



FEDERAL LEGISLATIVE UPDATE

November 13, 2018

ADVOCACY UPDATE

IRS and Tax Loophole Regulations

Last week 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. ESA Executives and 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.

Farm Bill

Democratic control of the House is likely to be a kick in the pants to get the Farm Bill finalized before January. If the House Republicans want to get some of their elements in, they will likely need to compromise with the Senate on key provisions, including the work requirements from SNAP. If a reauthorization is not passed before January, the House will start over with a democrat-friendly option. The wild card, however, is President Trump's threat to veto any bill that does not include the SNAP work requirements.

Higher Education Act

Once Representative Scott regains reigns of the House education committee, the Republican-led PROSPER Act will be officially dead. House Democrats have introduced the Aim Higher Act, which would expand the loan assistance programs used by teachers that were eliminated under PROSPER. The Senate may consider writing a full reauthorization bill of their own, which would be a compromise between Aim Higher and PROSPER.

ADEA

In the first Supreme Court decision of the season, the Court decided unanimously (8-0) on a case that could impact the smallest of educational service agencies and school districts. In *Mount Lemmon Fire District v. Guido* the justices determined that the Age Discrimination in Employment Act (ADEA) must apply to all public employers, regardless of size. It was previously held that only employers with over 20 employees could be held to the ADEA. What is the ADEA and how does it impact ESA and school personnel? The ADEA holds that employers cannot discriminate based on age. Normally, it is used to discourage using old age as a reason for firing or not hiring an employee. How does this impact ESA and school districts? Since 1974, most districts have been covered by ADEA without much impact. Public employers with fewer than 20 employees – know that now that you do not explicitly use age as a reason to fire or not hire an individual. Public employers with 20 or more employees – this is not a change, but

still be cognizant that you do not explicitly use age as a reason to fire or not hire an individual. Education Week posted an overview of the issue [here](#).

Appropriations

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 USED and provides the bulk of federal education dollars to K12 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. Here's a quick rundown:

- Overall allocation to USED is \$71.5 billion, an increase of \$581 million. The final bill rejects the proposal to consolidate USED 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

2018 Election Recap

Congress

Overall: Mid-term elections mean all 435 members of the House were up for election, along with 335 seats in the Senate (33 seats up in normal order, two as special elections). Overall, the House switched from Republican to Democrat control, and Republicans maintain control of the Senate and expanded their majority. As of this writing, in the House Democrats have 226 seats compared to Republicans with 197 (10 races remain undeclared). In the Senate, Republicans have at least 51 seats, compared to 46 seats for Dems, with two races (FL and AZ) still being finalized.

The election results will alter President Trump's next two years in office and make a deeply divided nation even more difficult to govern as he seeks re-election in 2020. A Democratic House (the first since 2010) leaves the President without congressional support to move his agenda forward, which included another round of tax cuts, funding for the wall, attempts to undo the Affordable Care Act and more. Democrats have indicated a commitment to checking the President's power and investigate his tax returns, Russian interference in the 2016 election and actions by his administration. The President will not be without power, though: He will continue to be able to reshape the federal court and cabinet departments, given a GOP Senate to do the confirming.

Leadership and Committee: As a result of the House changing leadership, there will be changes to chamber and committee leadership, including the House Education and the Workforce Committee. Minority Leader Nancy Pelosi is expected to resume her role as speaker of the House. In the House Education and the Workforce Committee, current Ranking Member Bobby Scott (D-Va) is expected to

step into the Chairman role in the new Congress. Republicans on the committee could lose as many as many as seven of its current members. Two incumbents (Brat of VA and Lewis of MN) both lost their reelection bids, and a third (Handel of GA) trails her Democrat challenger. These three losses come after 4 GOP committee members did not seek reelection (Rokita and Messer of IN, Barletta of PA, and Garrett of VA). The GOP had 22 seats on the committee in the current Congress, a number that will fall when they become the minority, though the final number remains to be determined.

