

Council for American Private Education

# CAPE outlook

Voice of America's private schools

## Every Student Succeeds Act Becomes Law

President Barack Obama signed the *Every Student Succeeds Act* into law December 10, culminating years of congressional debate about the proper role of the federal government in setting education

policy, and effectively ending the era of the *No Child Left Behind Act*.

The sweeping legislation saw bipartisan approval in both the House of Representatives (359-64) and the Senate (85-12) earlier in the month.

During the bill signing ceremony, President Obama praised House Education and the Workforce Committee Chairman John Kline (R-MN) and Ranking Member Robert C. “Bobby” Scott (D-VA) on the House side, along with Senate Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) on the Senate side for their tireless efforts to bring the bill to fruition. “This would not have happened without them,” said the president.

Obama called the effort “a good example of how bipartisanship can work.” Although people did not agree on everything, “they were willing to listen to each other in a civil, constructive way, and to work through these issues, compromise where necessary, while still keeping their eye on the ball,” said the president. “And I think it’s really a testament of the four leaders of the respective committees that they set that kind of tone.”

“Today we begin a new approach to K-12 education that will help every child

in every school receive an excellent education,” said Chairman Kline in a statement jointly released by the four congressional architects after the bill was signed. “Classrooms will no longer be micromanaged

by the U.S. Department of Education. Instead, parents, teachers, and state and local education leaders will regain control of their schools, and children will have a better shot at receiving a great education.”

“The *Every Student Succeeds*

*Act* affirms that every student has the right to an equal education as stated in *Brown v. Board of Education*, and honors the civil rights legacy of the original ESEA,” said Ranking Member Bobby Scott.

Chairman Alexander said the signing unleashed “a new era of innovation and excellence in student achievement—one that recognizes that the path to higher standards, better teaching and real accountability is classroom by classroom, community by community, and state by state—and not through Washington, DC.”

And Senator Murray called the new law “a great step forward in our nation’s continuing commitment to provide all students with a high-quality education.”

ESSA includes important provisions championed by the private school community to improve equitable services to private school students and teachers.

For example, under Title I, which provides assistance to school districts to help high-need students do well in school, a school district now has to calculate funds for services to private school students based on its total Title I allocation, without excluding certain expenditures for other purposes, which it was allowed to do in the past.

Similarly, under Title II-A, designed to ensure high-quality teachers, a district has to set aside a proportionate share of funds for services to teachers in private schools based on its total Title II-A allocation and not just on the funds it chooses to earmark for professional development, which was the case under previous law.

(ESSA’s impact on private schools is unpacked in *Private Schools and the Every Student Succeeds Act*, available on [CAPE’s Web site](#).)

Exactly when the new provisions of ESSA kick in depends on the provision in question. The law specifies different start dates for competitive programs, noncompetitive programs, and other components. To complicate matters, the fiscal year 2016 budget agreement that Congress approved after it approved ESSA amends the start date for noncompetitive formula grants. Suffice it

to say that ESSA will not be implemented overnight, and further clarity should emerge in coming weeks.

[student photo © WavebreakmediaMicro/Dollar Photo Club]



President Barack Obama signs ESSA, December 10, 2015. (Image from US Department of Education Web Site)

### Private Schools and the Every Student Succeeds Act



CAPE Council for American Private Education

**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 on Educational Standards and Accountability
- 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
- Oral Roberts University Educational Fellowship
- Seventh-day Adventist Board of Education
- United States Conference of Catholic Bishops
- Wisconsin Evangelical Lutheran Synod Schools
- 35 Affiliated State Organizations

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## 2016 Budget Affects Private School Students and Teachers

Friday, December 18, turned out to be a busier than usual day in Congress. The focus of frenzied activity on Capitol Hill was the bipartisan *Consolidated Appropriations Act*, a comprehensive spending bill and tax-cut measure that first passed the House (316-113) and then the Senate (65-33), before being signed by President Obama later the same day. The final tally was \$1.1 trillion in spending and \$650 billion in tax breaks, bringing the total price tag to nearly \$1.8 trillion—not bad for a day’s work.

The tax-cut section, called the *Protecting Americans from Tax Hikes (PATH) Act*, makes permanent a number of previously temporary tax breaks that Congress was forced to extend periodically in the past—the so-called “tax extenders.” According to House Ways and Means Chairman Kevin Brady (R-TX), the change from temporary to permanent status “will deliver predictability, clarity, and certainty for individual taxpayers as well as people managing businesses and trying to invest for the future.”

### Teacher Tax Deduction

The new permanent tax breaks include the \$250 above-the-line deduction for classroom teachers in public and private schools. That deduction, which had previously been for expenses related to classroom supplies, computer equipment, software, and instructional materials, now also includes expenses related to professional development. What’s more, from now on the IRS will increase the deduction based on cost-of-living adjustments.

### IRA Charitable Rollover

The PATH Act also “permanently extends the ability of individuals at least 70½ years of age to exclude from gross income qualified charitable distributions from Individual Retirement Accounts (IRAs),” according to a Ways and Means Committee summary of the bill. Under what has come to be called the “IRA Charitable Rollover” provision, up to \$100,000 per year may be distributed to charities from IRA accounts without being sub-

ject to income tax. According to Independent Sector, since the provision was first allowed in 2006, “hundreds of millions of dollars have been donated to charities through IRA contributions.” Private schools and other charitable organizations will no doubt benefit from this now permanent incentive for charitable giving.

