

Top 10 Higher Education State Policy Issues for 2016

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Introduction

As voters prepare to caucus and cast ballots for primary elections in the 2016 presidential race, higher education policy has emerged as a leading issue on the campaign trail. While higher education has traditionally received minimal attention, this race has witnessed sweeping proposals from the candidates aimed at increasing college affordability, restructuring federal student aid, and fostering innovation within higher education. Proposals include a wholesale re-evaluation and reform of existing policies affecting students, institutions, states, accreditors, and the federal government. In contrast to previous elections, presidential candidates have put forth specific plans to address the main driver of increasing tuition prices at public colleges and universities—state disinvestment—through federal policy. Regardless of the election's outcome, policymakers in Washington will continue to debate a “re-negotiated federalism” in American higher education as a way to ensure student access to high-quality, affordable public college opportunities.

Amid this national discussion, states will continue to be the primary actors for innovation and change in higher education policy. Higher education remains a focus of state leaders: AASCU analysis of gubernatorial *State of the State* addresses since 2012

has found that governors are interested in higher education policy, particularly the role of public colleges and universities in meeting state workforce needs and fostering economic growth. In particular, policies that make educational opportunities more affordable and both facilitate and accelerate the transition from education to employment remain popular among state chief executives.

In the 2016 state legislative sessions, higher education will compete for time on legislative calendars with a host of other issues, including K-12 education, transportation and health care. Some of the decisions in other policy areas could affect higher education. For example, a key decision in some states early this year will be whether state lawmakers choose to expand Medicaid eligibility. If state lawmakers choose to expand eligibility, the infusion of federal dollars could free up state funds for other state programs, including higher education.

While the 2016 elections could bring considerable changes to political realities in Washington, most states are unlikely to see significant political changes in the fall elections. Only 12 governors are up for re-election (with even fewer expected to change party control), and the legislative majorities in many states remain deeply entrenched. Republicans have complete control of 22 state governments, as opposed to seven with total control from Democrats and 21 with shared power. The political reality is unlikely to change in most states until 2018, when 36 states hold gubernatorial elections and at least 16 of these races will not have incumbents due to term limits.

This paper provides a summary of the higher education issues that are likely to generate the most attention in state capitals. While some of these issues are recurrent, others are emerging topics that may only see activity in a few legislatures. States will vary in their approach to higher education in 2016, with

four states not meeting in legislative session. This is the ninth annual synopsis of higher education state policy issues, informed by last year's legislative sessions, gubernatorial statements, newspaper articles, and economic forecasts.

#1 Keeping College Affordable Through State Investment in Public Higher Education

Consistent with previous iterations of the *Top Ten*, policies to keep college affordable will remain the central concern of state policymakers. With mounting public alarm over the growth of tuition rates and student debt burdens, state lawmakers will likely continue to negotiate tuition freezes or tuition increase caps with higher education officials in exchange for funding increases—or, at the very least, a promise not to reduce funding. State lawmakers will also explore other avenues to ease the burden of college costs, such as increasing financial aid and reducing textbook costs.

Tuition increases over the last several years have been considerably lower than historical averages, a trend attributable to state funding increases following the Great Recession and a renewed public commitment to maintaining college affordability. According to the latest [Trends in College Pricing](#) report from the College Board, published tuition increases for in-state students attending public four-year colleges and universities averaged 2.9 percent in 2015-16. Published tuition rates increased the previous two years by 2.9 percent and 2.8 percent, respectively. According to the College Board, these are the only years of average published tuition increases below 3 percent since the mid-1970s; average published tuition increases over the last decade have also been well below the previous two decades.

While the focus on affordability has been a welcome change for students and families, there are growing fears about sacrifices to college access and quality. For example, there have been concerns over public flagship universities seeking more higher-paying out-

of-state students at the expense of resident students and governing boards removing or weakening caps on out-of-state enrollments. In states where lawmakers have both frozen tuition and cut state funding, college presidents have had to make deep programmatic cuts and remain concerned about their ability to attract and retain quality faculty.

The emphasis on college affordability will continue in 2016, but analysts do not project growth in state budget revenue that will enable substantial new investments in state programs, including higher education. According to the [latest analysis](#) from the National Association of State Budget Officers (NASBO), most states are in a stable financial position, with modest revenue growth expected in the near-term. States that are reliant on severance taxes from oil and gas will have a challenging financial picture in 2016; officials in Alaska, Louisiana, North Dakota, Oklahoma and Wyoming have already indicated that they will need to make reductions to balance their respective state budgets due to low oil prices.

