

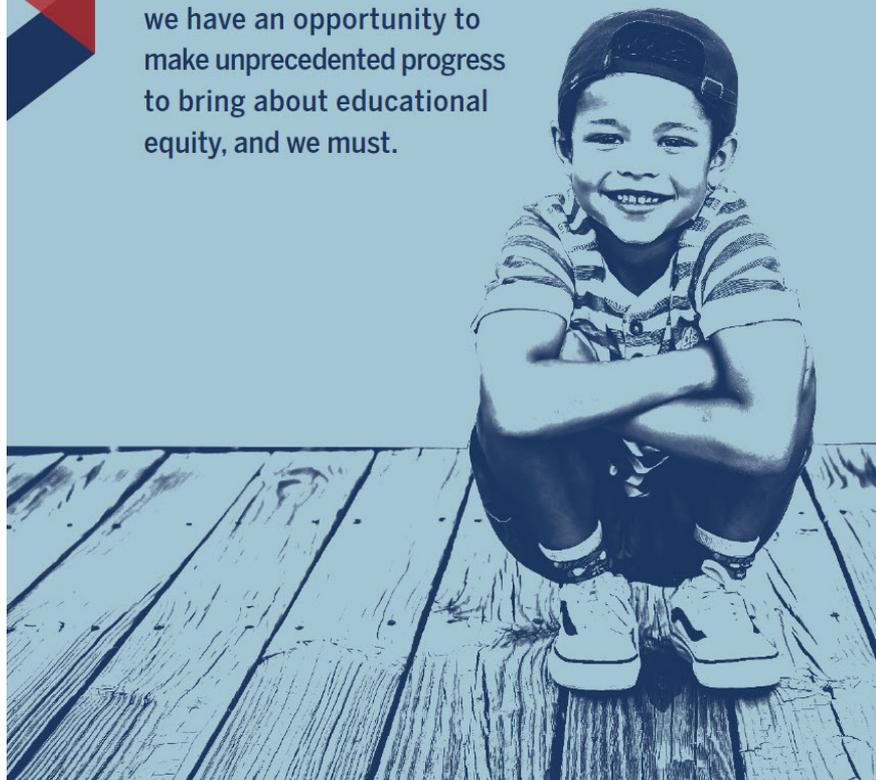


NSBA Legal and Legislative Advocacy Agenda
South Carolina School Boards Association
2018 Summer School Law Conference

Tammy T. Carter, NSBA Senior Staff Attorney
August 25, 2018

WE ARE

at a moment in history where we have an opportunity to make unprecedented progress to bring about educational equity, and we must.



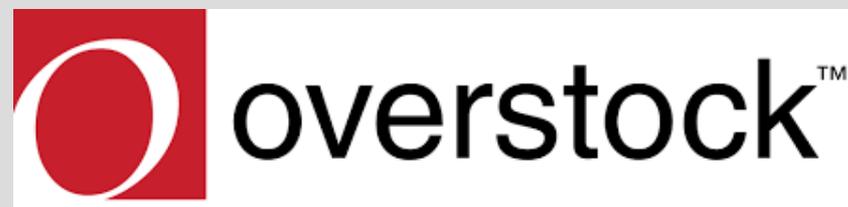
Agenda

- Introduction
- Supreme Court Update
- Federal Perspective
- Q&A

SCOTUS' 2017 Term

***South Dakota v.
Wayfair, Inc. No. 17-
494, (June 21 2018)***

Issue: whether a state has the authority to require an out-of-state online retailer with no physical presence in the state to collect sales tax on transactions with consumers who reside in the state.



Background...

In 2016 South Dakota enacted Senate Bill 106, requiring out-of-state retailers to collect and remit sales and use tax if they annually conduct with South Dakota residents either (1) \$100,000 worth of business, or (2) 200 separate transactions. S.D. Codified Laws §§ 10-64- 1 et seq. (2016).

The South Dakota legislation was designed as a direct response to Justice Kennedy's invitation in *Direct Marketing Association v. Brohl* to present “an appropriate case for this Court to reexamine *Quill*...” 135 S. Ct. 1124, 1135 (2015) (Kennedy, J., concurring).

Quill is the Supreme Court case that permitted states to impose excise taxes on out of state businesses provided they had a sufficient physical nexus with the state.

Shortly after the law was enacted, South Dakota sought a declaratory judgment in state circuit court to enforce the legislation against three out-of-state retailers. The State Supreme Court of South Dakota eventually concluded that the U.S. Supreme Court's precedent in *Quill* forbade South Dakota from enforcing the legislation against the out-of-state retailers.

South Dakota v. Wayfair, Inc., No. 17-494, (June 21, 2018)

- 5-4 split
- Majority: Kennedy (writing), Thomas, Ginsburg, Alito, Gorsuch
- Concurrences filed by Thomas and Gorsuch separately
- Dissent: CJ Roberts, joined by Breyer, Sotomayor, Kagan
- Bottom line: Good news for schools! Physical presence not required for sales tax obligations on sellers. Significant funding stream for states restored.

*Janus v. American
Federation of
State, County
and Municipal
Employees 31,
No. 16-1466 ,
(June 27, 2018)*



" I'VE JUST BEEN LAID OFF. IS IT TOO LATE FOR ME TO SIGN THAT UNION CARD YOU WERE TELLING ME ABOUT ? "

Background

- Since *Abood v. Detroit* (1977), the SCOTUS has recognized unions' ability to charge "fair share" fees to workers who are not members of the union. Fair share fees are minimum fees that non-union members pay to the union for the collective bargaining services that the union provides.

- In *Janus*, a public employee challenged a provision of the Illinois Public Relations Act that allows unions representing public employees to collect fair share fees from non-union members. The union asserted that all employees should contribute since all of them benefit from the collective bargaining efforts in which the unions engage.
- The district court dismissed the action. The Plaintiff appealed to the Seventh Circuit Court of Appeals.

- The Court of Appeals held that the claim was properly dismissed because of the Supreme Court's ruling in *Abood*.
- The Plaintiff filed a petition for cert. and SCOTUS granted review on September 28, 2017.

