

Council for American Private Education

CAPE outlook

Voice of America's private schools

CAPE Submits Comments Opposing New York Substantial Equivalency Proposal

On August 27, CAPE submitted comments to the state of New York opposing the Department of Education's (NYSED) proposed "substantial equivalency" regulations. Under those regulations, public school officials would inspect private schools to determine whether the education being provided is satisfactory.

Readers of *Outlook* will know that this proposal was originally unveiled by NYSED in 2018. Given that such an arrangement would strike at the autonomy of private schools and threaten the very *raison d'être* of private education, private school groups began to file suit. On April 17, 2019, a state judge struck down the proposal on procedural grounds, ruling that the state must allow public comment. NYSED has since reissued the proposal, this time implementing a public comment period.

CAPE's Comments

Because of the seriousness of the issue for private schools, *Outlook* is here printing CAPE's entire letter to the NYSED Board of Regents:

Dear Ms. Coughlin and Members of the Board of Regents:

On behalf of CAPE, the Council for American Private Education, I respectfully submit these comments in opposition to the proposed regulations recently published by the New York State Education Department regarding "Substantial Equivalency" – the statutory mandate that a private school student in New York receive instruction that is "at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides." NY Education Law 3204(2).

CAPE is a coalition of national

organizations and state affiliates (including a New York state affiliate) serving private elementary and secondary schools. There are over 33,000 private schools in America. One in four of the nation's schools is a private school. More than five million students attend these schools. CAPE member organizations represent more than 80 percent of private school enrollment nationwide.

Regulating with a Heavy Hand

CAPE is deeply concerned about the proposed new "substantial equivalency" regulations – both in terms of their potentially devastating impact on private schools in New York, and the dangerous precedent they may establish for other states. These regulations are extremely



prescriptive and heavy-handed, requiring private schools to teach precisely the same subjects as those required to be taught in the public schools, in some grades for precisely the same number of hours as required to be taught in the public schools. They would require many private schools to totally revamp their school day schedules, in some cases to the point of impinging on the schools' educational mission.

The proposed regulations would empower governmental regulators to determine the competency of private school teachers, notwithstanding that

New York does not require private schools to hire only licensed teachers. They would further empower local public school officials to sit in judgment on their private school neighbors, despite the obvious potential conflict of interest where those very same officials may be interested in attracting private school students to their public schools.

In short, if these regulations are adopted, they would represent a serious intrusion upon the autonomy of New York's private schools, would inhibit many schools' ability to pursue the educational vision upon which they were founded, and could jeopardize the continued viability of the private school sector.

Substantially Inequivalent

As the Board of Regents surely understands, parents dig deep into their pockets to educate their children in private schools precisely because they want their children to have an educational experience that is substantially *different* from – not substantially *equivalent* to – the experience they would have in public school. Private schools are established to provide a meaningful alternative to public education. They have historically served as laboratories in which innovative educational approaches have been successfully developed, have promoted social and educational diversity, and have made a major contribution to the American education landscape. But they have been able to do so only because the regulatory environment in which these schools operate have allowed maximum flexibility in designing curriculum, hiring teachers, and setting school day schedules.

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CAPE member organizations:

- Agudath Israel of America
- American Montessori Society
- Association Montessori International—USA
- Association of Christian Schools International
- Association of Christian Teachers and Schools
- Association of Waldorf Schools of N.A.
- Christian Schools International
- Council of Islamic Schools in North America
- Council on Educational Standards and Accountability
- Evangelical Lutheran Church in America
- Friends Council on Education
- Islamic Schools League of America
- Jesuit Schools Network
- Lutheran Church—Missouri Synod
- National Association of Episcopal Schools
- National Association of Independent Schools
- National Catholic Educational Association
- National Christian School Association
- Office for Lasallian Education
- Oral Roberts University Educational Fellowship
- Seventh-day Adventist Board of Education
- United States Conference of Catholic Bishops
- Wisconsin Evangelical Lutheran Synod Schools
- Affiliated State Organizations a coalition of national associations serving private schools K-12

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Outlook is published monthly (September to June) by CAPE. An annual subscription is \$35. ISSN 0271-145

