

Council for American Private Education

CAPE outlook

Voice of America's private schools

Secretary DeVos Announces Equitable Services Policy with State CAPE Leaders

Secretary of Education Betsy DeVos made news while speaking to a group of State CAPE Network (SCN) leaders at the Department of Education's (USDE) headquarters on March 11, when she announced that the Department will no longer enforce a restriction barring religious organizations from serving as contract providers of equitable services.

Religious Providers of Equitable Services

For decades, faith-based contractors have been prohibited from providing "equitable services" mandated under the Elementary and Secondary Education Act to private schools, even though they can provide them to public schools. According to a USDE release, "The U.S. Department of Education, in consultation with the U.S. Department of Justice, determined the statutory provisions in... the Elementary and Secondary Education Act (ESEA) that require an equitable services provider to 'be independent of... any religious organization' are unconstitutional because they categorically exclude religious organizations based solely on their religious identity. These provisions run counter to the U.S. Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) that, under the Free Exercise Clause of the First Amendment of the U.S. Constitution, otherwise eligible recipients cannot be disqualified from a public benefit solely because of their religious character."

The Announcement

Under the new USDE policy, religious providers of equitable services – such as professional development for teachers and special education and tutoring for students – will now be free to provide those services to private as well as public schools. The requirement that the services themselves be secular, neutral and non-ideological remains in place, as does the condition that

contractors be independent of the private schools for which they provide services. Additionally, districts will continue to exercise the authority over whether contractors are used and which ones.

"The Trinity Lutheran decision reaffirmed the long-understood intent of the First Amendment to not restrict the free exercise of religion," said Secretary DeVos. "Those seeking to provide high-quality educational services to students and teachers should not be discriminated against simply based on the religious character of their organization."



State CAPE leaders meet with Education Secretary DeVos.

Secretary DeVos' announcement was made while leaders of the State CAPE Network were in Washington, DC for their annual meeting with each other and the CAPE Board. On the afternoon of the 11th, the SCN heads went to USDE to be briefed by various Department officials on the issues of the day. It was then that Secretary DeVos announced the new policy.

Reaction

Abba Cohen, Vice President for Federal Affairs for Agudath Israel of America, responded to the announcement by saying, "The Secretary's decision is groundbreaking in that it brings the Department in line with the Supreme Court's rejection of anti-religious discrimination, which has

unnecessarily and illegally plagued too many federal programs."

Sister Dale McDonald, Director of Public Policy for the National Catholic Educational Association (NCEA), observed, "As a provider of professional development activities for teachers and administrators, the National Catholic Educational Association welcomes the announcement that the Association may not be excluded as providers simply because Catholic is in our title. NCEA complies with the requirements of the law regarding secular content provided with federal funding and welcomes the opportunity to provide greater services to our members."

George Tryfiates, Director for Government Affairs of the Association of Christian Schools International (ACSI), said, "The Department's announcement is great news for the entire education community. By allowing religious service providers to participate in equitable services, the Department recognizes a significant part of a very broad and diverse education community that too often has been held back by arcane and arbitrary restrictions."

Part of a Broader Effort

In October 2017, then Attorney General Jeff Sessions issued guidance to all federal agencies on the issue of religious freedom. Among other things, it said, "Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions."

CAPE

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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CAPE Board, State CAPEs Gather in Washington, DC

CAPE's national board and the directors of the State CAPE Network met in the nation's capital on March 10-11 to discuss the important issues facing private education. Over fifty private school leaders from across the country were present for the discussion.

State CAPE Leadership Network

Heads of the State CAPE affiliates kicked things off on Sunday, March 10, with a wide-ranging discussion that addressed ESSA Implementation, updates on HEA and IDEA reauthorization, and the impact of immunization laws on private schools, as well as a variety of other issues.

The keynote talk of the day was delivered by Robert Enlow, president and CEO of EdChoice. In a dynamic presentation on the changes in K-12 education that are coming, and in some cases already here, Enlow's theme was "standardization versus personalization."

Enlow laid out the public support for Education Savings Account (ESA) programs and the growing demand for customization in education. He lauded State CAPEs for their tactical successes while urging them not to neglect long-term strategic thinking about the future of education. He also encouraged attendees to consider media training for school principals and parents and to think more about having private school leaders and families engage with policymakers. In a bit of bad news, Enlow pointed to early evidence which suggests that donations to tax credit scholarship programs are down in some places as a result of the proposed rules issued by the IRS last summer.

CAPE Board

On Monday morning, the State CAPEs joined the national board to discuss a range of issues, including USDE's Education Freedom Scholarships proposal, legislation that would establish a federal tax credit to encourage donations to scholarship granting organizations, and the DC Opportunity Scholarship program, which is the only federally funded voucher program in the country.

