

AASCU STATE HIGHER EDUCATION POLICY

UPDATE

JULY-SEPTEMBER 2018

By Thomas L. Harnisch 

This report provides a summary of higher education state policy developments that occurred from July to September 2018 and mentions other issues discussed at the state level.

01 Federal Policy

IRS Cracks Down on State Efforts to Circumvent New Federal Tax Law:

The Internal Revenue Service (IRS) [proposed new regulations](#) in July to crack down on state efforts to bypass the new federal tax reform law as it pertains to the state and local tax (SALT) deduction. The new tax law limits the SALT deduction to \$10,000, which adds primarily to the tax burden of individuals and families in higher-tax states. As of September, [four states have passed laws to work around the new law](#) by allowing them to donate taxes into a charitable trust, which would then be used to fund public services.

Federal Judge Rules in Favor of DACA, But Lawsuit Continues:

In August, a federal judge in Texas [denied a request](#) from the Texas attorney general and nine other states that the Deferred Action for Childhood Arrivals (DACA) program be preliminarily halted amid a lawsuit challenging the program's legality. However, the Texas attorney general said he feels optimistic about the case, noting language from the judge that the program causes irreparable harm to states. The lawsuit from Texas and the nine other states remains ongoing.

Democratic State Attorneys General Win Borrower Defense Lawsuit Against Secretary DeVos:

A federal judge [ruled](#) in September that the U.S. Department of Education's move to delay the borrower defense to repayment rules approved under President Obama's administration was unlawful. These rules require the government to forgive student loans if students attended a school that grossly misled them. Due to the collapse of several major for-profit college chains, an estimated 165,000 borrowers have sought relief from the government. The lawsuit against the department was filed by 19 state attorneys general. Under Secretary DeVos, the U.S. Department of Education plans to make it more difficult for borrowers to get relief from these loans than under the Obama administration.

Federal-State Showdown on Loan Servicing:

The U.S. Department of Education has vigorously [opposed](#) state attorney general efforts to sue companies that fail to appropriately service federal student loans, and told the loan companies that they can refuse demands from state attorneys general for information based on privacy grounds. A federal judge, however, rejected this rationale in a lawsuit earlier this year. The Department has repeatedly said they believe that federal law preempts

states with respect to oversight of federal student loan servicers. A handful of states, however, have attempted to provide new consumer protections for borrowers and hold the servicers accountable to state-level laws and regulations.

02 State Revenue

According to an [update](#) posted in late August by the National Association of State Budget Officers (NASBO), state budget pictures throughout the nation continue to improve due to the strong state of the national economy. Buoyed by the new tax reform law and a two-year federal spending framework, NASBO says states are experiencing moderate economic growth and revenues exceeding projections. This has allowed lawmakers to make new investments in key state programs and set aside money in rainy day accounts. However, demand remains strong for new investments in education, health care, public safety and other core services, and long-term structural challenges related to state employee pensions and health care obligations loom large in some states. Lastly, states continue to vary widely on their fiscal condition, with some states in far better shape than others. Universities and state systems of

higher education throughout the country are currently submitting budget requests to be considered by lawmakers in 2019.

03 College Affordability

With the pivotal midterms elections approaching, governors and state legislators have been highlighting efforts to make college more affordable. On free and reduced tuition, **North Carolina** officials have been touting [enrollment growth](#) following the implementation of the NC Promise program. NC Promise lowered tuition to \$1,000 annually to in-state students (\$5,000 annually for non-resident students) at Elizabeth City State University, The University of North Carolina at Pembroke and Western Carolina University. Undergraduate enrollment at those institutions grew by 19 percent, 14 percent and 6.6 percent, respectively, over the past year. **Wisconsin** Gov. Scott Walker, facing a competitive re-election contest, [said he would like to freeze tuition](#) at the state's public universities for the next four years. The University of Wisconsin System [submitted a budget request](#) in August that included a tuition freeze alongside a request for more state funding. Meanwhile, **Maryland** Gov. Larry Hogan, also facing re-election, [said he would like to expand](#) the state's recently enacted free community college program to allow participants to attend the state's four-year public universities tuition-free. Hogan also called for boosting the deduction on state income taxes for investments in 529 programs from \$2,500 to \$5,000 and allowing state residents to deduct 100 percent of the interest paid on their state loans. In an effort to cut textbook costs, **California** Gov. Jerry Brown [signed legislation](#) crafted by students at Cal Poly, San Luis Obispo that would require college

textbook publishers to disclose to students the differences between various editions of textbooks.

04 Economic and Workforce Development

One workforce development strategy employed by key lawmakers in recent years is providing incentives for recent graduates to stay in the state. In September, **Wisconsin** Gov. Scott Walker [proposed \\$5,000 in tax credits](#) for college graduates who stay in the state. The plan would provide \$1,000 in refundable tax credits over five years. The tax credit would be non-retroactively available to state residents who attended in-state and out-of-state institutions. In **Illinois**, reports of students leaving the state prompted lawmakers to create a new merit-based financial aid program. Gov. Rauner [signed legislation](#) to provide \$25 million in matching funds for merit-based financial aid.

