

Council for American Private Education

# CAPE outlook

Voice of America's private schools

## New Mexico CAPE at Center of Textbook Battle

The New Mexico Association of Non-public Schools (NMANS), a state affiliate of CAPE, is at the center of a battle about a provision in the state's constitution that discriminates against students in private schools.

At issue is whether the New Mexico Supreme Court ruled correctly when in 2015 it determined that providing state-purchased textbooks and other instructional materials

to students in private schools was unconstitutional. Article XII, Section 3 of the New Mexico Constitution says that no state funds "shall be used for the support of any sectarian, denominational or private school, college or university." Essentially similar language, known as Blaine amendment language, exists in the constitutions of 38 states.

### Since 1933

New Mexico had been providing free textbooks to public and private school students in grades 1-8 since 1933. That law evolved over the years to the point where the state was offering textbooks along with other instructional materials to students in early childhood programs, elementary schools, and secondary schools, whether public or private—until, that is, the court put a stop to the private school component in 2015.

### U.S. Supreme Court

In 2016 NMANS, represented by attorneys from Becket, an organization devoted to protecting "the free expression of all faiths," asked the U.S. Supreme Court to review the New Mexico court's decision.

On June 27, 2017, the Supreme Court vacated the New Mexico ruling and told the state court to reconsider the matter in light of a decision the Supreme Court had rendered the previous day.

That landmark decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* held that the state of Missouri could not exclude a private school from a neutral and secular grant program for playground resurfacing materials.

Missouri had relied on a provision in its constitution similar to what exists in the constitutions of many other states, including New Mexico, that prohibits the expenditure of state funds for religious schools. But the U.S. Supreme Court said that excluding a religious school "from a public benefit for which it is otherwise qualified" is a violation of the U.S. Constitution, specifically the First Amendment's Free Exercise Clause.

### Briefs Filed

Under orders to reconsider its ruling, the New Mexico Supreme Court called for the parties involved to file briefs in anticipation of a decision that will likely be rendered sometime next year.

The brief filed by Becket on behalf of NMANS states that the Blaine amendment that was "forced upon the state by the federal government as a condition for statehood" represented "invidious discrimination" against Catholics. The term "sectarian" in the amendment was code for "Catholic." The NMANS brief contends that the Supreme Court's ruling in *Trinity Lutheran* affirms "that laws targeting religious individuals or organizations for

disfavored treatment are barred by the Free Exercise and Equal Protection Clauses of the United States Constitution."

### Invalidate Blaine Amendment

Although delegates to New Mexico's 1910 Constitutional Convention expanded the funding ban to encompass all private schools, the expansion "cannot disguise that the ultimate target was Catholic organizations," according to the brief, which goes on to argue that "[i]nvalidating Article XII, Section 3... is the only way to completely cure the religious animus lingering in the New Mexico Constitution."

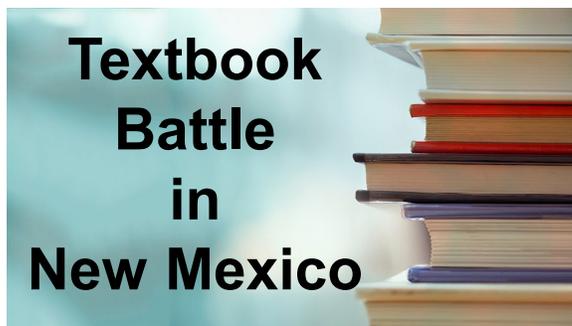
### Alternative Path

But if the New Mexico Supreme Court is not prepared to invalidate the state's Blaine amendment, the brief provides an alternative path. The court could determine that the provision of textbooks and other instructional materials to students across the state is not in conflict with the state constitution because the program does not constitute support for schools. Instead, the state's Instructional Materials Law (ILM) is designed to assist students. By looking at the "student-focused purpose" that lawmakers had when they enacted the ILM, rather than "the incidental, non-financial benefits that may accrue to private schools," the court could uphold the program without invalidating Article XII, Section 3.

Noting that the state has been providing textbooks to students for decades, Eric Baxter, senior counsel at Becket, said. "It makes no sense to punish kids for choosing to attend religiously affiliated schools, especially in lower-income communities."

