

# Federal Legislative Report



## **U.S. DEPARTMENT OF LABOR OVERTIME RULES**

As mentioned in *Federal Legislative Report 114-10*, the U.S. Department of Labor issued a final rule changing overtime regulations in May. There is significant opposition to this change, but there was concern that an attempt to pass legislation to overturn the rule before the effective date of December 1, 2016, would fail because not enough legislators would feel comfortable voting “against” workers so close to the election. To provide some relief, H.R. 5813, the *Overtime Reform and Enhancement Act*, has been introduced which would phase the new salary threshold in over three years. The bill would also eliminate a provision in the final overtime rule that allows for automatic updates to the salary threshold every three years. The phase-in limits this onerous regulation until legislation overturning it can pass. The goal is for this language to be included in an appropriations measure or a legislative vehicle that would pass before the end of this Congress.

Please contact your members of Congress and our Illinois Senators to express your support for this language.

## **EVERY STUDENT SUCCEEDS ACT (ESSA) – FEDERAL**

The U.S. Department of Education (USDOE) continues to roll out proposed rules and Guidance on various issues (see *Federal Legislative Report 114-10* for the previous list):

- Notice of Proposed Rulemaking on Supplement Not Supplant (SNS) (9/6)
- Guidance on using evidence to select, implement, and evaluate evidence-based interventions (9/16)
- Guidance on educating English learners - provides information on Title III flexibility, and discusses how districts can use Title III funds to provide instruction and support services to English learners (9/23)
- Guidance on how states and school districts can use federal funding under ESSA to better support teachers (9/27)

As also mentioned in the previous *Federal Legislative Report (114-10)*, Congressional leaders and stakeholders are taking notice and are speaking out due to concerns that the USDOE is overstepping its authority in regards to all of the recent rules and Guidance on ESSA. Senator Lamar Alexander (R-TN), Chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, told a group of Kentucky legislators a few weeks ago to sue the USDOE if it rejects their State Plans. Then last week, Congressman Todd

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Rokita (R-IN), Chairman of the House Education Subcommittee on Early Childhood, Elementary, and Secondary Education, held a hearing entitled “Supplanting the Law and Local Education Authority Through Regulatory Fiat”. The hearing examined the SNS proposed rules and how they would change the longstanding requirement that federal funds supplement—not supplant—state and local funds resulting in significant consequences for student and schools.

Closer to home the concern is the same as State Superintendent Tony Smith eloquently wrote an Opinion Editorial for *U.S. News & World Report*, on September 15, titled “States Can Help Every Student Succeed – The Education Department needs to stop micro-managing implementation of the new education law”. According to Illinois State Board of Education Chairman James Meeks, Dr. Smith was asked by other state superintendents to write an op-ed piece about their concern that the USDOE is “NCLBing ESSA”. You can view the piece [here](http://www.usnews.com/opinion/articles/2016-09-15/education-dept-is-micro-managing-the-every-student-succeeds-act) - <http://www.usnews.com/opinion/articles/2016-09-15/education-dept-is-micro-managing-the-every-student-succeeds-act>.

### **CARL D. PERKINS CAREER AND TECHNICAL EDUCATION ACT (CTE)**

The House voted on September 13, to overwhelmingly approve the reauthorization of the CTE (H.R. 5587 – *Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act*) after the House Education and the Workforce Committee unanimously passed the legislation in July (see *Federal Legislative Report 114-10*).

The Senate HELP Committee has been working on a companion bill that was set to be heard last week, but that was postponed most likely until after the election after some members of the Committee expressed concerns with specific provisions, including provisions that restricted the authority of the Secretary of the USDOE.

### **SCHOOL NUTRITION REAUTHORIZATION UPDATE**

The House passed their version of the Child Nutrition Act in May, on a largely partisan vote (see *Federal Legislative Report 114-09* for background information). The Senate passed their version back in January. The full Senate was expected to consider the measure before the end of September, but concern from members has most likely delayed any vote until after the election. Even once the Senate passes their version, a Conference Committee will have to be created to negotiate the differences between the two versions.

### **USDOE GUIDANCE ON RESPONDING TO SEXUAL ASSAULT IN K-12**

Last week, the USDOE Office of Civil Rights released non-regulatory guidance to support school districts in preventing sexual misconduct, encourage reports of misconduct, improve responses to reports of misconduct, and comply with applicable federal laws. According to the USDOE, the Department’s “Task Force to Protect Students from Sexual Assault” issued

guidance to provide helpful information for school districts to consider when drafting their sexual misconduct policies, including the following:

- The sexual misconduct policy of each school district will vary in detail, specificity, and components, reflecting, for example, differences in state or local legal requirements and each district's student population.
- School districts should engage in a comprehensive drafting process that considers the unique aspects of the district and its student body.
- Parental involvement at the K-12 level is critical and should be sought at all stages of the process for students who are minors.

In addition to issuing this guidance, they released an online interactive tool called a Safe Place to Learn with information for schools on the topic. You can access the information [here](http://www.whitehouse.gov/blog/2011/09/23/ensuring-all-students-have-safe-place-learn) - [www.whitehouse.gov/blog/2011/09/23/ensuring-all-students-have-safe-place-learn](http://www.whitehouse.gov/blog/2011/09/23/ensuring-all-students-have-safe-place-learn).

### **ENVIRONMENTAL PROTECTION AGENCY (EPA) POLYCHLORINATED BIPHENYLS (PCBs) RULE**

The EPA is reconsidering a rule it first floated in 2013 requiring the replacement of all light fixtures containing PCBs. These are chemicals used until 1979 that have since been found to be carcinogenic (see *Federal Legislative Report 113-06* and *113-07*).

Initially, in 2010, the EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) soliciting information from the public to determine whether PCBs pose an unreasonable risk to human health and the environment. The ANPRM also indicated that the EPA was considering a “potential phase-out of any PCB use authorizations” through a gradual phasing out of equipment containing PCBs. Despite receiving several comments, the EPA did not proceed with formal rulemaking. Then, in 2013, the EPA reinitiated efforts to examine the use of PCBs in electrical lighting in public buildings, including schools. After stakeholders, including the National School Boards Association, provided the EPA with information related to the significant cost of the proposed action, the EPA postponed action again.

The EPA's recent economic analysis indicates that the action to remove light fixtures containing PCBs in public schools and daycare centers may result in state and/or local government expenditures of between \$153 and \$263 million, depending on how quickly they require compliance. This cost estimate triggers the Unfunded Mandates Reform Act/Federalism (UMRA), which requires federal agencies to consult with state and local elected officials, or their designated employees with authority to act on their behalf, when developing regulations that have the potential to exceed a certain amount.