Janus v. American Federation of State, County and Municipal Employees 31, No. 16-1466 , (June 27,2018)

- **SUMMARY:** In a 5-4 decision (Alito writing) the U.S. Supreme Court overruled *Abood v. Detroit Bd. of Ed.* and held that: “The State’s extraction of agency fees from non-consenting public-sector employees violates the First Amendment.” It held that states could no longer require non-members to pay agency fees.

Janus (Cont'd)

- Note that the Court held that unions must continue to represent nonmembers in the absence of agency fees. It said: “...Their [the unions’] duty of fair representation is a necessary concomitant of the authority that the union seeks when it chooses to be the exclusive representative.”

Link to FAQ's For Janus

- The following link provides answers to some questions your clients might have regarding the Court's holding in Janus and how it might affect their districts:
- <https://cdn-files.nsba.org/s3fs-public/reports/JANUS%20FAQs-Final.pdf?rJQFzhTdW.xKpRsyiQCbqGrh4k6R0XO8>

Circuit Court Cases



***Davison v.
Rose, 715
Fed.Appx.
298 (4th Cir.
2018).***

Issue:

Whether a private social media account of a school board member is a public forum, and if so, does the First Amendment apply to messages posted by community members, or is it instead a personal platform in which the account holder may determine the expression that appears there.

Background...

- A parent regularly spoke at school board meetings and blogged about his complaints against the school system, often posting comments on private social media pages of school board members.
- Several individual school board members deleted comments the parent posted to the social media pages and blocked him from posting any more comments to those accounts.
- Parent brought a claim in federal court claiming violation of his First Amendment rights.
- Parent also asserted the school board member actions were in retaliation for his constant public criticism of the school system.

Federal District Court...

- Dismissed the claims against the individual school board members, finding they did not knowingly violate a clearly established First Amendment right of which a reasonable public official would have known.

Court noted:

- Law is not clear as to whether private social media pages created by public officeholders are public forums subject to the First Amendment.
- Parent appealed to 4th Circuit. NSBA joined a brief with other organizations representing state and local entities.

NSBA brief filed December 7, 2017, argued that:

- Only a governmental unit may create a public forum.
- Private social media accounts of public officeholders are neither traditional nor designated public forums.
- Unless a forum is a traditional public forum, such as a street, sidewalk, or park, the government must act intentionally to create a public forum.
- Social media platforms such as Facebook or Twitter are not themselves government property or programs, and are not per se public forums.
- Nor are the personal social media accounts of users, even users who are public officeholders, public forums.

Davison v. Rose, 715 Fed.Appx. 298 (4th Cir. 2018)

- In an unpublished, *per curiam*, decision the Fourth Circuit Court panel dismissed and remanded the case back to the district court, finding that it had not issued a final decision on Davison's request for injunctive relief. The district court will now consider that request.



Federal Perspective

Overview

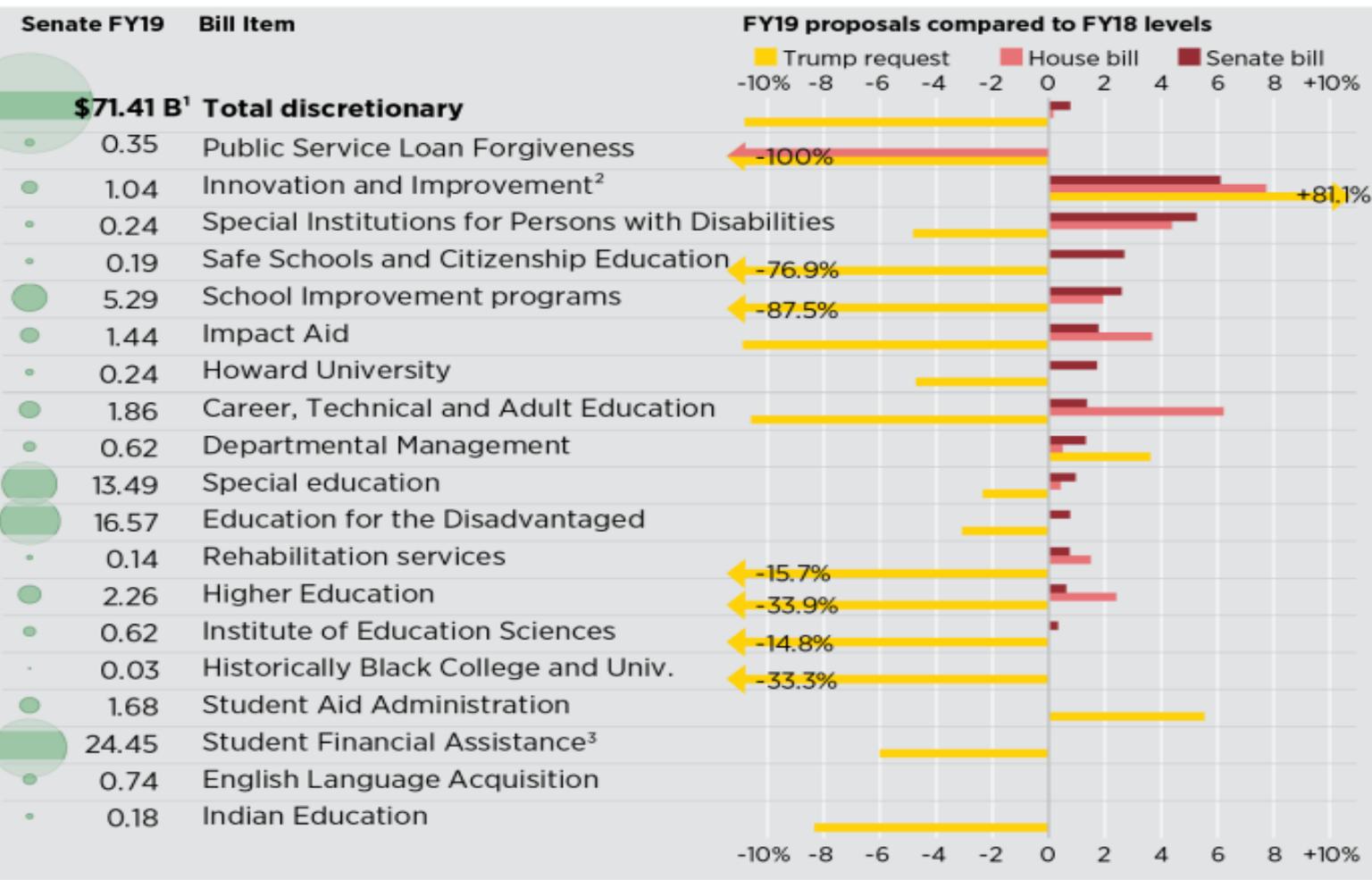
- Appropriations
- Net Neutrality
- DACA
- Higher Education Act Reauthorization
- Perkins Career & Technical Education Act Reauthorization
- Educational Choice
 - Voucher Opposition/ Tax Reform 2.0
 - Impact Aid
 - Proposed Charter School Expansion Regulations
- Child Nutrition/FARM Bill
- U.S. Department of Education Reorganization
 - Privacy Technical Assistance Center (PTAC)
 - Office of English Language Acquisition (OELA)

