



## October 2018 PUBLIC POLICY UPDATE

### Perkins News

#### President Signs FY19 Appropriations Bill That Includes Increase for Perkins

On September 26 a “minibus” FY19 appropriations package was signed into law that includes a \$70 million increase for the Carl D. Perkins Career and Technical Education (CTE) Act’s Basic State Grants, the first such increase in many years. “NAPE is encouraged by the bipartisan efforts of Labor-HHS Appropriations and the Congress to increase FY19 funding for Perkins Basic State Grants,” says NAPE CEO Ben Williams, PhD. “This value-added investment will help provide NAPE’s state members with the means to increase student access to high-quality CTE programs while fostering educational equity and ultimately workforce diversity.”

Williams also notes, “We are equally pleased that Congress sees the value of making a needed investment to improve college affordability by increasing the Pell grant program.” The maximum Federal Pell Grant for the 2018-19 award year will be \$6,095, which is an increase from the 2017-18 maximum of \$5,920.

NAPE looks forward to working with its state members, coalition partners, and the U.S. Department of Education to facilitate the implementation of Perkins V and to utilizing the resources provided by Congress to continue to build educator’s capacity, expand student access, and offer equitable options in CTE.

**How the appropriations bill came to pass:** Congress and the Administration recently completed its work on the Fiscal Year 2019 (FY19) Labor, Health and Human Services, Education and Related Agencies (Labor-HHS-Ed) Appropriations bill. This marks the first time in 22 years that the U.S. Congress has passed and sent a Labor-HHS-Ed bill to the President before the end of the fiscal year. The bill combines Labor, HHS, and Defense appropriations with a continuing resolution that extends funding for remaining departments of the federal government at FY18 levels until December 7, 2018.

The Senate voted 93-7 on September 18 to advance a “minibus” FY19 appropriations package that includes the Labor-HHS-Ed appropriations bill (which includes key investments in education and workforce programs). The House then voted on September 26 to approve that package (361-61), which President Trump signed into law.

### Administration

#### Education Department Says It Will Miss Key Deadline for Higher ED Regulatory Rollbacks

*(Courtesy of Politico October 3, 2018)*

The Trump administration says it will miss a key deadline to publish its rewrite of a package of regulations governing loan forgiveness for students at defrauded colleges and mandatory arbitration agreements. Education Department officials had previously planned to finalize its

proposal to overhaul the rules, known as “borrower defense to repayment,” by November 1, so that they could take effect by next July.

—But in a court filing late Tuesday evening, the Trump administration said it won’t make that November 1 deadline. Under the Higher Education Act, that means that the earliest the new rules could take effect is July 2020.

—“Given the volume of comments received, uncertainty as to the future of the 2016 Rule as a result of litigation, and the complexity of the issues, the Department has determined that it will not publish a final rule by November 1, 2018,” Trump administration attorneys wrote in the court filing. The Education Department, they said, “continues to work on the rule” and remains “committed to promulgating new regulations.”

—The missed deadline potentially raises the stakes for an ongoing legal battle over whether the 2016 Obama-era regulations should take effect as the Trump administration works on a replacement for them. A federal judge last month struck down Education Secretary Betsy DeVos’ postponement of the Obama-era rules but put his ruling on hold until October 12.

—In the meantime, the California Association of Private Postsecondary Schools, which represents for-profit colleges, is challenging the substance of the 2016 regulations in court. But the Trump administration, in its Tuesday evening court filing, urged a judge to reject that challenge. The Trump administration said that it believes that the Obama-era rules are “misguided” policy and should be changed but defended them as legal and constitutional.

—The Education Department is also going to miss the November 1 deadline for finalizing its plan to repeal the Obama-era “gainful employment” rule, according to a report in Bloomberg, quoting a senior department official. Bloomberg also first reported the Trump administration’s delay on the borrower defense rule. The gainful employment rule, which is currently in effect, cuts off federal funding to low-performing programs at for-profit schools and other career colleges.

## Student Loan, Gainful Employment Rules Delayed, Official Says

*(Courtesy Emily Wilkins -Bloomberg Government News)*

The Education Department will miss a crucial deadline to finalize a regulation on forgiving loans made to students who say colleges used deceptive recruiting, potentially giving those students an extra year of debt forgiveness under more lenient standards. The delay comes after the department received more than 38,000 comments on its draft “borrower defense” regulation and needed more time to review them, a Trump administration official said Tuesday.



