure that the requirements under the revised law are not cost prohibitive to school participation.
- **SCOTUS:** There were two Supreme Court cases with education impacts that AASA followed this year. Janus was the case that centered on whether or not public employees (including teachers) represented by a union but not belonging to that union can be required to pay a fee to cover the union's costs to negotiate a contract that applies to all employees. The court answered 'no' in a 5-4 decision that overturns an earlier ruling, dating back to 1977, that allowed the unions to charge such fees, which are often known as "fair share" or "agency" fees. **The second case—Wayfair—relates to applying sales tax to internet-based sales. The court overturned precedent here. States previously had not been able to apply sales tax to internet sales if the store/entity did not have a brick and mortar presence in said state. In light of this decision, states stand to claim upwards of hundreds of millions of dollars in previously unclaimable sales tax revenue, with potential impacts for state education funding.**
- **IRS State and Local Tax Deduction Regulations:** In November, the IRS heard arguments from [school superintendents](#) and voucher proponents about the possibility of the IRS closing down a tax shelter in 12 states that allows voucher supporters to profit from their donations to voucher tax credit programs. Superintendents from across the country submitted comments to the IRS in October urging them [to not carve-out voucher programs](#) from this larger tax regulation impacting state tax credits. While we were outnumbered at the IRS hearing, we had the stronger tax arguments. The IRS ruling is expected in January or February.
- **Public Charge Proposal:** A Trump proposal provided an opportunity for educators to weigh in on a proposed immigration regulation that could jeopardize the ability of your immigrant students to access to healthcare, food and housing. Specifically, the public charge regulation would amend a policy that has been on the books for decades and is intended to ensure that immigrants who have entered the U.S. legally are not granted green cards or lawful permanent resident cards if they are "likely to become primarily dependent on the government for subsistence."

The Trump Administration is changing the definition of a "public charge" to anyone who receives any assistance with healthcare, nutrition or housing. Because of the complexity of the new regulation, it is predicted that families (not just a family member who would be considered a public charge) will refuse to participate in Medicaid/CHIP, SNAP (food stamps) and public housing programs like Section 8. Specifically, this means that families with children who qualify for healthcare, nutrition and housing benefits will forego accessing these benefits for fear it could jeopardize a family member's ability to stay in the U.S. [Read more](#) about how this could impact district finances. The comment period closed December 10, and AASA will continue to monitor this issue. Find more information and our template for comments [here](#).

- **Annual Appropriations:** The federal government is currently funded through a combination of final appropriations bills (including LHHS) and a handful of bills under a Continuing Resolution that expires on December 7 (this update was written on Dec 1). IN terms of LHHS: It is not new news, but it is highly atypical: Congress completed its funding work for the Labor Health Human Services Education & Other (LHHS) slice of the federal funding pie ahead of schedule. LHHS is the appropriations bill that funds the U.S. Department of Education and provides the bulk of federal education dollars to K-12 schools. Federal fiscal year 2019 (FY19) started October 1. In recent years—spanning more than a decade—Congress has failed to complete its funding work on time and has needed to implement a continuing resolution (CR) for parts or all of the budget to avoid a federal shutdown. LHHS was always one of the funding pieces left to the end, often used to absorb cuts to pay for increases elsewhere. Different political pressures aligned for 2019 (which will be in schools for the 19-20 school year) and resulted in LHHS being funded on time. Full details are [on the blog](#), but here's a quick rundown:
 - **Overall allocation to the Department of Education is \$71.5 billion, an increase of \$581 million.** The final bill rejects the proposal to consolidate the U.S. DOE with the Department of Labor, as well as the Trump/DeVos privatization agenda. **The bill does NOT include language to prohibit the use of federal education dollars to arm school personnel.**
 - **Programs receiving an increase:** Title I (\$100 m); Title IVA (\$70 m); IDEA Part B (\$100 m); 21st Century (\$10 m); Charter School grants (\$40 m); Perkins Career Tech (\$70 m); Impact Aid (\$32 m);
 - **Programs that are level funded:** Title II A; Title III;
 - [Full chart](#) courtesy of Committee for Education Funding.
- **Farm Bill:** The House and Senate have reached a compromise on a Farm Bill conference report. As a recap, the House Farm Bill included two elements that AASA opposed: stricter work requirements for SNAP that could lead to millions of students losing access to meals at home and changes to categorical eligibility, which automatically enrolls 265,000 students in school meals. The compromise bill has not been formally released, but Congressional leaders say the nutrition elements closely track with the Senate bill, which only included administrative updates.
- **Relax of School Nutrition Regulations:** Agriculture Secretary Purdue announced a final decision as it relates to providing regulatory relief to schools for the Russell Nutrition Program. The recent announcement makes permanent the interim rule (and related flexibilities) as it relates to whole grains, flavored milk and sodium target. These are changes that AASA supports.

So, what's next?

Full analysis of the elections is available [here](#). What to expect in terms of education policy? A lot, though we have to remember to distinguish activity from productivity. **That said, we have seen some of the strongest policy come from a split Congress and we remain optimistic.**

A Democratic House will step up oversight of the administration in general. Specific to education, you can expect invitations for DeVos to account to the committee as well **as increased ESSA implementation oversight.** We could see a Democratic House come together with the Senate to move a permanent solution for DACA (which remains overwhelmingly bipartisan), though there are no guarantees the president would sign it.

School safety will remain a lightning rod and you can expect the House committee to be especially loud if Secretary DeVos includes information related to using federal dollars to arm school personnel in the Federal School Safety Commission report, expected in December. Potentially also tied into the report is the DeVos final decision/action on the school discipline guidance, which would again draw the ire of Democrats. The committee has indicated its strong interest in moving an infrastructure bill that includes education, an idea that gets bipartisan traction in the Senate and could receive the support of the president, who has long expressed interest in an infrastructure package (albeit it one without support for schools). **We already know both the House and Senate will re-up their efforts at legislation addressing/prohibiting seclusion and restraint in schools.**

Over on the Senate side, while we don't expect a shake up in the education committee membership, there is a different type of pressure: Current chairman Lamar Alexander enters his final term at the helm, due to term limits. This is his swan-song Congress, and there are a lot of eyes on whether or not he can work with Senator Murray on a Higher Education Act bill. They have a long, proven record of bipartisan work, but HEA has thus far proven elusive. Senator Alexander is term limited, meaning this will be his last term as Chairman, and he will be looking to go out on a high note. That could be HEA, but the recent details of the DeVos Title IX regs further complicates the process and politics of HEA.

Any major bill will need to be wrapped by the end of 2019 (because hello, the 2020 presidential campaign), and if it gets to be April/May and it's not all but certain that HEA will wrap, you can expect the Alexander team to pivot to another policy to get that 'win', and we have heard that FERPA is on that list.