EducationCounsel Alert for November 12, 2026

This EducationCounsel Alert shares updates about various recent actions by the federal government relevant to education, including:

1. DOJ Issues Legal Opinion Asserting that USED's Magnet Schools Assistance Program is Mostly Unconstitutional
2. USED Proposes Changes to Secretarial Priorities
3. USED Finalizes Higher Education Accreditation Rules
4. DOJ Issues Guidance Directing Agencies to Move Toward "English-Only" Operations
5. Other Significant Updates
6. Table of Proposed Federal Rules

In addition to this week's Alert, please also see the following new Deep Dive:

- ➔ ***2026 Election Results: An Outlook for Federal Education Policy*** provides an overview of the 2026 midterm election outcomes and their potential impact on federal education policy—across early childhood, K-12, higher education, and more—given the new context of a divided government.

All of our summaries and analysis of the Administration's executive actions are available in one place by clicking here. Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice*.

1. DOJ Issues Legal Opinion Asserting that USED's Magnet Schools Assistance Program is Mostly Unconstitutional

On 11/5/26, the Department of Justice's (DOJ) Office of Legal Counsel (OLC) issued a formal memorandum opinion that calls for significant limits on USED's Magnet Schools Assistance Program (MSAP). Congress authorized MSAP as part of the Elementary and Secondary Education Act to help school districts establish and operate magnet schools that could help desegregate public schools as part of required or voluntary desegregation plans and, in particular, to combat "minority group isolation." Congress also allocated $139 million to MSAP in the FY26 appropriations law. OLC's new opinion asserts that "in most cases," MSAP is unconstitutional under the strict scrutiny legal standard that OLC argues the program must satisfy. In the wake of the Supreme Court's *Harvard vs. SFFA* decision that diversity in college admissions no longer constitutes a "compelling interest," OLC concludes that USED "may approve MSAP grants only when an applicant demonstrates that its use of race is narrowly tailored to remedy a specific and identified instance of illegal discrimination." In its press release, OLC further explained that MSAP "grants based solely on goals such as increasing racial diversity, reducing racial isolation, or altering racial balance—untethered from the remediation of unlawful discrimination—cannot be approved."

Regarding the existing MSAP grants, OLC noted that it is "not aware of any specific [MSAP] grant that currently" would be lawful under OLC's analysis. The DOJ also announced that it will work with USED to ensure its MSAP grants comply with the OLC's opinion; as of this Alert's publication, the MSAP website includes a notice that reads in part, "[a]t this time, no action is being taken regarding any grant. We do not yet have additional information about what, if any, implications the opinion may have for the program or existing grants."

This is the latest in a series of similar opinions from OLC asserting that various congressionally-authorized and -funded programs are unconstitutional in whole or in part, including some National Science Foundation programs supporting efforts to diversify STEM education and USED's Minority-Serving Institutions (MSI) programs. (See our 8/20/26 Alert for more information about these prior OLC opinions, including how USED has responded to them by using the relevant appropriated funds for other purposes.)

2. USED Proposes Changes to Secretarial Priorities

On 11/5/26, USED published a notice of proposed changes to the Secretary's Supplemental Priorities and Definitions. This proposal would amend six of Secretary McMahon's priorities, which USED uses to design discretionary grant competitions in line with the Administration's priorities. (USED is not proposing changes to the only other existing priority, "Promoting Patriotic Education.") As part of its justification for proposing these additional changes, USED pointed to input it has received from the other federal agencies that are beginning to administer these programs via the Administration's series of interagency agreements as well as lessons learned from FY26 grant competitions. Comments on the proposed changes are due here by 12/7/26. Some of the proposed changes include:

- **Evidence-Based Literacy**: This priority would remain largely unchanged, although USED is proposing new definitions including for super intelligence (SI) (which is the federal government's preferred term for artificial intelligence); SI literacy; talent marketplace; pre-apprenticeship; and Registered Apprenticeship. It would also revise the definition of computer science to include a reference to SI.