### Spending Levels

On the spending side of the *Consolidated Appropriations Act*, Congress approved \$14.9 billion in Title I grants to improve the education of low-income students, an increase of \$500 million from last year. For students with special needs, the new law provides \$11.9 billion in grants to states under IDEA, up \$415 million from FY 2015. Other spending levels for

key programs affecting students and teachers in private schools are presented in the table below.

### Opportunity Scholarships

The omnibus bill was a huge disappointment, however, for supporters of the DC Opportunity Scholarship Program. They were hoping the bill would include reauthorization of the program, but that was not to be. Betsy DeVos, chairman of the American Federation for Children, called the failure “a serious blow to low-income families in the District of Columbia.”

On the plus side, the spending measure did include another year of funding for the scholarship program, whose authorization does not actually expire until 2016-17. “We look forward to working with Congress in 2016 to meet the demands of low-income families in Washington, DC,” said DeVos.

[Photo: © doganmesut/Dollar Photo Club]



Program	FY 2015	FY 2016
Career Education (Perkins Act)	\$1,118	\$1,118
Community Learning Centers (IV-B)	\$1,152	\$1,167
English Language Acquisition (III-A)	\$737	\$737
Math & Science Partnerships (II-B)	\$153	\$153
Special Education (IDEA Part B-611)	\$11,498	\$11,913
Migrant Education (I-C)	\$375	\$375
Teacher Quality (II-A)	\$2,350	\$2,350
Title I (grants to LEAs)	\$14,410	\$14,910

## Religious Freedom and Sexual Rights

A Massachusetts court captured national headlines last month with a ruling that Fontbonne Academy, a Catholic secondary school for young women, violated state law when it rescinded an offer for employment as a food services director to a person involved in a same-sex marriage. The lawsuit was brought by Gay & Lesbian Advocates & Defenders (GLAD), which hailed it as a “first-of-its-kind decision.”

The case is one of many legal clashes between the free exercise of religion and statutes relating to sexual rights—in this case, a law prohibiting employment discrimination based on sexual orientation.

### Under Siege

Boston University Professor Charles Glenn, a member of CAPE’s board of directors, has been sounding an alarm that the distinctiveness of faith-based schools is under siege on several fronts. Speaking November 19 at an international conference in Rome, Italy, sponsored by the Vatican, Professor Glenn said that “this distinctiveness is threatened today as it never has been before except under totalitarian regimes.”

Glenn cited the recent decision of the U.S. Supreme Court in *Obergefell v. Hodges* as likely to affect the freedom of religious organizations, noting that Chief Justice Roberts wrote in his dissent that the decision “creates serious questions about religious liberty.”

Glenn observed, “We have already seen, in North America and in Western Europe, many challenges to the employment practices of faith-based schools...that ‘discriminate’ against individuals openly engaged in same-sex relationships.”

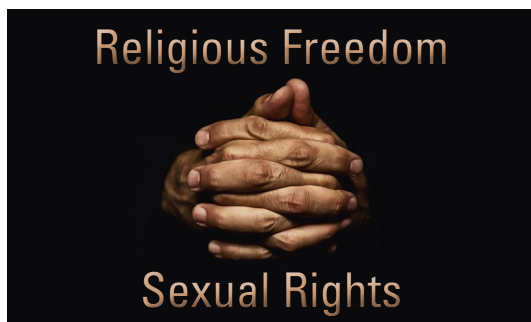
“In fact,” said Glenn, “our ‘tolerant’ contemporary culture has no tolerance at all for limits on sexual self-expression, and redefines religious freedom as no more than the right to hold opinions privately, so long as they do not infringe on the activities or even the self-regard of others.”

### Possible Threats

In a related piece published in the December issue of *First Things*, Professor Glenn offered a sobering list of threats that religious schools could face if they resist the sexual rights agenda: a loss of tax-exempt status, ineligibility for participation in state programs, law suits regarding hiring or firing, a ban from inter-scholastic sports leagues, loss of accreditation, or a man-

date to teach material that violates their faith.

Noting that “[f]irm and intelligent resistance to cultural trends has always been a hallmark of vital religious institutions,” Glenn called on faith-based schools to be “clear and unapologetic about their mission.” Such clarity, he argued, will allow those schools “to compete with the consumerist youth culture to which public schools, whatever their academic quality, offer no credible alternative.”



Specifically, Glenn urged religious schools to be consistent in translating their mission “into every detail of school life, and doing so without apology.”

### One Clear Lesson

Offering similar advice specifically on

the heels of the Massachusetts court decision, Stanley Carlson-Thies, founder and president of the Institutional Religious Freedom Alliance, wrote that the decision provides one clear lesson: “faith-based organizations ought to carefully examine their operations and documents to ensure that their employment practices are clearly and transparently guided by their religious mission and convictions.”

