

Council for American Private Education

CAPE outlook

Voice of America's private schools

Public School Officials to Inspect All Private Schools in New York

The New York State Education Department (NYSED) has issued guidelines under which public school officials would inspect private schools to determine whether the education being provided is satisfactory. This stunning announcement has generated massive pushback from the private school community and promises to be an important test of private school autonomy.

The Guidance

An NYSED press release announcing the policy stated that “local public school officials have the responsibility to ensure that the education received by non-public school students is substantially equivalent to that received in district public schools. Substantial equivalency means that a program is comparable in content and educational experience.”

According to the new guidelines, “All religious and independent schools will be visited as part of the process.” The reviews are slated to begin during the current school year. Going forward, “Superintendents or designees should plan to re-visit the religious and independent schools in their district on a five-year cycle.”

After a public school superintendent or designee visits and reviews a private school for a determination of substantial equivalency, the local public school board will vote on that determination. If the school board votes that a private school is failing to achieve substantial equivalency, “the board will provide a reasonable timeframe (e.g., 30-45 days) for parents or persons in a parental relationship to identify and enroll their children in a different appropriate educational setting.” After that, “the students will be considered truant if they continue to attend that school.”

Private School Response

The private school response has been resolute in rejecting the terms of the new policy. In a letter to New York State Commissioner of Education MaryEllen Elia, the New York State Council of Catholic School Superintendents declared its refusal to submit to the visitations by public school officials: “We write to inform you that the New York State Council of Catholic School Superintendents, representing some 500 Catholic schools, rejects the recently released ‘substantial equivalency’ guidelines and is directing all diocesan



Catholic schools not to participate in any review carried out by local public school officials.”

Rabbi David Zwiebel, Executive Vice President of Agudath Israel of America and member of the CAPE board, also expressed strong opposition to the new policy: “The notion that our schools have to provide an education that is ‘substantially equivalent’ to that provided in the public schools, as measured by the specific courses offered and the hours required to be devoted to those courses, is patently absurd. Parents who reach deep into their pockets, often at considerable sacrifice, to enroll

their children in religious or independent schools do so precisely because they seek an education that is substantially inequivalent to that which is offered in the public schools. Any governmental regulation of how nonpublic schools go about their educational business must be done, if at all, with a light touch -- not with the heavy hand New York State has displayed with its new substantial equivalency guidance.”

Jim Cultrara, Co-Chairman of the New York State CAPE, offered the following statement in response to the NYSED guidance: “The parents who choose our schools can have great confidence in their academic rigor and while the state has a right to establish minimum basic secular education standards for all schools, the measurement of religious and independent schools’ performance against those standards must be consistent, objective and reflect the right of parents to choose a school that they determine is best suited to educate their children. Giving local public school officials the authority to evaluate and determine whether our schools can operate is simply unacceptable.”

National Implications

As an article at Reason.com observed, the new policy gives a private school’s local competitor – the public school board – the power to declare it educationally deficient. “Would anybody trust Microsoft with the power to determine if its competitors should be allowed to exist?” The new policy could be a bellwether for other states and is therefore being watched intently by friends and foes of private education across the country. Keep your eyes open for updates on this situation in future editions of CAPE Outlook.

Private School Students Perform Better on ACT



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
- 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

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Private school graduates are better prepared for college than those with diplomas from other schools, according to 2018 data from the ACT.

Eighty-four percent of 2018 graduates of religious and independent schools who took the ACT met or exceeded the test's college readiness benchmark score in English, compared to 57 percent of graduates from public schools. The share of students who met or surpassed the benchmark scores in other subjects was also higher in private schools (reading – 67 percent vs. 43 percent; math – 59 vs. 37; science – 55 vs. 34)

According to the [ACT press release](#), “ACT research shows that students who meet the ACT College Readiness Benchmarks are more likely to persist in college and earn a degree than those who don't. The benchmarks specify the minimum score students must earn on each of the four ACT subject tests to have about a 75 percent chance of earning a grade of C or higher and a 50 percent chance of earning a B or higher in a typical credit-bearing first-year college course in that subject area.”

More than 1.9 million students, an estimated 55 percent of 2018 high school graduates, took the ACT. Of those, 198,464 were from private schools. On October 17, ACT released “The Condition of College & Career Readiness 2018,” its annual report on the readiness of high school graduates for college. At CAPE's request, the company compiled comparable data for private school graduates.

Average ACT scores for 2018 graduates of private schools well exceeded the national average. The ACT mean composite score for 2018 private school graduates was 24.1, compared to 20.4 for public school graduates. The mean composite score for all graduates was 20.8. The average for public school students in 2018 fell under the national mean by four-tenths of a point, while the average score for private school students exceeded the national mean by 3.3 points.

The private school advantage remained

steady across all subject areas: English – 24.7 vs. 19.7; reading – 24.8 vs. 20.9; math – 23.1 vs. 20.2; and science – 23.4 vs. 20.4. The ACT scoring scale ranges from 1 to 36.

