

Council for American Private Education

# CAPE outlook

Voice of America's private schools

## CAPE Group Gets White House Briefing and Capitol Hill Meetings

CAPE's board of directors and state representatives got a rare look at the intricate workings of Washington last month from the people who ought to know: top advisors in the White House and Congress. Presenters offered insights on the processes that produced recent education-related legislation, provided a profile of pending policy initiatives, and in one case even predicted the next round of education reforms.



Margaret Spellings, Assistant to the President for Domestic Policy

### White House Briefing

Margaret Spellings, President Bush's top domestic policy advisor, covered a range of issues, many relating to school choice. She urged the private school community to become providers of supplemental services under the No Child Left Behind Act, predicting the demand for providers will grow as the program catches on. "I know that some of you have gotten into this area," she said, "and I hope that a whole lot more of you will."

Speaking in the splendid and historic setting of the Indian Treaty Room, Spellings told CAPE's delegates how important the D.C. school choice initiative is to President Bush. She said the administration is "very much committed to this program," and she predicted it would be a major test case that could set the stage for an expansion of school choice around the country. "It is very important...that this program work," she added.

Spellings, whose official title is "Assistant to the President for Domestic Policy," reminded the audience that the president included an additional \$50 million in his FY 2005 budget to fund similar choice pi-

lot programs in other willing cities across the country.

Regarding the reauthorization of the Individuals with Disabilities Education Act, Spellings said, "We're hopeful that we can get a bill passed this year." She noted that the two houses are not that far apart on the issue.

During a Q-and-A session, Spellings touched on the issue of government control of private education. She said the administration advocates a "hands-off attitude" toward private schools, noting that patrons of such schools "can vote with their feet."

Answering a question about what's on the horizon for education reform, Spellings suggested a focus on high schools. "Making the high school diploma worth the paper its printed on" could be one component of such an initiative, she said, along with lowering the dropout rate and offering more opportunities and incentives for advanced placement courses.

### The Capitol

After travelling down Pennsylvania Avenue from the White House to the Capitol, the CAPE group heard from the top education advisors to the Senate Majority Leader and the House Speaker, as well as from key staff for the education policy committees in each house. Kaleem Caire, director for the D.C. education initiative

at Fight for Children, also addressed the group. Fight for Children played a pivotal role in setting the stage for passage of the D.C. program and was the agency that initially coordinated the program's implementation.

Together, presenters at the Capitol painted a picture of a complex series of actions that had converged to produce school choice in D.C. The CAPE group learned, for example, that during the year preceding the legislation's enactment, a host of powerful players involved themselves in its pursuit through a precarious mix of meetings and decisions. At any stage of the journey, a disruption in the delicate balance of activities and personalities could have brought the project to an end.

Caire provided a dramatic narrative of the program's development from concept to implementation, offering an insider's look at some key events along the way.

He described, for example, how a high-powered collection of business, community, and political leaders came together to push for the so-called three-sector initiative, which ultimately resulted in not only the choice program, but also more money for the District's public schools and charter schools. With the program now in the implementation phase,

Caire said organizers have launched a TV and radio ad campaign to let families know how they can participate. He said it was critical that the program get off to a good start and ultimately demonstrate results.

Recounting events on the Senate side,

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Kaleem Caire, Project Director, D.C. K-12 Education Initiative at Fight for Children



**CAPE** member organizations:

- American Montessori Society
- Association Montessori International—USA
- Association of Christian Schools International
- Association of Waldorf Schools of N.A.
- Christian Schools International
- Evangelical Lutheran Church in America
- Friends Council on Education
- Lutheran Church—Missouri Synod
- National Association of Episcopal Schools
- National Association of Independent Schools
- National Catholic Educational Association
- National Christian School Association
- Seventh-day Adventist Board of Education
- Solomon Schechter Day School Association
- Southern Baptist Association of Christian Schools
- Toussaint Institute for Historically Black Independent Schools
- United States Conference of Catholic Bishops
- 28 Affiliated State Organizations

a coalition of national associations serving private schools K-12  
Executive Director: Joe McTighe

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# CAPE Board Issues Educational Accountability Statement

*CAPE's board last month approved the following statement on private school accountability.*

CAPE believes that all educational institutions have a responsibility to provide their students with the knowledge, skills, values, ethics, and social commitment they will need to succeed, to be good citizens, and to be positive forces in a dynamically changing society and global environment.