No matter what course the court takes, the case will likely be a significant one in the history of private school jurisprudence and could have implications for other Blaine amendment cases.

Photo: jakkaje808/Shutterstock.com



**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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## Results for Revised SAT Released

The College Board recently released performance results from the revised SAT for the class of 2017, the first graduating class in which the majority of SAT test takers (93 percent) took the new exam, which was first administered in March 2016. The results for the class of 2017 set the baseline for comparing the performance of graduates for years to come.

The mean total scores for 2017 graduates who took the new SAT was 1060. For the Evidence-Based Reading and Writing section (ERW), the mean score was 533 and for the Math section it was 527.

### Varied Results

According to data provided to CAPE by the College Board, results varied significantly by the type of school students attended, with college-bound seniors in religious and independent schools scoring substantially higher than the national average. Specifically, the average combined score of students in independent schools was 1160, or 100 points above the national mean, while the average for religious school students was 1134, which was 74 points above the mean. Public school students scored 1044, 16 points shy of the mean. Students in private schools clearly help lift the national average.

In each of the subjects tested, SAT scores for college-bound seniors in religious and independent schools were also substantially higher than the national average. Mean SAT scores for students in public schools were 527 in ERW and 517 in math, while comparable scores for students in religious schools were 574 and 560. Students in independent schools had an average

ERW scores of 570 and an average math score of 590.

### Benchmarks

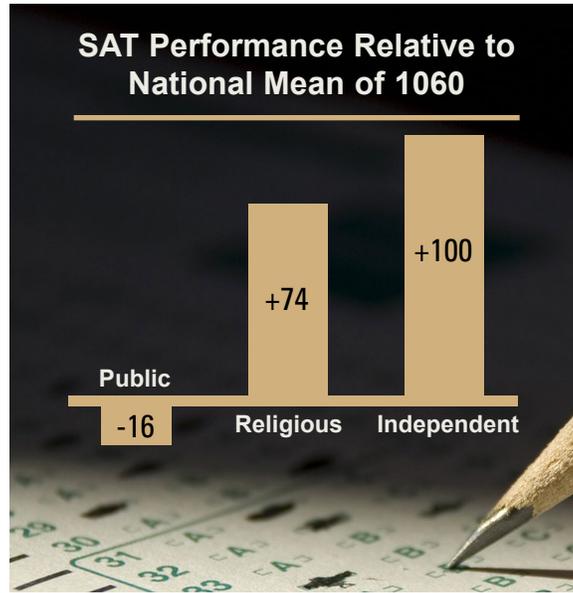
The College Board calculates benchmarks for both the ERW and math sections of the assessment. The math benchmark (530) is said to be “associated with a 75 percent chance of earning at least a C in first-semester, credit-bearing, college-level courses in algebra, statistics, precalculus, or calculus.” The ERW benchmark (480) “is associated with a 75 percent chance of earning at least a C in first-semester, credit-bearing, college-level courses in history, literature, social science, or writing.”

For the class of 2017, 46 percent of students who took the SAT met or surpassed the benchmarks in both sections of the assessment. But again, percentages varied by type of school. For public school students, the share of students who met or exceeded both benchmarks was 43 percent; for religious school students, it was 60 percent, and for independent school students, it was 66 percent.

### Khan Academy

In connection with its release of SAT results, the College Board reported that more than 4 million students, or 40 percent of all SAT test takers used the official and free SAT practice site on Khan Academy. Among members of the class of 2017, 400,000 students “linked their College Board and Khan Academy accounts to receive a free, personalized SAT study plan.”

Photo: Eric Von Seggern/Shutterstock.com



Schools	ERW	Math	Total
Independent	570	590	1160
Religious	574	560	1134
Public	527	517	1044
National Mean	533	527	1060

## Survey Says: Parents Like Private Schools

Although about 90 percent of American K-12 students attend public schools, a significant share of parents would prefer an alternative type of school, according to a national poll released November 29 by EdChoice.

Only one-third of parents surveyed said that if they could select any type of school, they would choose a public district school in order to obtain the best education for their child. Forty-two percent said they would select a private school, 15 percent a charter school, and 7 percent would home-school their child.