In every racial and ethnic subgroup, ACT-tested students in private schools outscored their public school counterparts. For example, Hispanic/Latino students in private schools had a composite score of 22.5, while Hispanic/Latino students in public schools scored 18.5. And private school Black/African American students

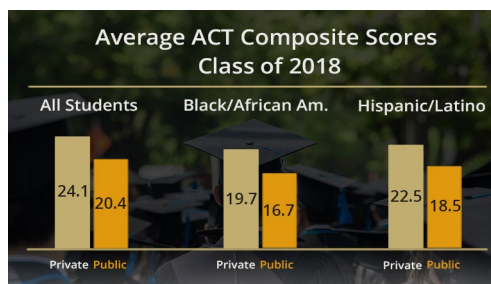
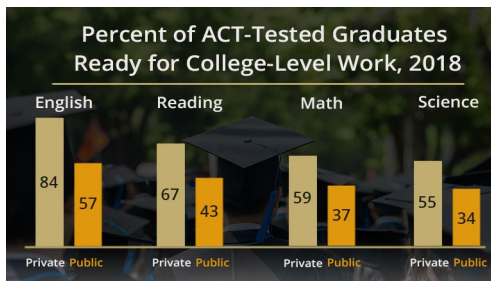
scored 19.7, compared to 16.7 for Black/African American students in public schools.

The ACT press release announcing the data for all graduates struck a note of concern: “Readiness in math is trending downward among ACT-tested US high school graduates, falling to its lowest mark in 14 years... The percentage of ACT-tested graduates who met or surpassed the ACT College Readiness Benchmark in

math—suggesting they are ready to succeed in a first-year college algebra class—fell to its lowest level since 2004; 40% of 2018 graduates met the math benchmark... In addition, students' average score on the ACT math test dropped to its lowest level in more than 20 years.”

The cause for concern extends beyond math. “Readiness in English has also been trending down over the past several years, dropping from 64% in 2015 to 60% this year, the lowest level since the benchmarks were introduced.” Additionally, “A growing percentage of students are falling at the bottom of the preparedness scale. Thirty-five percent of 2018 graduates met none of the four ACT College Readiness Benchmarks... These students are likely to struggle in first-year college coursework in all four core subject areas.”

“The negative trend in math readiness is a red flag for our country,” said ACT CEO Marten Roorda. “It is vital that we turn this trend around for the next generation and make sure students are learning the math skills they need for success in college and career.”



Montana's High Court Strikes Down Tax Credit Scholarships

In a decision decried by advocates of school choice nationwide, the Montana Supreme Court ruled that the state's tax credit scholarship program is unconstitutional under the Montana Constitution, reversing a lower court decision and setting up a possible rendezvous with the United States Supreme Court. The decision marks the first time in American history that a state supreme court has struck down a tax credit scholarship program.

The Case

The case 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 are found in the constitutions of thirty-seven states and prevent government support for religious schools to varying degrees, depending on their construction and interpretation. As described by the Becket Fund, a public interest firm that defends religious freedom, "Blaine Amendments have been used by anti-religious activists to keep religious organizations from participating in neutral, generally applicable, government programs on equal terms as everyone else. They have been used to try stopping children with disabilities from attending a school that meets their needs, to prevent schools from making their playgrounds safer, to keep food kitchens from helping the poor, and more."

Three mothers who wanted their children to be able to use the scholarships in 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 on December 12.

Reaction

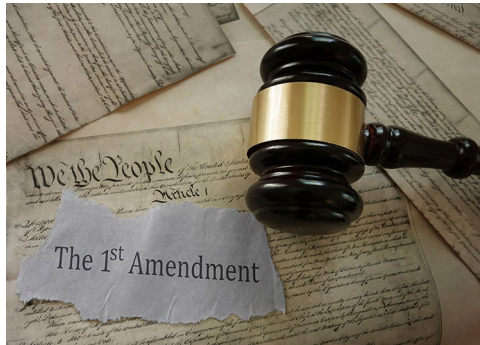
Response to the decision was swift. Matthew Brower, Executive Director of the Montana Catholic Conference, said, "The Montana Catholic Conference is deeply disappointed by the Montana Supreme Court's recent decision. The anti-Catholic origins of so-called 'Blaine Amendments' are well-documented. The fact that the very modest tax credit provided under Montana's tax credit scholarship program could help open doors to Catholic and other private schooling for students whose families would otherwise be unable to afford such makes the court's decision particularly upsetting."

Commenting on the situation, Dr. Tim Uhl, the head of the Montana CAPE, said that "we all expect a Supreme Court challenge."

An appeal to the highest court in the land seems altogether likely, as the Institute for Justice (IJ), a law firm that has defended school choice laws across the country for years and argued on behalf of the Montana law, has announced its intention to do exactly

that. Erica Smith, an IJ attorney, said: "This decision takes scholarships away from needy families across the state. The U.S. Supreme Court has been clear that the First Amendment of the U.S. Constitution prevents the government from discriminating against religious individuals in awarding public benefits. We plan to immediately appeal."

