From: Michelle Clement Taylor
To: Jenn Thompson
Subject: FW: UPDATED: December 2022 Outlook
Date: Tuesday, January 3, 2023 11:36:21 AM

Thought this might be of interest to you.

Michelle

From: CAPE Outlook <cape@capenet.ccsend.com> **On Behalf Of** CAPE Outlook
Sent: Saturday, December 31, 2022 2:04 PM
To: Michelle Clement Taylor <mtaylor@sde.idaho.gov>
Subject: UPDATED: December 2022 Outlook

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Religious Charters?

In an official legal opinion dated December 1, 2022, Oklahoma Attorney General John O'Connor declared his view that a state law prohibiting religious charter schools is unconstitutional. "Pursuant to the conclusions of the United States Supreme Court in *Trinity Lutheran*, *Espinoza*, and *Carson*, the non-sectarian and non-religious requirements found in 70 O.S.2021, § 3-136(A)(2) of the Oklahoma Charter Schools Act likely violate the First Amendment to the U.S. Constitution and therefore should not be enforced."

According to the Oklahoma Council Of Public Affairs, "Official opinions issued by the attorney general are normally treated as legally binding unless a court declares otherwise."

In a joint statement, Archbishop Paul Coakley of Oklahoma City and Bishop David Konderla of Tulsa called the AG opinion "a win for parents and students in Oklahoma." The New York Sun reports that following the release of the opinion, the Archdiocese of Oklahoma City will soon submit an application for the nation's first religious charter school. That application will reportedly be for virtual charter authorization, so if approved, the Catholic charter school would not have a physical school building.

More on the possibility of religious charters below.

Kentucky Supreme Court Strikes Down Nation's First Tax Credit Funded ESA Program

In a unanimous decision handed down on December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Program is unconstitutional under the state constitution.

According to the Institute for Justice (IJ), the program would have been funded entirely by private donations and available to families earning up to 175% of the income cap for reduced-price lunch. Eligible families would have been able to use the accounts for a wide array of educational expenses, including tutoring services, online learning programs, classes or extracurricular activities provided by a public school, and tuition for dual-credit college courses. Families in counties with 90,000 or more residents could also have used their accounts to pay for private school tuition.

IJ attorney Joshua House was quoted as saying, "I think Kentuckians would be shocked to learn that their private donations are treated as government money, especially when that conclusion will take away educational options from lower-income families across the Commonwealth—options already available to their more affluent neighbors."

Vermont Settles Lawsuits Over Tuition for Religious Schools

From the AP:

The Vermont Agency of Education and several school districts will pay tuition costs and legal fees to five families to settle lawsuits challenging the state's practice of not paying for students to attend religious schools if their towns do not have a public school.

In court filings late Wednesday, the two sides agreed to dismiss the two lawsuits in the aftermath of a June U.S. Supreme Court ruling that said Maine schools cannot exclude religious schools from a program that offers tuition aid for private education.

Like Maine, Vermont pays tuition for students living in towns that do not have a public school to attend other public schools or approved private schools of their choice. Following the Supreme Court decision, Vermont Education Secretary Daniel French sent a letter to the state's superintendents in September saying the state's school districts "may not deny tuition payments to religious approved independent schools or religious independent schools that meet educational quality standards."

You can read more here.

Lawsuit Filed Against New Hampshire Choice Program

"The head of one of New Hampshire's teachers' unions is suing the education commissioner to stop the state from spending money on private education," as reported by WMUR.

According to the New Hampshire Department of Education, "Education Freedom Accounts allow eligible New Hampshire students to direct state funded per-pupil education adequacy grants toward select educational programming of their choice for a variety of learning experiences. There are currently 3,025 children enrolled in the EFA program that is offering grants totaling nearly $14.7 million this school year. The cost to taxpayers would be about $65 million if the 3,025 students, who are all eligible, attended a traditional public school."

Students of families with incomes at or below 300 percent of the poverty level are eligible for the program.

Study: Ohio Choice Program Helped, Not Hurt, Public Schools

A new study from the Thomas Fordham Institute found that that Ohio's private school voucher program, known as EdChoice, improved district achievement, reduced district segregation, and had no impact on district expenditures per pupil. This all flies in the face of the claims of school choice opponents.

Read the whole thing here.

Lawmakers in Ohio are considering legislation that would dramatically expand eligibility for the EdChoice program.

Former Catholic School Student Wins Heisman Trophy

Caleb Williams, former quarterback at Gonzaga College High School in Washington, DC, and now QB at the University of Southern California, said the "Gonzaga experience both on and off the field helped to prepare me in more ways than you can imagine," as he accepted the Heisman Trophy Award in New York City on December 10, 2022.

Thanking his high school coach, he went on to say, "Coach, you may not know this, but the Gonzaga mantra that you drilled into us, 'men for others,' has helped inspire me to create the Caleb Cares Foundation, which is all about giving back, so thank you coach, thank you Gonzaga."

ChatGBT: What Artificial Intelligence Breakthrough Portends for K-12

From the *Washington Post*:

Teachers and professors across the education system are in a near-panic as they confront a revolution in artificial intelligence that could allow for cheating on a grand scale. The source is ChatGPT, an artificial intelligence bot released a few weeks ago that allows users to ask questions and, moments later, receive well-written answers that are eerily human.