Fiscal Year 2019 Appropriations

- Both House and Senate Appropriations Committees have reported their recommendations for U.S. Department of Education programs, with a collective increase of more than \$540 million proposed over FY2018.
- Senate began debating FY2019 funding bill (S. 3158) for education and defense programs this week.
- **ASK:** Urge your congressional delegation to support the proposed increases in the final FY2019 funding bill for education programs (Title I, special education, school safety, Title IV academic enrichment, CTE, and Impact Aid).
 - ✓ Highlight success stories of student achievement.
 - ✓ Note district priorities for enhanced school safety measures.
 - ✓ Mention the amount of funding your district dedicates to IDEA, noting that the average federal share per child is \$1,738 for 2018.

Back to School: Education Spending Details

House and Senate appropriators would provide targeted increases in fiscal 2019 while holding total discretionary spending near the fiscal 2018 level and largely ignoring President Donald Trump's request to slash or cut dozens of programs.



¹Total net discretionary figure for Senate is \$70.8 B including a \$600 M Pell Grant rescission.

²Trump request would consolidate several programs into \$1 B Opportunity Grants account.

³House bill would dip into \$7.4 B Pell surplus to hold maximum Pell Grant steady at FY18 enacted level; Senate bill would use surplus and also rescind available discretionary and mandatory funds.

Source: CQ appropriations reporting
Randy Leonard and Peter Cohn/CQ



Current Federal Appropriations – FY2018

- Title I Grants - \$16.44 billion
- Title II - \$2.056 billion
- Special Education (IDEA) - \$12.27 billion
- Title IV Grants - \$1.1 billion (Student Support & Academic Enrichment)
- English Language Acquisition - \$737 million
- Career & Technical Education - \$1.19 billion

| NSBA Priority | Current FY2018 Funding | Administration's FY2019 Budget Request | Senate Appropriations Committee Mark for FY2019 | House Appropriations Committee Mark for FY2019 |
|--|---|---|--|---|
| Every Student Succeeds Act (ESSA) - Title I Grants for Disadvantaged Students | \$16.44 billion [Benefits more than 25 million students.] | \$15.9 billion | \$16.56 billion [Would provide a \$125 million increase over FY2018.] | \$16.44 billion |
| Individuals with Disabilities Education Act (IDEA) State Grants | \$12.27 billion [Supports more than 6.5 million students with disabilities.] | \$12 billion | \$12.4 billion [Would provide a \$125 million increase over FY2018.] | \$12.32 billion [Would provide a \$50 million increase over FY2018.] |
| ESSA -Title II Grants Supporting Effective Instruction | \$2.056 billion [Supports training and preparation for teachers/school leaders, class-size reduction, civics engagement, etc.] | \$0 | \$2.056 billion | \$2.056 billion |
| ESSA -Title IV Grants Student Support and Academic Enrichment | \$1.1 billion [Supports STEM education and computer science; school safety and violence prevention; and, use of technology to improve instruction.] | \$0 | \$1.22 billion [Would provide a \$125 million increase over FY2018.] | \$1.2 billion [Would provide a \$100 million increase over FY2018.] |
| Impact Aid | \$1.41 billion [Provides flexible support to school districts with non-taxable, federally owned land and activities, such as military bases.] | \$1.26 billion | \$1.43 billion [Would provide a \$25 million increase over FY2018.] | \$1.46 billion [Would provide a \$52 million increase over FY2018.] |
| Perkins Career and Technical Education State Grants | \$1.19 billion [Supports integration of academic, career, and technical instruction, as well as state/local program improvements for career pathways.] | \$1.11 billion | \$1.19 billion | \$1.46 billion [Would provide a \$115 million increase over FY2018.] |
| ESSA - Title III Grants | \$737 million | \$737 million | \$737 million | \$737 million |

Net Neutrality

- **Urge your representatives to sign the bipartisan discharge petition for H.J. Res. 129 to restore Net Neutrality. *Currently 177 signatures.***
- Senate passed S.J. Res. 52 last May.
- August 15 – FCC oversight hearing convened by Senate Commerce Committee
- Priority for rural broadband deployment

Net Neutrality

- 2015 Federal Communications Commission Order
- Banned the blocking and slowing of Internet content by service providers
- Banned the practice of “paid prioritization” to allow online companies “fast lanes,” or faster delivery to Internet users' devices, particularly if it involves extra fees the websites must pay for the special treatment
- Established a “general conduct” standard for the FCC to investigate questionable broadband practices

Net Neutrality

- Could impact Internet/broadband access and affordability, classroom instruction and curriculum content
- Effect could exacerbate the “homework gap” affecting millions of students
- Impact on E-Rate resources for schools and libraries

DACA refresher...