- **Expanding Education Choice**: This priority would add references to technical, trade, and vocational schools, and would expand the STEM charter school provision to include SI, SI literacy, and cybersecurity. It would also specify that career and technical education includes programs integrating pre-apprenticeship and Registered Apprenticeship pathways. Additionally, USED would add four new provisions allowing it to incorporate into competitive grant competitions priorities for:
    - technical assistance to families regarding scholarships under the Federal Scholarship Tax Credit program,
    - child care and other supports for student parents,
    - access to talent marketplaces and apprenticeships, and
    - children and youth in foster or kinship care and their caregivers.

- **Returning Education to the States**: This priority would allow for grant applicants to be endorsed by an Indian Tribe's highest-ranking elected official, not only by a Governor or chief state school officer.

- **Meaningful Learning Opportunities**: This priority would be amended to expand the menu of topics included within it, from which USED can select one or more to prioritize within grants it is designing. The expanded list would also include:
    - mathematics instruction aligned with workplace math skills and real-world applications identified by employers;
    - high-quality instructional materials focused on STEM that include SI and cybersecurity, and CTE programs, including those integrating career-connected learning, pre-apprenticeship, and Registered Apprenticeship pathways;
    - Registered Apprenticeships as a model for teacher and paraprofessional advancement;

  - Support for professional development and technical assistance for local school board members and superintendents to improve student outcomes using data; and
  - Strategies to support attendance and engagement.

- **Career Pathways and Workforce Readiness**: This priority would add a provision regarding the integration of activities across the "full career pathway spectrum" to help students, jobseekers, and workers access high-quality career pathways. The proposed priorities add coordination with Tribes and local entities and expand apprenticeship strategies, including for adult learners. Additionally, USED is proposing to add new priority areas for the following:
  - workforce readiness skills (including SI and financial literacy); and
  - educator Registered Apprenticeships, with credit-transfer alignment and supports for apprentices.

- **Advancing Artificial Intelligence in Education**: This priority would be renamed to "Advancing Super Intelligence in Education," and "AI" would become "SI" throughout. USED would also add new priority areas including:
  - tribal partners for dual enrollment;
  - employer-developed SI training;
  - alignment with DOL's "AI Literacy Framework"; and
  - SI projects designed for all students, plus support for building evidence on SI in education.

3. USED Finalizes Higher Education Accreditation Rules

On 10/29/26, USED announced that it has issued final regulations overhauling the way USED governs higher education accreditors. (USED published this fact sheet as well.) The final version is largely unchanged from the approach agreed to in the negotiated rulemaking process that took place earlier this year (and that was later codified in the proposed regulations). These final regulations are important because accreditation is a prerequisite for postsecondary institutions and their students to access federal student aid like Pell Grants and student loans. Under USED's new approach, prospective accreditors will face a much lower bar to initial recognition, which means schools will more easily be able to switch accreditors to avoid sanction or scrutiny. Once recognized, accreditors will also face several new federal requirements, including ones that open the door to federal government review of diversity, equity, and inclusion initiatives. As we have previously noted, many of the changes appear to exceed the Higher Education Act's statutory limits on USED authority over accreditation and raise concerns regarding the First Amendment rights of accreditors, postsecondary institutions, faculty, and students. (For more detail on these proposed regulations, please see EducationCounsel's prior overview of the proposed regulations and an analysis of the Trump Administration's legal arguments governing diversity, equity, and inclusion in accreditation.) The final regulations will go into effect on 1/1/27.