“We got a lot of comments. Some of them were very detailed, many of them were highly technical,” the official said in an interview with Bloomberg Government. “We are committed to taking the time that is necessary to review those comments and make sure we get it right.”

The missed deadline could give students who were defrauded by their college an additional year of loan forgiveness under the Obama-era “borrower defense” rule if a federal judge allows that rule to be reinstated on Oct. 12. In a case before the U.S. District Court for the District of Columbia, Judge Randolph Moss previously deemed Education Secretary Betsy DeVos’ delay of the Obama administration rule “arbitrary and capricious.”

### Nov. 1 Deadline to be Missed

The department disclosed the delay in a [filing](#) in the case. Department lawyers informed Moss a final regulation would not be done by November 1 but emphasized the department “remains committed to rescinding the 2016 Rule.”

Because the regulation carries out part of the higher education law ([Public Law 110-315](#)), it must be made final by Nov. 1 to go into effect for the first day of the school year—July 1, 2019. The administration official, who spoke on condition of anonymity ahead of the court filing, said the department won't be able to meet that deadline with its proposed rule, thus pushing back the implementation date to July 2020 at the earliest.

DeVos has continued to discharge student loans but reinstating the Obama-era regulation would favor borrowers by banning pre-dispute arbitration agreements and allowing for automatic discharge of a federal loan if a student's school closes. The Education Department has not given up on finalizing the new rule and is already looking at possible changes to its draft regulation. One of the changes under consideration is removing a provision requiring a student borrower to go into default before being able to apply to have a loan forgiven, according to the official.

### **Victory for Students**

Student advocates said the comments on the new proposal were signs of a larger issues with the department's plan for the regulations. Toby Merrill, one of the lawyers representing the student borrowers who sued the Education Department over the delay of the 2016 regulation, said the department officials should scrap efforts to revise it.

"This rule is so fundamentally flawed, no amount of time could put the Department's proposal on strong legal footing," said Merrill, the director of the Project on Predatory Student Lending. Adam Pulver, an attorney with Public Citizen Litigation Group who is also representing student borrowers in the Washington, D.C., lawsuit, said the delay in a new rule's implementation will give Moss more incentive to revive the 2016 regulation given how far away July 2020 is. The official Twitter account for Democrats on the House Education and the Workforce Committee tweeted that the news was a "big victory for students and taxpayers."

### **No Earnings Data**

The department also will miss the November 1 deadline for a regulation that evaluates vocational education programs' effectiveness based on the cost of their students' annual loan payments compared to their earnings. That means the Obama-era version of that regulation, known as "gainful employment," also remains in effect. The regulation would revoke funding from vocational programs where the average graduate's income would make it difficult to repay student loans.

The administration official said the department has been collecting data from schools. Yet, there won't be any data on student earnings per program as the Social Security Administration, the agency that provides the earnings data, allowed an information-sharing agreement between the two agencies to expire in May. The Education Department requested the SSA continue the agreement in a March 2018 letter obtained by Bloomberg Government.

Changing the source of the data from the SSA to another agency, such as the Internal Revenue Service, would require a rule change, which the official said wouldn't be possible by November 1. The official who spoke with Bloomberg Government said the gainful employment rule will hopefully be finalized before the end of the year, although an exact timeline was hard to estimate given the role other agencies have in the regulatory process.

### **Betsy DeVos Launches Four-State "Rethink Schools" Tour**

*(Courtesy of Ed Week)*

U.S. Secretary of Education Betsy DeVos is embarking on her second back-to-school road trip since taking over the department.

This year's theme is the same as last year's: "Rethink Schools." DeVos will swing by four states: Georgia, Alabama, Mississippi and Louisiana.

Last year, her tour focused on the Midwest. [DeVos visited schools she said were trying outside-the-box approaches](#), including a school based at a zoo, and one that serves students recovering from addiction. She also met plenty of protestors.

No official word on the specific stops for this year yet. But the Clarion Ledger, a Mississippi newspaper, reported last week that [DeVos would be visiting the Holmes County Consolidated School District to learn about its participation in an initiative that helps to bring Advanced Placement classes to rural schools](#).