The most critical topic of the day, however, was the "substantial equivalency" guidelines promulgated in New York State (see the January 2019 edition of *Outlook*). Jim Cultrara, Co-Chairman of the New York State CAPE, and Rabbi David Zwiebel, Executive Vice

President of Agudath Israel of America and CAPE a board member, led the discussion on this high stakes issue, which has serious implications for private schools across the country. Zwiebel observed that while there are grave religious freedom concerns raised by the new policy, it also has the very real potential to affect schools that emphasize art, music, and other distinctive approaches to learning.

Monday afternoon, the State CAPE leaders departed for meetings at the US Department of Education, while the CAPE board benefited

from an extraordinary presentation on education futurism by board member Donna Orem, president of the National Association of Independent Schools (NAIS). Orem's many insights ranged across a wide array of subject matters, including the pace of technological change, with artificial intelligence and blockchain being key examples, as well as global interconnectedness, urbanization, population ag-

ing, and what this all means for the future of education.

Orem touched on the very concerning phenomenon of the disappearance of the middle class from private schools and the increasing difficulty of recruiting and retaining teachers in cities with high costs of living. She also delved into the exciting potential for a shift towards a lifelong learning. It was a remarkable session.

SCN at USDE

Meanwhile, the State CAPE leaders were in for an exciting afternoon themselves. They heard from a great lineup of speakers, including Maureen Dowling, Director, Office of Non-Public Education, Frank Brogan, Assistant Secretary, Office of Elementary and Secondary Education, Laurie VanderPloeg, Director, Office of Special Education Programs, Paul Kesner, Director, Office of Safe and Supportive Schools, Meredith Miller, Director, Disaster Recovery Unit, McKenzie Snow, Policy Advisor, Office of the Secretary, and Phil Rosenfelt, Michael Anderson, and Josie Skinner with the Office of the General Counsel.

The highlight of the day, of course, was the appearance by Secretary DeVos and her announcement that USDE will no longer enforce a restriction barring religious organizations from serving as contract providers of equitable services (see the cover story).



Robert Enlow, president and CEO of EdChoice. (EdChoice photo)

State Update

New York

The January 2019 edition of *Outlook* reported on the stunning “substantial equivalency” guidelines in the state of New York. In March, the New York State Association of Independent Schools (NYSAIS) filed suit against the New York State Education Department over those guidelines. NYSAIS’s executive director, Mark Lauria, was quoted in a *Wall Street Journal* story as saying, “At the core of our independence is our ability to create our curriculum,” and, “This cuts to the core of what our schools do.” Shortly after, Agudath Israel of America and the New York State Council of Catholic School Superintendents filed lawsuits of their own. Those lawsuits will likely be consolidated and a preliminary hearing is scheduled for April 15. This is definitely one to watch.

Montana

Previous editions of *Outlook* have covered the battle in Montana over that state’s tax credit scholarship program. In December of 2018, the Montana Supreme Court 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.

On March 12, 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. According to IJ, a decision from the high court on whether it will take up the case is expected in May or June of this year.

Stay tuned, this one could have Blaine amendment implications nationally...

Virginia

In the Old Dominion, the Virginia CAPE (the Virginia Council for Private Education) played an important role in achieving passage of legislation signed by the governor expanding the Education Improvement Scholarship Tax Credit (EISTC) program. The EISTC is a tax

credit scholarship program that allows students with an individualized education program (IEP), or with an annual household income below 300 percent of federal poverty guidelines, to receive scholarships. Under the newly signed law, pre-kindergarten children will be able to access the program, whereas previously it was only open to students K-12.

South Dakota

South Dakota Governor Kristi Noem signed legislation strengthening the state’s Partners in Education Tax Credit Program, a tax credit scholarship program for students from low-income families. The new law raises the

percentage of the tax credit to 100 percent from 80 percent. The change also allows donor companies to take the credit when they file their quarterly taxes.

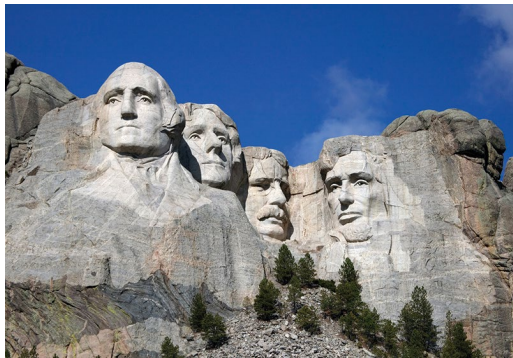
Oklahoma

The Oklahoma Senate approved a bill that will raise the cap on the state’s Equal Opportunity

Scholarship Act, a tax credit scholarship program serving low-income children. The legislation, sponsored by Senator Dave Rader (Tulsa), comes as the amount of private funds donated under the program has exceeded the cap on the tax credits. By raising the income cap, program supporters hope to increase access to the program. The bill would increase the annual cap to \$20 million from \$5 million. Half of those funds would be available for public school programs. Having passed the Senate, the legislation is awaiting House action.

New Hampshire

A House committee in the General Court of New Hampshire (the state legislature) voted to phase out and ultimately eliminate New Hampshire’s tax credit scholarship program. On March 13, the Ways and Means Committee passed a bill ending the program by a 10-9 vote. Six days later, however, the full House voted overwhelmingly to table the legislation (332-19). Program supporters in the Granite State say that the program is not entirely out of the woods yet but celebrated the vote to table as an important step to protecting the program.



