Private School Accountability

presentation by

Joe McTighe
Executive Director, CAPE

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The rulebook for talks like this makes it mandatory to start with a funny story. And fortunately for me, I come from Washington, a place where funny is a way of life. As Will Rogers used to say, “I don’t make jokes. I just watch the government and report the facts.” One source of humor in D.C. is the title of the No Child Left Behind Act. There seems to be no end to the humorous variations on that title. But the one I like best is Jay Leno’s description of Governor Schwarzenegger’s bill to ban junk food in school cafeterias. He calls it the No Child Left with a Big Behind Act.

In all seriousness, the No Child Left Behind Act, though the butt of some jokes, has had a pervasive effect on American education in its drive to bring about improvement in student achievement through assessment and accountability. In its standards-based approach to reform, measurement by standardized tests is everything. As U.S. Education Secretary Margaret Spellings told our CAPE board a few months ago, “In God we trust, all others bring data.” And although the secretary was not specifically talking about private schools, the reality is that the private school community does not live in a bubble, and we are not immune from the accountability and assessment epidemic that is sweeping the country. It may not be policymakers or lawmakers who hold us accountable for results; it may be parents—who want to know how much progress their children are making and how they compare with children in other schools in the district, state, or country.

The issue of private school accountability grabs a headline now and again. Several years ago, The Washington Post published a front-page article about The Islamic Saudi Academy, a school for the children of Arabic-speaking diplomats with a curriculum that let’s say does not measure up to American standards of tolerance. The article prompted some harsh letters to the editor, including this one from William Mullins of Potomac, MD:

Is it really legal for a private school to teach children to attack and murder people because of their religious beliefs? The Post needs to follow up this disturbing article with more information about what can and cannot be taught at private schools according to state and federal law. (March 4, 2002)

And then there’s this letter from Barbara Allen of Washington, DC:

After reading about the hate-filled textbooks at some of the Islamic schools in the Washington area, it was clear why religious schools should not receive public funding of any kind. If schools can openly advocate anti-Semitic or anti-Christian ideology, what is to stop other types of religious schools from advocating anti-gay, anti-women or white-supremacy positions in the classroom? Funding religious schools through school vouchers or any other public means could mean supporting the “hate-training” of our children at everyone's expense. (March 4, 2002)

Ignoring for the moment the logical fallacies, the letters suggest some core questions in the debate about accountability:
• Should the state hold private schools accountable? If so, for what?
• Does the state have a legitimate role in ensuring that a private school’s curriculum reflects democratic principles and society’s core values?
• Does the state have an expanded oversight responsibility when public funds are involved?
• Might the state’s interest in defending core values clash with the First Amendment rights of citizens?

The last question is especially intriguing. If, for example, we were asked, should the state allow schools that advocate terrorism? We would respond with a resounding no. Should the state allow schools that are racist? Same answer. But should the state allow schools that teach that homosexual behavior is sinful, or schools whose health plans do not cover abortions, or schools that discriminate in admissions or hiring on the basis of religion? There are those, like the letter writers to The Washington Post, who believe such schools shouldn’t exist, or at least should not be supported with tax dollars. The Post article that prompted the letters was entitled “Where Two Worlds Collide.” The collision between the values of society and the values of groups that sponsor private schools may be closer to home than we think.

Let’s look at the first question, should the state hold private schools accountable? No less an authority than the U.S. Supreme Court gives some guidance in the landmark case Pierce v. Society of Sisters. While those of us in the private school community understandably focus on the court’s declaration that “[t]he child is not the mere creature of the state,” we would do well to pay as much attention to the court’s recognition in Pierce of “the power of the state reasonably to regulate all schools.” Let’s look at the text:

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require...that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. (Pierce v. Society of Sisters, 268 U.S. 510 (1925))

Of course the court in the same decision goes on to declare that the state cannot unreasonably interfere “with the liberty of parents and guardians to direct the upbringing and education of children under their control.” The court continues:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state. (Pierce v. Society of Sisters, 268 U.S. 510 (1925))

The court struck a balance between the liberty rights of parents to direct the education of their children and the right of the state to make sure that education achieves certain state
interests (for example, that children be given the skills they need to be good citizens and that nothing be taught which is manifestly harmful to the public welfare). You can’t have terrorist training academies under Pierce.