Limited state revenue growth, competition from other state budget items, and conservative approaches to state spending will make it difficult for higher education to secure the increases in appropriations necessary to restore per-student funding to pre-recession levels. Due to these factors, higher education funding in 2016 could [resemble 2015](#): modest funding increases in most states, with cuts in states that are pursuing austerity policies and those reliant on severance taxes from oil and gas.

Some early state proposals for higher education funding in 2016 have been positive. Virginia Gov. Terry McAuliffe (D) has proposed substantial new state commitments to a wide variety of higher education programs and capital construction projects, while South Dakota Gov. Dennis Daugaard (R) has outlined a state budget plan to retire higher education bonds, increase faculty salaries and freeze tuition. Nevertheless, gubernatorial funding priorities in a number of states could depend

in part on whether legislators agree to expand Medicaid eligibility. While more governors [have demonstrated a willingness](#) to make this policy change, it remains unclear whether there is enough support in state legislative chambers to pass these proposals. Under the Affordable Care Act (ACA), the federal government pays for the vast majority of the Medicaid expansion, and states could save money by not needing to pay hospitals and clinics for losses from adults who cannot afford private insurance but are ineligible for Medicaid.

#2 Improving Institutional Outcomes and Degree Production

This year will likely witness continued state emphasis on institutional outcomes and accountability measures, including progress on improving graduation rates and boosting overall degree production. In their *State of the State* addresses last year, a number of governors emphasized their long-term educational attainment goals and college completion initiatives as a way to meet future workforce needs. A number of states have chosen to participate in the suite of policy reforms proposed by Complete College America, which include new approaches to remedial education and incentives for full-time enrollment.

Performance-based funding (PBF) has been a major policy shift in higher education financing aimed at boosting degree production. While states have experimented with PBF since the late 1970s, the shift towards funding institutions based on performance has grown in popularity over the last several years, and the PBF systems have become more sophisticated and tailored to campus missions. According to the National Conference of State Legislatures (NCSL), [32 states](#) now have PBF in place for all or a portion of state higher education funding, and five states are currently in transition to such models. This trend will undoubtedly continue in 2016, as numerous states started exploring or

considered expanding PBF in 2015. Because the new versions of PBF have only been in operation for a few years in most states, research about their effectiveness remains limited.

#3 Combating Campus Sexual Assault

Campus sexual assault prevention, response, reporting and adjudication has recently emerged as one of the most prominent higher education policy issues at the national, state and campus levels. State legislatures, in particular, are rapidly seeking to address this issue, as over 26 states considered legislation in 2015, up from six in 2014. This trend will likely continue in 2016, especially as legislatures that had commissioned task forces receive findings from their committees and act on those recommendations. Some of the most widely considered and debated policies include:

- Establishing affirmative consent standards in student conduct policies;
- Notating academic transcripts for students found in violation of sexual misconduct policies or for those who withdraw while a disciplinary process is pending;
- Requiring colleges or victims to file a municipal police report before the college is permitted to initiate a disciplinary proceeding; and
- Providing victims with confidential advisors or advocates either on- or off-campus.

Although a growing number of states have begun to consider this policy issue, most did not ultimately enact policies in 2015. This year will likely see an even greater number of proposals across the nation as state lawmakers continue to work with college campuses to prevent campus sexual assault, develop protocols to effectively respond to and report incidents, and ensure disciplinary proceedings are equitable and timely. For more on this issue, please review [AASCU's recent policy brief](#) on state legislation to combat campus sexual assault.

#4 Meeting State Economic Needs Through Higher Education

Heading into the 2016 election cycle, leveraging higher education's assets for meeting workforce needs and fostering economic growth will continue to be a focus of state policymakers. While the economy is growing at a slow yet steady pace and the national unemployment rate is almost half of the level of January 2010, policymakers remain concerned about stagnant wages, inequality, and complaints from state businesses that they do not have access to a skilled labor pool. Over the last several years, governors have promoted and expanded policies that link programs in high schools, technical colleges and universities directly to in-demand, high-paying opportunities in the state workforce. In addition, commercializing university research, facilitating public-private partnerships, attracting top-tier researchers, and emphasizing STEM education all have been themes of governors in recent years, a trend that will likely continue this year.

#5 Aligning Secondary-Postsecondary Educational Standards

Since the initiative was announced at the beginning of the decade, the Common Core State Standards (CCSS)—which articulate the learning objectives in English language arts and mathematics in each K-12 grade—have been adopted by 46 states and the District of Columbia. Intended to ensure high school graduates are college and career ready, reduce the number of students needing developmental or remedial coursework, and improve college graduation rates, the CCSS have been controversial and are certain to be a topic of discussion among governors and legislators in 2016.