DeVos isn't the only department official hitting the road. Mick Zais, the deputy secretary; Frank Brogan, the assistant secretary of elementary and secondary education; Scott Stump, the assistant secretary of career and technical education, and others have also been out visiting schools. They've visited 42 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands. (The department has not released more specific information on where they went.)

"Our team is crossing the country this year to challenge local leaders, educators and parents to rethink school," said DeVos. "We know the current system is leaving too many students unprepared, so we must question everything about the way we do school in this country. There's no more time for tinkering around the edges. No more trying the same things and expecting different results. I'm excited to highlight pockets of innovation around the country that are truly challenging the status quo and working to ensure all children can have access to the education that fits their learning style and prepares them for a successful future."



## Education Department Holds Back \$4M from Chicago Schools Over Sexual Violence

*(Courtesy of Politico)*

The Education Department is withholding \$4 million in federal funds from Chicago Public Schools because of the district's failure to adequately address sexual violence in schools, the [Chicago Tribune reports](#).

The withheld funds are part of a larger, multi-year federal grant to help establish and operate magnet schools.

The Education Department's move to suspend federal money is typically seen as a last resort to bring school districts into compliance with federal law. The agency believes that Chicago Public Schools has failed to adequately enforce Title IX, which prohibits sex-based discrimination in federally funded education programs. The Education Department and Chicago Public Schools didn't respond to requests for comment.

In an internal memo provided to the Tribune, federal education officials expressed frustration with the district's slow pace in providing information about two student complaints filed in recent years.

Chicago Public Schools this summer launched an office dedicated to student protections and Title IX following a [Tribune investigation](#) into the district's failure to protect students from sexual abuse and sexual assault. But federal education officials noted in their internal memo that the district still doesn't have a Title IX chief.



Michael Passman, a spokesman for Chicago Public Schools, told the Tribune, “The Trump Administration’s move to threaten funding for schools that serve children of color is another attack on Chicago, considering CPS has already taken significant steps recommended by an independent expert to transform the way it responds to and prevents abuse.”

“We are working tirelessly to address this pervasive societal challenge and safeguard our students — including by cooperating with the Department of Education,” he said.

## **DeVos Investigates Whether School Transgender Bathroom Policy Led to Sexual Assault**

*(Courtesy of Politico)*

The Trump administration is investigating whether a Georgia school district’s policy allowing transgender students to use the bathroom of their choice led to the sexual assault of a 5-year-old girl.

The investigation in Decatur, Georgia, which opened last month, signals a major development in Education Secretary Betsy DeVos’ [controversial policies](#) on transgender bathroom access in schools and her handling of civil rights enforcement for transgender students. The agency didn’t immediately respond to a request for comment.

The complaint alleges the girl was assaulted in the girl’s bathroom at Oakhurst Elementary School by a boy who identified as “gender fluid.” [The complaint](#) was filed in May with help from the Alliance Defending Freedom, a conservative Christian group that has filed many lawsuits challenging school district transgender bathroom policies nationwide.

The Education Department’s Office for Civil Rights said on Sept. 14 it would [investigate](#) the complaint, which means it will consider whether a student was assaulted because Decatur City School District allows transgender students to use the bathrooms of their choice.

The mother of the girl in the complaint is identified as Pascha Thomas. The girl is identified as “N.T.” and the other child is not identified.

The investigation comes after the Trump administration [rescinded](#) an Obama-era directive in February 2017 that said Title IX—federal law that prohibits sex-based discrimination in federally funded education programs—also protects the right of transgender students to use the bathrooms of their choice. The Education and Justice departments said at the time the directive had “given rise to significant litigation” and required further study.

Since then, the Trump administration has stopped investigating civil rights complaints filed by transgender students over bathroom access and has dismissed some of those complaints.

The complaint filed in Georgia over Decatur City School District’s bathroom policy reflects the long-held conservative belief that such bathroom policies violate student privacy and make students less safe. Superintendent David Dude didn’t immediately respond to a request for comment.

The Alliance Defending Freedom announced the Education Department’s involvement on Wednesday.