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Limiting and restricting the independence and flexibility that private schools enjoy would have a severe impact on their ability to provide their students with the education they, their students, and their students' parents want them to have. As stated in a recent report by the National Conference of State Legislators, there is concern that "uniform government standards will force all schools, public and private, to teach the same material rather than allow private schools to provide an array of alternative learning environments that offer innovative teaching philosophies and unique school cultures." <http://www.ncsl.org/research/education/accountability-in-private-school-choice-programs.aspx>

Unprecedented Intrusion

Based on our research and the experience CAPE has had with private schools across the United States, we believe that the proposed regulations would constitute an unprecedented level of state interference with the independence of private schools. To put the proposed regulations in context, a review of the statutes and regulations for private schools in all 50 states shows that most states do not require "substantial equivalency" altogether; and that even in those few states where substantial equivalency is required, the statutes and the regulations do not specify in as great detail as New York's proposed regulations exactly how that education must be provided.

For example, New Jersey law requires equivalency of instruction (N.J. Rev. Stat. 18A:38-25), and there are a few subjects (history of the Constitution, accident and fire prevention) required by statute (N.J. Rev. Stat. 18A: 6-2, 6-3), but there are no regulations at all that specify courses, hours of instruction, and the like. Rhode Island law requires substantially equivalent instruction in core academic areas (RIGL 16-19-2) and some specific subjects such as government (RIGL 16-22-2) and health and physical education (RIGL 16-22-4), but there are no state regulations that specify anything more than that. Alaska law requires comparable instruction (Alaska Stat. 14.30.010(b)(1)), but there are no regulations specifying how that must be implemented. Michigan requires comparable subjects be taught (Mich. Comp. Laws Sec. 380.1561(3)(a)), but the Michigan statute

states that while the state board of education is charged with developing a recommended model core curriculum for local school districts, that curriculum is only to be made "available" to nonpublic schools for their consideration in developing their own core curriculum, and does not require nonpublic schools to conform precisely to the state model core curriculum (Mich. Comp. Laws Sec. 380.1278 (1 and 7)). It would thus appear that New York's proposed regulations go far beyond what other states that do require substantial equivalency of instruction actually specify in their regulations governing curriculum requirements.

It is important to recall that even without overly prescriptive governmental regulation, private schools are already accountable to those who hold ultimate authority over them: their parent bodies. If parents are dissatisfied with the education their child is receiving in a private school, they are perfectly free to vote with their feet and enroll their child in another school.

We do not suggest that government should have no oversight responsibility in the context of private schools. But in exercising such responsibility, government must tread lightly, cognizant of the fact that private schools are accountable first and foremost to their parent bodies. The proposed new regulatory scheme in New York seems totally oblivious to that reality.

They want their children to have an educational experience that is substantially *different*.

The Threat to Religious Liberty

CAPE represents virtually the full spectrum of private schools across the United States, and the concerns we have expressed in the preceding paragraphs apply across the board to all private schools. But they apply with special force to faith-based private schools. The U.S. Supreme Court has emphasized "the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children." *Wisconsin v. Yoder*, 406 U.S. 205, 302 (1972). When government regulation interferes with the parental right to guide the religious education of their children, by prescriptively imposing onerous secular studies curriculum requirements that would undermine the ability of private religious schools to provide an appropriate religious education to their students, government undermines the fundamental religious liberty interests of parents and their children.

CAPE respectfully opposes the proposed regulations.

Supreme Court to Hear Montana Case with National Implications

On June 28, the United States Supreme Court agreed to hear a challenge to Montana's Blaine Amendment, a case with the potential to circumscribe or even strike down Blaine Amendments across the country.

The case, *Espinoza v. Montana Department of Revenue*, is borne out of the Montana Department of Revenue's refusal to fully implement a tax-credit scholarship program enacted by the state legislature in 2015. The program allows taxpayers to receive up to \$150 in state tax credits for donations to organizations that offer scholarships to help families pay for private schools. In implementing the program, the Department decided that the scholarships could not be used at religious schools because of the Montana Constitution's "Blaine Amendment."

Named after James G. Blaine, a nineteenth century Maine politician, Blaine Amendments originated as a hostile response to Catholic immigrants, and are currently found in the constitutions of thirty-seven states. They prevent government support for religious schools to varying degrees, depending on their construction and interpretation.