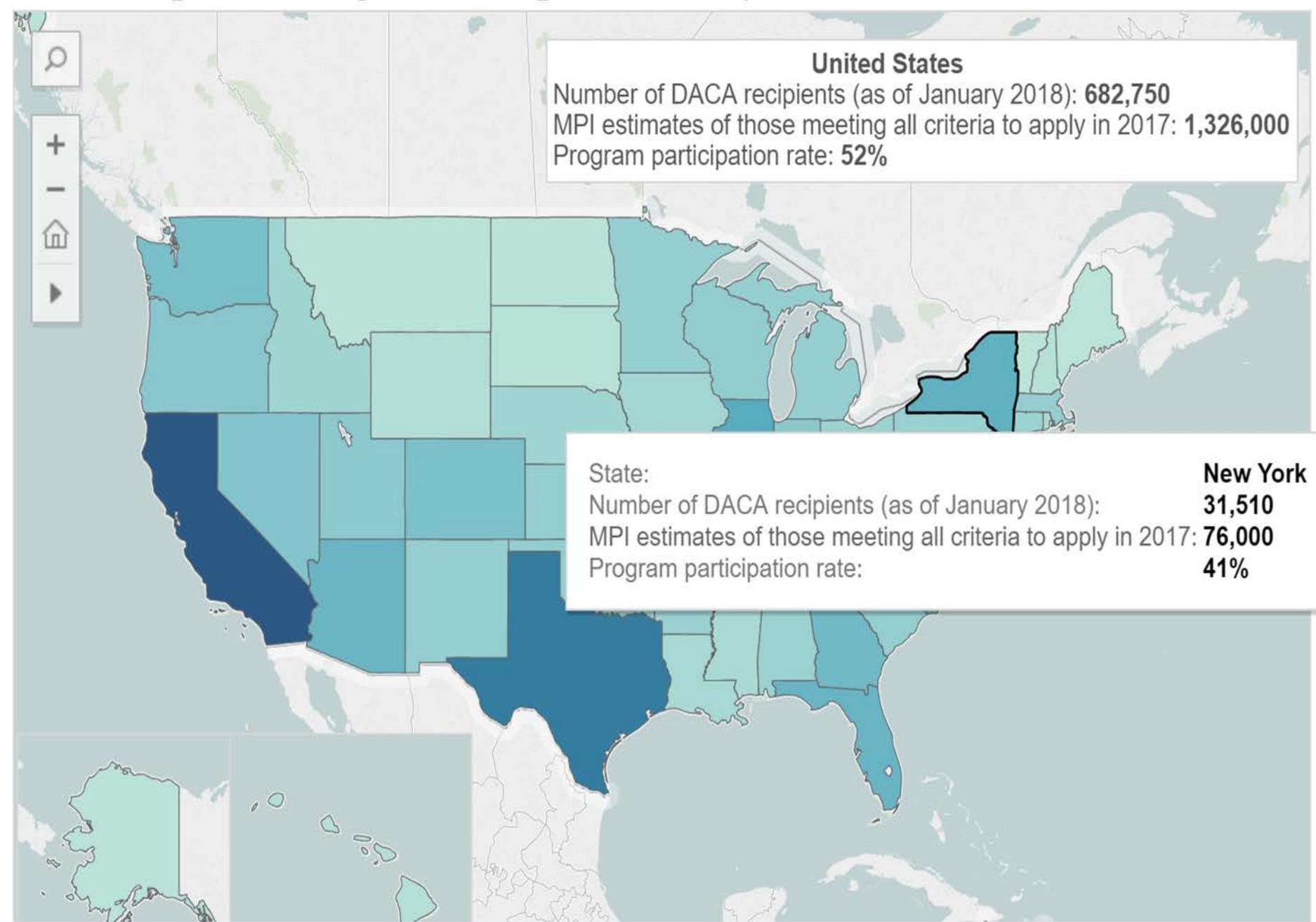
- Deferred Action for Childhood Arrivals (DACA) - begun in 2012. Allowed certain young people who arrived with undocumented parents to apply for protected status: government would forbear removal action against undocumented individual for a designated period.
- Involved extensive application process & background check.
- Authorized hundreds of thousands of young people for deferral of removal proceedings and work authorization.
- In 2017, federal government rescinded DACA: After expiration of grantees' current terms, grantees will immediately face loss of employment, loss of certain benefits, and be subject to deportation.

- NSBA joined with several state associations and national educ. groups in amicus briefs challenging the DACA rescission.
- Cases are now on appeal to the 9th and 2nd Circuits.
- The briefs focused on ways DACA program motivated young people to stay in school, leading to productive participation in society.
- School districts impacted as both education service providers and employers of educators who are DACA recipients.
- Loss of DACA would disrupt classrooms and destabilize school districts (student achievement, teacher shortages, diversity).

Deferred Action for Childhood Arrivals (DACA)

- Unique feature of the briefs -- the testimony of students, teachers, administrators **and school board** members about their experiences concerning the educational benefits of DACA, and how they will be detrimentally affected by this abrupt change in policy.

DACA Recipients & Program Participation Rate, by State



NSBA Advocates for Legislative Solution

- NSBA urged Congress's swift consideration of DACA bills:

“Without DACA or similar legislation, our schools and communities, as well as our national economy, will suffer. Policymakers’ gridlock puts the nation on a path leading to significant negative consequences for learning in public schools, quality of life for families, and economic well-being in communities. We will lose over 800,000 young adults who have attended school, established careers and contributed to America’s communities and growing economy.”

-- NSBA Executive Director and CEO Thomas J. Gentzel, in an editorial published by *The Hill*.

**THE
HILL**

Foreclosing DACA debate puts politics above people

BY THOMAS J. GENTZEL, OPINION CONTRIBUTOR — 06/15/18 02:00 PM EDT

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL



So, what has Congress been doing on DACA?

- Petition for Discharge “Queen of the Hill”
 - Mechanism for considering 4 pieces of legislation by the full House without leadership support
 - Required majority vote of House: 218 signatures needed
- House Leadership sought to shift away from Petition for Discharge through floor votes on two bills:
 - A conservative bill requiring funding of a “wall” and other interior measures, and no real pathway to citizenship, but 3 year DACA renewals

DACA

The proposed bills continued:

- Moderate bill requiring funding for a “wall” and other interior measures, but with a pathway to citizenship
- Both proposals failed on 6-27-18
- House to take up legislation addressing family separations

What is DACA's Status now?

- Unlikely Congress will act before the mid-term elections, although after returning from recess, there may be renewed push by legislators in battle ground jurisdictions.
- Without legislative fix and as court cases continue, no first-time applicants, but DACA renewal applications must continue.

Advocacy

Home / Advocacy / Take Action » Legislative Action Cen ...