“This situation was both deeply tragic and avoidable,” said ADF Legal Counsel Christiana Holcomb in [a statement](#). “Schools have a duty to protect the privacy and safety of all students and Decatur Schools clearly failed this young girl. The current approach that many schools are taking of passing these transgender bathroom policies isn’t working; they fail to provide basic privacy or ensure the safety of all students.”

LGBT advocacy groups have said most transgender students are required to use bathrooms that don't match their gender identity and, as a result, suffer serious physical and emotional health consequences.

For example, the group GLSEN notes that transgender students often avoid using bathrooms because they feel unsafe or uncomfortable. They might not eat or drink regularly or could develop a medical issue from not using the bathroom, like a urinary tract infection.

## Other News

### **Are States Shirking ESSA Responsibilities?**

*(Courtesy of Alliance for Excellence in Education)*

Are states shirking their responsibilities around two of the Every Student Succeeds Act's (ESSA) most important provisions for historically underserved groups of students? A new analysis by the Alliance for Excellence in Education (All4ED) says yes.

Under ESSA, states have flexibility to chart their own path to educational success, but they must submit a plan to the U.S. Department of Education (ED) explaining how they will reach these goals. So far, ED has approved plans for 44 states and the District of Columbia. To provide a quick reference guide of strengths—and shortcomings—for each state's plan, the Alliance for Excellence in Education created the series, "ESSA Equity Dashboards." [To view your state's ESSA Equity Dashboard, click here.](#)

In addition, a new Alliance for Excellent Education analysis finds that most states are shirking their responsibilities around two of the law's most important provisions for historically underserved groups of students: twelve states do not include subgroups of students in school ratings, and sixteen states are at risk for under-identifying schools with consistently underperforming subgroups for targeted support. Is your state one of them? [ESSA-Subgroup-Performance-State-Accountability-Systems.pdf](#)

### **Learning Policy Institute Holds Senate Briefing on Strengthening the Educator Pipeline: Evidence-Based Approaches to Teacher and Leader Preparation**

*(September 25, 2018 photo courtesy of Lisa R. Ransom)*

Learning Policy Institute CEO Dr. Linda Darling Hammond lead an informative briefing on building a strong teacher profession and aligning teacher and leadership preparation with the 21st century. Opening the session for the Learning Policy Institute (LPI) was Senator Tim Kaine (D-VA), member of the Senate HELP Committee and Co-Chair of the Senate CTE Caucus. Speakers included:

- Andrew P. Daire, Dean, Virginia Commonwealth University, School of Education
- Brittany Jones, Teacher, John Marshall High School, Richmond, Virginia, former Richmond Teacher Residency Resident, Virginia Commonwealth University School of Education
- Steven L. Paine, State Superintendent of Schools, West Virginia Department of Education
- Naomi N. Shelton, National Director of K-12 Advocacy, UNCF

LPI's Senate briefing addressed both the skills students need to be successful in the 21st century change, and the type of instruction that students receive. Speakers focused on the need for Educators to provide educational opportunities that support students in meeting challenging state academic standards and that are responsive to the needs of an increasingly diverse student population.



Well-prepared educators are crucial to the success of states' efforts under the Every Student Succeeds Act to create inclusive educational environments in which all students have the opportunity to develop skills such as critical thinking, complex problem solving, effective communication, collaboration, and academic mindsets.

Right now, our nation is facing teacher shortages in areas such as special education, science, mathematics, world languages, bilingual education, and career and technical education—fields that are vital to our economic success. Addressing teacher shortages begins with high quality teacher and leader preparation. Research shows that better prepared teachers stay longer in the profession and are more effective in improving student achievement. Investments in teacher and leader preparation advance equity in the high-need communities where schools are often staffed by a revolving door of underprepared and inexperienced teachers.

[Briefing](#) speakers discussed approaches to teacher and leader preparation that are effective in meeting these goals, such as high-quality residency programs and Grow Your Own models. Speakers also discussed the types of skills educators need to be prepared with to create inclusive classrooms that provide every student with a high-quality education.

## **Class-Action Lawsuit Launched Against Student Loan Servicer Navient over PSLF: Firm Misled Borrowers about Loan Forgiveness to Line Pockets**

*(Courtesy of the American Federation of Teachers)*

A class-action suit filed in federal court sets out serious allegations that student loan servicer Navient has misled borrowers in public service professions from accessing a loan forgiveness program to boost its own profits.