Kendra Espinoza, one of the plaintiffs, is a single mom who struggles to pay tuition for her two daughters to attend a Christian school, according to IJ. Because of the Montana Supreme Court ruling, her daughters will be unable to receive scholarships. "The Court's ruling discriminates against religious families and every Montana child who is counting on these scholarships," said Espinoza. "For the benefit of families across the state, and the nation, we will appeal to the U.S. Supreme Court to right this wrong."



The Montana & New Mexico Supreme Courts reached very different conclusions in cases with important Blaine Amendment implications.

Great News from New Mexico

Montana's is not the only state supreme court to rule on a case with important Blaine Amendment implications, but the news out of the Land of Enchantment is much better. The New Mexico Supreme Court ruled that a program that lends textbooks to private schools, including religious schools, is constitutional.

In 2012, anti-religious activists sued the state over the program, claiming that it violated New Mexico's Blaine Amendment. The New Mexico Supreme Court agreed and struck it down as unconstitutional. However, in 2017, the United States Supreme Court issued the landmark *Trinity Lutheran v. Comer* decision, which declared that a religiously affiliated school could not be excluded from a generally available public benefit simply because it is religious.

Based on the *Trinity Lutheran* decision, the US Supreme Court ordered the New Mexico Supreme Court to reconsider the textbook case. On December 13, the NM Supreme Court reversed its earlier ruling and upheld the textbook program's constitutionality.

The New Mexico Association of Nonpublic Schools (NMANS), a state affiliate of CAPE, played an important role in the litigation. NMANS State Director John Foreman applauded the decision: "We are extremely pleased with the recent decision of the New Mexico Supreme Court reinstating the instructional materials lending program, as well as for taking a stand against unjust policies such as the Blaine Amendment. Over the years the textbook program has greatly benefited thousands of New Mexico children and their families. It has enhanced K-12 education for all, regardless of income, both in our largest cities and most rural communities. Our special thanks to the Becket Fund for their incredible support throughout this lengthy process."

CAPE notes

★ In December, the US House of Representatives passed tax legislation that would further expand the use of 529 savings accounts for private school parents and homeschoolers, and would repeal the 21 percent tax on transportation-related fringe benefits – like parking – that has caused significant concern among small nonprofit organizations (see the October and December 2018 editions of *Outlook*). However, those provisions were passed as part of a larger package that failed to get traction on the Senate side before the 115th Congress came to an end. Meaning that if they are to make it to the president's desk, advocates will have to start from scratch in the new Congress.

★ In December, the Federal Commission on School Safety released a 177-page report making recommendations for improving safety at schools nationwide. The Commission was formed after the horrific shooting at Marjory Stoneman Douglas High School in February of 2018 and was led by Secretary of Education Betsy DeVos, Acting Attorney General Matthew Whitaker (who succeeded former Attorney General Jeff Sessions as a commissioner), Secretary of Health and Human Services Alex Azar, and Secretary of Homeland Security Kirstjen Nielsen. You can read the report here: <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

★ EdChoice's annual 2018 Schooling in America Survey was released in December and it contained some interesting findings.

The survey's results indicate that public school teachers support school choice, in some cases by wide margins. According to EdChoice's polling, 78 percent of current public school teachers favor education savings accounts (ESAs) while only 22 percent oppose. The margin is tighter with respect to vouchers: 54 percent to 46. With tax credit scholarships it is 67-32. The study also found that 79 percent of current and former school parents are "very" or "somewhat" satisfied with private schools whereas the number is 66 percent for public schools. When EdChoice asked survey respondents a follow-up question regarding the primary reason they chose a certain type of school, respondents choosing private schools were more likely to prioritize "individual attention/one-on-one/class size/student-teacher ratio" than those selecting public district schools. More than one-quarter of private school choosers gave that reason. Respondents that preferred public schools would most frequently say some aspect of "socialization" was a key reason for making their selection. Finally, the study observes that "Americans do not know how much we spend on average per student in public K-12 education. The United States spends more than \$11,000 on each student in America's public schools, but a majority of our survey respondents underestimated per-student funding by at least \$3,000."

★ It caught our attention at CAPE *Outlook* that Alleane West has been working to defend Alabama's tax credit scholarship pro-

gram as it comes under attack from political opponents. Alleane's son Nick, a previous scholarship recipient, testified in Washington, DC at the same IRS hearing that was reported on in the December issue of *Outlook*, where he did an outstanding job. Truly the apple doesn't fall far from the tree.

★ George H.W. Bush, the forty-first president of the United States, died on November 30. While running for president in 1988, Bush famously declared that he wanted to be "the education president." In his first year in office, he convened a historic education summit at the University of Virginia attended by most of the nation's governors. According to a Los Angeles Times article written at the time, this was only the third time in history that an American President called a summit conference of the governors. Senator Lamar Alexander, who served as Bush's secretary of education and currently chairs the US Senate's education committee, told *Politico* that Bush's proposed (and never enacted) "GI Bill for kids," that would have helped low-income families pay for private schools, paved the way for school choice discussions that followed. "It was the biggest push that school choice had had up until that time."