Ultimately, each private school is most immediately accountable to its students' families, and to its graduates—one by one. Private education is based on choice. Families choose private schools for their children, and parents will always be judges of whether a school meets the needs of their children. All private schools are also to some degree dependent on generous, voluntary support from graduates, families, and others who are pleased with these schools.

Other forces also shape a private school's destiny. The performance of private schools is continually assessed by their governors and sponsors. These overseers have an ongoing duty to evaluate outcomes and make their decisions based in large part on each school's performance.

Many private schools voluntarily participate in an accrediting process as a way of accounting to the school's own public as well as the larger community. Accrediting bodies conduct extensive site-based reviews of every aspect of a private school's operations and program, measuring and certifying that it meets prescribed standards.

Some states, in varying degrees, are also involved in some forms of accountability. The U.S. Supreme Court in *Pierce v. Society of Sisters* (268 U.S. 510 [1925]) limited the state's authority to "standardize its children" by forcing them to submit to only one kind of instruction, because "the child is not the mere creature of the state." While guarding the liberty of parents to "direct the education and upbringing of children," the state has a legitimate responsibility to ensure that students are educated in safe envi-

ronments that promote democratic values. Private schools comply with applicable statutes and regulations. But in carrying out its regulatory role, government must not impose on private schools rules "so pervasive and all-encompassing" that compliance would "effectively eradicate the distinction" between public and private schools and thereby deny parents their capacity to guide their children's education (*Ohio v. Whisner*, 351 N.E.2d 750, 768 [1976]).

At a time when test scores are seen by some as the ultimate measure of attainment, the accountability of private schools for student achievement, teacher quality, and school success cannot be addressed by standardized testing alone or any single scale of measurement. While students in private schools routinely take standardized tests as one tool for assessing achievement, and while other forms of periodic assessment also have their place as well, CAPE believes that test scores should never be allowed to become a sole or dominant indicator of achievement or failure. Educational accountability requires a much broader, long-term assessment of outcomes. These must include the family's educational goals for its children, how students do at the next level(s) of schooling, accomplishment in life, and evidence of productive good citizenship.

An accumulation of accountability mechanisms—not any single one—combines to assure the public that private schools will provide the resources and vision needed to help every enrolled student succeed. Within such an environment of accountability, private schools pursue their mission, and survive or fail on the merit of their performance. CAPE supports policies and initiatives that will preserve and enhance this environment of accountability—so that private schools remain good for students, good for families and good for America.

*Modified from a statement approved March 1, 2003, by the National Association of Independent Schools (NAIS)*

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Andrea Becker, education advisor to Senate Majority Leader Bill Frist (R-TN), reported that the senator was "very personally engaged" in efforts to secure passage of the D.C. initiative and worked closely with Mayor Anthony Williams to do so. She said that at one point floor action on the bill became a "cat and mouse game" because specific outcomes were dependent on who was or was not present for a particular vote.

Becker also talked about efforts by one senator during the debate to impose additional requirements on participating private schools, and

she called on the CAPE community to help convey the message that private schools are held to the ultimate standard of accountability in that parents *choose* whether or not to send their children to such schools.

Melanie Looney, professional staff member for the House Committee on Education and the Workforce, which is chaired by Rep. John Boehner (R-OH), told the group about the extraordinary confluence of support from various committee and subcommittee chairmen that helped bring about passage of the school choice bill in the House.

## Becket Fund Vice President Reviews Implications of *Locke*

Anthony Picarello sees a bleak side and a bright side to the recent decision by the U.S. Supreme Court in *Locke v. Davey*. The bleak side is that the court allowed a tax-funded college-level scholarship program in Washington State to exclude students who declare pastoral ministry as their major field of study. The bright side is that the court's rejection was on narrow grounds and included language that, in the long run, may actually have a positive effect on Blaine Amendment jurisprudence.