### Satisfaction

Positive perceptions of private schools were also reflected in responses to a question measuring how satisfied current and former school parents were with their child's school. According to the report, 93 percent of private school parents were satisfied, as were 90 percent of homeschool parents, 75 percent of public charter school parents; and 73 percent of public district school parents.

Looking only at parents who said they were "very satisfied" with their child's school, the contrasts are even more stark, with 58 percent of private school parents indicating that level of satisfaction, along with 54 percent of homeschool parents, 45 percent of charter school parents, and 29 percent of district school parents. As the report put it, "Parents were twice as likely to say they were very satisfied with their private school experience compared to the proportion who said they were very satisfied with district schools."

### School Grades

Preference for private schools was also reflected in how American parents rated different types of schools. Respondents were asked to give a grade of A through F to the schools in their community. Among current school parents who actually assigned a grade, 75 percent gave an A or B to private schools, 61 percent gave an A or B to public charter schools, and 50 percent gave an A or B to public district schools.

After they were asked about the type of school they would prefer for their child, respondents were asked about the most important characteristic or attribute that would cause them to select that school type. The top five reasons identified by parents who selected private schools were: Individual Attention / One-on-One (18 percent); Class Size / Student-Teacher Ratio (15 percent); Better Education / Quality (15 percent); Discipline / Structure (9 percent); Religion / Religious Reasons (6 percent), and Better Teachers / More Professional (6 percent).

The survey involved telephone interviews of 1,000 adults between August 18 and September 2.

### Support for Choice

The survey also measured what Americans think about various approaches to school choice programs. Responding to a question that described education savings accounts (ESAs), 71 percent of Americans said they supported an ESA system. Only 19 percent of respondents said they opposed ESAs. According to the report, there was "a noticeable spike—19 percentage points—in support for ESAs when compared to last year's survey."

Other school choice measures also fared well. On vouchers, the report notes, "More than six

out of 10 Americans (62 percent) said they support school vouchers, compared with 31 percent who said they oppose such a school choice system."

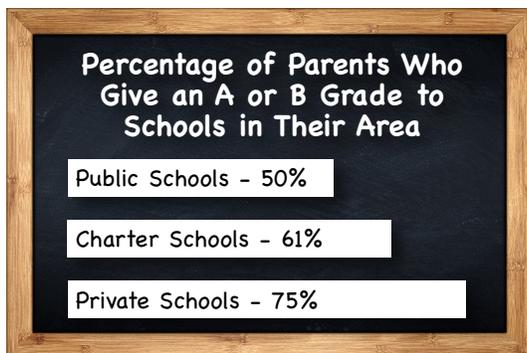
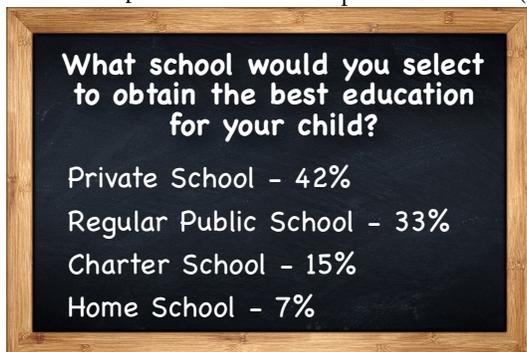
And when it comes to tax-credit scholarship programs, "Similar to vouchers, respondents are more than twice as likely to support (62

percent) a tax-credit scholarship system than to oppose (26 percent) one."

"We are encouraged by continued support for educational options, including vouchers, tax-credit scholarships and charter schools. We are particularly pleased to see high levels of support for education savings accounts or ESAs," said EdChoice President and CEO Robert Enlow in a news release.

The report is available at [www.edchoice.org/research/2017-schooling-america-survey/](http://www.edchoice.org/research/2017-schooling-america-survey/).

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## USDE Priorities

In early November, CAPE offered comments to the U.S. Department of Education on Secretary DeVos's proposed priorities for awarding grants under various discretionary grant programs that the department administers.