05 Immigration

Immigration continues to be a flashpoint in public policy discussions at the state and federal level, including its intersection with public higher education. In **California**, Gov. Jerry Brown [approved a measure](#) allowing undocumented students to serve on college boards. In **Maryland**, Democratic gubernatorial candidate Ben Jealous has proposed extending free community college tuition to undocumented students, a proposal [sharply criticized](#) by President Trump. Gubernatorial candidates in **Tennessee** have [gone on record](#) regarding in-state tuition for undocumented students, with the Republican candidate opposing

extending the lower in-state rate and the Democratic candidate supporting lowering the rate for this student population. In **Arizona**, officials at Maricopa Community College [noted a 40 percent decline](#) in the number of DACA students following a ruling making them ineligible for in-state tuition.

06 Guns on Campus

Since the Parkland tragedy, there has been less discussion regarding guns on college campuses. However, a **Missouri** state judge [ruled](#) in September that the University of Missouri's gun ban is legal, rejecting an argument that the ban conflicts with state law, while a **Wyoming** state delegate [has filed a lawsuit](#) challenging the University of Wyoming's gun ban.

07 State Responses to Population Shifts

Declining enrollment remains a pressing concern on campus and beyond in states throughout the nation. The **Montana** University System is [examining a unified student recruiting model](#) with a centralized portal so public institutions do not compete for an ever-shrinking number of in-state students, and students are directed to the institutions where they have the greatest chance of success. Some, however, have pushed back against this approach, arguing that it could limit student choice. At the state level, news reports have detailed enrollment declines in states such as **Arkansas, Iowa, Illinois** and **South Dakota**. Other states, however, have noted increases in enrollment.

08 Performance-Based Funding

States continue to debate the merits of transitioning to a performance-based higher education funding system. Some officials in **Kentucky** [remain concerned](#) about the state's new performance-based funding model, arguing that state institutions serving the largest shares of low-income and minority students would receive budget cuts and students at these institutions would not have the resources necessary to succeed. **Illinois** lawmakers are also [revisiting discussions](#) on developing a performance-based funding model, and the University of **Wisconsin** [budget request](#) would distribute a majority of its new funding to institutions based on performance.

09 Campus Free Speech

Because most state legislatures have adjourned for the year, there has been limited state movement this fall on bills related to campus free speech. However, at the federal level, speeches by U.S. Department of Education Secretary Betsy DeVos and Attorney General Jeff Sessions have highlighted curtailment of free speech on campus as a core national concern confronting higher education.

10 Combating Campus Sexual Assault

Policies aimed at ending sexual assault on college campuses continued to be discussed this fall. In **Pennsylvania**, state attorney general Josh Shapiro [released a series of recommendations](#) in late August

related to preventing substance abuse, improving mental health services, and reforming practices and policies related to campus sexual assault. Advocates in **Massachusetts** are [pushing a bill](#) that would create a survey to gather information on the prevalence of sexual assault on college campuses. In late September, a bill in **New Jersey** was approved by a state legislative committee that would fine institutions \$10,000 for failing to appropriately respond to student claims of assault. There are currently seven bills circulating in the New Jersey legislature pertaining to campus sexual assault, including bills establishing a commission to examine the issue and new campus reporting requirements.

Other Issues

State Higher Education

Reorganization and Reform: West Virginia's blue-ribbon commission on higher education, started this summer by Gov. Jim Justice, is [continuing its work](#) to reimagine the future of the state's network of public colleges and universities. **North Dakota** is also [taking a look](#) at revising its higher education governance structure.

Dual Enrollment: Montana officials [announced a measure](#) in September that would allow high school students to take two college courses for free, eliminating the existing \$50.50 fee.

College Access for Foster Youth:

Legislation introduced in **Pennsylvania** would create [college tuition waivers](#) for foster youth age 14 and older attending state-owned and state-related institutions and community colleges. The **Nevada** System of Higher Education (NSHE) [approved](#) tuition and fee waivers to foster youth age 14 and older in September.

Student Affairs and Services: In **California**, the [legislature sent a bill](#) to Gov. Jerry Brown requiring health centers at the state's public universities starting in 2022 to provide pills to terminate pregnancies. Brown vetoed the legislation in late September. **New York** Gov. Andrew Cuomo stated in late August that all of the state's public colleges and universities [will have a food pantry](#), so that college students would have "stigma-free food access." Gov. Cuomo also [signed an anti-hazing bill](#) in August. The governor in **Rhode Island** signed a bill to help [prevent suicides](#) on public college and university campuses.

Academic Affairs: In **New Jersey**, state lawmakers [approved a bill](#) that would limit bachelor's degrees to 120 credits and an associate degree to 60 credits, with some exceptions, as well as a bill to create a public relations campaign to encourage students to take 30 credits each year.

Community College Bachelor's Degrees: In **California**, Gov. Jerry Brown [signed a measure](#) extending the state's community college bachelor's degree program through 2026.

State Student Loans: A report from **Minnesota** indicates that the state's Office of Higher Education [has gotten more aggressive](#) in taking borrowers in its state student loan program to court if they fail to meet their repayment obligations.