Let me provide an example of a post-Pierce ruling by a state court on the balance between parent interests and state interests. In 1976 the Supreme Court of Ohio ruled that while the state can enforce reasonable regulations on private schools, in carrying out its regulatory role, government must seek to avoid imposing 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).

Eric DeGroff sums up what the courts have to say in an article in the Brigham Young University Education and Law Journal (Volume 2003, No. 2). After thoroughly reviewing cases dealing with the Fourteenth Amendment and the Establishment and Free Exercise Clauses of the First Amendment, DeGroff concludes, “Although private schools clearly have a right to exist, and parents are guaranteed the liberty to choose nonpublic schooling for their children, the courts have consistently affirmed the right of states to regulate nonpublic schools.” The regulations, however, must be reasonable and cannot be so burdensome as to effectively eliminate parental choice in education.

How are states currently regulating private schools? DeGroff surveyed states and found that 26 require private schools to be registered, approved, or accredited, despite the fact that no state “could offer any evidence that its accreditation or approval requirement actually affects the quality of education.”

Nine states required all private school teachers to be certified, and ten more required certification only for “schools seeking voluntary accreditation or approval.” Again, DeGroff notes “the difficulty of demonstrating any statistical correlation between teacher certification and the quality of classroom teaching.”

Thirty-eight states have established some curriculum mandates for private schools, although the degree of curriculum requirements varies considerably from state to state. And 16 states impose some testing requirement on private schools, sometimes a backdoor way of controlling curriculum.

One state that requires private schools to administer tests and makes the results available to parents and the public is Indiana. You can go to the Web site of the Indiana Department of Education, click on the name of any public or private school in the state and find out how the school is doing on state tests and how it compares to other schools in the state.

I don’t think there’s anyone in America who has done more thinking and writing than Charles Glenn on the issue of educational freedom and the balance between the rights of states and the rights of non-state schools. He is a member of CAPE’s board of directors,
and he told the directors that private schools have to be vigilant about maintaining their distinctiveness in the face of national public policy trends toward school standardization.

He said it is possible to win the battle for public funding for faith-based and independent schools and still “lose the war” if schools wind up losing their distinctive character. He called such loss “a constant danger.” He said in some of the counties he’s studied he can point to publicly funded private schools that have very strong autonomy but to others that have very little. Most instances of the latter, he said, stem from a “loss of nerve” by the private school community. He called it “self-betrayal” or “preemptive capitulation,” which he described as surrendering before anyone asks you to. Sometimes the state needs and receives the willing cooperation of private schools in developing and imposing regulations.

The dangers of over-regulation of private schools exist, according to Glenn, with or without government funding. He referred to a chapter in his book *The Ambiguous Embrace* titled “Strings Without Money,” in which he presents the scope of government oversight of private schools apart from public funding.

Glenn offered a list of regulatory “non-negotiables” that private schools must resist in order to maintain their identity. First, they must exert autonomy over the employment of staff. While schools cannot discriminate on the basis of race and must not employ persons who might endanger the well-being of children, they should be free to hire teachers who reflect the school’s vision, beliefs, and values.

Second is control over the makeup of the student body. This means, says Glenn, that religious schools should be able to maintain their religious identity by limiting enrollment to members of the faith community; single-sex schools should be able to protect their status; and performing-arts schools should be allowed to draw students only from those who demonstrate talent. Of course, schools again have to abide by applicable laws governing nondiscrimination.

Autonomy over organization, instruction, pedagogy—in other words, the *how* of education, the “way that schools do things”—must also be safeguarded.

In short, his plea was that private schools do everything they can to protect their distinctiveness and avoid standardization. And he added that the only way to preserve the educational pluralism that Americans value is by having institutions with “distinctive viewpoints.”

In this era of performance standards and school report cards and state assessments, a charge we often hear is that private schools are not accountable. Well, not accountable to whom? All private schools are schools of choice—chosen by parents, the child’s primary educators, and presumably chosen because they provide an education consistent with the parents’ expectations of what a school should be. There are free-market forces at play in our schools that ensure a level of quality control immediate, effective, decisive, and
unforgiving. If our schools don't deliver what parents want, they take their business someplace else, and the school closes. Now that's accountability. And we should not sell that short. The fact is that private schools are the most accountable schools in the country.

In the wonderfully delightful movie *Moonstruck*, there is a scene in which Olympia Dukakis, who plays Rose Castorini, a firmly rooted Italian lady, is outside her house after an evening stroll with a man she had met earlier in a restaurant. The man, with obvious amorous intentions, says, "I suppose you can't invite me in because your family must be in there." And Rose says, "No. There's no one at home. I can't invite you in because I'm married and I know who I am."