The first priority was right in CAPE's wheelhouse: "Empowering families to choose a high-quality education that meets their child's unique needs." The department's proposal explains that "the Secretary believes that every child, regardless of his or her ZIP code or family income, should have access to a high-quality education. A family should have the chance to select the educational path that best meets a child's needs, regardless of where or how instruction is delivered."

In applying this priority, the department would give preference to projects that increase "the proportion of students with access to educational choice" and that increase access to educational choice for high-need students.

The document defines "educational choice" to include not only public school providers, but also "[p]rivate or home-based educational programs or courses, including those offered by private schools, private online providers, private tutoring providers, community or faith-based organizations, or other private education providers."

CAPE's mission is to preserve and promote educational pluralism, so its response to the department's proposals included strong support for the school choice priority. CAPE's response also applauded Secretary DeVos and the department for the comprehensive definition of "educational choice." As the letter from CAPE noted, "The inclusion of private educational programs, including those sponsored by faith-based and secular providers, is essential if parents are to have genuine options when it comes to their child's education."

## CAPE notes

★ The Office of Non-Public Education (ONPE) at the U.S. Department of Education recently published the latest issue of its quarterly newsletter *Ombudsman Update*, designed to help newly appointed state ombudsmen ensure that school districts comply with the equitable services provisions of the *Elementary and Secondary Education Act*.

The latest *Update* is packed with helpful information for ombudsmen and private school officials, including several questions and answers from USDE guidance documents. Here's one on the consultation that local educational agencies (i.e., school districts) must conduct with private school officials on equitable services:

Q. *Who is responsible for initiating the consultation process?*

A. The obligation to initiate the consultation process lies with the LEA that is responsible for providing equitable services. In most cases, the LEA contacts officials of private schools located within its jurisdiction to begin the consultation process on key issues that are relevant to the equitable participation of private school students, teachers and, in some cases, parents in ESEA programs. If this does not occur, private school officials should contact the LEA in which their school is located and ask to speak to the individual(s) responsible for administering ESEA programs.

The *Ombudsman Update* is available at <https://innovation.ed.gov/what-we-do/non-public-education/essa/ombudsman-corner/>.

★ A study conducted by researchers at the University of Virginia and the University of Hartford “offers evidence that high fidelity Montessori preschool programs are more effective than other business-as-usual school programs at elevating the performance of all children, while also equalizing outcomes for subgroups of children who typically have worse outcomes.”

Results of the study were published October 30 in *Frontiers in Psychology* under the title “Montessori Preschool Elevates and Equalizes Child Outcomes: A Longitudinal Study.”

Using randomized selection, the study found that children enrolled in the Montessori program “fared better on measures of academic achievement, social understanding, and mastery orientation, and they also reported relatively more liking of scholastic tasks.”

The sample included 141 children, 70 of which were in Montessori settings. The researchers called for a larger study to validate the promising findings.

★ “I’m not going anywhere! In fact, I’m just getting started!” That’s how Education Secretary Betsy DeVos recently put to rest rumors of her imminent retirement from office. Speaking in Nashville November 30 at the Foundation for Excellence in Education’s National Summit on Education Reform, DeVos speculated that her decision to stay would be bad news for “defenders of the status quo.”

Referring to *A Nation at Risk*, the 1983

report decrying the country’s “mediocre educational performance,” DeVos declared, “We are a nation still at risk. We are a nation at greater risk.” She added, “This is unacceptable. This is inexcusable. And this is truly un-American. We can—we must—do better.”

The secretary then recounted moving stories of several students whose lives had been changed by school choice, noting, however, that for each one of them, there are millions of other students across the country “whose stories don’t have the same result. Who aren’t afforded the same opportunity.”

Calling these countless students the “forgotten in our society,” the secretary reminded her audience that such students have dreams, potential, and hope. She challenged policymakers to respond to these students: “How are you going to put their needs above the needs of a ‘system’? Will you have the courage to buck the entrenched special interests and do what you know is right for these ‘forgotten’ among us? Make a commitment to put people before paperwork. Students before systems,” she said.

DeVos closed her remarks with these comments: “America is far too great a country to deny any parent or any student the chance at their dream—the chance a great education affords them. We owe it to our children to be fearless. The rising generation represents 100 percent of our future; let’s give them nothing less than 100 percent of our effort.”