The 2014-15 academic year was particularly historic, as it marked the first in which assessment of the higher standards, conducted through two multi-state consortiums, would be implemented. The impending assessments led to a number of

complications, prompting many states to review the standards and leading to a significant backlash and an opt-out movement. According to the NCSL, this past year, 21 states introduced proposals to halt implementation of CCSS; 22 proposed to preclude the state from participating in one or both of the assessment consortia; 24 states proposed to give parents the authority to opt their children out of summative assessments; and 33 proposed to change how summative assessment data would be used in accountability systems. Notably, the Every Student Succeeds Act, which replaces much of No Child Left Behind, explicitly requires the Department of Education to remain neutral on CCSS while largely returning responsibility for student testing and school accountability to the states.

A related policy concern regarding K-12 education involves federal efforts to set direction for teacher preparation programs at institutions of higher education. Criticized by a broad coalition of public education advocates and higher education institutions as politically intruding on the academic autonomy of institutions and state prerogatives, the Department of Education appears poised to publish regulations on state rankings of teacher preparation programs based on criteria that opponents describe as arbitrary and questionable.

#6 College Access for Undocumented and DACA Students

While the national trend in recent years has largely been one toward increased college access for undocumented students and those with federal Deferred Action for Childhood Arrival (DACA) status, there were attempts to roll back access for these students in 2015. In 2016, there will likely be continued attempts to either expand or restrict college access for undocumented students. As of July 2015, the NCSL reports that 16 states and four university systems extend in-state tuition at public postsecondary institutions to certain immigrants. Additionally, six states offer state financial aid to this population, and six states explicitly bar in-state tuition for unauthorized students.

This past year, the debate about “lawful presence” versus “lawful status” emerged as students with DACA status—which grants them “lawful presence” at the federal level—argued for in-state tuition. A number of court cases are currently pending regarding this distinction and whether these students are eligible for the lower in-state tuition rate. Given that the national consciousness has largely shifted toward national security and more stringent immigration policy (in light of recent terrorist attacks around the globe), the intersection of immigration and higher education policy will be a key issue in the coming year.

#7 Guns on Campus

Lawmakers this year will continue to debate bills that would force public colleges and universities to allow individuals with concealed weapons permits to carry their weapons on campus. In some states, these bills extend “campus carry” to classrooms, residence halls and other buildings. While most of these bills failed in 2015, Texas enacted a bill that will allow guns in most parts of public college and university campuses, including dormitories. Lawmakers in Florida, Missouri, Tennessee and a number of other states have already filed bills for the 2016 legislative session that would allow guns on campus. According to the NCSL, [eight states](#) currently allow guns on campus, with 42 states either banning guns on campus through state law or deferring authority to college or university governing bodies. The vast majority of college students, campus staff, faculty members, college presidents, and law enforcement personnel oppose allowing guns on campus. AASCU strongly opposes any effort to strip campus governing boards of their authority to regulate guns on campus and is a supporter of the Campaign to Keep Guns Off Campus.

#8 College Access and Success for Veterans

Since the Veterans Access, Choice, and Accountability Act passed Congress in August 2014, states have had to pass legislation extending in-state tuition to recent veterans, regardless of their residency status,

in order to participate in the GI Bill. While the law was scheduled to go into effect on July 1, 2015, the Obama administration extended the deadline to January 1, 2016. Beyond compliance with the new federal law, governors and state legislators have proposed an array of changes to help veterans transition to civilian life through higher education, including recognizing veterans’ education and skills through the granting of commensurate college credits and promoting campus programs that help veterans succeed in college. This year will likely bring more state legislation to help veterans achieve their college goals and facilitate their transition into the civilian workforce.

#9 Free Community College

The movement advocating free community college grew in the states in 2015, with more attempts to enact these proposals expected this year. According to the NCSL, lawmakers in [four states](#) introduced legislation for free community college in 2015, while another seven states considered bills on this issue but ultimately did not enact them into law. The recent state-level movement towards tuition-free community college began in early 2014 with the “Tennessee Promise,” a program that guarantees recent high school graduates free tuition at any state community college in exchange for completing the FAFSA, performing eight hours of community service, attending mandatory meetings with mentors, and maintaining satisfactory academic progress at their institution. In 2015, lawmakers in Oregon and Minnesota approved different variations of free community college plans. President Obama championed a federal proposal inspired by the Tennessee Promise, but the legislation has not gained sufficient support on Capitol Hill.

Some state-level free community college plans are “last-dollar” programs that pay for tuition costs that are not covered by existing state and federal financial aid programs. Because federal and state financial aid already covers tuition costs for many low-income students, the last-dollar scholarship programs will

disproportionately direct state resources towards students from higher income backgrounds. As a result, state resources will be re-directed from the poorest students at community colleges needing help with non-tuition expenses, as well as those needy students choosing to attend public four-year universities. AASCU opposes state-level free community college proposals that disproportionately allocate funding to higher income students and families while providing minimal additional resources for the neediest students.