- › School Law
- › Federal Legislative Priorities
- › Public Engagement
- ▼ Take Action

[Legislative Action Center](#)

[How to Contact Your
Members of Congress](#)

[How to Contact the Media](#)

Legislative Action Center

**ACT NOW: Urge Members of the U.S. House of
Representatives to Restore DACA**

NSBA resource

www.nsba.org

A light gray silhouette of the United States map is positioned in the background behind the title text.

LIFTING THE LAMP

Beside the Schoolhouse Door

A Legal Guide to Serving Undocumented Students in Public Schools



Higher Education Act Reauthorization

- Urge Congress to continue investments and support in Title II programs for teacher/school leader preparation.
- Urge Congress to continue the Public Service Loan Forgiveness (PSLF) program for educators that helps districts attract and retain effective teachers and leaders.

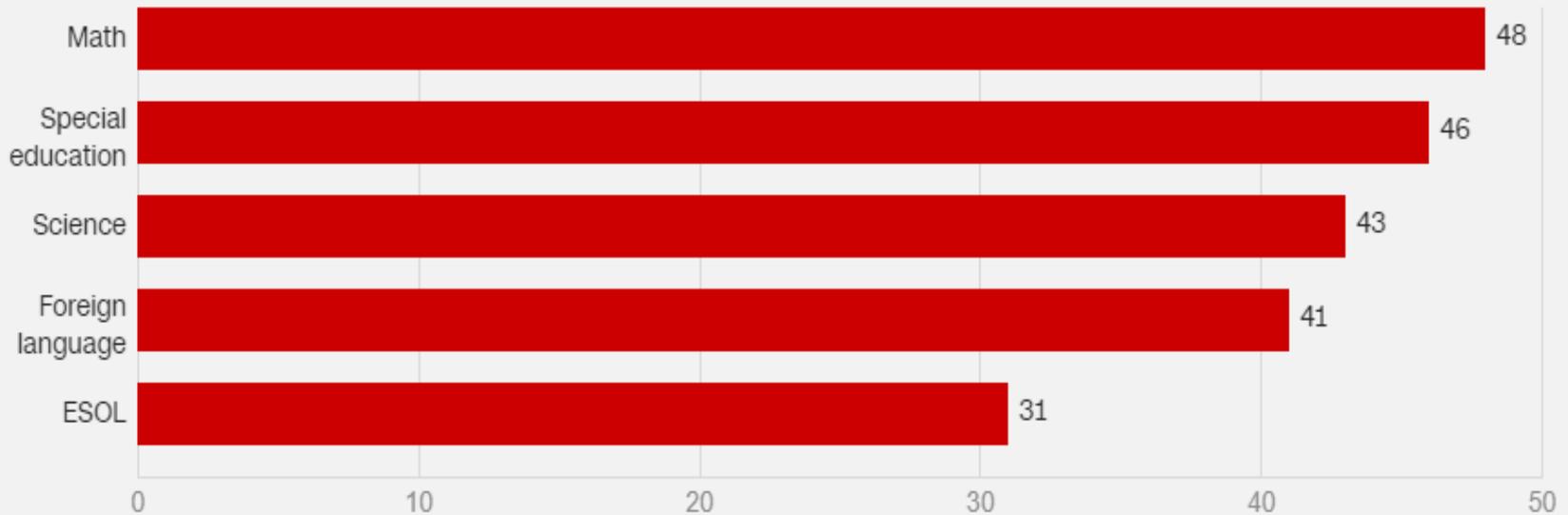
Teacher Shortages and Their Impacts on K-12 Schools and Educator Preparation Programs

- **Costly:** When teachers leave, districts must hire and train new teachers.
- **Can negatively impact workforce quality and student learning:** Too much turnover can be harmful. To fill vacant positions, schools often resort to hiring inexperienced or unqualified teachers, increasing class sizes or cutting course offerings.
- **Can disrupt positive teaching cultures:** Persistent turnover can disrupt school stability, collegial relationships, collaboration and the accumulation of institutional knowledge.
- **Disproportionate impact certain student groups:** Staffing inadequacies and turnover are most common in high-poverty, urban and low-performing schools.

HEA Reauthorization & Title II

Subject shortages 2017-2018

Here are the top 5 subjects and the number of states reporting shortages



Source: US Department of Education

Title II Advocacy

- Convey local support to your members of Congress, especially with FY2019 appropriations process and HEA reauthorization
- Provide salient examples of success
- Note the possible impact on student achievement and school district accountability regarding ESSA compliance

Child Nutrition

- Secured provision in House-passed FARM bill for USDA consultation with school boards for child nutrition programs
- Current efforts to include stakeholder engagement for school boards in upcoming USDA regulations to address operational burdens of school districts
- Will help rural school districts and other districts facing challenges for compliance

Career & Technical Education Reauthorization

Career and Technical Education:
**Building New Pathways
into the Labor Market**



Strengthening Career and Technical Education for the 21st Century Act

H.R. 2353 enacted July 31, 2018

Perkins CTE Reauthorization

- Maintains formula grant structure
- Comprehensive needs assessment every 2 years
- Would become effective July 1, 2019
- Requires disaggregated data reporting for student subgroups
- Expands use of resources for CTE/career exploration in earlier “middle grades”

Perkins CTE Reauthorization

- Encourages targeted services for at-risk students, effective counseling services and career readiness for students pursuing employment opportunities in non-traditional fields
- Focus is on performance of CTE concentrators (students taking 2 + courses in a specific discipline)
- Local grant applications must describe improvements for recruitment, retention, and training of CTE teachers, faculty, specialized instructional support personnel, paraprofessionals, and career guidance and academic counselors, including individuals in groups underrepresented in such professions.



Career Technical Education (CTE) is an educational option that provides learners with the knowledge and skills they need to be prepared for college and careers. It gives purpose to learning by emphasizing real-world skills and practical knowledge within a selected career focus.

CTE *Delivers* FOR PARENTS AND STUDENTS

92%

of students involved in CTE and their parents are satisfied with their high school experience compared to 78% of those not involved in CTE.

93%

The graduation rate for students who take a concentration of CTE courses is about 93 percent, approximately 10 percent higher than the national average.

82%

of CTE students are satisfied with their ability to learn real-world skills in school, compared to just 51 percent of non-CTE students.