Governor Kristi Noem signed legislation strengthening school choice in the Mount Rushmore State.

Trump Budget Released

On March 11 President Trump released his proposed budget for Fiscal Year 2020. For the third year in a row, it calls for the creation of a school choice program but the elimination of a popular teacher quality improvement program and a student support program. Congress has declined to follow those requests the last two years.

The president’s budget would provide up to \$5 billion for the Education Freedom Scholarships program, which, as mentioned previously, is a proposed federal tax credit designed to encourage donations to scholarship granting organizations. The budget also doubles funding for the DC Opportunity Scholarship Program funding, for a total of \$30 million.

The budget document recommends cancellation of funds for Title II-A of the Elementary and Secondary Education Act (ESEA), which deals with the professional development of teachers. Educators in religious and independent schools have benefited significantly from Title II-A throughout the program’s long history. During the most recent reauthorization, the private school community worked very hard to ensure that equitable services for educators in private schools would be calculated based on a school district’s total allocation of funds under Title II-A. With that provision now in place, the program carries even more significance for private schools.

The budget also does not include funding for Title IV-A’s Student Support and Academic Enrichment Grants (SSAEG). Those grants may be used to support well-rounded educational opportunities, safe and healthy students, and the effective use of technology—all through a variety of means best suited to local needs. States and districts receiving funds under Title IV-A must provide equitable services to students and teachers in private schools.

The annual presidential budget request is not binding, Congress has the power of the purse and will decide whether to fund which programs at what levels over the coming months.

CAPE notes

★ CAPE is very pleased to welcome its newest member, the Office for Lasallian Education, part of the Christian Brothers Conference. At its March meeting, the CAPE board voted to accept the organization's application for CAPE membership.

The Executive Director of the Office for Lasallian Education, Mark Freund, said, "Our Office for Lasallian Education and the Lasallian Education Council are honored to be able to join with the Council for American Private Education, not only as a way of expanding our collaboration with other groups involved in educating young people, but also as a way of lending our voice to conversations and efforts that advocate for the needs of students and families who choose the option of non-public education."

CAPE now has twenty-three national member organizations, up from thirteen in 1996 and eight when it was first established in 1971.

★ Leaders from CAPE member organization Agudath Israel of America met with Attorney General William Barr in March to discuss issues of religious discrimination. According to a story in the *Yeshiva World*, "Attorney General Barr also expressed his support of school choice, another issue that his office will be actively addressing by defending parents' rights to select educational institutions for their children that best reflect their values and priorities. The attorney general said that he intends to promote the development of

school choice programs nationwide."

The delegation from Agudath also spent time at the Department of Education, meeting with Assistant Secretary for Planning, Evaluation and Policy Development Jim Blew, and McKenzie Snow, Policy Advisor, Office of the Secretary. Discussion centered around the new Education Freedom Scholarship proposal, a topic that was again on the menu when the representatives from Agudath dined with Secretary Betsy DeVos on Capitol Hill. Joining them were the congressional sponsors of the legislation, Senator Ted Cruz (TX) and Representative Bradley Byrne (AL).

★ Legislation has also been put forward in Congress that would establish education savings accounts (ESA) for military families. Senator Ben Sasse (NE) introduced the Senate version of the bill while Representative Jim Banks (IN) introduced the House version.

According to a statement released by Senators Sasse, Tim Scott (SC), and Tom Cotton (AR), "In recent years, multiple branches of the armed services have struggled with recruitment and retention rates — just last year, the U.S. Army fell 6,528 recruits below its yearly goal, and the U.S. Marine Corps faced what officials have called 'uncharacteristically high' turnover rates. Over one-third of military parents say that dissatisfaction with their children's schooling was a significant factor in their decision to remain in or leave the military. This legislation would create an opt-in for military families who choose to pursue alternative

educational options to apply for an education savings account worth \$6,000 annually."

In his statement on the bill's introduction, Congressman Banks said, "Ensuring the security of the nation is the most important job of the federal government. Unfortunately, the lack of education options for military families is making it increasingly difficult to recruit the best and brightest into the armed forces. With 35 percent of military families having considered leaving the armed forces due to concern over their children's education, the Education Savings Accounts for Military Families Act tackles this problem head-on by creating education savings accounts that can be used to fund tuition, textbooks, and online courses. This will ensure that every military family can access quality education options and not have to worry that a reassignment could jeopardize their children's future. The children of our soldiers, sailors, airmen, and Marines, have sacrificed mightily for our country and have earned the right to be afforded robust educational opportunities from a grateful nation."

★ The Department of Education has released draft guidance for review and comment on Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA). The draft guidance can be found here: <https://www2.ed.gov/policy/elsec/leg/essa/drafteseatitleiequitable-services.pdf>. Comments can be sent to EquitableServices@ed.gov and must be received by April 9.