In the LHHS appropriations subcommittee, ranking member Rosa DeLauro (longtime strong supporter of public education and funding for public education) is expected to ascend to the Chairwoman spot. This becomes especially salient when we consider gridlock (either between the chambers or between Congress and the White House). Congress has no absolute requirements to pass federal education policy reauthorization, but they do have an annual responsibility to adopt funding bills. To that end, it means that Ms. DeLauro could prove more impactful for education through her funding leadership than Mr. Scott may impact, should gridlock prevent policy bills from getting over the finish line.

At the full appropriations committee level, Nita Lowey is expected to be the first woman to lead the panel. She has been ranking member since 2013. She is generally considered to be in the ideological center of the Democratic Party and has a strong relationship with Democratic caucus leaders including Nancy Pelosi (D-CA). She served on the Appropriations Committee with Pelosi, Democratic Whip Steny Hoyer (MD) and Assistant Democratic Leader James Clyburn (SC) earlier in their careers. A former member of the LHHS Subcommittee, Lowey supports funding early childhood education, women's health programs, community health centers and after-school activities. (H/T in part to Committee for Education Funding, Children's Budget Caucus, Ed Week, Washington Post, Vox, Politico, and other listservs.)

Education Policy

What to expect? 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 Sec 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 he can work with Sen. Murray on a Higher Education Act bill. They have a long, proven record of bipartisan work, but HEA has thus far proven elusive. (H/T in part to Committee for Education Funding, Children's Budget Caucus, Ed Week, Washington Post, Vox, Politico, and other listservs)

State Governors and Legislatures *Related graphics at the end, H/T Politico.*

Governors

Thirty-six governor seats were up for election in 2018. Democrats picked up at least 7 seats (up to 23), though Republicans still held more gubernatorial seats (26), even after losing ground. As of this writing, two governor races looked close to recount (Georgia and Florida). In terms of governors to watch for their education actions, EdWeek flagged [five to follow](#):

- DeSantis (R-FL) for his expected efforts on choice, though we should note his race is likely headed back to recount;
- Tony Evers (D-WI) is a former ESA executive director and state education chief turned governor, who wants to increase education spending and look to water down the Milwaukee voucher program;
- Michelle Lujan Grisham (D-NM) moved from the House to the Senate, and campaigned on increasing K12 funding and teacher pay, universal pre-K, and limiting testing;
- Laura Kelly (D-KS) campaigned heavily on finding new money for public schools, including investments in early education, CTE and student mental health; and
- Jared Polis (D-CO), a former Representative, and big supporter of school-reform ideas including charters, Race to the Top, and more.

Any of the success of these governors will be tied to their ability to work with the state legislature, which will be tied to whether or not the governor and legislature are of the same political party.

Other governor races of interest to educators included Arizona, where incumbent Doug Ducey successfully defended his seat in a campaign where education funding was a hot issue; Kevin Stitt (R-OK) emerged victorious, campaigning against the tax hike the GOP-legislature passed to raise teacher pay; Democrat J.B Pritzker defeated incumbent Bruce Rauner in an Illinois campaign that centered on multiple issues related to school funding; and Minnesota, where Representative Tim Walz (former teacher and Democrat) won the seat campaigning on reducing class size and indexing future education budgets.

Legislatures

Voters in 46 states cast ballot for more than 6,000 state legislative seats on election night. Democrats picked up 4 state legislatures. Only one state—Minnesota—has split chambers; all other bicameral states have single-party leadership. The state legislatures going to Democrats in 2018 include New Hampshire (Ds retook both chambers); Colorado (Senate flipped to D); Connecticut (Senate flipped to Ds); Minnesota (House flipped to Ds, splitting the legislature); and Maine (Senate flipped).

State Policy:

Over at Fordham Institute, they penned a [good article](#) detailing the meaning of the election on a handful of ballot initiatives and races that will impact education at the state level. They focus on three buckets: funding related items, policy questions, and governors.

Images: The following images were generated by Politico Pro Data Point, a service AESA advocacy subscribes to. They are available in PDF or powerpoint; email if you would like them in either format.

