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# **The Federal Update for November 22, 2024**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: November 22, 2024

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*Due to the Thanksgiving holiday and The Bruman Group’s Fall Forum on December 4-6, the next issue of the Federal Update will publish on December 13th.*

## Legislation and Guidance

### Linda McMahon Picked as Next Secretary of Education

President-Elect Donald Trump announced this week that he will nominate Linda McMahon to be the next Secretary of Education.

McMahon was head of the Small Business Administration during Trump’s first term, a position to which she was confirmed with a vote of 81-9. She was appointed to the Connecticut State Board of Education but resigned after one year to campaign for the United States Senate. She is board chair of the America First Policy Institute, a conservative think tank which has promoted vouchers and other school choice mechanisms and decried diversity, equity, and inclusion initiatives in higher education.

McMahon’s selection is not without controversy. Her resignation from the Connecticut State Board of Education came one day after the Hartford Courant inquired about her claims that she had an education degree, which she later claimed were the result of her own confusion (her college degree is in French, but she did earn a teaching certificate in North Carolina). She was also sued for allegedly enabling the sexual abuse of children during her time as Chief Executive Officer of World Wrestling Entertainment (WWE). McMahon denied the allegations.

House Education and Workforce Committee Chair Virginia Foxx (R-NC) praised the selection of McMahon. “Above all else, the Secretary of Education should be principled. She should be committed to the well-being and success of students, and clear-eyed about what is needed to empower them. Linda McMahon fits that bill to a T,” Foxx said in a statement.

Author: JCM

### OCR Issues Guidance on Avoiding Discrimination in Use of AI

The U.S. Department of Education’s Office for Civil Rights (OCR) released guidance this week on ensuring that artificial intelligence (AI) is used in a nondiscriminatory manner. The guidance notes that AI tools have the “potential to enhance opportunities and increase educational equity” but also have the ability to “create or contribute to discrimination.”

The guidance states that there are multiple types of discrimination that could be implicated by the use of AI and walks through a number of hypothetical scenarios and how OCR might respond. It notes that students must be protected from discrimination on the basis of race, color, or national origin, sex, or disability.

Among the potential issues for AI cited are that AI has a high error rate when evaluating essays by non-native speakers for plagiarism and use of generative AI; the potential for poor translation when using AI to generate text in non-English languages; and the use of facial recognition technology that consistently misidentifies or confuses non-white students. The guidance provides examples of the use of AI to harass students with computer-generated sexually explicit materials, make admissions decisions based on past makeup of entering classes, or overreliance on AI closed captioning to provide access to deaf students without reviewing for quality or providing additional supports.

[The guidance is available here](https://www.ed.gov/media/document/avoiding-discriminatory-use-of-ai).

Author: JCM

### ED Releases Guidance on Functional Behavioral Assessments

The U.S. Department of Education (ED) recently released a new guidance document on using functional behavioral assessments. The guidance document was developed by the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education to provide schools and families with more information on functional behavioral assessments (FBAs) and behavioral plans to address student behavior.

The guidance aligns with ED’s focus on addressing the overreliance on exclusionary discipline, which includes the use of suspensions and expulsions. ED points to reports showing that some groups are overrepresented when it comes to exclusionary discipline. The guidance states that this form of discipline can lead to negative impacts for students, including not finishing high school and involvement with the justice system. ED says that focusing on evidence-based practices, including FBAs, can reduce reliance on exclusionary discipline.

FBAs are “used to understand the function and purpose of a child’s specific, interfering behavior and factors that contribute to the behavior…for the purpose of developing effective positive behavioral interventions…” and have traditionally been used for students with disabilities. However, the guidance notes that they can be applied to all students. FBAs often have a data collection characteristic, where observations and interviews are conducted to collect insights into environmental and behavioral factors. ED says that factors that contribute to behavior can include bullying, poverty, and discrimination. FBAs can help educators understand these factors and develop positive interventions.

The guidance describes how to develop and implement an FBA, including how to incorporate it into the individualized education program process for students with disabilities. ED also explains how FBAs can be used to create strategies that address behaviors that interfere with learning and includes examples of how an FBA would work. The document also includes a list of guiding principles when developing FBAs and highlights sources of federal funds for training on FBAs.

To share additional information on the guidance document, ED will be hosting a webinar at 1:00pm ET on December 3, 2024. [Registration for the webinar is open here.](https://ed-gov.zoomgov.com/webinar/register/WN_gnCUbkCOSrKRj-zNMahUQA)

[The new guidance document can be viewed here.](https://sites.ed.gov/idea/files/Functional-Behavioral-Assessments-11-19-2024.pdf)

Author: BTW

## Reports

### IES Report Finds Short-Term Pell Does Not Increase Employment

The U.S. Department of Education’s (ED’s) Institute of Education Sciences (IES) released a report this month that examined short- and long-term effects from expanding the Pell grant program to allow funding to be used for short-term programs. The study was conducted based on two pilot programs ED operated between 2012 and 2017. Currently, Pell grants can only be used in long-term programs, but Congressional members have introduced legislation to expand their use to programs as short as eight weeks.

One of the pilot programs allowed Pell grant-eligible students with a bachelor's degree to use funds for short-term occupational training programs lasting up to one year, while the other pilot program allowed students to use Pell grants for programs lasting as short as eight weeks. IES found that in both pilot programs, enrollment and completion rates increased, including programs associated with high-demand occupations in the State. However, when looking at the medium to long-term impact, students who were offered Pell grants in the two pilot programs were about as likely to be employed as students who did not have access to Pell grants for short-term and occupational programs. The students receiving Pell grants also had similar earnings to the non-Pell grant students.

IES notes in the report summary that “[t]he cost of expanding Pell Grant eligibility—about $1,800 per student in this study—should be considered against the evidence on the economic benefits of short and very short-term programs.” Although there is bipartisan support for the concept of short-term Pell grants, the report’s results could impact the momentum behind legislation in Congress, especially as the incoming 119th Congress is expected to enact more fiscally conservative policies regarding education spending.

[The full IES report is available here](https://ies.ed.gov/ncee/pubs/2025005/pdf/2025005.pdf).

Author: KSC

***The Federal Update has been prepared to inform The Bruman Group, PLLC’s legislative clients of recent events in federal education legislation and/or administrative law. It is not intended as legal advice, should not serve as the basis for decision-making in specific situations, and does not create an attorney-client relationship between The Bruman Group, PLLC and the reader.***

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