For some students, the temptation is obvious and enormous. One senior at a Midwestern school, who spoke on the condition of anonymity for fear of expulsion, said he had already used the text generator twice to cheat on his schoolwork. He got the idea after seeing people expound on Twitter about how powerful the word generator is after it was released on Nov. 30.

He was staring at an at-home computer-science quiz that asked him to define certain terms. He put them into the ChatGPT box and, almost immediately, the definitions came back. He wrote them by hand onto his quiz paper and submitted the assignment.

Later that day, he used the generator to help him write a piece of code for a homework question for the same class. He was stumped, but ChatGPT wasn't. It popped out a string of text that worked perfectly, he said. After that, the student said, he was hooked, and plans to use ChatGPT to cheat on exams instead of Chegg, a homework help website he's used in the past.

He said he's not worried about getting caught because he doesn't think the professor can tell his answers are computer-generated. He added that he has no regrets.

The stakes are high. Many teachers agree that learning to write can take place only as students grapple with ideas and put them into sentences. Students start out not knowing what they want to say, and as they write, they figure it out. "The process of writing transforms our knowledge," said Joshua Wilson, an associate professor in the School of Education at the University of Delaware. "That will completely get lost if all you're doing is jumping to the end product."

Wilson added that while universities are buzzing about this, many secondary teachers remain blissfully unaware.

"The average K-12 teacher — they're just trying to get their [semester-end] grades in," he said. "It's definitely a wave that's going to hit."

Read the whole thing here.

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Religious Charters

Our top story, on the possibility of religiously affiliated charter schools, carries massive implications for private religious schools. There are at least two distinct questions to be wrestled with in the coming days: is this concept constitutional, and is it a good idea?

Of course, those who have opposed all forms of school choice for decades will answer both questions with a resounding negative, as will those who resist any contact whatsoever between religion and the public square. However, a line of Supreme Court jurisprudence going back at least twenty years, and culminating in the *Trinity Lutheran*, *Espinoza*, and *Carson* decisions, have left activists holding those absolutist positions precious little ground to stand on.

Meanwhile, respected voices in the private school community see in the Oklahoma attorney general opinion a great opportunity for parents seeking a religious education for their children. Notre Dame's Nicole Stelle Garnett, who has anticipated the possibility of religious charters for years, writes that "Opening the door to religious charter schools will result in the creation of new religious schools, adding valuable pluralism to the American educational landscape." However, Ms. Garnett's position that religious charters are constitutional appears to turn on her novel understanding of charters as not really being public schools. Previously she has written that "if charter schools really are public schools — that is, state actors — they must remain solely secular," an assertion that some advocates of religious charters would very much dispute. As for whether charters are a good idea, while seeming in favor, she is evasive.

There is another perspective. School choice guru Matt Ladner has declared himself "president of the 'Religious Charter Schools are Permissible, Mandatory and a Bad Idea' Club." In a piece at *reimagineED*, he warns that a coalition of charter opponents and entrenched interests will guarantee years of litigation hell for anyone attempting to open a religious charter. Food for thought, though one wonders if the threat of determined opposition is a good enough reason not to try to make progress if a concept is fundamentally sound.

We at *CAPE Outlook* still have a lot of thinking to do on the issue, and our nascent opinions on the matter do not necessarily represent those of CAPE or its members. But let us put it this way: it stands to reason that the religious school community would celebrate the fact that recent Supreme Court decisions have pushed back hard against the notion that public support for the parental choice of a religious education represents a fundamental breach with America's constitutional order (and possibly even a sign of the Apocalypse). *Espinoza* and *Carson* are extremely welcome developments and long overdue. The Constitution does not allow state discrimination against individuals or institutions simply because they are religious. And allowing charters of various stripes, as long as they are not religious, does carry the whiff of such discrimination.

That said, religious school advocates should perhaps bear in mind an admonition they often use against their opponents in church-state debates: the First Amendment was not designed to protect the state from the church, but rather the church from the state. The Constitution may permit religious charters, but what will such charters mean for the the religious institutions that operate them? Just how free to be true to the fullness of their missions and creeds will religious charter operators be?

Moreover, just how eager will lawmakers be to provide ESAs, tax credit scholarships, and vouchers that can be used at private religious schools, if the taxpayer-funded religious charter option is up and running?

And of course, who will pay tuition for a religious school when there is a "free" religious charter representing (or claiming to represent) the same faith tradition down the street? If the only religious schools left in town are charters, will Springfield in fact have any truly, fully, unequivocally religious schools? Would an array of Catholic, Protestant, Jewish, Islamic, and other religious charters constitute actual pluralism, or some ersatz version of it?

These questions, and others, warrant careful consideration by private school advocates, lawmakers, and parents in the days ahead.

Private Education: Good for Students, Good for Families, Good for America

Agudath Israel of America

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

Friends Council on Education

Islamic Schools League of America

Lutheran Church–Missouri Synod

National Association of Episcopal Schools

National Association of Independent Schools

National Catholic Educational Association

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Oral Roberts University Educational Fellowship

Seventh-day Adventist Board of Education

United States Conference of Catholic Bishops

Wisconsin Evangelical Lutheran Synod Schools

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Outlook is published monthly **(September to June)** by CAPE.
ISSN 0271-145

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