Three mothers who wanted their children to be able to use the scholarships at religious schools challenged the Department of Revenue's exclusionary rule and won at the district court level. But the Montana Supreme Court overruled that decision and struck down the program as unconstitutional under the Montana Constitution. This marked the first time in American history that a state supreme court had struck down a tax credit scholarship program.

The Institute for Justice (IJ) appealed that decision to the US Supreme Court, on the grounds that it violates the United States Constitution's Free Exercise, Establishment, and Equal Protection Clauses by discriminating against faith-based schools and the religious families who attend them. The Supreme Court was not required to accept the case but did.

Education Secretary Betsy DeVos tweeted out: "The Supreme Court's decision to hear oral arguments on the Montana tax credit scholarship case is great news for all of us who believe in fundamental fairness & #EducationFreedom. I am grateful that SCOTUS has decided to consider this important question about religious liberty. There can be no room for bigotry of any form in America, but Blaine Amendments continue to deny too many First Amendment religious freedoms. I hope that this last acceptable prejudice will be, at long last, assigned to the ash heap of history."

New Poll Shows Increasing Support for Choice Programs

Education Next, a program at Harvard University's Program on Education Policy and Governance, has released their annual poll on education, which includes statistics on support for school choice. The polling indicates increasing levels of support for choice programs.

According to the poll, support for vouchers for low-income families has risen from 37 percent in 2016 to 49 percent today. Meanwhile, 55 percent now support universal vouchers, including 61 percent of Republicans and 52 percent of Democrats.

Support for tax credit scholarships now stands at 58 percent. According to the researchers, "Even in an era of polarization, tax credits retain bipartisan favor. Sixty-five percent of Republicans like the idea, as compared to 49 percent in 2016. But the increase in Republican approval has not engendered polarization. In 2016, a 57 percent majority among Democrats

avored the idea. That percentage has not changed materially in any subsequent year."

The polling also bore good news for Secretary DeVos' proposed "Education Freedom Scholarships," which would establish a federal tax credit to encourage donations to scholarship granting organizations in the states. According to Education Next, "Nor does the public seem to care whether it is the state government that offers the tax credit, as in 18 current state programs, or if it is the federal government, as DeVos proposes. We learned this by asking half of the respondents a version of the question that said the credits would be offered by the feds. This version elicited a level of support—57 percent—that is statistically similar to what we observe when the federal government is not mentioned."

Secretary DeVos released a statement, saying, "American families want more control and more options when it comes to education, which is why every poll conducted shows the growing, bipartisan support for education freedom."

Educational Pluralism

This summer, the Manhattan Institute released a study titled "The Case for Educational Pluralism in the U.S.," by Ashley Berner, deputy director of the Johns Hopkins Institute for Education Policy and associate professor of education.

Berner states, "A majority of the world's democracies support school systems in which the state funds and regulates, but does not necessarily operate, a mosaic of schools. The Netherlands, for example, supports 36 different types of schools—including Catholic, Muslim, and Montessori—on an equal footing. The U.K., Belgium, Sweden, and Hong Kong help students of all income levels attend philosophically and pedagogically diverse schools. So do most Canadian provinces. Funded schools in these pluralist systems are also subject to robust regulations and, in some cases, to a common academic curriculum... Importantly, educationally plural countries also provide for what the U.S. calls 'district schools'; a third of Dutch students attend them. The difference is that, in educationally plural systems, many types of schools are considered to be part of the public education system."

She goes on to say that, "Public education in the U.S., however, has operated as a unitary system for over a century—which means that public schools are funded, regulated, and exclusively delivered by government... Our imaginations—and our public debates—remain captive to the existing paradigm, in which only district schools are considered truly public, and all alternatives (including funding via tax credits and vouchers) must justify themselves on the basis of superior test scores."

According to Berner, "Political rhetoric and legislative initiatives skew toward one of two poles: the libertarian and the statist. Educational pluralism aligns with neither of these poles but stands firmly in the center, affirming both distinctive cultures as well as robust public accountability."

Undoubtedly food for thought, and debate. [Read the full study here.](#)

CAPE notes

★ In June, this year's class of US Presidential Scholars was in Washington, DC to receive their medallions and to visit the White House for a meet and greet with President Trump. According to the US Department of Education, the program "spotlights academic achievement of outstanding high school graduates and has expanded to recognize achievement in the arts and career and technical education (CTE). Each year, thousands of students are identified as eligible for recognition, but fewer than 200 are selected to receive this prestigious award."