4. DOJ Issues Guidance Directing Agencies to Move Toward "English-Only" Operations

On 11/12/26, DOJ issued "Guidance on Implementing English as the Official Language," a resource intended to assist federal agencies in implementing President Trump's 3/1/25 executive order (EO), "Designating English as the Official Language of the United States of America." Among other things, that EO rescinded an EO in place since August 2000, "Improving Access to Services for Persons with Limited English Proficiency," which required federal agencies and recipients of federal funding to provide extensive language assistance

to non-English speakers and to work to eliminate discrimination against them. The new guidance from DOJ builds on guidance the agency previously issued on this topic on 7/14/25, directing federal agencies to take steps to redirect resources *away* from providing multilingual services that exceed the minimum legal requirements and *toward* programs that facilitate "English-language education and assimilation." (See our 7/28/25 Alert for further discussion of the earlier guidance.)

Neither President Trump's EO nor DOJ guidance document change the federal legal rights—established by both Congress and the Supreme Court—for English learners to access public services and especially for students who are English learners to have meaningful access to public education. However, by limiting "government business" to English and directing agencies to "prioritize the English language over all other languages," DOJ's guidance may have the effect of limiting access to information for students and families with limited English proficiency. Areas identified by DOJ for English-only operation include:

- Official correspondence,
- Regulations and policy documents,
- Public notices,
- Forms and applications,
- Websites and digital services,
- Outreach and educational materials,
- Internal communications and training materials, and,
- "Super intelligence tools."

The guidance directs all federal agencies to identify and review all multilingual assistance programs, determine whether multilingual assistance is required by law or necessary to accomplish an agency's mission, and promptly discontinue any services that do not meet this threshold. It highlights a number of examples of recent agency actions to reduce multi-language services, including USED's removal of non-English language content such as "Know Your Rights" resources from its website, and encourages other agencies to follow suit. Members of the public may submit comments on the guidance through 1/11/27.

5. Other Significant Updates

All recent updates will appear in the Executive Actions Chart, but some of note include:

USED Grants ESSA Waivers to Ohio, Oklahoma, and Nebraska: Over the past two weeks, USED announced that it has approved Every Student Succeeds Act (ESSA) waiver requests from Ohio, Oklahoma, and Nebraska. Ohio and Nebraska also received approval to exercise Ed-Flex authority to waive certain federal statutory and regulatory requirements for districts and schools without first seeking approval from USED. Under their ESSA waivers, all three states will be allowed to consolidate their state-level activities funds, including funds from Title II, Part A (Supporting Effective Instruction); Title III, Part A (English Language Acquisition); and Title IV, Part A (Student Support and Academic Enrichment). Ohio and Oklahoma will also be allowed to include in their consolidation the state-level activities funds available under Title IV, Part B (21st Century Community Learning Centers). To date, USED has issued ESSA waivers to 10 states and granted Ed-Flex authority to 28.

- Among some other financial flexibilities, **Ohio** received waivers in the following areas: School districts in the state will be allowed to use their Title III funding across any, but not necessarily all, of the three allowable areas (academic supports, professional development, and parent engagement).

Similarly, Ohio districts will be free to use their Title IV funding without regards to ESSA's minimum percentage requirements. The state was also granted a waiver from some of the requirements applicable to Direct Student Services funds, including no longer needing to provide a list of state-approved tutoring providers.

DOJ Names Former USED OCR Official to Serve as Acting Assistant Attorney General for Civil Rights: On 11/10/26, Attorney General Todd Blanche announced that President Trump has appointed Craig Trainor to serve as DOJ's Acting Assistant Attorney General for Civil Rights following Harmeet Dhillon's recent resignation as the head of the Civil Rights Division. Trainor most recently served as the Senate-confirmed Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development (HUD), but he previously served as USED's Acting Assistant Secretary for Civil Rights. During his OCR tenure, Trainor signed the 2/14/25 Dear Colleague Letter that demanded all school districts certify their compliance with the Administration's anti-DEI guidance within two weeks—guidance that was later vacated by multiple federal courts. In addition to leading all of the DOJ's civil rights enforcement work (across education, voting, employment, and other areas), Trainor assumes the acting role as DOJ and USED are beginning to implement multiple interagency agreements that shift both funds and functions from USED to other federal agencies, including ones affecting OCR and the Student Privacy Policy Office. During Dhillon's DOJ tenure, the Civil Rights Division shifted away from its traditional priorities and toward a focus on opposing efforts to advance diversity, equity, and inclusion in K-12 and higher education, investigating alleged antisemitism on college campuses, and challenging policies related to transgender students.

