The single biggest influence on reform in education law comes from state and local policymakers. While some continue to believe that education reform is primarily the result of successful court litigation on issues of rights and liability, the new rules created by local administrators, district school boards, state boards of education and state legislators continues to dominate the current wave of reform.

The explanation for the shift in dominance is simple; it is a return to the natural order of things. The constitutions of each state create the system of education. And while the formula for day-to-day management of education may vary from state-to-state, responsibility for learning has always been a local enterprise. The spate of court decisions in the 20th Century in critical areas of civil rights should not be diminished, but it represents a temporary and historical anomaly in what is ordinarily a judicial posture of deference to local and state policymakers. In other words, as long as policymakers stay on the constitutional side of the line, the courts are content to give communities and their representatives the controlling voice in shaping the future of public education.

One U.S. Supreme Court Chief Justice puts it this way, "People elect school boards, who in turn select administrators, who select the teachers, and these are the individuals best able to determine the substance of that policy. ... Local control of education involves democracy in a microcosm. ... A school board is not a giant bureaucracy far removed from accountability for its actions; it is truly "of the people and by the people."

All of this makes the current wave of education legislation important to identify and ponder. In 2016, policymakers were most vocal on the subjects of school funding, governance, curriculum reform and school safety discipline reform. In this last category, all policymakers were keeping an eye on information that provides an empirical assessment of the challenges to maintain a safe learning environment. In most instances, this is the data provided by the National Center for Education Statistics. This branch of the U.S. Department of Education collects and disseminates data on education in several important categories.

On school safety, all eyes pondered the meaning of the 2015 Indicators of School Crime and Safety Report:

- There were a total of 53 school-associated violent deaths in elementary and secondary schools in the United States. Of these 53 student, staff, and nonstudent school-associated violent deaths, there were 41 homicides, 11 suicides, and 1 legal intervention death.

- The rate of serious violent victimization against students ages 12–18 averaged about 4 serious violent victimizations per 1,000 students at school.
● 65 percent of public schools recorded that one or more violent incidents had taken place, amounting to an estimated 757,000 incidents. This figure translates to a rate of approximately 15 crimes per 1,000 students.

● 58 percent of public schools reported one or more incidents of a physical attack or fight without a weapon. This percentage translates to approximately 453,000 incidents at a rate of about 9 crimes per 1,000 students.

● Some 47 percent of schools reported one or more incidents of threat of physical attack without a weapon (a rate of 6 crimes per 1,000 students).

● 9 percent of school teachers reported being threatened with injury by a student from their school. The percentage of teachers reporting that they had been physically attacked by a student from their school in 2011-12 (5 percent) was higher than in any previous survey year (ranging from 3 to 4 percent).

With the beginning of the 2017 legislative sessions, several states are implementing new policies.

The new laws summarized below are noteworthy in two respects. To begin with, the policies reflect the competitive nature of safe school policies with other legislative priorities. This is the best way to view the current conflict between gun-free school zones and state laws that permit and encourage gun possession. It is more than a collision of the right to an education versus the right to bear arms. It is a pragmatic debate over how much one’s civil liberty should be restricted for the sake of a safe campus. This is not the only conflict reflected in the new laws going into 2017, but it clearly illustrates the need for advocates of safe schools to be prepared to persuade policymakers of the need to exempt the campus environment from laws that predictably make more difficult the task of protecting students while in school.

The second take-away from the new laws below is the continuing concern about the role of law enforcement on campus. The competing issues here involve the right of a student to an education free from victimization and the desire of policymakers to avoid criminalizing every campus incident.

Finally, the trends identified in the summary below reflect subjects that will surface again in the proposals the 2017 legislative sessions.

Alabama

Alabama’s new gun law (AL ST § 13A-11-61.2) allows a person to carry a gun in a car without a license as long as the gun is unloaded and out of reach. A person can carry a gun to work as long as it is licensed, and the gun is kept secured and out of sight. The law allows a person to carry a licensed gun into a school sporting event, unless the school posts signs forbidding gun possession, and if “access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features.”

Alaska

Alaska’s new penal code redefines crimes, encourages less jail time and more treatment and relaxes penalties. Under the Senate Bill 91, persons who commit various reclassified offenses (vehicle theft, firearm theft, shoplifting, possession of drugs, and fraud), cannot be sentenced to jail unless they have prior convictions.

Arizona

Senate Bill 1137 requires every public school in the state to provide CPR training to high-school students. School resource officers and fire department personnel may be used as the instructors.

House Bill 2338 forbids any school officials from enforcing gun-free school zone policies against citizens who travel near schools on a public right of way adjacent to the campus itself.

California

Senate Bill 869 now requires all law enforcement officers to securely store handguns “by locking it in the trunk of the vehicle, locking it in a locked container and placing the container out of plain view, or locking the handgun in a locked container that is permanently affixed to the vehicle’s interior and not in plain view.”

Assembly Bill 1732 will, starting March 1, require schools with single toilet bathrooms to place signs on the door identifying the facilities as “Gender-neutral bathrooms.”

Assembly Bill 2007 requires all K-12 schools and private youth sports organizations to immediately remove an athlete from an athletic activity for the remainder of the day if the athlete is suspected of sustaining a concussion or head injury, and prohibits the athlete from returning to the athletic activity until the athlete is evaluated. The law also requires that parents be notified and that coaches and administrators complete concussion and head injury education.

Senate Bill 1072 requires all school buses and child care motor vehicles to be equipped with a “child safety alert system.” Every school is required to have a transportation safety plan with procedures to ensure that a pupil is not left unattended in the vehicle.