"In 2019, more than 5,200 candidates qualified for this program based on outstanding ACT or SAT scores or through nominations. The White House Commission on Presidential Scholars—appointed by the President—selects the finalists based on their academic success, school evaluations, transcripts, and essays, as well as evidence of community service, leadership, and demonstrated commitment to high ideals."

The following private school recipients were named this year:

Annette Doeun Lee, Polytechnic School, Pasadena, CA (Most Influential Teacher: Ms. JoAnn Turovsky) • Benjamin D. Hu, Horace Mann School, Riverdale, NY (Most Influential Teacher: Mr. Charles Garcia) • Akhil D. Rao, Caravel Academy, Bear, DE (Most Influential Teacher: Ms. Ann Garrison) • Tullis Tien-Tze Liu, Archmere Academy, Claymont, DE (Most Influential Teacher: Mr. Glenn Hartman) • Shiva Khanna Yamamoto, St. Albans School, Washington, DC (Most Influential Teacher: Ms. Alexandra Paige Blumer) • Maggie Elizabeth Wang, National Cathedral School, Washington,

DC (Most Influential Teacher: Dr. Alexandra Sundman) • Richard J. Nuss, Jesuit High School, Tampa, FL (Most Influential Teacher: Ms. Amy Martin) • Ryan Park, Punahou School, Honolulu, HI (Most Influential Teacher: Ms. Janet Oshiro) • Sophie Paquette, Interlochen Arts Academy, Interlochen, MI (Most Influential Teacher: Mr. Joe Sacksteder) • Shinwoo Kim, Metairie Park Country Day School, Metairie, LA (Most Influential Teacher: Ms. Jennifer Marsell Sciortino) • Douglas Edward Robins, Episcopal High School, Baton Rouge, LA (Most Influential Teacher: Ms. Katie Field Sutcliffe) • Madeleine Yang, Detroit Country Day School, Beverly Hills, MI (Most Influential Teacher: Mr. Ross Arseneau) • Eliza P. Burnham, Jackson Preparatory School, Flowood, MS (Most Influential Teacher: Ms. Anna Griffin) • Sukanya Kennamthiang, Brownell-Talbot School, Omaha, NE (Most Influential Teacher: Mr. Darin Larsen) • Arthur Acuna, Bishop Gorman High School, Las Vegas, NV (Most Influential Teacher: Dr. Joshua Barteo) • Michaela Thanh Khiem Phan, Phillips Exeter Academy, Exeter, NH (Mr. Matthew Hartnett) • Yasmine H. Zein, Hathaway Brown School, Shaker Heights, OH (Most Influential Teacher: Mr. William Adler) • Julian Marcellus Zanders, Cascia Hall Preparatory School, Tulsa, OK (Most Influential Teacher: Ms. Laura Millsbaugh) • Seth David Talyansky, The Catlin Gabel School, Portland, OR (Most Influential Teacher: Ms. Lauren Reggero-Toledano) • Fayleon Lin, St. Mary's School, Rio Piedras, PR (Most Influential Teacher: Ms. Nathbia Guerrero) • Everett Thornton Smith, Wheeler School, Providence,

RI (Most Influential Teacher: Ms. Joanne Lafortune) • Kyle Smith, St. Mark's School of Texas, Dallas, TX (Most Influential Teacher: Mr. Scott Hunt).

Far be it from us at *Outlook* to play favorites, but suffice it to say it did not escape the notice of CAPE's Executive Director that his alma mater, Cascia Hall, produced a recipient (his quote: "Order is restored.") But congratulations to all!

★ CAPE's venerable newsletter, *Outlook*, is soon to undergo significant changes. This is being done to better meet the needs of our readers. Henceforth, *Outlook* will be digital only, the print edition is being retired and those resources redirected to CAPE's work on behalf of private schools. Further changes are also in the works. Among other updates, the new version of *Outlook* will be more user friendly for reading from mobile devices. Everyone at CAPE appreciates all of the people across the country who care about private education that read *Outlook* each month. We hope that the improvements to the newsletter will make for an enhanced reading experience.