Focus is now on implementation of CTE reauthorization

- Equitable access to high-quality CTE, including in rural communities
- Work-based learning
- Diverse array of programs
- Effective teachers

**Advance CTE*

Educational Choice/Voucher Opposition/Tax Reform 2.0

- Opposed inclusion of voucher/education savings accounts (ESAs) amendments in National Defense Authorization Act for FY2019
- Proposals could have diverted \$400 million + from the Impact Aid Program to ESAs for military families without oversight or accountability regarding how the funds would be used.
- **Next steps** - Opposition to any voucher proposals in upcoming tax bill from Ways and Means Committee with measures to expand 529 education accounts, per the following: “Building upon the improvements in the *Tax Cuts and Jobs Act* so families can also use their education savings to pay for apprenticeship fees ... cover the cost of home schooling, and help pay off student debt.”



FEDERAL REGISTER

The Daily Journal of the United States Government



PR Proposed Rule

Proposed Priorities, Requirements, Definitions, and Selection Criteria-Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools

A Proposed Rule by the [Education Department](#) on [07/27/2018](#)

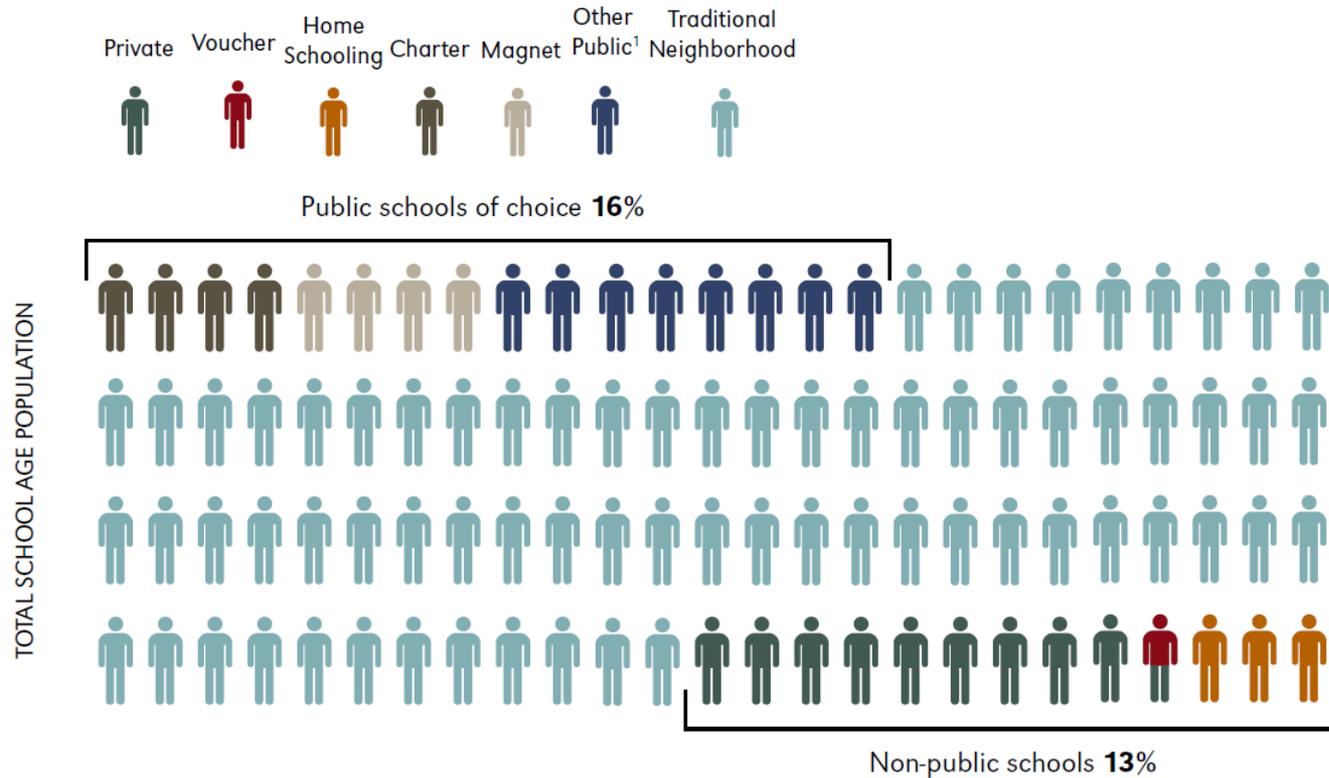


This document has a comment period that ends in 9 days. (08/27/2018) [SUBMIT A FORMAL COMMENT](#)

Proposed Charter Schools Expansion – Priority Areas

- Diversity
- School Improvement through Restart Efforts
- High School Students
- Underserved Communities
- Rural Communities
- Number of CMOs
- Replicating or Expanding High-Quality Charter Schools to Serve Students who are Native American

87% of all school-aged children attend a public school



www.centerforpubliceducation.org

The Every Student Succeeds Act: Local Governance & Implementation

- NSBA's guidebook and workbook for school districts on ESSA implementation offers practical insight for district plans to advance student achievement and maximize resources.
- From insight on monitoring student progress to supports for vulnerable students and Title I program design, the materials provide a strategic framework to promote effective intra-district collaboration.