Picarello is vice president and general counsel at the Becket Fund for Religious Liberty, a nonprofit, public-interest law firm supporting the free exercise of all religious traditions. Cases involving Blaine Amend-

ments—state constitutional prohibitions against government funding of “sectarian” schools—are a Becket specialty.

At a meeting last month of CAPE's board of directors and state representatives, Picarello reviewed the history of Blaine Amendments, named after Speaker of the U.S. House of Representatives James G. Blaine, who sought such an amendment to the U.S. Constitution in 1875. Although the House passed Blaine's measure by a decisive vote (180-7), the Senate rejected it, though by a slim four-vote margin. In individual states, however, Blaine-like amendments took hold, with some states adopting them as a condition imposed by the federal government for statehood. Picarello described the amendments, which were rooted in 19<sup>th</sup> century anti-Catholic prejudice, as part of a “pincers attack” against Catholics that promoted Protestant teachings in public schools but at the same time denied public funding for Catholic schools.

For the past 50 years or so, Blaine Amendments “got all dusty,” said Picarello, because opponents of government assistance to children in religious schools were able to rely on the Supreme Court interpreting the First Amendment as banning many instances of such aid. But with the court's recent openness to government support in decisions like *Zelman v. Simmons-Harris*, opponents are now turning to Blaine Amendments as their “weapon of choice.”

Picarello identified two major arguments against Blaine Amendments, which he classified as historical and ahistorical. The ahistorical argument goes like this: If government provides

a generally available benefit, it cannot single out a specific category of potential recipients for exclusion on the basis of religion. The historical argument is that Blaine Amendments were not enacted from a desire to promote the common good but from animus towards religion. Religious hatred should not be the basis for government action, and laws rooted in such hatred are unconstitutional. Picarello believes the historical argument is still very much in play after *Locke*.

In its 7-2 decision, the court essentially sidestepped the issue of Blaine Amendments. Finding “no credible connection” between the state's Blaine Amendment and the state constitutional provision that actually controlled the case (Article I,

§11), the court declared quite directly that “the Blaine Amendment's history is simply not before us.” It further found that neither the history or text of Article I, §11 nor the operation of the scholarship program demonstrated any hostility toward religion. But, according to Picarello, while the court avoided the Blaine Amendment controversy head-on, it also suggested that a law traced back to Blaine could be vulnerable. That's good news for Becket, which has some true-blue Blaine-related cases in the pipeline.

Picarello offered an insightful explanation as to why the 7-2 decision may not be as lopsided or harmful as the numbers suggest. He believes that Chief Justice Rehnquist may have joined the majority so that he could write the opinion himself and thereby limit its harmful effects. As Picarello explained it, the chief gets to cast his vote last and also gets to decide who writes the majority opinion—but only when he's part of the majority. So in this case, Picarello theorizes, once Rehnquist saw the vote going south, he decided to jump on board to exert some damage control. Picarello pointed out that by writing the opinion, Rehnquist not only breathed life into true Blaine Amendment cases, but also got six other justices, including Ginsburg, Souter, and Stevens, to sign on to an explicit acknowledgment that while the Constitution does not require states to do so, it at least *allows* them to provide scholarships to students pursuing a religion degree. That accomplishment is not insignificant, for given the jurisprudential history of the two dissenting justices (Scalia and Thomas), the court now appears to be unanimous on that point.



Anthony Picarello, Vice President and General Counsel at the Becket Fund

## HEA Reauthorization

With the reauthorization of the Higher Education Act (HEA) on the horizon, CAPE's board of directors approved an issue paper last month aimed at securing “the equitable participation of private elementary and secondary school students and teachers” in certain programs covered by the act.

Based on the premise that “federal higher education programs that benefit public school students and teachers should provide equitable benefits to comparably situated private school students and teachers,” the paper sets forth some specific suggestions, including:

- ★ All federal financial aid programs, including loan-forgiveness and scholarship programs, should apply alike to educators in public and private schools.