In an [analysis of the decision](#), Carlson-Thies explained that Massachusetts has two exemptions from employment law for religious employers. One exemption applies only to an organization that “limits membership, enrollment, admission, or participation to members of that religion.” Fontbonne Academy, the school in question, does not fall into that category.

“The judge,” wrote Carlson-Thies, “opined that the state’s interest in prohibiting sexual orientation discrimination is as compelling as its interest in ending racial discrimination, dismissing the differences and giving little weight to the government’s compelling, constitutional, interest in upholding religious exercise and thus in protecting the faith-shaped decisions of religious organizations.”

### Precedent?

“Will the decision set a precedent in Massachusetts and elsewhere that a prohibition of job discrimination on the basis of sexual orientation trumps the religious staffing rights of faith-based organizations?” Carlson-Thies doesn’t think so, reasoning that “the Massachusetts exemption language is unclear and the judge did not sufficiently weigh the religious freedom rights at stake.”

[Photo: ©igor/Dollar Photo Club]

## Help for Schools

With religious schools facing challenges to practices that do not conform to the sexual liberation agenda (see story left), several organizations have published resources to help those schools prepare for, and survive, legal assaults.

The Alliance Defending Freedom, a religious rights advocacy organization, has published *Protecting Your Ministry*, designed to help all Christian churches, schools, and ministries defend against SOGI (sexual orientation and gender identity) lawsuits. (The Association of Christian Schools International has collaborated with ADF to produce a version of the manual specifically designed for ACSI schools.)

The guide provides examples of what religious institutions are facing; how an institution “may be vulnerable to similar threats,” and what leaders can do “to secure crucial legal protections to help enable [them] to weather the fast-approaching legal storms.”

Using templates and examples, the ADF document encourages schools to have explicit statements of faith, religious employment criteria, facility use policies, religious mission statements, codes of conduct, and admissions procedures.

Along the same lines, the Heritage Foundation has published *Protecting Your Right to Serve*, a practical guide to help religious organizations “take steps to protect their ability to continue serving the public and operating according to their mission.”

The Heritage document “illustrates some of the present and emerging pressures on religious organizations from government and culture,” then provides “an overview of the religious freedom protections in federal and state constitutions and laws,” and finally “outlines a ‘mission audit’ for religious congregations and ministries to undertake in light of these challenging circumstances.”

Return service requested

## CAPE notes

★ On December 24, the Department of Health and Human Services, Administration for Children and Families, published in the Federal Register proposed regulations to carry out provisions of the *Child Care and Development Block Grant Act of 2014* (CCDBG).

CCDBG, which authorizes the Child Care and Development Fund (CCDF), includes language proposed by the CAPE community that affirms the use of child care certificates, which are provided directly to parents for use in whatever program best suits their child—faith-based, Montessori, Waldorf, or any other public or private program.

Prior to the enactment of CCDBG, the Administration for Children and Families sought to increase the use of grants and contracts to the disfavor of certificates. Grants preclude participation by faith-based providers that incorporate religious components within their programs.

The proposed regulations state that, according to preliminary FY 2013 data, “approximately 90 percent of children receiving CCDF-funded child care were served through certificates.” The new rules would require states to include “some use of grants or contracts for direct services based on an assessment of shortages in the supply of high quality care.”

Other areas addressed by the proposals include training and professional development for caregivers and teachers, health and safety requirements, the use of quality rating and improvement systems (QRIS),

as well as several other sundry topics.

The due date for comments on the proposed rules is February 22, 2016.

★ Following overwhelming approval by the New York City Council last month of Intro 65A, which provides up to \$19.8 million for reimbursements to private schools for the cost of security guards, Mayor Bill de Blasio held a public hearing on the measure December 23.

“Additional security guards will, of course, enhance school safety and community safety, and will put more eyes and ears on the ground, which will ... improve the ability of the NYPD and other public safety agencies to keep New York safe,” said the mayor.

Speakers at the hearing included Dovid Tanenbaum, education affairs associate at Agudath Israel of America, a member of CAPE. In praising the new measure, Tanenbaum said: “It is a simple matter of equity. All the children in New York City are precious, and their safety should be our priority. The police department, the fire department, the hospitals and all the other city agencies that serve and protect the lives of her citizens provide their services equitably, without discrimination. Intro 65A is consistent with this policy.”

Joseph Rosenberg, director of the Catholic Community Relations Council, sounded a similar theme: “There are more than 80,000 children in the schools of the Archdiocese of New York and the Diocese of Brooklyn. When it comes to the safety

of our city’s schoolchildren, there should not be preference for one population of students over any other.”

Mayor de Blasio is schedule to sign the bill January 5, 2016.

★ A new publication from the Friedman Foundation for Educational Choice examines the developing field of private school management organizations, defining them as “independent entities that operate or help operate three or more private schools” and calling them “a potentially important innovation in the supply of private schools.”

The fascinating study, which looks at 14 PSMOs serving about 42,000 students, sets out to answer such questions as how PSMOs differ from one another and how they can consistently generate quality schools for families.

The Friedman report, *Private School Pioneers*, is available for download at <[www.edchoice.org](http://www.edchoice.org)>.