Private schools are reluctant to invite the state in—reluctant, that is, to submit to excessive government control—because we know who we are. We have been educating youngsters for hundreds of years in this country—longer than the government schools. We have a clear philosophy, a focused mission, a distinctive approach to education, and we know that we need to be free to fulfill our own nature. Without diversity in education, there is no freedom in education. If the government so regulates schools as to destroy their difference, so that school A and school B are nothing more than Tweedle-dee and Tweedle-dum, we have in effect robbed parents of the right to direct the upbringing of their children.

The science of education, to the extent it can be called a science, does not have a lock on what one curriculum or methodology is best for all students. We don't know the one best way to educate everyone, probably because there is no one best way. Each child is different. What’s more, in a pluralistic society there are lots of answers to the question What is the good life? And schools reflect those answers.

No less an authority than Dr. Seuss extols curriculum diversity in the delightful book *Horray for Diffendoofer Day*, a celebration of the Diffendoofer School. The school is known for inspiring students to engage the world fully and creatively, unlike the Flobbertown school “and we shudder at the name, for everyone in Flobbertown does everything the same.” The Diffendoofer school does not simply prepare students for standardized tests, but it prepares them for life. It helps students see the world with fresh eyes. And so Miss Bonkers, a teacher, tells her students, "We've taught you that the earth is round,/That red and white make pink,/And something else that matters more/-We've taught you how to think." And the teachers at Diffendoofer are creative and inspiring; you might say they are not cookie-cutter teachers from the same teacher-training schools. So Dr. Seuss has the students saying, “I think we’re learning lots of things not taught in other schools; our teachers are remarkable; they make up their own rules.” Schools teaching lots of things not taught in other schools is what educational pluralism is all about.

In a recent article on influences of deism in the United States, Avery Dulles wrote that Thomas Jefferson took pride in the fact that students at his University of Virginia had
opportunities to worship in a variety of denominations. In fact, Jefferson believed inter-denominational competition was the best protection against religious fanaticism. So for Jefferson the aphorism “United we stand, divided we fall” had to be reversed. “Divided we stand, he said, but united we fall.” (“The Deist Minimum,” First Things, January 2005).

An analogy applies to American education. Pluralism is a protection against the dominance of a single pedagogy that drives instruction through tests; it is protection against a single state-sponsored curriculum, and it is, some would say, protection against the promulgation through our schools of a single philosophy of life—modern secularism, with its conviction that there is no objective truth or absolute moral code, only an ever-evolving series of cultural and individual redefinitions of truth and good. Without pluralism in education, we face the tyranny of a state-sponsored monolithic system of education, and that cannot be good for a free society. Divided we stand, but united we fall.

But still, as Charles Glenn told our board, private schools perform a public service and we are in part accountable to the public. We would do well to focus on the recognition in Pierce of “the power of the state reasonably to regulate all schools.” We need to engage in a discussion of what constitutes reasonable regulation. And my sense is that there would be considerable consensus within our community on the topic.

We would, I suspect, want to focus on output. That is, we would probably consider it appropriate for private schools to show evidence of school success in helping students achieve the broad, general, commonly accepted skills and concepts essential for good citizenship—competence in reading and math, for example. But we would want to avoid being tied to specific learning outcomes that could wind up dictating curriculum and interfering with a private school's ability to fulfill its unique nature. And we would certainly want to be free to select from a wide range of measures to demonstrate achievement. Forced government assessments can present a serious threat to the independence and diversity of private education.

Of course, the corollary to a focus on output is an aversion to state-mandated input standards, such as teacher-training regulations or specific course requirements. The government should leave to local schools the determination of how the broad outcomes should be achieved.

The point is, with the growing public demand for genuine public school accountability, and with the tendency of some lawmakers to treat all schools alike, and with what will be the growing demand of private school parents to know how their schools are doing, the private school community must take hold of the accountability issue ourselves and define what it means for private schools. And we need to do it apart from any discussion of government assistance for private schools. We should recognize, as did the Supreme Court, the right of government reasonably to regulate private schools, and then we should directly shape the dialogue on what constitutes reasonable regulation.
These are exciting times for private schools, but when it comes to accountability, these are also challenging times, and we should not shrink from the challenges; we should meet them head on.