

## **NSBA Comments on Proposed Public Charge Regulation**

**Via Online Submission December 10, 2018:**

[www.regulations.gov](http://www.regulations.gov)

**Re: Proposed Public Charge Regulations**

**DHS Docket NO. USCIS-2010-0012  
RIN 1615-AA22**

The National School Boards Association (NSBA) represents through our state association members approximately 13,000 school boards nationwide. As the national voice for school boards, NSBA offers the following comments to proposed regulation, USCIS-2010-0012, issued by the Department of Homeland Security (Department).<sup>1</sup>

NSBA opposes the proposed regulation and urges the Department to revisit its decision to expand the meaning of the term “public charge.” As proposed, the rule will adversely impact both immigrant families and public schools who rely on federal funding primarily through Title I calculated in part on the numbers of public benefit applications/recipients. As families forgo public benefits to which they may be entitled, students in high poverty communities may experience increases in homelessness and child hunger as well as decreases in medical treatment.<sup>2</sup> This is because the expansion of the “public charge” rule places immigrant families—many with children who are United States citizens—in the untenable position of having to choose between food, access to healthcare, and shelter and legal immigration status. As the number of public benefit applicants/recipients declines, so does concomitant federal school funding aimed at improving the educational opportunities of children brought on by poverty, hunger and lack of access to healthcare. Ironically, the unintended outcome of the proposed rule is that the loss of much needed federal funding will result in the elimination of school programs that benefit all children. As a result, NSBA urges the Department to consider the devastating consequences the proposed change in the regulation will have on schools, children, and families and remove the public charge expansion before it is finalized.

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<sup>1</sup> As indicated in the Summary of the proposed regulation, “This NPRM (proposed rule), if finalized, would enable the federal government to better carry out provisions of U.S. immigration law related to the public charge ground of inadmissibility. This proposed rule would change the standard that is used when determining whether an alien is likely at any time in the future to become a public charge and is therefore inadmissible under section 212(a)(4) of the INA, ineligible for adjustment of status, or ineligible for admission or a visa. The rule would also make nonimmigrant aliens who are public charges generally ineligible for change of status and extension of stay. USCIS believes this proposal is more consistent with Congressional intent regarding the public charge ground of inadmissibility.”

<sup>2</sup> <https://firstfocus.org/news/press-release/dhs-proposed-public-charge-rule-would-harm-children>

## **Expanding the Definition of “Public Charge” will Result in Many Low Performing Schools Becoming Ineligible for Title I Funds**

Every year public school across the country rely on Title I funds to provide supplementary education and related services necessary to help low-achieving pre-k through grade 12 students succeed academically. For example, in school year 2015-2016 more than 55,906 public schools used Title I funds to provide additional academic assistance to help low-achieving students master their curricula.<sup>3</sup> During the 2015-2016 school year, the United States Department of Education awarded approximately \$14.9 billion in Title I funding to K-12 schools within the United States.<sup>4</sup> Those funds provided schools with extra instruction in reading and mathematics, special pre-school programs, special after-school programs and special summer programs that extended and reinforced the regular school curriculum.<sup>5</sup> Schools could not have provided these services, which benefitted all students, without federal funding.

Schools in which the student body is made up of at least 40% low-income students qualify for Title I funds.<sup>6</sup> In identifying the number of low-income students for purposes of Title I, most public schools rely on approval for free or reduced-price meals as the primary indicator of low family income.<sup>7</sup> Applications for free and reduced meals require parents to provide proof of income to qualify for the meals. That proof of income often requires parents to show that they receive some type of public benefit; those who receive assistance from the Supplemental Nutrition Assistance Program (SNAP) or the Temporary Assistance for Needy Families Program (TANF) are automatically eligible for the free and reduced-price meal program.<sup>8</sup>

The proposed change in the “public charge” regulation will add SNAP, non-emergency Medicaid, and other need-based programs to the list of benefits that could potentially preclude an immigrant from being granted a change in immigration status because they may be viewed as at risk of becoming a “public charge.” Because of that, it is foreseeable that many immigrant families—including those who have children who were born in the United States—will forgo enrolling for needed public benefits out of fear of losing the eligibility to adjust their immigration status. In effect, the expanded rule would place immigrant families in a position of having to choose between accessing public benefits or securing an adjustment to their immigration status. When those parents fail to enroll in public benefit programs, schools lose an important measure of the number of low-income students they serve. In those instances, eligible schools will not have enough students disclosing their low-income status to reach the 40% threshold needed for school-wide Title I funding. Many schools may then be unable to provide deserving students both immigrant and non-immigrant in low-performing schools the supplementary education services needed to help them meet their academic goals.