The [landmark complaint](#), which seeks millions in damages and class-wide injunctive relief, details a spate of systematic misrepresentations, untruths and misdirection pedaled by Navient to stop borrowers from enrolling in Public Service Loan Forgiveness, a 10-year payoff plan administered by rival servicer FedLoan. As a result, teachers, nurses, first responders, social workers and other people who have dedicated their lives to helping others are paying millions more than they otherwise should in student loan payments.

Rather than promote the availability of PSLF, Navient recommended forbearance and other less effective remedies to those seeking debt relief. The suit alleges Navient ignored borrowers' best interests—in violation of its government contract—to prevent borrowers from moving to FedLoan, so it could continue to earn millions in fees.

The suit is brought by nine members of the American Federation of Teachers in four states on behalf of themselves and all other similarly situated public servants. The Department of Education, which contracted with Navient to carry out its duties, has stood idly by while complaints against Navient piled up.

The complaint alleges that Navient staff are financially incentivized to keep calls with borrowers short—under seven minutes—not nearly long enough to properly assess their eligibility for

PSLF. The suit also details how Navient steered PSLF-eligible candidates into non-qualifying plans and wrongly told borrowers in those plans they were on track for PSLF.

Plaintiff Michelle Means is a first-grade public school teacher in Maryland. Navient misled Means by telling her that a single missed or late payment would be enough to completely disqualify her for PSLF. But a borrower's qualifying payments for PSLF need not be consecutive, and borrowers may continue making qualifying payments even if they have missed payments in the past. Means did not pursue PSLF further, believing she would be unable to make 120 consecutive payments, and instead went into forbearance. As a result of Navient's misrepresentations, Means has and will make thousands of dollars in payments of principal and interest that would have otherwise been forgiven under PSLF.

America is in the midst of a \$1.5 trillion student debt crisis, more than the entire GDP of Russia. PSLF, passed in 2007, enables qualifying public servants to discharge their loans after 10 years, a potential savings of tens of thousands of dollars. But since its inception, the program has been mishandled and undermined by the Department of Education's contracted servicers.

The department admitted last month that less than one percent of borrowers who submitted PSLF applications after the first cohort of candidates became eligible last year—96 out of 28,000—have been accepted into the program. And just 1.2 million borrowers have sought to have their eligibility certified out of approximately 32 million who may qualify, with only 900,000 currently enrolled.

The American Federation of Teachers is supportive of its members' suit. In a recent AFT member survey, 97 percent said student debt increased stress in their lives. The vast majority—80 percent—said they've lost sleep over it. Nearly three-quarters—72 percent—said it strained family and household relationships. A third said they had gone into default.

AFT President Randi Weingarten said: "Navient has purposely and systematically trapped teachers, nurses and other public service workers under a mountain of student debt instead of providing them with accurate information about their loan options and the loan forgiveness programs they qualify for and deserve. No one goes into public service to strike it rich; they do it out of a deep commitment to students, patients and the public good. But we cannot attract the best and brightest to these careers if promises of debt relief are deliberately broken.

"Navient, rather than fulfill its responsibilities, has instead deceived America's public servants and public servants-to-be, under the eye of Betsy DeVos and the Department of Education. But what goes around comes around—and it's well past time that Navient faced up to its lies.

"We've heard our members' concerns and complaints about the ruinous effect of the debt on their lives, and we've taken on the student debt crisis as a union issue. It's an epidemic, and people are suffering. The stories from members haunt me: from new teachers who can't stay in the profession because they're defaulting on their loans, to experienced professionals who can't retire because they can't afford payments on their kids' loans. This crisis affects us all.

"This suit seeks not only damages but injunctive relief to protect the next generation of borrowers. We will have our members' backs as they pursue this complaint to not only achieve justice for Navient's 6.1 million federal student loan borrowers, but also uphold Congress'—and the American people's—intent when they created PSLF to help those who are helping others."

The suit was filed Wednesday in the U.S. District Court for the Southern District of New York. The plaintiffs are represented by Selendy & Gay PLLC. The filing is available [here](#).