The Path to Student Success & Planning for Action

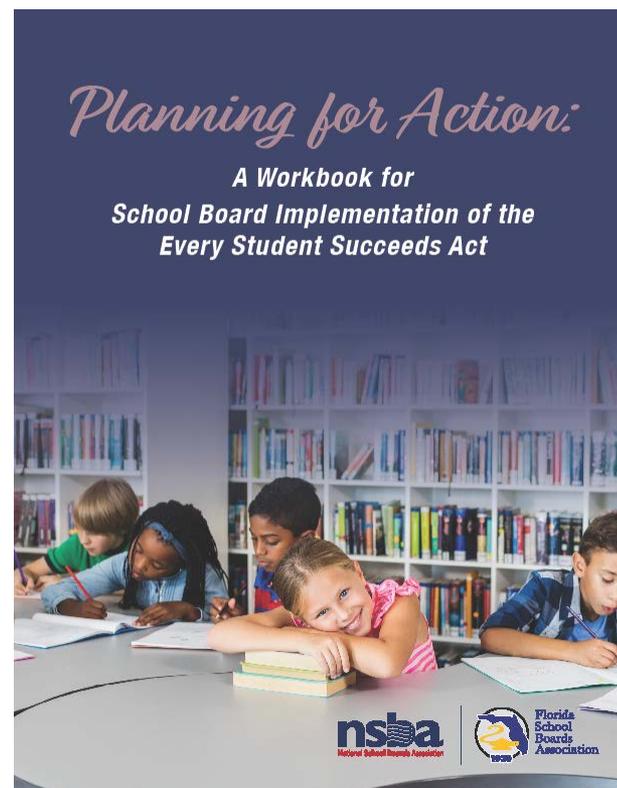
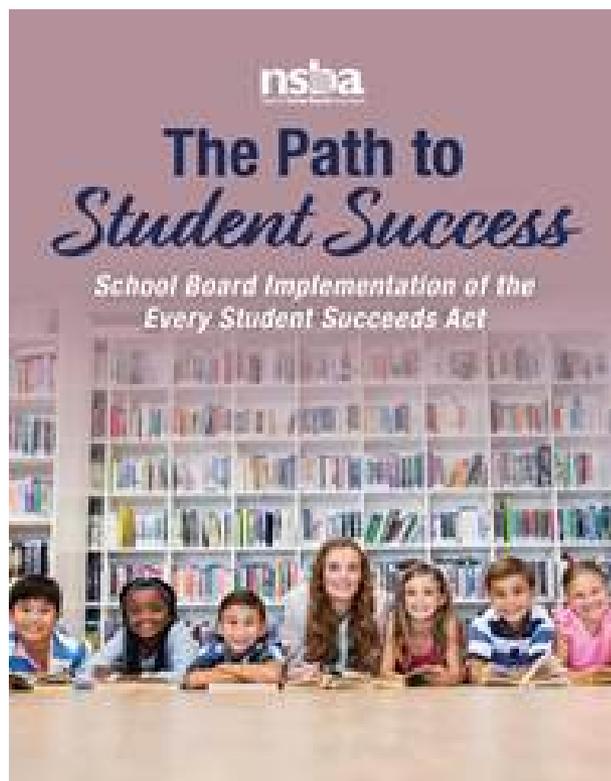
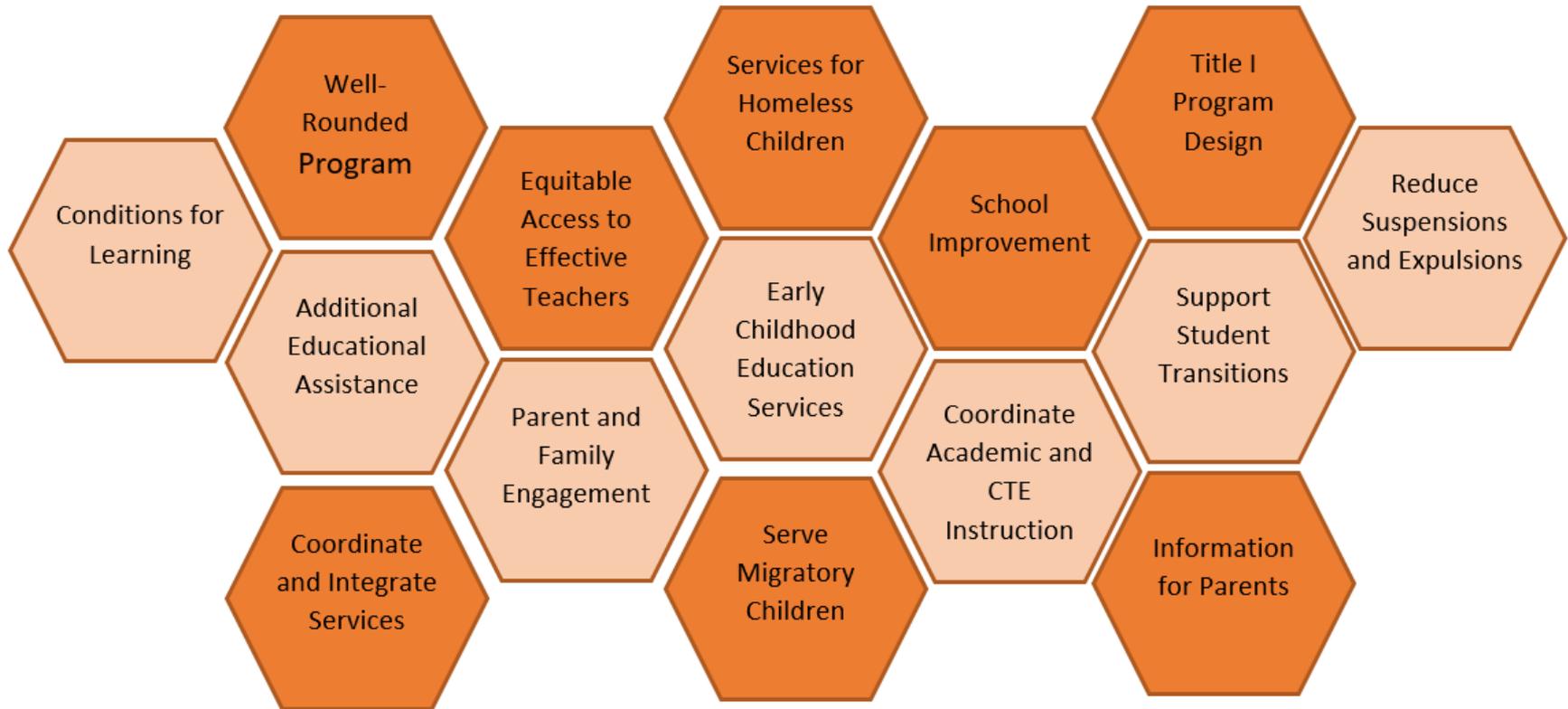


Figure 1. Examples of Policy Areas Congress Highlighted in the ESSA LEA Plan Provisions (Sec. 1112)



School Safety & Title IV Student Support and Academic Enrichment Grants

- FY2018 Appropriations \$1.1 billion (\$700 million increase).
- House/Senate Appropriations Committee Report: Funds can have a “wide range of uses, including to expand access to or coordinate **resources for school-based mental health services and supports**, which may include **trauma-informed practices and school counseling**; bullying prevention; and professional development for personnel in crisis management and **school-based violence prevention strategies.**”
- NSBA’s engagement with Federal Commission on School Safety.