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<sup>3</sup> <https://www2.ed.gov/programs/titleiparta/index.html>

<sup>4</sup> <https://www.usnews.com/news/blogs/data-mine/2016/01/14/federal-education-funding-where-does-the-money-go>

<sup>5</sup> <https://nces.ed.gov/fastfacts/display.asp?id=158>

<sup>6</sup> <https://www2.ed.gov/programs/titleiparta/index.html>

<sup>7</sup> <https://www.cbpp.org/sites/default/files/atoms/files/6-2-14fa.pdf> (It should be noted that school districts have the option of adopting community eligibility for free and reduced meals, which does not require them to obtain to use data from child nutrition programs to determine if an individual student is entitled to free or reduced-price meals, but they still must use some data).

<sup>8</sup> <https://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals>

**Expanding the Definition of “Public Charge” Could Increase Hunger, Illness and Homelessness in School Populations as Immigrant Families Withdraw from Public Benefits to Which They Might be entitled.**

Under the proposed regulation, SNAP will be one of the programs used to determine if an immigrant has the potential of becoming a “public charge.” According to the Center on Budget and Policy Priorities, “research indicates that poor children lag behind non-poor children on a wide range of indicators of physical, mental, academic, and economic well-being.” Research indicates that children who experience hunger are likelier to have health, behavioral, learning and emotional problems.<sup>9</sup> Additionally, it is well-documented that hungry students have lower concentration and achievement levels, and have difficulty controlling their behavior.<sup>10</sup> Data also indicate that SNAP alone has reduced food insecurity for children by as much as 30%, which increases the odds that these students will be healthier, more disciplined and better able to perform in school.<sup>11</sup>

But, if the rule is expanded, parents will not apply for SNAP benefits because of fear that they will be deemed to be a “public charge,” and will be denied favorable immigration adjustments. Indeed, data have already shown that much of the recent discussion related to immigration is driving families away from SNAP. A recent study done by researchers at Boston Medical Center Children’s Health Watch indicates that SNAP participation by immigrant families who have been in the United States for fewer than 5 years and who are eligible dropped by nearly 10% in the first half of 2018. The trend is clear: immigrants concerned about legal immigration status forgo federal food benefits their families need.<sup>12</sup> As the proposed regulation brings the fear into focused reality, more parents are likely to stop applying for and using SNAP benefits. This is also likely to impact children’s participation in free and reduced meals program, even though that program is not specifically listed in the proposed regulation’s expanded list.

Families faced with this dilemma and forgoing public food benefits to which they and their children are entitled will increase the prevalence of hunger in schools. As research has shown, increased prevalence of hunger in schools will impact the entire school community because groups of hungry children will not be prepared to learn. Thus, an intended consequence of the rule expansion is that it works against the very real challenges stemming from conditions of poverty, such as childhood hunger, that Title I funding is designed to address.

A similar outcome could result from the addition of non-emergency Medicaid to the list of benefits that would lead to a finding that a person is a “public charge.” As of 2017, 45 million children receive Medicaid benefits. Research indicates that those children who receive benefits through Medicaid and children’s health programs access healthcare at a far greater rate than those who are uninsured.<sup>13</sup> Studies demonstrate that children who have access to healthcare are healthier and do better in school.<sup>14</sup>

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<sup>9</sup> <https://www.cbpp.org/blog/snap-lifts-millions-of-kids-out-of-poverty>

<sup>10</sup> <http://www.nea.org/home/39282.htm>

<sup>11</sup> <https://www.cbpp.org/blog/snap-lifts-millions-of-kids-out-of-poverty>

<sup>12</sup> <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation>.