#10 Student Loan Refinancing and Debt Assistance

Due to the growing presence of debt as a vehicle for college financing, student loan refinancing, loan forgiveness, and policies to help students and graduates manage their debt is an emerging issue for state policymakers. According to the NCSL, [eight states](#) passed bills in 2015 related to student loan refinancing, loan forgiveness, or improved debt management. Further, lawmakers in other states, such as Wisconsin, have proposed bills to allow the state to refinance student loans. A notable proposal starting this year comes from New York, which will cover student loans for recent graduates making under \$50,000 and participating in an eligible federal income-based repayment program. As college debt affects more state residents, state policymakers will continue to explore policies to ease debt burdens in the months and years ahead.

Honorable Mention

Dual Enrollment

Dual enrollment programs allow students to enroll in and receive credit for postsecondary courses while in secondary school. Governors and state legislators continue to tout dual enrollment and other initiatives that allow high school students to receive college credit—such as Advanced Placement, International Baccalaureate, or College-Level Examination Program examinations—as ways to help students graduate college on time and reduce college costs. Supporters

also claim that dual enrollment can improve college readiness and reduce the likelihood a student will require remedial education upon enrolling at a college. Because college readiness, affordability and completion remain in the forefront of state lawmakers' minds, many states will likely consider policy proposals related to increasing access to dual enrollment opportunities.

A key issue in dual enrollment in 2016 will be the clarification on qualifications to teach dual enrollment courses. This past year, the Higher Learning Commission (HLC)—an accrediting association for Midwestern colleges—issued a clarification about postsecondary teacher qualification requirements that also applies to secondary school teachers leading dual enrollment classes. The policy states that postsecondary instructors must have completed a designated amount of graduate-level coursework in the field in which they teach. This policy may reduce the number of teachers qualified to teach dual enrollment classes for postsecondary credit, thus making such courses less widespread and accessible. Although set to become effective in 2022, the HLC's policy will likely be a point of debate across the 19 affected states.

Consumer Protection Involving For-Profit Colleges

For-profit colleges have come under fire from state agencies and attorneys general in recent years for violation of consumer protection laws, such as inflating job placement rates in college marketing materials and false claims made over program accreditation needed for certain professions. Other complaints about the sector include high tuition rates, low completion rates, and high levels of student debt and loan default. Popular state actions include pursuing lawsuits for fraudulent business conducted within the state and establishing student loan assistance resources at the state level to help struggling borrowers with repayment options or guidance in how to seek forgiveness under alleged abuse. Beyond state-level action, the

federal government has been active in overseeing this industry over the past several years, including withholding federal student financial aid from Corinthian Colleges, leading to that company's declaration of bankruptcy; reaching a settlement with Education Management Corp. (EDMC) for violation of federal and state False Claims Act; and suspending the University of Phoenix from Department of Defense Tuition Assistance programs and recruiting at military facilities. Continued state legal and legislative action directed at the for-profit colleges is expected in 2016.

Privacy and Data Protection

Last year witnessed a proliferation of state legislation on student privacy and data safeguarding. Parental concerns about third-party access to their children's K-12 educational data, whether collected directly or through partnerships between school systems and educational technology providers, was the force behind much of the legislative activity on student privacy at the state level. While higher education rarely motivated legislative proposals, many of the bills introduced last year followed the well-settled practice of making no distinction between K-12 and higher education records. At the same time as bills were introduced to address privacy issues (focusing on *authorized* disclosures), numerous state proposals sought to address data security practices (related to prevention and remediation of *unauthorized* disclosures). Given the frequency and scope of documented data breaches in 2015, state legislative attention to this issue is likely to persist and amplify in 2016.

Conclusion

Following decades of state disinvestment in public higher education, tuition rates and student debt levels have risen to new heights and prompted a national conversation about the appropriate roles of institutions, states and the federal government in keeping college affordable. At the state level, this year promises continued debate about how to keep college affordable, but it remains unclear the extent to which higher education will be a budgetary priority amid competition from other state budget items and limited growth in state budget revenues. Higher education's role in state economic and workforce development will remain central to gubernatorial agendas, and other higher education issues, including campus sexual assault, immigration and guns on campus, will generate headlines this year as well. While the outcomes of these policy debates remain uncertain, it is certain that in order for higher education to be a top priority for state policymakers in 2016, public colleges and universities will need to recommit to engaging and energizing their constituencies, redouble their efforts to demonstrating their value to state policymakers, and renew their longstanding commitment to addressing state needs.

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