

1300 Pennsylvania Ave., NW  
#190-433  
Washington, DC 20004  
844-883-CAPE(tel)

www.CAPENetwork.org

**CAPE member  
organizations:**

Agudath Israel  
of America

Association of Christian  
Teachers and Schools

Association of Christian  
Schools International

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

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, Christian  
Brothers Conference

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

June 20, 2023

U.S. Department of Education  
Office of Postsecondary Education  
400 Maryland Avenue SW, 5th Floor  
Washington, DC 20202

**RE: Docket ID ED-2023-OPE-0089**

To Whom It May Concern:

On behalf of the Council for American Private Education (CAPE), I write to provide comments on the high school diploma provisions (§ 668.16(p)) included in the Department of Education's (ED) [notice of proposed rulemaking \(NPRM\)](#) published in the Federal Register on May 19, 2023.

CAPE is a coalition of twenty national organizations and thirty-seven state affiliates serving the broad array of private, religious, and independent elementary and secondary schools across the United States. As such, CAPE has a strong and vested interest in confirming that graduates of private schools with financial need are eligible for Title IV funding when they enroll at institutions of higher education (IHE). The proposed regulations threaten that eligibility by requiring postsecondary Title IV administrators to interpret the complex, diverse web of state laws applicable to private schools. Given the wide variation of state law, rules, and requirements, CAPE believes the rule as written could lead to inequitable outcomes and the wrongful denial of access to student aid for some high school graduates.

ED's stated goals in the NPRM about its update to the high school diploma requirements – to curb diploma mills and ensure “students can benefit from the postsecondary training they are pursuing” – are not at issue. What is a concern is the way the proposed rule is written. ED's proposal is not as simple as it sounds given that there is no one standard across all 50 states. Some states have no standards for nonpublic schools, while other states have multiple and complex regulations and laws. Faced with the requirement to analyze technical, nuanced, ever-changing, and multi-faceted state regulations and laws to confirm whether a diploma is valid, CAPE is concerned that institutions of higher education will err and/or be extra cautious and deny financial aid, particularly to students from unfamiliar nonpublic schools.

We urge ED to refine the proposed regulation to achieve the Department's goals in a more tailored way. ED should target diploma mills without creating an equity and access issue for legitimate and deserving students that graduate from private schools. Consistent with the Department's intent, we have attached alternative language that would clarify the procedures for institutions of higher education and avoid the risk

that qualified students will face unnecessary barriers to Title IV aid. It does this by:

- Including the elements of what the Department proposed as constituting what is not a valid diploma, but reframed in a way that clarifies for IHEs the procedures they will need to have in place when the diploma or the secondary school from which the diploma was obtained is in doubt.
- Confirming the effort to root out fraud covers all bases, by clarifying the circumstances for which an IHE must have and utilize a review process:
  - Instances where diplomas appear to be faked (e.g., photoshopped by a student or even a diploma mill); and
  - Instances where the secondary school from which the high school diploma was obtained might be doubted as bona fide.
- Addressing the diversity of ways in which states regulate private schools (or do not) by offering a few acceptable paths for IHEs to follow, based on government recognition, participation in government funded programs, or accreditation.
- Requiring business relationships involving an unaccredited secondary school to be automatically doubted and therefore required to be validated.

Students who attend high schools, private or otherwise, familiar or unfamiliar, that prepare students to succeed in institutions of higher education should not endure the denial of financial aid and lost opportunity for postsecondary education due to an unnecessarily vague rule. To achieve its goals, CAPE urges ED to incorporate these suggested language changes as it develops the final rule. At the very least, ED should clarify that documentation from a State agency is required to validate a diploma only where the State has a mandatory licensing or registration requirement for private secondary schools in a given State.

Please reach out to me with any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Schuttloffel". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael Schuttloffel  
Executive Director

(p) Develops and follows adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education, consistent with the following requirements:

~~(1) Adequate procedures to evaluate the validity of a student's high school diploma must include—~~

~~(i) Obtaining documentation—In instances where there is reason to doubt the validity of the high school diploma, the institution satisfies this requirement when it obtains documents or information from the high school that confirms the validity of the high school diploma, including at least one of the following—~~

~~(iA) Transcripts;~~

~~(iiB) Written descriptions of course requirements; or~~

~~(iiiC) Written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school.;~~

~~(ii) If the high school is regulated or overseen by a State agency, Tribal agency, or Bureau of Indian Education, confirming with, or receiving documentation from that agency that the high school is recognized or meets~~

~~requirements established by that agency; and~~

~~(iii) If the Secretary has published a list of high schools that issue invalid high school diplomas, confirming that the high school does not appear on that list; and~~

~~(2) A high school diploma is not valid if it—~~

~~(i) Did not meet the applicable requirements established by the appropriate State agency, Tribal agency, or Bureau of Indian Education in the State where the high school is located and, if the student does not attend in-person classes, the State where the student was located at the time the diploma was obtained;~~

~~(ii) Has been determined to be invalid by the Department, the appropriate State agency in the State where the high school was located, or through a court proceeding;~~

~~(iii) Was obtained from an entity that requires little or no secondary instruction or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under 34 CFR 600.2; or~~

~~(2) In instances where there is reason to doubt the validity of the entity that provided the high school diploma, the institution satisfies this requirement when it confirms or receives documentation or information that --~~

(i) the secondary school is recognized, registered, authorized, licensed, certified, approved, or equivalent by a state or local government entity;

(ii) the secondary school participates in programs that receive funding from federal, state, or local government sources; or

(iii) the secondary school is accredited, approved, or recognized as a legitimate school by an established educational agency.

(3iv) ~~Was obtained from an entity~~ An institution must follow the requirements outlined in (1) and (2) to confirm the validity of the high school diploma for any secondary school that –

(iA) Maintains a business relationship or is otherwise affiliated with the eligible institution at which the student ~~is~~ seeks to enrolled; and

(iiB) Is not accredited.