- ★ If additional high-need instructional or geographic areas are included in a reauthorized HEA for loan forgiveness programs, these new areas should apply equally to public and private school educators.

- ★ The teacher recruitment grants program under Title II (Section 204) of the Higher Education Act (Title 20, Chapter 28, Subchapter II, Section 1024) should allow scholarship recipients to complete their service requirements in high-need public or private schools.

- ★ Special teacher scholarships should be established to encourage teachers to become qualified in those subject areas where the need for expert teachers is especially critical.

- ★ Students in federally supported teacher training programs should be allowed to satisfy their practice teaching requirements in public or private schools.

- ★ College financial aid officers (FAOs) should be required to consider a family's elementary and secondary school tuition obligations as a “special circumstance” in determining a family's need for college financial aid.

Return service requested

## CAPE notes

★ Every time Dr. Maureen Dowling of USDE's Office of Non-Public Education gives one of her workshops on federal programs and private schools, the audience is wowed. Now you and your colleagues can hear Dr. Dowling's clear, authoritative, and comprehensive presentation on private schools and the No Child Left Behind Act thanks in part to the California Association of Private School Organizations (CAPSO), a CAPE affiliate. In a remarkable display of public/private collaboration, CAPSO, the California Department of Education, and the State Superintendent's Private School Advisory Committee arranged for Dr. Dowling to give a series of workshops in California for officials in public schools and private schools. Extending that spirit of collaboration, the Sacramento County Office of Education generously produced a streaming video of one of the workshops. You can get to it through the following link: <http://www.capsso.org/sfprogs/workshopvideo.html>.

★ The U.S. Department of Education is gearing up to award about 200 grants, ranging from \$100,000 to \$200,000, to help communities and schools provide mentoring programs for students in grades 4 to 8 who are at risk of failing, dropping out of school, or engaging in criminal or delinquent activities. Private schools, either individually or in groups, are eligible applicants in collaboration with community-based organizations serving children

and families. According to USDE officials, either the school or CBO can be the applicant and awards recipient.

Although the competition for the Safe and Drug-Free Schools–Mentoring Programs grants will not begin until later this year, applicants can get a head start with preparations by viewing the Notice of Proposed Priorities at: <http://www.ed.gov/legislation/FedRegister/proprule/2004-1/031504h.html>. Additional helpful information about this and other grant programs is available from USDE's Center for Faith-Based and Community Initiatives at: <http://www.ed.gov/about/inits/list/fbci/grantguide.html>.

★ CAPE's new logo is an award-winner. Cheney & Company, the communications firm that designed the logo, received a Gold award for first place in the secondary schools logo design category in the 19th Annual Admissions Advertising Awards, sponsored by Admissions Marketing Report. Congratulations to the Cheney team for a first-rate design! More information about the award is available at <http://www.cheneyandco.com/>.

★ The U.S. Department of Education last month selected the Washington Scholarship Fund (WSF) to administer the D.C. Choice Incentive Program, the nation's first federally funded K-12 voucher program. Since its founding in 1993, WSF has awarded some \$10 million in privately funded scholarships to help

needy children in D.C. attend private schools.

"I'm glad to see that this effort to expand school choice is moving ahead full-speed," said U.S. Education Secretary Rod Paige. "The WSF has a proven track record for this type of work, and I'm happy to see them take on this project. We're in the business of improving education by providing parents with choices—regardless of their income level—and so are they."

Also commenting on the award, D.C. Mayor Anthony A. Williams said: "This is a huge step in the right direction. I look forward to the WSF taking on the task of operating this program and moving quickly to ensure a successful effort in the fall. I am confident that WSF will continue its good work of providing increased educational options for parents."

The Department also announced that its Institute of Education Sciences (IES) awarded a 10-month contract to Westat to assist the Washington Scholarship Fund "on the design and execution of the lottery that will be used to randomly assign scholarships to eligible student applicants." According to the announcement, Westat will also "collect achievement data and other school data on students, prepare a report to Congress on the characteristics of the applicants, and prepare data files for the comprehensive evaluation." The evaluation itself, however, will be the subject of a second contract competition, with the winner to be announced in June.