Colorado

House Bill 16-1080 creates a new crime “assault by strangulation,” when a person intentionally causes serious bodily injury (first degree) through strangulation or bodily injury (second degree). The new law increases the sentences range for these crimes.

Connecticut

Under House Bill 5237, a job applicant is not required to disclose the existence of any arrest, criminal charge, or conviction records. An employer is not allowed to ask prospective employees about prior arrests, charges or convictions in an initial employment application unless required to do so under state or federal law or if the employer must obtain a security or fidelity bond.

House Bill No. 5642 (Public Act No. 16-147) reduces to seven days the maximum time a juvenile can be detained in a facility. An additional seven-day detention is permitted only after officials conduct a risk assessment.

Delaware

House Bill 90 requires all public school employees to receive 90 minutes of training each year on suicide prevention. The bill also requires all public schools to establish a suicide prevention policy and a suicide prevention committee.

Florida

Senate Bill 938 bans the retail sale of products containing the intoxicating drug Dextromethorphan to persons under the age of 18. This ingredient is found in many over-the-counter cough syrups.

Senate Bill 436 makes it a second-degree felony to make false reports about a crime using firearms and makes it a first-degree misdemeanor to threaten to harm a law-enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official or any of their family members.

House Bill 387 amends and increases criminal and civil penalties against those who victimize people with disabilities.

Georgia

House Bill 310 amends state laws that prohibit bullying to include cyberbullying, defined as bulling which occurs “through the use of electronic communication, whether or not such electronic act originated on school property or with school equipment, if the electronic communication (1) is directed specifically at students or school personnel, (2) is maliciously intended for the purpose of..."
threatening the safety of those specified or substantially disrupting the orderly operation of the school, and (3) creates a reasonable fear of harm to the students' or school personnel's person or property or has a high likelihood of succeeding in that purpose.”

Senate Bill 367 allows juvenile criminal offenders held in detention by the state to receive educational services through state charter schools.

**Idaho**

Senate Bill 1389 allows residents who are 21 and older to carry a concealed weapon without a permit within city limits. Outside city limits anyone over 18 can carry a concealed weapon.

**Illinois**

SB 2835 requires vehicles to stop before passing or driving past a stopped school bus on a highway, roadway, private road, parking lot, school property, or at any other location when students are boarding or leaving the vehicle.

**Indiana**

House Bill 1019 creates a process for public dissemination and access to police car-camera and body-camera video recordings by amending the public records law. The new law allows access to persons depicted in a recording, owners of property depicted in the video, and a victim if the video is pertinent.

**Iowa**

Senate File 2288 makes it harder to assess juvenile records. Under the revised Iowa Juvenile Code, juvenile records are presumptively closed unless the juvenile is missing or the crime alleged involves a forcible felony. Government agencies, parents and guardians of accused minors, school superintendents or their designees and alleged victims of the delinquent act will still have access to these records, but the general public and media will not have access.

**Kansas**

House Bill 2502 amends existing gun laws to allow residents to carry concealed weapons without a permit. The new law also allows public employees to carry a concealed weapon on the job. The laws do not apply to private employers and K-12 public school districts, but to college and university campuses are not exempt and must allow armed individuals on their campuses.

**Kentucky**

In House Bill 162, Kentucky amended their penal code to include cyberbullying (called a “harassing communication” in the code). Communications can be made for all kinds of electronic devices, written mail, or telephone. The law forbids harassing communications “while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.” Harassing communications is a Class B misdemeanor. Ky. Rev. Stat. Ann. § 525.080.

**Maine**

Question One, a referendum, passed by voters in November, allows Maine residents to cultivate, manufacture, distribute, test and sell marijuana and marijuana products. Retail stores in Maine are not allowed to operate in the state until 2018. Local governments are allowed under the provisions of the new law to prohibit recreational use of the drug.

**Maryland**

Senate Bill 764 overrides the authority of local school officials to supervise school-sponsored journalism activities. Under the law, the extensive protection given to the press and media under the First Amendment to the U.S. Constitution applies to students regardless of whether the school district financially supports the journalism or if the news story is produced as a graded part of the curriculum. The bill also protects student from censorship and retaliation by school officials after publication.

**Missouri**

House Bill 1371, requires that “[t]he local board of education of each school district shall clearly establish a written policy of discipline, including the district’s determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district’s discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection.” The new statute outlines what crimes must be included in the school’s discipline policies, along with guidelines for punishments for disciplinary infractions. The statute also includes mandatory punishments for weapon possession on school property. Mo. Ann. Stat. § 160.261 (West).

**New Hampshire**

House Bill 1584 establishes comprehensive regulations for the use and dissemination of body-worn cameras by law enforcement personnel. The regulations create standards for training, prohibitions on camera use, and retention and disclosure of recordings. Under the provisions of the law police officers cannot use a body-worn camera; “[w]hile on the grounds of any public, private, or parochial elementary or secondary school, except when responding to an imminent threat to life or health or a call for service.”

**Ohio**

House Bill 410 amends the education code on school discipline. The new law forbids students from being expelled or suspended for excessive absences. The law requires each school district to create an “absence intervention plan” to intervene on behalf of truant students.

**Washington**

Washington State passed a House Bill 2449 that requires all school districts in Washington to create local truancy boards by 2018. These boards would be used as an alternative to incarcerating truant students in juvenile detention.

**2017 NASRO Keynote Speaker**

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