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Department Proposes Regulations for the Substantial Equivalency of Instruction in Nonpublic Schools

Regulations Would Provide Multiple Pathways to Nonpublic Schools to Demonstrate Substantial Equivalency of Instruction

Public Comments Accepted Through May 30, 2022

In new draft regulations, the New York State Education Department proposed multiple pathways for nonpublic schools to demonstrate the substantial equivalency of instruction for students to ensure that nonpublic school students receive the education to which they are entitled under the law, Commissioner Betty A. Rosa announced today. The [proposed regulations](#) will be presented to the Board of Regents at its March meeting.

“Our state is rich in diversity, from our cultural, racial, and religious backgrounds to the languages we speak,” Board of Regents Chancellor Lester W. Young, Jr. said. “These differences are assets that should be embraced so we can learn from each other. The Board and I are committed to ensuring students who attend school in settings consistent with their religious and cultural beliefs and values receive the education to which they are legally entitled.”

“We have an obligation under the law to ensure all students receive an education that enables them to fulfill their potential and teaches them the skills and knowledge needed to contribute to society and participate in civic life,” Commissioner Rosa said. “Through our robust stakeholder engagement over the past two years, we listened to all parties, and their feedback is reflected in our new proposed regulations.”

After hearing feedback from nonpublic school representatives, public school representatives, parents, students, and others, the Department incorporated key elements into its new proposed regulations for determining substantial equivalency of instruction, including:

- **Respect for different instructional models;**
- **Offering multiple pathways** to demonstrate substantial equivalence of instruction;
- **Focusing on core instruction** in math, science, English language arts, and social studies, and other statutorily required instruction in all schools such as certain civics, health, and physical education requirements;
- **Providing specific expectations** for local school authorities and non-public schools during review processes; and
- **Creating a review and complaint process.**

Multiple Pathways

The proposed regulation allows non-public schools to choose from various pathways to demonstrate that they provide substantially equivalent instruction to students, as required by law. Any of the state's more than 1,800 nonpublic schools will be able to demonstrate their substantial equivalency of instruction through one of the following pathways:

- **The school is accredited** by a Department-approved accreditation organization;
- It is an approved **Private Special Education School** ('853'), State-Operated, or a **State-Supported School** ('4201');
- **It is a high school registered by the Board of Regents** (grades 1 through 8 of a nonpublic school that has a registered high school program will also be deemed substantially equivalent by virtue of the school's high school registration);
- It participates in the **international baccalaureate program**;
- It delivers **instruction approved by the United States government** on a military base or service academy; or
- **It regularly uses assessments approved by the Department** that can be used to demonstrate student academic progress.

Local School Authority (LSA) Review

In the instances where a non-public school chooses not to use one of the above pathways, the local school authority (LSA) must complete a review. As part of this process, LSAs must complete initial reviews and make final substantial equivalency determinations by the end of the 2024-2025 school year, and the LSA must vote on all substantial equivalency determinations. For schools subject to the Commissioner's determinations of substantial equivalency, the LSA must submit the findings of its review for the Commissioner's determination by the end of the 2024-2025 school year.

All schools subject to negative findings are provided the opportunity to demonstrate substantial equivalence within a reasonable timeframe.

Stakeholder Engagement Process

The Department first released guidance for determining the substantial equivalency of instruction of nonpublic schools in November 2018. In April 2019, a court ruled the Department must undergo a rulemaking process. As such, the Department proposed draft regulations in July 2019, which received more than 140,000 public comments. Given the volume of largely negative comments, in February 2020, the Board of Regents directed Department staff to re-engage stakeholders to inform policy decisions related to the substantial equivalence of instruction in nonpublic schools.

In Fall 2020, the Department conducted six regional stakeholder meetings, which were attended by more than 500 people, to gather stakeholder input on substantially equivalent instruction for nonpublic school students.

In May 2021, the Department released a [report with a summary of the feedback at the stakeholder meetings](#). From Fall 2020 to the present, Department staff held over 20 meetings both virtually and in person with groups representing tens of thousands of students to gather their input and feedback into developing draft regulations. These stakeholders included the Commissioner's Advisory Council for Religious and Independent Schools, Amish school leaders, local Orthodox Jewish groups, public school leaders, including Superintendents, Young Advocates for Fair Education (YAFFED), Parents for Educational and Religious Liberty in Schools (PEARLS), and many other leaders of interested parties. Feedback from these meetings is reflected in the proposed regulations.

Next Steps

The draft regulations will be published in the state register on March 30, 2022, and public comment will be accepted until May 30, 2022. To submit a comment, email seregcomments@nysed.gov (link sends e-mail) or mail them to: 89 Washington Ave., EBA Room 1078, State Office of Religious and Independent Schools, SE Regulation Comments, Albany, NY 12234.

The Department will review the public comments over the summer. If substantial revisions are not made, the final regulations could come before the Board of Regents in Fall 2022.