<sup>13</sup> <https://ccf.georgetown.edu/2017/03/03/medicaid-fact-sheets/>

<sup>14</sup> <https://www.attendanceworks.org/policy/state-education-policy/>

With the addition of Medicaid to the list of public benefits that will factor into the calculation of whether a person has the potential to be a “public charge,” many eligible immigrant families and their children, fearing the “public charge” designation and its adverse impact on their immigration status, will forego Medicaid benefits. As with public benefits designed to ameliorate childhood hunger, and absence of health benefit will adversely impact children. Some may go without items that are essential to learning, such as glasses and hearing aids. And, an inability to access health services may result in an increase in the spread of communicable diseases in school, as families forgo treatment otherwise available under Medicaid for their ill children. And, the health of students impacts the absenteeism rates at schools,<sup>15</sup> which leads to lower levels of academic achievement. Increased absenteeism resulting from ill children could also impact school funding in those jurisdictions basing per pupil funding on rates of average daily student attendance.<sup>16</sup> As with Title I funds, fewer dollars means fewer resources for all students, and especially for those most vulnerable.

Lastly, adding Section 8 and other housing benefits to the list of benefits that could cause one to be considered a “public charge” could lead to housing insecurity and homelessness, yet another factor contributing to low student achievement and child well-being. If the proposed rule allowing housing benefits to be considered in determining who constitutes a “public charge” becomes effective, legal immigrants who fear the “public charge” designation will forego housing assistance, which will put fragile students in an even more unstable position ~ homelessness. And, the rule expansion to include housing benefits may fall disproportionately on immigrant families. According to the National Law Center on Homelessness and Poverty, approximately one in four children (18 million) live in families with at least one immigrant parent.<sup>17</sup> Instability in housing and homeless caused by forgoing public benefits, will also drive up the costs of transportation for school districts, as schools seek to shift resources to comply with the McKinney Vento Act requiring them to provide transportation to homeless students.<sup>18</sup>

## Conclusion

As outlined in these comments, expansion of the definition of “public charge” to include a family’s use of SNAP, Medicaid and Housing benefits will most certainly harm immigrant families many of whose children are American citizens. However, such an expansion will not just harm immigrant families. School districts and the other students they serve will also be harmed by the decrease in federal funding that flows from the rule’s built-in disincentive of many immigrant families to seek public benefits for which they may otherwise qualify. Students in high-risk schools who need supplementary services to benefit from school curricula will be harmed by the lack of federal funding because they will not be able to receive the services they need to help them succeed in school. Schools who are required to serve all students without regard to funding levels will have to scramble to find the resources necessary to help the children who need the more intensive services as well as provide necessary services to other students. The change in the regulation will also harm schools and the children they serve because it could result in increases in the numbers of hungry, sick and potentially homeless students, which will impact schools financially through the potential loss of state revenue due to increases in student absenteeism and increased transportation costs for homeless students. In sum, NSBA believes expansion of the public

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<sup>15</sup>[https://healthyschoolscampaign.org/wp-content/uploads/2017/02/Addressing\\_Health-Related\\_Chronic\\_Absenteeism\\_Toolkit\\_for\\_Action\\_Full.pdf](https://healthyschoolscampaign.org/wp-content/uploads/2017/02/Addressing_Health-Related_Chronic_Absenteeism_Toolkit_for_Action_Full.pdf)

<sup>16</sup> <https://www.attendanceworks.org/policy/state-education-policy/>

<sup>17</sup> [https://nichp.org/press\\_releases/09.25.18](https://nichp.org/press_releases/09.25.18)

<sup>18</sup> <https://www2.ed.gov/policy/elsec/leg/esea02/pg116.html>

benefit rule will have a deleterious impact not only the lives of immigrant families and students, but also on the many other students in public schools that depend on federal funding through laws like Title I. The Department should withdraw its proposed expansion of the “public charge” definition.

Sincerely,

A handwritten signature in black ink, reading "Thomas J. Gentzel". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas J. Gentzel  
Executive Director & CEO