U.S. Department of Education Reorganization

- Privacy Technical Assistance Center (PTAC)
 - Potential abolishment or reassignment of functions.
- Office of English Language Acquisition (OELA)
 - Merging with other functions within the Office of Elementary and Secondary Education.
 - Functions to continue elsewhere.

School Safety



Overview

- Setting the Stage – NSBA Advocacy
- Student Emotional and Mental Well Being
- Threat Assessment
- School Safety Plans
- Working with Law Enforcement
- Liability & Insurance
- Q & A

Use you COSA school member as a resource!

- COSA attorneys can help formulate plans, engage law enforcement, clarify legal requirements, raise and address issues of legal liability.
- COSA attorneys can also be integral to the development of threat assessment plans or even help in the determination of whether a particular threat is immediate and/or meets the required legal standards for information sharing.

Setting the stage – NSBA Advocacy

- Tom's ASBJ Column on Arming Teachers.
- Appendix to First Amendment Guide in response to nationwide student protests.
- Comments to Sec'y of Ed in multiple summit and closed door meetings.
- Two instances of public testimony on FERPA and School Safety before Federal Commission on School Safety.
- Public testimony on FERPA before Marjorie Stoneman Douglas Public Safety Commission.
- Multiple media engagement on FERPA and school safety including NPR panel discussion on "IA with Joshua Johnson" program.

What did NSBA tell the Federal Commission on School Safety on FERPA:

- Defer to educational judgement of schools in determining violations of FERPA.
- Clarification of standard that results in ability to share greater information with law enforcement and others can:
 - Help threat assessments.
 - Contribute to identifying exculpatory evidence that can exonerate a student.

What did NSBA request from the Federal Commission on School Safety?

- More funds for SRO's.
- More funds for wrap around services.
- Dedicated funds for safety infrastructure, planning and recovery (capital budgets).
- National online clearinghouse of all federal resources, grants, services, etc., available for schools.

Student Emotional and Mental Well Being

- Policies and Programs that promote safe & secure learning environments.
 - PBIS, Restorative Justice, character counts programs, counselling services, engaged faculty & staff, communication with parents/guardians.
- Steps to take:
 - Adopt policies to require collaboration with mental health provides/community health departments, etc.
 - Define protocols for communication of student information, crisis intervention, threat assessment and referral processes.
 - Co-location of services in schools.

Mental Health Evaluations

- Some courts have approved “evaluation suspensions.”
- Distinct from discipline.
- Special Education status raise separate “manifestation” issues that may limit school choices.
- Attendance may be limited if student is danger to himself or others.
- Caution: Exclusion solely on basis of mental health status or need is impermissible.
- In the field: Recent Florida law on disclosing mental health conditions upon enrollment. May present constitutional issues.

Threat Assessment

- Safety Plans should include the establishment of a **Threat Assessment Teams**.
- Purpose is to identify persons or students of concern, assess risk for engaging harm to self or others and identify potential intervention strategies to manage the risk.

What is a threat assessment team & what can it do?

- Purpose is identify, evaluate, and address threats or potential threats to school security.
- Review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals.
- Team can include officials such as school principals, counselors, school law enforcement unit officials, as well as outside medical and mental health professionals and local law enforcement officers.

When should Threat Assessment Teams meet?

- When a potential threat comes to the attention of the school.
- On a regular basis as a means of identifying rising or brewing matters that could give rise to a potential threat.
- As needed to ensure participants retain connectivity, including updating reporting to law enforcement and/or referral to services.

School Safety Plans

- Over 40 states requires school districts to maintain safety/emergency response plans.
- ESSA requires districts to include safety data in annual report cards.
- Consider an “all hazards” approach:
 - Natural, technological, mass violence
- Elements of Plan:
 - Prevention and Mitigation
 - Preparedness
 - Response
 - Recovery

Working with Law Enforcement

- Key is to plan ahead.
- Utilize law enforcement to help develop/inform threat assessment criteria/plan.
- Utilize School Resource Officers (SRO's) in school safety plan.
- Use Memorandum of Understanding (MOU's) to:
 - Define clearly role of SRO's: School official or LEO?
 - Identify how information will be shared with law enforcement and under what circumstances.

To Arm or not to arm... (school staff).

- Only 9 states expressly authorize schools to arm staff.
- Absent a prohibition in state law, some state weapons laws may implicitly permit arming of school staff.
- However, schools should be cognizant of federal Gun-Free Zones School Act (GFZSA).
 - Prohibits individuals from possessing a firearm in a “school zone.”
- Exceptions to GFZSA:
 - Law enforcement officer in official capacity.
 - Person appropriately licensed by state.

Liability & Insurance

- Types of insurance coverage will be based on associated risks/activities:
 - Comprehensive General Liability
 - Property
 - Special Law Enforcement Officer; Law Enforcement Professional Liability
 - Violent Event Response/Workplace Violence/Active Shooter

Liability & Insurance

- Generally no constitutional duty to protect from private violence.
- But, some actions for federal and state legal rights violation:
 - Tort actions (***generally heightened negligence standard & capped***)
 - But, some federal civil rights actions can come with treble damages and attorneys' fees:
 - Title IX
 - 42 USC Section 1983

Liability concerns around arming school staff (NOT law enforcement)

- Civil liability “heightened negligence” is wanton or reckless behavior in violation of a duty.
- I.e., failure to supervise, train in light of foreseeable harm.
- What could give rise to “heightened negligence?”
 - Failure to safeguard weapon properly
 - Accidental discharge
 - Erroneous targeting; misidentification of perpetrator during crisis
 - Excessive Force

In Sum...

- Develop a safety plan and train to it regularly.
- At all stage of development and implementation engage stakeholders and community.
- Ensure safety plan has a threat assessment component and address mental health issues and concerns.
- Engage law enforcement early; draft meaningful, detailed MOU's in advance that identify roles and information exchange/flow.
- Determine potential liability and weigh risks vis-à-vis insurance coverage.



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Working with and through our State Associations to advocate for equity and excellence in public education through school board leadership.

www.nsba.org