USDA Proposes Changes to SNAP Categorical Eligibility: On 11/10/25, the U.S. Department of Agriculture (USDA) published a proposed rule that would significantly narrow categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP). The proposal would limit categorical eligibility through the Temporary Assistance for Needy Families (TANF) program to households receiving TANF financial assistance, eliminating states' ability to also extend SNAP categorical eligibility to households receiving other TANF-funded non-cash benefits or services. This change would effectively end states' use of Broad-Based Categorical Eligibility (BBCE) to expand SNAP eligibility beyond federal income and resource limits. USDA projects that "approximately 16.9 percent of participating SNAP households" would "no longer receive SNAP benefits" because their income or resources exceed the federal statutory limits. "This represents 3.2 million households containing 6.3 million individuals in FY 2029. The proposed rule also impacts other nutrition programs where SNAP confers eligibility. This includes the National school lunch and breakfast program. The department estimates that 1.78 million school children would no longer be eligible for school meals due to the proposed rule, but they estimate that most (97%) could still retain eligibility through direct certification." Comments on the proposed rule are being accepted here through 12/10/26.

USED and Jefferson County Schools Agree to Pause Gender Identity Litigation: On 11/20/26, media reports indicated that USED and the Board of Education of Jefferson County School District (JCPS) have agreed to "indefinitely pause" federal litigation over threats by the federal government to terminate more than $50 million in funding unless JCPS changes its gender identity policies to align with the Administration's interpretation of "sex." JCPS filed the suit after USED's Office for Civil Rights (OCR) issued a Letter of Impending Enforcement Action alleging that JCPS's policies violate Title IX by permitting students to access facilities and participate on athletics teams that align with their gender identity. JCPS refused to sign an agreement drafted by USED because, among other things, Colorado state law provides explicit protections for transgender and nonbinary students. (See our 7/9/26 Alert for more information.) The reason for the pause has not been made public.

DOL Issues Final Rule Rescinding Equal Opportunity Requirements in Apprenticeships: On 11/6/26, the U.S. Department of Labor (DOL) issued a final regulation eliminating various equal employment opportunity (EEO) and affirmative action requirements that previously applied to Registered Apprenticeship program sponsors. Under the new rules, sponsors will no longer be required to:

- Designate an EEO officer or coordinators,
- Conduct mandatory anti-harassment trainings,
- Post equal opportunity pledges,
- Conduct utilization analyses, or
- Set numerical goals related to recruitment or participation based on race, sex, or ethnicity.

The rule also requires any state seeking new or continued recognition as a State Apprenticeship Agency (SAA) must ensure that its laws and regulations "conform" to DOL's new approach to nondiscrimination in apprenticeships. In explaining the changes, DOL raised concerns that the existing requirements placed significant administrative burdens on apprenticeship sponsors, may have imposed "legally questionable" participant thresholds based on identity, and increased costs that discouraged program expansion. Instead, DOL will subject entities to "a more straightforward requirement that all Registered Apprenticeship program sponsors comply with all Federal and State laws and regulations prohibiting discrimination."

USED Directs Illinois to Change Mental Health Screening Guidance: On 10/20/26, USED's Student Privacy Policy Office (SPPO) announced that it is demanding that the Illinois State Board of Education (ISBE) revise its new mental health screening guidance because, according to the SPPO, the guidance may violate the Protection of Pupil Rights Amendment (PPRA) and the Family Educational Rights and Privacy Act (FERPA). (See our 9/3/26 Alert for analysis of SPPO's recent Dear Colleague Letter on the scope of these laws.) SPPO raised concerns that, as written, the guidance allows parents to opt their students out of mental health screenings but does not require parents to provide prior written consent *before* students participate and may allow some screenings to be omitted from an "official" student record. ISBE's new policy was adopted by the state legislature in 2025 and will go into effect for the 2027-2028 school year. USED demanded changes by 11/13/26 or it would take further enforcement action.

Federal Court Dismisses DOJ Lawsuit against Harvard Regarding Admissions Records: On 11/2/26, a federal judge in Massachusetts dismissed a lawsuit brought by the Trump Administration against Harvard University regarding access to admissions records the government is seeking as part of its Title VI investigation into whether Harvard is improperly using race in its admissions process. The court ruled that the DOJ had not complied with the pre-litigation procedures established in Title VI and its implementing regulations. However, the case can be revived either by DOJ taking additional administrative steps or amending its filings to better demonstrate compliance with the relevant procedures. According to reporting, the DOJ plans to do the latter. For more on this ongoing and multi-faceted dispute, see EducationCounsel's Deep Dive, *The Trump Administration vs. Harvard University*.

6. Table of Proposed Federal Rules

The following table includes information about a number of significant pending proposed rules from various federal agencies. Background information and links for submitting public comments appear in each row.

Agency & Notice of Proposed Rulemaking (NPRM)	**EducationCounsel Resources**	**Status & Deadline for Submitting Comments**
FCC: FCC To Review **E-Rate** Program To Ensure Congress's Vision (NPRM)	• Alert from 8/20/26	*ACCEPTING REPLY COMMENTS* Public comments were due by 10/13/26. Reply comments can be submitted through **11/12/26**.
Treasury: **Federal Scholarship Tax Credit** (NPRM)	• Unpacking Treasury's Proposed Regulations • FSTC Primer • Considerations for State-Level Leaders	*ACCEPTING PUBLIC COMMENTS* Submit public comments here for a 60-day period through **12/1/26**.
USED: Proposed Priorities and Definitions-**Secretary's Supplemental Priorities** and Definitions (NPRM)	• Unpacking the Secretary of Education's Supplemental Priorities for Competitive Grants (9/30/25 version to be updated soon)	*ACCEPTING PUBLIC COMMENTS* Submit public comments here for a 60-day period through **12/7/26**
NPRMs No Longer Accepting Comments / Awaiting Final Rule		
USED: Accreditation, Innovation, and Modernization: The Secretary's Recognition of **Accrediting Agencies** (NPRM)	• Alert from 8/20/26 about the NPRM • Alert from 5/29/26 about the rules emerging from negotiated rulemaking	*WAITING FOR FINAL RULE* 2,822 comments were submitted by the 9/21/26 deadline.
USED: Education Department General Administrative Regulations (**EDGAR**) (NPRM)	• Overview & FAQs of USED's Proposed Changes to EDGAR • Alert from 9/3/26	*WAITING FOR FINAL RULE* 5,510 comments were submitted by the 9/23/26 deadline.
HHS: Reducing Federal Burden for **Head Start** Programs (NPRM)	• Unpacking the NPRM to Overhaul the Head Start Program Performance Standards • Alert from 8/20/26	*WAITING FOR FINAL RULE* 40,089 comments were submitted by the 10/6/26 deadline.
Commerce: Decennial **Census** of the Population of Americans (NPRM)	• Alert from 10/29/26	*WAITING FOR FINAL RULE* 149,926 comments were submitted by the 11/2/26 deadline.
Treasury: Racial Nondiscrimination in **Private Schools** (NPRM)	• Alert from 9/3/26	*WAITING FOR FINAL RULE* 2,640 comments were submitted by the 11/3/26 deadline.

DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to info@educationcounsel.com. Updates in this Alert are current as of November 12, 2026 at 10:00 am ET.